Counterplans

Word-PIC

[if the plan text says ‘uav’ or ‘UAS’ replace it with drones]

The aff sanitizes language and justifies atrocity - the term ‘UAV/UAS’ is an attempt to whitewash the horrible history and practices of Drones.

Stanley 13 – Senior Policy Analyst @ the ACLU (Jay, May 20th 2013, https://www.aclu.org/blog/drones-vs-uavs-whats-behind-name, "Drones" vs "UAVs" -- What's Behind A Name?) NAR

Representatives of the drone industry and other drone boosters often make a point of saying they don’t like to use the word “drones.” When my colleague Catherine Crump and I were writing our drones report in 2011, we talked over what terminology we should use, and decided that since our job was to communicate, we should use the term that people would most clearly and directly understand. That word is “drones." Drone proponents would prefer that everyone use the term “UAV,” for Unmanned Aerial Vehicle, or “UAS,” for Unmanned Aerial System (“system” in order to encompass the entirety of the vehicle that flies, the ground-based controller, and the communications connection that connects the two). **These acronyms are technical, bland, and bureaucratic**. That’s probably their principal advantage from the point of view of those who want to separate them from the **ugly, bloody, and controversial uses** to which they’ve been put by the CIA and U.S. military overseas. I suppose there is a case to be made that domestic drones are a different thing from overseas combat drones. Certainly, there’s a wide gulf separating a $17 million Reaper drone armed with Hellfire missiles and a hand-launched hobbyist craft buzzing around somebody’s back yard. But drone proponents themselves would be the first to say that drones are a tool—one that can be used for many different purposes. They can be used for fun, photography, science, surveillance, and yes, raining death upon people with the touch of a button from across the world. Even the overseas military uses of drones vary, including not just targeted killing but also surveillance and logistics. Putting aside well-founded fears that even domestically we may someday see the deployment of weaponized drones, in the end, the difference between overseas and domestic drones is a difference in how the same tool is used. Regardless of whether you’ve got a Predator, a Reaper, a police craft, or a $150 backyard hobby rotorcraft, that tool is what it is. What it is is a drone. I can’t touch on this subject without quoting from George Orwell’s famous essay “Politics and the English Language,” in which Orwell argued that bland and needlessly complicated language was a political act—a symptom of attempts to cover up things. “Such phraseology is needed if one wants to name things without calling up mental pictures of them,” he wrote. Defending the English language against such obfuscatory usages, he argued, requires writers to: Use “the fewest and shortest words that will cover one's meaning.” “Let the meaning choose the word, and not the other way around.” “Never us a long word where a short one will do.” “Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.” All of which back up our decision to stick with the word “drones.” In light of the overseas uses of drone technology, it’s worth noting Orwell’s conclusion: Political language—and with variations this is true of all political parties, from Conservatives to Anarchists—**is designed to make lies sound truthful and murder respectable.** If the word “drones” has horrible connotations, it’s because the technology has in fact been associated with horrible things. Many Americans may not pay attention, but when U.S. drones bring dismembering explosions down upon wedding parties, women, children, and other innocent civilians, they generate all the warm feelings and associations in those countries that the Boston Marathon bombing brought here. In any event, if we change the word we use for drones and they continue to be used for such purposes, then the new word will just gain the same associations as the old. Linguists call that the “euphemism treadmill”—the process by which euphemisms lose their value as euphemisms and take on all the negative coloring of the original word. For example, the words “moron,” “imbecile,” and “idiot” were once neutral terms referring to specific levels of mental disability. They were replaced with the euphemism “mentally retarded”—but in time that has also come to be seen as offensive. The good news for drone boosters is that the very fluidity of the meaning of words that makes a euphemism treadmill possible also means there is plenty of opportunity for the word “drone” to gain more positive connotations over time. If the technology does, in fact, bring benefits to our lives, and not just continue as a surveillance and killing tool, then the word will start to take on the warm and fuzzy tones its proponents would like. Mainly we at the ACLU use “drones” because that is the clearest way to communicate. At the same time, if the word continues to carry a reminder that this is an extremely powerful technology capable of being used for very dark purposes, then that’s not necessarily a bad thing.

Advantage CP core JDI

*Cyber Security – Cyber Treaty

1NC Shell

Text: The United States federal government should propose a treaty through the United Nations on cyber-war that prohibits first use of cyber weapons and use against civilian infrastructure, applies the law of state responsibility to non-state actors conducting cyber-attacks, create an obligation of treaty members to investigate who committed cyber-attacks against a victim state, with enforcement coming from an International Cyber Forensics and Compliance Staff and issue a document making its current cyber war doctrine transparent, encourage discussion on cyberwar and the Law of Armed Conflict, and offer to restrain its cyber capabilities in exchange for ratification of the treaty, and implement the results of treaty negotiations.

We'll clarify

Treaty solves miscalculated cyber war

Schneier '12

Bruce, is the Chief Technology Officer of Co3 Systems, a fellow at Harvard's Berkman Center, and a board member of EFF, "Cyberwar Treaties," https://www.schneier.com/blog/archives/2012/06/cyberwar_treati.html

We're in the early years of a cyberwar arms race. It's expensive, it's destabilizing, and it threatens the very fabric of the Internet we use every day. Cyberwar treaties, as imperfect as they might be, are the only way **to contain the threat.**

If you read the press and listen to government leaders, we're already in the middle of a cyberwar. By any normal definition of the word "war," this is ridiculous. But the definition of cyberwar has been expanded to include government-sponsored espionage, potential terrorist attacks in cyberspace, large-scale criminal fraud, and even hacker kids attacking government networks and critical infrastructure. This definition is being pushed both by the military and by government contractors, who are gaining power and making money on cyberwar fear.

The danger is that military problems beg for military solutions. We're starting to see a power grab in cyberspace by the world's militaries: large-scale monitoring of networks, military control of Internet standards, even military takeover of cyberspace. Last year's debate over an "Internet kill switch" is an example of this; it's the sort of measure that might be deployed in wartime but makes no sense in peacetime. At the same time, countries are engaging in offensive actions in cyberspace, with tools like Stuxnet and Flame.

Arms races stem from ignorance and fear: ignorance of the other side's capabilities, and fear that their capabilities are greater than yours. Once cyberweapons exist, there will be an impetus to use them. Both Stuxnet and Flame damaged networks other than their intended targets. Any military-inserted back doors in Internet systems make us more vulnerable to criminals and hackers. And it is only a matter of time before something big happens, perhaps by the **rash actions of a low-level military officer**, perhaps by **a non-state actor**, perhaps by **accident**. And if the target nation retaliates, we could find ourselves in a real cyberwar.

The cyberwar arms race **is destabilizing.**

International cooperation and treaties are the only way to reverse this. Banning cyberweapons entirely is a good goal, but almost certainly unachievable. More likely are treaties that stipulate a no-first-use policy, outlaw unaimed or broadly targeted weapons, and mandate weapons that self-destruct at the end of hostilities. Treaties that restrict tactics and limit stockpiles could be a next step. We could prohibit cyberattacks against civilian infrastructure; international banking, for example, could be declared off-limits.

Yes, enforcement will be difficult. Remember how easy it was to hide a chemical weapons facility? Hiding a cyberweapons facility will be even easier. But we've learned a lot from our Cold War experience in negotiating nuclear, chemical, and biological treaties. The **very act** of negotiating limits the arms race and **paves the way to peace**. And even if they're breached, the world is safer because the treaties exist.

Block

Unilateral avoidance of shared legal obligations undermines the entire architecture of international law

Koplow 13—David, is Professor of Law and Director of the Center for Applied Legal Studies at Georgetown University Law Center. He was Special Counsel for Arms Control to the General Counsel, U.S. Department of Defense, Washington, DC, from 2009 to 2011."Indisputable Violations: What Happens When the United States Unambiguously Breaches a Treaty?," The Fletcher Forum of World Affairs 37(1): http://www.fletcherforum.org/wp-content/uploads/2013/02/Koplow_37-1.pdf

So what? Why does it matter that the United States violates treaties, and occasionally does so without a shred of legal cover? Perhaps that is the realpolitik privilege of the global hegemon: to be able to sustain hypocrisy asserting that its unique international responsibilities and its "exceptional" position in the world enable the United States explicitly to welch on its debts, fudge on its obligations, and adopt a "do as we say, not as we do" approach with other countries.

However, **there is a cost when the world's strongest state behaves this way**. One potential danger is that other countries may mimic this disregard for legal commitments and justify their own cavalier attitudes toward international law by citing U.S. precedents. Reciprocity and mutuality are fundamental tenets of international practice; it is foolhardy to suppose that other parties will indefinitely continue with treaty compliance if they feel that the United States is taking advantage of them by unilateral avoidance of shared legal obligations.

So far, there has not been significant erosion of the treaties discussed in the three examples. The United States and Russia will fall years short of compliance with the CWC destruction obligations, but other parties, with the notable exception of Iran, have reacted with aplomb, comfortable with the two giants' unequivocal commitment to eventual compliance. Likewise, the VCCR is not unraveling, even if other states lament the asymmetry in consular access to detained foreigners. And while many states pay their UN dues late and build up substantial arrearages, that recalcitrance seems to stem more from penury than from a deliberate choice to follow the U.S. lead.

But that persistent flouting undermines the treaties—and by extension, it jeopardizes the entire fabric of international law. Chronic noncompliance—especially ostentatious unexcused, unjustified noncompliance—also sullies the nations **reputation** and degrades U.S. diplomats' ability to drive other states to better conform with their obligations under the full array of treaties and other international law commitments from **trade** to **human rights** to **the Law of the Sea**. The **United States** depends upon the international legal structure more than anyone else: Americans have the biggest interest in promoting a stable, robust, reliable system for international exchange. It is shortsighted and self-defeating to publicly and unblushingly undercut the system that offers the United States so many benefits. It is especially damaging when, following an indisputable violation, the United States acknowledges its default, participates in an international dispute resolution procedure, and apologizes—but then continues to violate the treaty. The CWC implementation bodies, the International Court of Justice, and even the UN General Assembly and Security Council are unable to effectively do much to sanction or penalize the mighty United States, but it is still terrible for U.S. interests to disregard those mechanisms.

*Democracy – Campaign Finance Reform

1NC Shell

Text: The United States federal government should pass the Fair Elections Act.

Campaign Finance Reform solves the democracy internal link

Mandle 15 – Executive Director of Democracy Matters and Associate Professor of Sociology and Anthropology at Colgate University

(Joan Mandle, "Why we Need Reform", Democracy Matters, http://www.democracymatters.org/what-you-need-to-know-about-money-in-politics-2/overview/why-we-need-reform/)

I. The lifeblood of our democracy is under threat Democracy is above all a process of citizen participation, with government accountable to the people. But it is precisely that necessary participation and accountability that have been weakened and eroded by big contributors who dominate the private financing of campaigns Voter turnout for elections is far lower than in most other democracies. A turnout rate of only around 50% is typical, even for high-profile races. Cynicism about politics and government is rampant as people see: a) the influence of big contributors on laws and policy and b) the corruption scandals involving campaign contributions. The cost of running for office continues to escalate. Few citizens can afford the huge cost of running for office at any level of government. Uncontested and non-competitive elections have increased in frequency, with a re-election rate of incumbents that tops 90% in both federal and state races. Incumbents regularly out-spend challengers by margins of 4 to 1. In 2010, the Supreme Court reversed a 100 year-old ban on corporate and union expenditures on political speech, unleashing unlimited spending from these sources. The "Citizen's United" decision has worsened the dominance of corporate influence in our democracy. In 2014, the Court's McCutcheon decision raised the limit of individual contributions to national party and federal candidate committees from a little over $200,000 to over $3 million (essentially no limit at all on what one person can contribute). The Supreme Court has declared war on campaign finance reform and exponentially raised the power of individuals and corporations to control our elections, laws and democracy. The number of bright young people who want to spend their lives in politics or government service has declined as the price of participation has risen. Fewer than 1% of Americans contribute the vast majority of private money going to fund campaigns. Too many politicians are forced to spend up to 20 hours a week raising money rather than solving our country's pressing problems. National polling has consistently shown that large majorities of the American people distrust the government because they believe that wealthy special interests have more influence in Washington and in state capitols than do voters. Polls also showed that over 2/3 of voters say we need changes to the way elections are financed. II. What can we do? In response there has emerged a pro-democracy movement, committed to deepening the democratic process in the United States. Fundamental to this movement is the struggle to change the way election campaigns are financed, especially by ensuring public financing for serious candidates. Fundamentally a democracy can only be as strong as its elections — elections in which many ideas are heard and where citizens actively engage by running for office, participating in debate, and voting. Private money in elections undermines a truly democratic political process. Changing the way elections are financed is the first and most important step in resolving this shameful situation. If private money continues to dominate American politics, the desires of the affluent will control legislation and the rest of us will be ignored. If we change campaign finance laws, we will help create the real democracy most of us want — one in which laws and policy reflect the will of the majority of the American people. Democracy Matters' motto is CHANGE ELECTIONS. CHANGE AMERICA. III. What is wrong with the present system? Politicians, who depend on huge sums of money to run their campaigns, respond more to the concerns of wealthy donors and special interests than they do to the concerns of voters Affordable health care policy has been held hostage to big contributors who fight reform. Protecting the environment is a low priority for legislators who take big campaign contributions from oil and energy companies. Providing more affordable college loans and grants is fought by banks and college-loan companies. Our foreign policy is too often influenced by the economic interests of big donors rather than by welfare of our country. Huge contributions by banks and the financial industry have ensured that real regulation of Wall Street has been blocked, while our economy has suffered. The safety of our food supply takes second place to the interests of companies that contribute millions to politicians every year. Funding for research and for higher education lags as college tuitions rise and legislators vote for tax breaks for big campaign contributors. Lobbyists representing wealthy contributors gain privileged access to elected officials, while ordinary citizens have to stand in line or rely on sending emails. Precious tax dollars are wasted in the form of pay-backs to wealthy special interests who have filled campaign coffers. You name the issue, and it has a link back to political decisions made by elected officials who are indebted for campaign contributions to a small group of wealthy special interests. Everyone knows there is something wrong – that the system is broken – but they think there is nothing we can do. For specific information on federal campaign contributions (who gives how much to whom as well as reports and commentary on outrageous money and politics happenings) go to the Center for Responsive Politics (www.opensecrets.org); for state-level information go to www.followthemoney.org. IV. Is there a solution? It is obvious that to sustain a democracy and solve the many problems we face as a country, we need to reform the way private money dominates our elections Citizens throughout the country have been organizing together since the early 1990's to correct these problems by instituting systems of public financing of elections, often called Voter-Owned Clean Elections (CE) or Fair Elections. The system is voluntary, and only candidates who show support from their districts can qualify. These reforms have proven to be both constitutional (the courts have ruled it does not harm free speech) and costs only a reasonable amount. Reforms of campaign contribution laws for state-level races have passed in Connecticut (2005); Maine (1996); Arizona (1998) for state elections; and in the cities of Albuquerque, NM (2005) and Portland, OR (2005) for municipal elections. In addition, New Mexico passed CE for the state races for its Public Regulation Commission; New Jersey for two state Assembly districts; and North Carolina and New Mexico for Appellate and Supreme Court judges. In Congress, the Fair Elections Act has been introduced to give Congressional candidates a way to run competitive races without depending on big corporate-based and wealthy donors. The proposed bill would create a hybrid public-financing system, with small donations as well as a public grants going to qualified candidates for the House and Senate. On-going fights for reform to make government accountable to citizens at both the state and federal level are getting traction and building all the time.

Block

The rich have a monopoly on politics- it destroys democratic ideals

Brennan Center for Justice 4/12/11

(The Fair Elections Now Act: A Comprehensive Response to Citizens United April 12, 2011, Brennan Center for Justice at New York Law School, http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united)

The Brennan Center for Justice thanks the Subcommittee on the Constitution, Civil Rights and Human Rights for the opportunity to offer testimony in support of the Fair Elections Now Act, S. 750. Providing public financing for federal elections is a necessary, effective, and constitutional response to last year's game-changing Supreme Court decision in Citizens United v. FEC. The Fair Elections Now Act fights corruption and the appearance of corruption by reducing elected officials' dependence on large donors. It encourages constituent-focused campaigns, and increases the power and participation of small donors in elections. Ultimately, public financing restores voters to their central role in our democracy. With Citizens United, the age-old problem of big money in politics has reached a historic inflection point. In that case, the Court overturned decades of law restricting corporate campaign spending. In doing so, the Court re-ordered the priorities in our democracy—amplifying special interests while displacing the voices of the voters. The 2010 midterm elections gave us a preview of what we can expect in 2012, and beyond. In the first post-Citizens United election, tens of millions of dollars from corporate treasuries were spent to influence the electoral process, leaving voters and grassroots groups consigned to the political margins. Many big spenders—including corporate interests—were able to shield their identities through gaping loopholes in federal disclosure law. In fact, 35 percent of all independent spending was done in the dark. Indeed, a detailed study on political spending in the 2010 elections by New York City Public Advocate Bill de Blasio illustrates the pernicious impact of Citizens United on accountability and transparency in American politics. De Blasio's report focused on the races where Citizens United had the most pronounced impact—namely, elections to the U.S. Senate. After examining the ten most expensive Senate races, De Blasio discovered that: "Anonymous or uncapped entities" (that is, organizations taking advantage of the lifting of restrictions on political spending by Citizens United) spent over $85 million on U.S. Senate races—of which $65.4 million was spent on the top ten races alone. Over 30% of outside spending in these Senate races was funded by anonymous donations. These funds included single donations totaling millions of dollars. In other words, in the last federal election cycle, more spending than ever was made by outside organizations that are wholly unaccountable to voters—indeed, such organizations routinely fail to publicly disclose the names of the corporations and wealthy individuals who are bankrolling their campaigns. This influx of secret money poses major risks of corruption, since such independent spending has been used as a quid pro quo for favorable political treatment for large spenders, as explained below.

Super PACs destroy the democratic system

Bowie '12. Blair Bowie. Adam Lioz. The Huffington Post. Updated: 04/09/2012 5:12 am EDT. http://www.huffingtonpost.com/blair-bowie/how-super-pacs-are-auctio_b_1262962.html

By now there's been no shortage of reporting on the tremendous influence Super PACs have had on the Republican presidential primary. From Sheldon Adelson single-handedly extending Newt Gingrich's campaign to pro-Romney Super PAC Restore our Future running more than 12,000 TV ads in Florida, their super-sized footprint has been felt across the country. In a new report, called Auctioning Democracy: The Rise of Super PACs and the 2012 Elections, we take a comprehensive look at Super PAC fundraising -- from their advent in the wake of 2010's Citizens United Supreme Court decision through 2011 Federal Election Commission year-end filings. Our findings confirm that Super PACs represent much of what is wrong with American democracy rolled neatly into one package: they provide a convenient avenue for

for-profit businesses and wealthy donors to dominate the political process with a flood of sometimes secret cash. Business Money Contrary to the Supreme Court's flawed Citizens United ruling, for-profit businesses should not be permitted to spend treasury funds to influence elections. This spending is usually self-interested, and undermines political equality by allowing those who have achieved success in the economic sphere to translate this success directly into the political sphere. Yet, Super PACs have provided a convenient avenue through which more than 550 for-profit businesses have contributed more than $30 million, accounting for 18% of total itemized Super PAC fundraising since their inception. Secret Money Despite lofty talk of disclosure and transparency in the Citizens United opinion, Super PACs have provided an avenue for secret money to influence elections. Our analysis of FEC data shows that 6.4% of the itemized funds ra ised by Super PACs since 2010 was "secret money" not traceable to its original source, from 501(c)(4) nonprofits or other Super PACs that themselves raised secret money. As the chart below shows, secret money spiked just before the 2010 election, and we expect to see an unprecedented surge flowing to Super PACs as we approach November. Wealthy Contributors Our research confirms what has also been widely reported -- that the vast majority of Super PAC fundraising comes from a tiny number of wealthy individuals and institutions. Of all itemized contributions from individuals to Super PACs, 93% came in contributions of at least $10,000. Only 726 individuals, or 23 out of every 10 million people in the U.S., made a contribution this large to a Super PAC. More than half of itemized Super PAC money came from just 37 people giving at least $500,000. Our big-money system, fueled by Super PACs, is bad for democracy because it gives wealthy individuals and institutions unfair influence over who wins elections; and because, despite the Supreme Court's out-of-touch reasoning, winning candidates are likely to feel more accountable to big donors who helped elect them than the constituents they are supposed to represent. **This violates the spirit of the "one-person, one-vote" principle and a basic premise of political equality: the size of one's wallet should not determine the strength of one's voice in our democracy.** It might not systemically skew politics or policy outcomes if these well-heeled donors were like the rest of us -- if on average they had the same life experiences, opinions about issues, and political views as average-earning citizens. But, unsurprisingly this is not the case. We've long known that large donors are more likely to be wealthy, white, male, and conservative on economics. A recent Russell Sage Foundation report confirms this. The authors found meaningful distinctions between the wealthy respondents they surveyed and the general public on economic issues such as the relative importance of deficits and unemployment. Fighting Back So, we've determined that Super PACs are like kryptonite for our democracy. What can we do to fight back against this menace? Our report names concrete policy solutions to help stanch the flow of unlimited money into democracy. To name a few, Congress and the States can add a layer of accountability to corporate electoral spending by requiring publicly traded corporations to get shareholder sign-off on political spending, as is the norm in European countries where businesses are allowed to spend in elections. The Securities and Exchange Commission can require businesses to disclose their political spending, removing the opportunity to cloak spending through non-profits. And, Congress can enact proactive tools that encourage more small donor participation in campaign financing, like vouchers or tax credits. But, ultimately, the people must act together through Congress and the state legislatures to amend our Constitution to make perfectly clear that **the First Amendment is not -- and never was -- intended as a tool for use by wealthy donors and large corporations to dominate the political process.**

*Economy – OSW

1NC Shell

Text: The United States federal government should develop offshore wind farms.

Offshore wind key to advanced manufacturing clusters

N'dolo 10 – associate principal @ Camoin Associates

(Michael and Bruce Bailey, "Offshore development can yield economic benefits," North American Wind Power, Fall 2010)//BB

Economic opportunities

Wind power is a job-creation **engine**. According to the American Wind Energy Association, the wind industry supported over 85,000 jobs in 2009 alone. Most of these jobs were in manufacturing, an area of the U.S. labor force that has been declining rapidly for years. The wind energy industry represents a **significant opportunity** for **turning this decline around**.¶ Although wind power industry clusters exist in North America, there are many specifics to offshore wind that differentiate it from its onshore cousin. Requirements such as installation vessels, unique turbine components, specialized research focus, and professional and technical experience are not yet present in the North American workforce skill set. All of these unique requirements represent an economic opportunity for job creation, ranging from research, design and manufacturing to operations and maintenance.¶ Vessels. Highly specialized installation vessels must be built, operated, repaired and docked during the off-season. The newest generation of such vessels under development in Europe can cost hundreds of millions of dollars to construct and can require a **small army of workers** in ports with sufficient ship-building capacity. In addition, other smaller vessels are necessary for ongoing maintenance and repair operations.¶ The Jones Act requires that all goods transported by water between U.S. ports are carried in U.S.-flagged ships that are constructed in the U.S., owned by U.S. citizens and crewed by¶ permanent residents of the U.S. Although some developers have been successful in requesting an exception, allowing them to use foreign vessels, the Jones Act creates a significant barrier for off-shore developers. Investing and developing a domestic vessel industry to serve the offshore market would significantly increase the attractiveness of a region to offshore developers and investors, in addition to creating jobs to support the new industry.¶ Components. Offshore components tend to he larger and bulkier. Certain components are either unique to (foundations) or modified for (hermetically sealed nacelles, seaworthy substations, nacelle-mounted or substation-mounted helicopter pads for maintenance, and corrosion-resistant materials) offshore use. One of the largest portions of the installed cost of a typical offshore wind farm is directly attributable to the manufacturing and pro-assembly of turbine and foundation components. In regions where a high level of wind component manufacturing currently exists, there is significant opportunity tor creating offshore wind component manufacturing clusters.¶ Installation. Turbines and foundations must be assembled in a staging area, loaded onto a vessel and installed. There are limitations on the ability of any one state or province to service both coasts, but it is reasonable to assume, for example, that an installation cluster in the Mid-Atlantic region of the¶ U.S. could provide installation capacity for a number of projects on the East Coast.

Manufacturing key to econ

Franklin J. Vargo, 10/01/**03**, National Association of Manufacturers, FNS, l/n

I would like to begin my statement with a review of why manufacturing is vital to the U.S. economy. Since manufacturing only represents about 16 percent of the nation's output, who cares? Isn't the United States a post-manufacturing services economy? Who needs manufacturing? The answer in brief is that the United States economy would collapse without manufacturing, as would our national security and our role in the world. That is because manufacturing is really the foundation of our economy, both in terms of innovation and production and in terms of supporting the rest of the economy. For example, many individuals point out that only about 3 percent of the U.S. workforce is on the farm, but they manage to feed the nation and export to the rest of the world. But how did this agricultural productivity come to be? It is because of the tractors and combines and satellite systems and fertilizers and advanced seeds, etc. that came from the genius and productivity of the manufacturing sector. Similarly, in services -- can you envision an airline without airplanes? Fast food outlets without griddles and freezers? Insurance companies or banks without computers? Certainly not. The manufacturing

industry is truly the innovation industry, without which the rest of the economy could not prosper. Manufacturing performs over 60 percent of the nation's research and development. Additionally, it also underlies the technological ability of the United States to maintain its national security and its global leadership. Manufacturing makes a disproportionately large contribution to productivity, more than twice the rate of the overall economy, and pays wages that are about 20 percent higher than in other sectors. But its most fundamental importance lies in the fact that a healthy manufacturing sector truly underlies the entire U.S. standard of living -because it is the principal way by which the United States pays its way in the world. Manufacturing accounts for over 80 percent of all U.S. exports of goods. America's farmers will export somewhat over $50 billion this year, but America's manufacturers export almost that much event month! Even when services are included, manufacturing accounts for two-thirds of all U.S. exports of goods and services. If the U.S. manufacturing sector were to become seriously impaired, what combination of farm products together with architectural, travel, insurance, engineering and other services could make up for the missing two-thirds of our exports represented by manufactures? The answer is "none." What would happen instead is the dollar would collapse, falling precipitously -- not to the reasonable level of 1997, but far below it -and with this collapse would come high U.S. inflation, a wrenching economic downturn and a collapse in the U.S. standard of living and the U.S. leadership role in the world. That, most basically, is why the United States cannot become a "nation of shopkeepers."

Block

OSW promotes fast growth - energy

N'dolo 10 – associate principal @ Camoin Associates

(Michael and Bruce Bailey, "Offshore development can yield economic benefits," North American Wind Power, Fall 2010)//BB

Avoided costs

There are many other ways that offshore development can positively impact local economics, all of which focus on avoided costs. Often misunderstood or ignored, avoided costs are those that, if not addressed, could result in money or **opportunity leaving** an area.¶ For example, is the avoided costs of transmission system upgrades. Many metropolitan areas along the Eastern Seaboard suffer from capacity issues in transmission infrastructure that require tens of billions of dollars to remedy. The extent to which such costs can be delayed, reduced or avoided altogether is an economic benefit to the host community and should be considered as an offset to the perceived higher per-kilowatt power costs of offshore wind.¶ There are additional avoided costs that may be more sig-nificant. Many states and some metropolitan areas have either mandates or policy goals requiring the sourcing of renewable energy by a certain date. If such power cannot be produced locally, providers will be required to source renewable power from elsewhere. This is, in effect, taking local ratepayer dollars and sending them outside of the local economy, a situation analogous to consumer dollars flowing out of the U.S. to pur-chase electronics from low-cost manufacturing countries.¶ These outflows of dollars are tied to **massive job losses**. For the exporting state or province, the ability to recapture these dollars represents new money added to the local economy and additional economic activity. The final avoided cost worth noting is that offshore, while expensive relative to fossil fuels, is less expensive than some other sources of renewable energy such as solar or tidal. The differential costs between offshore¶ wind and other forms of renewable energy can be considered avoided costs that are not passed on to ratepayers.

The aff solves trade and independently without the counterplan trade is ineffective

Scott et al. '13 (Robert E. Scott – Director of Trade and Manufacturing Policy Research, Rob Scott joined the Economic Policy Institute in 1996. His areas of research include international economics, trade and manufacturing policies and their impacts on working people in the United States and other countries, the economic impacts of foreign investment, and the macroeconomic effects of trade and capital flows. He has published widely in academic journals and the popular press. Helene Jorgensen. Doug Hall – Director of the Economic Analysis and Research Network (EARN), Doug Hall became Director of EPI's Economic Analysis and Research Network (EARN) in July 2009, after being an active member of EARN for ten years. Hall previously served as director of operations and research for the Connecticut EARN partner, Connecticut Voices for Children, where he played a leading role in work related to family economic security and state tax and budget issues. He is the author or co-author of dozens of reports, including several reports on state-level economic trends, and eight State of Working Connecticut reports. "Reducing U.S. trade deficits will generate a manufacturing-based recovery for the United States and Ohio" 2/7/13, http://www.epi.org/publication/bp351-trade-deficit-currency-manipulation/)//JHH

Manufacturing has played a **leading role** in the nation's economic recovery, adding 504,000 jobs between February 2010, when manufacturing employment fell to its lowest point, and October 2012. These 504,000 jobs constituted 11.1 percent of the 4.5 million jobs created in that period. However, this relatively recent manufacturing boom comes on the heels of more than a decade of sharp declines in manufacturing employment. Between March 1998 and October 2012, the United States lost 5.7 million manufacturing jobs, nearly a third (32 percent) of manufacturing employment; most of these job losses were due to the growing U.S. trade deficit. Taken together, these trends highlight the manufacturing sector's importance to the U.S. economy and recovery, as well as the role of trade deficits in eliminating U.S. manufacturing jobs.¶ This paper argues that reviving U.S. manufacturing requires eliminating a jobs-destroying U.S. trade deficit in goods by ending currency manipulation and **investing in a series of coordinated manufacturing policies**. It also estimates the economic benefits of ending currency manipulation on trade, jobs, and public budgets in the United States and in Ohio, one of the nation's preeminent manufacturing states.¶ Global currency manipulation1 is one of the most important causes of growing U.S. trade deficits, and of unemployment and slow economic growth in the United States and Europe. Currency manipulation distorts international trade flows by artificially lowering the cost of U.S. imports and raising the cost of U.S. exports. This leads to goods trade deficits that displace U.S. jobs, particularly in the manufacturing sector. The U.S. goods trade deficit could be reduced by between about $190 billion and $400 billion over the course of three years (modeled in this paper as having started in 2011)2 by eliminating global currency manipulation. Without any increase in federal spending or taxation, the United States would reap enormous benefits. As this paper explains, over three years a reduction in the U.S. goods trade deficit of this magnitude would:¶ Create between 2.2 million and 4.7 million U.S. jobs (equal to between 1.4 percent and 3.0 percent of total nonfarm employment)¶ Reduce the national unemployment rate by between 1.0 and 2.1 percentage points¶ Create about 620,000 to 1.3 million manufacturing jobs (27.5 percent of all jobs created by eliminating currency manipulation)¶ Increase U.S. GDP by between $225.0 billion and $473.7 billion (an increase of between 1.4 percent and 3.1 percent)3¶ Shrink the federal budget deficit by between $78.8 billion and $165.8 billion (reductions that would continue as long as the trade balance remained stable), as growth in output expands tax receipts and reduces safety net payments¶ Because Ohio's strong manufacturing sector would experience above-average gains through the increased demand for traded manufactured goods, reducing the U.S. goods trade deficit by between about $190 billion and $400 billion via the elimination of global currency manipulation would have enormous benefits for the state. This paper explains that over three years it would:¶ Create 94,900 to 199,700 jobs (equal to between 1.6 percent and 3.4 percent of total Ohio employment)¶ Reduce Ohio's unemployment rate by between 1.3 and 2.7 percentage points¶ Create 36,100 to 75,900 Ohio manufacturing jobs (equal to 38.0 percent of all Ohio jobs created through ending currency manipulation)¶ Increase Ohio GDP by between $8.3 billion and $17.4 billion (an increase of between 1.9 percent and 3.9 percent)¶ Improve the fiscal position of Ohio state and local governments altogether by between $1.7 billion and $3.7 billion (improvements that would continue as long as the trade balance remained stable), as output growth leads to increased tax revenues and spending reductions¶ But currency manipulation is only one of many demand-side constraints on manufacturing job growth; other countries' dumping practices, insufficient U.S. investment in infrastructure, and other factors have also been barriers to the recovery of U.S. manufacturing. Supply-side constraints also play a role: The United States and its domestic manufacturers are competing in an environment where many other countries, including Germany, Japan, China, and Korea, operate comprehensive manufacturing and labor force development programs to support their traded goods industries; the United States does not.¶ Thus, ending currency manipulation would still leave the United States with a goods trade deficit, which stood at $738.4 billion in 2011. Under the model utilized in this paper, it would be between $360.9 billion and $564.3 billion (equal to between 2.3 percent and 3.6 percent of U.S. GDP) after three years. Fully eliminating the goods trade deficit requires implementing policies that will help restore demand for U.S. goods and boost supply-side supports. As detailed in this paper, such policies include:¶ **Greatly expanding investments in manufacturing R&D and technology diffusion programs**¶ **Providing public financial support to small and medium-sized manufacturers**¶ Developing school-to-work job training systems for non-college-educated workers, including apprenticeship programs modeled on Danish and German models¶ Developing new trade policies that support fair, balanced, and sustainable trade¶ **Planning and implementing manufacturing and traded industry strategies**, including establishing an institution akin to Japan's Ministry of Economy, Trade, and Industry4¶ **Making massive investments in infrastructure**, for example by meeting the United States' $2.2 trillion worth of infrastructure needs over the next five years¶ **Greatly expanding public and private investments in green and renewable energy technologies**¶ Such steps could lead to the **complete elimination of the U.S. goods trade deficit**, which would allow U.S. manufacturing to recover most or all of the market share and employment lost since the late 1990s.

*EU Relations – OSW

1NC Shell

Expanding offshore wind commercialization is crucial to US-EU cooperation

Quinn ’14 (Máire GEOGHEGAN-QUINN European Commissioner for Research, Innovation and Science Opening speech at the World Ocean Council World Ocean Council New York, 29 September 2014

As Europeans and North Americans, when we think of the Atlantic, our first reflection may be that the ocean is something that separates us by its sheer vastness and by the harshness of its marine environment. But the Atlantic Ocean also unites us. It's a physical link. And from Ireland, to Newfoundland, to Florida, we face similar challenges and similar opportunities. So, for me, as the European Commissioner responsible for Research, Innovation and Science, **the Atlantic** also **presents a vast potential for collaboration**. Collaboration aimed at tackling the challenges and making the most of the opportunities. A little over one year ago, the US, the EU and Canada signed the Galway Statement on Atlantic Ocean Cooperation. Today we have a perfect forum in which to present this cooperation to industry and to identify ways to collaborate and better address the Atlantic together - our shared heritage, our shared resource and our joint responsibility. **The challenges we face are global in dimension, whether climate change, the rise in sea levels or the sustainable exploitation of marine resources. These challenges are so great, and so important, that international cooperation is not an optional extra – it's essential**. We need the best researchers and the best innovators, in academia and in companies, working together with policymakers on both sides of the Atlantic. But I don't want to talk only about the challenges. I also want to talk about the opportunities. The Blue Economy is expected to experience major growth in the coming decades. Blue biotechnology has an expected yearly growth rate of 5 to 10%. Deep-sea mineral extraction could provide up to 10% of the world's total minerals. **Marine renewable energy** is expected to grow to **40 Gigawatts of offshore wind capacity by 2020. The Blue Economy will only realise its full potential** across all its different **sectors if it is built on a solid base of** research and **innovation**. And we rely on research and innovation to help ensure that growth does not come at the expense of the marine environment. It took us a couple of centuries to fully appreciate the cost to the environment of the industrial revolution. We know better now, and can't afford to make similar mistakes in our oceans. Sustainability must be ensured and the seas and oceans must be de-polluted so that future generations can continue to enjoy the benefits. Knowledge and innovation are the keys to reducing pressure on resources and ensuring that our oceans remain healthy for future generations. Europe and its Atlantic partners already have a strong technology and innovation base in many new and emerging marine sectors. However, these technologies often **face bottlenecks** that prevent them from making it **‘from lab to market’**. **Investments are therefore needed to support the deployment and demonstration of innovations** such as multi-use offshore platforms, integrated multi-trophic aquaculture and large-scale integrated bio-refineries.

Block

Offshore wind is crucial to US-EU economic and trade ties

Stori ’14 (January 27, 2014 | by Val Stori, OWAP Project Director Trade Missions Critical in Building an Offshore Wind Industry

Perhaps one of the most cost-effective measures US developers can take to reduce project risk and installation costs is partnership with experienced developers. Reducing risks and construction time can have a significant impact on overall project costs. In Europe, growing professionalism in the industry—mainly market entry by large construction companies and major utilities, has led to faster installation times and improved methods. These major players have developed and improved techniques and equipment specific to offshore wind development, which has led to speedier installations and thus, reduced costs. In fact, leading utility and major offshore wind developer DONG Energy predicts that a cost reduction of 10-20% by 2017 is realistic; companies like these are focused on streamlining, improving efficiencies, and incentivizing OEMs and suppliers to reduce costs. **Through partnerships, a US developer can gain valuable experience and tap the wealth of knowledge that European developers have already amassed. To spur the development of offshore wind in the US and to gain public acceptance through more acceptable power prices, the US must take advantage not only of European know-how, but also of the European supply chain.** State renewable energy agencies and local economic development councils who already are heavily invested in offshore wind-related infrastructure and who are looking to position themselves as **leading US offshore wind players, are engaging with key European developers and political leaders through international trade missions. In 2013, two CESA members travelled to Germany and Denmark along with a contingent from economic development councils and port authorities as part of international trade missions.** Both contingents returned to the US cognizant of the major challenges that lie ahead in building a domestic industry, yet aware of the tremendous opportunities for growth. After touring some of the world’s largest wind farms, visiting offshore wind-dedicated ports, and speaking with turbine OEMs, the US representatives returned home to champion for offshore wind. In the words of New Bedford Mayor Jon Mitchell, who travelled to Europe with the Massachusetts Clean Energy Center, “it is hard to avoid the adage that seeing is believing.” But what other than awe at the industry’s huge potential is to be gleaned from these international missions? **Beyond the fact finding and knowledge sharing lies an integral component of these trade missions—the opportunity to build relationships and establish joint ventures.** Dedicated matchmaking sessions and networking opportunities are critical to kick-starting efficient development off US shores. **The opportunity to partner—whether a US contractor partners to operate in Europe and brings the experience back or a US project partners with an experienced European contractor—enables us to benefit from Europe’s learning curve**. We do not have to reinvent the wheel every step of the way. In fact, to do so would likely be cost prohibitive at this point in the game. The US currently does not have the volume or the guaranteed market to develop a robust supply chain or to justify investment in domestic ventures that would support the nascent-at-best industry. Even in Germany, where nearly 400MW of offshore wind were installed in 2013, factories sit idle when demand is low despite investment of an estimated $1.3 billion for specialized ports and factories. Even though economic development and job creation are key goals for the states interested in building an offshore wind industry, until a sufficient pipeline of projects is established along the US Atlantic coast, the first few projects will be supplied by European manufacturers. **European developers and manufacturers are eager to work on this side of the Atlantic.** Recently, the Maryland Energy Administration was invited to attend the annual European Wind Energy Association’s conference at the request of European turbine manufacturers who recognize that Maryland may be the first state to deploy a large-scale project in the US. And in late December, Cape Wind contracted with Siemens to supply the project with Siemens’ 3.6MW turbines and an electrical services platform. The platform, in fact, has been contracted out by Siemens to Cianbro Corp.—a Massachusetts-based company, that will construct the offshore substation at its manufacturing facility in Brewer, Maine. While it may be too early for European developers to establish significant facilities in the US at this stage, **they are looking for project partners and prime locations to invest**—especially if states set offshore wind targets. **It could be a win-win situation. Local content is lacking and would be a substantial hurdle causing major bottlenecks if US offshore developers chose to go “local only.” Overseas cooperation with local industry will be key in getting the US offshore wind industry up and running, while providing a large opportunity for the established European players to get involved in US developments**.

Expanding economic and trade ties are the only way to sustain the relationship

Brattberg '13 (By Erik Brattberg. Published 8 November 2013. Erik Brattberg is Analyst at The Swedish Institute of International Affairs, and currently Visiting Fellow at the Atlantic Council of the United States and a Non-Resident Fellow at the Paul H. Nitze School of Advanced International Studies (SAIS) at Johns Hopkins University in Washington DC.

If so, this could be the start of a recreated and re-invented transatlantic relationship. The development of a more strategic EU-US relationship could also help allay fears regarding the US 'abandonment' of Europe. While US strategic thinking is changing – and fast (the so-called 'Asian pivot' is only the beginning) – a more strategic transatlantic relationship would still serve a critical function for Washington, and not just on the security side of things. The drawdown of the military mission in Afghanistan means that the US will have less need for Europe in coming years. Focusing more on global economic and trade issues could constitute a new strategic imperative for closer EU-US ties.

Energy is the litmus test- current cooperation is insufficient AND without energy alignment other cooperation will be undercut

Koryani, 11—Hungarian diplomat, former Undersecretary of State, foreign policy and energy expert. He is also the Deputy Director of the Dinu Patriciu Eurasia Center of the Atlantic Council of the United State (David [Editor], Tranatlantic Energy Futures, 2011, http://transatlantic.sais-jhu.edu/publications/books/Transatlantic_Energy_Futures/Transatlantic_Energy_Futures.pdf)

Critical factors of divergence cannot be discounted either, as **they have an almost equally strong pull**. **Differing climate change perceptions and the lack of U.S. commitment and action is extremely dangerous, as it alienates Europeans,** both policymakers and the wider public alike**. These differences, if not solved, could drive a wedge for decades between the partners, undermine trust, create a value gap and hinder cooperation not only in** climate change and **energy issues but in all other aspects as well. There is in fact a chance that U.S. and European energy markets could largely decouple** in coming years, **due** in **part to differences regarding the need to tackle climate change**, and in part to diverging geopolitical and domestic trends. **The U.S. has edged closer to self sufficiency with respect to fossil fuels**, with the extensive development of its vast unconventional gas resources and increasing reliance on Canadian oil sands. **This could lead to a more isolationist stance in U.S. policy**. Meanwhile unconventional gas faces mixed reactions in Europe; the EU, for example, plans to shun oil shales and tar sands in its impending Fuel Quality Directive. Friction in transatlantic perceptions on energy security and divergences over preferred courses of action are real dangers that must be addressed head on. Towards a Transatlantic Energy Alliance The systemic transformation of the world of energy, triggered by climate change and powered by new technologies, will likely cause the reorganization of our societies. The benefits and pitfalls of transatlantic cooperation are beyond doubt. Renewing the transatlantic community's leadership is essential to lead the world to a sustainable, low carbon future. Transatlantic cooperation can contribute to provide secure and affordable energy to people in the EU and the U.S., foster economic prosperity and create jobs. **Current cooperation on a wide range of subjects is encouraging but inadequate**. What we need is a new impetus, genuine political will, adequate resources and enhanced cooperation to advance a transatlantic green economy. Joint efforts in addressing climate change, **innovation and investment into clean**

energy technologies, risk sharing and cost reduction, joint RD&D and harmonized energy diplomacy **must be the cornerstones of a Transatlantic Energy Alliance**. A Transatlantic Energy Alliance is desirable and feasible, but not self-evident. **Climate change and energy cooperation will be the litmus test of converging or diverging European and American norms, values and interests in the 21st century**. We have to bridge our differences and we have to do that quickly in order to remain in the driving seat. To amend Robert Kagan's famous line, Americans may be from Mars and Europeans from Venus, but we shall all soon need to move to some other planet if we do not adjust course. Transatlantic Energy Futures endeavors to give you a taste of the intricate and multifaceted energy challenges facing our communities. It aims to do so with a strong conviction in the enduring prominence and necessity of the transatlantic partnership.

Aligning US energy towards renewables is crucial to the US-EU alliance and solving global conflicts

Koranyi '12 (David Koranyi is the deputy director of the Atlantic Council's Dinu Patriciu Eurasia Center and the editor of the book Transatlantic Energy Futures - Strategic Perspectives on Energy Security, Climate Change and New Technologies in Europe and the United States, September 4, 2012, "An Emerging Transatlantic Rift on Energy?")

American and European energy markets are on a diverging path. The US has edged closer to self-sufficiency with respect to fossil fuels, due mostly to the extensive development of its unconventional resources. From 60 percent in 2005, net petroleum imports were down to 45 percent of the US supply last year. By 2020, this rate could be further reduced close to zero, excluding Canada and Mexico. Shale gas made the United States the number one natural gas producer in the world, overtaking Russia, and revitalized manufacturing and the chemical industry. Meanwhile, climate-conscious Europe's already high energy import dependence continues to grow. Use of renewable resources **mandated** by the European Union are **spreading dynamically**, but will take time to mature. Indigenous unconventional gas faces mixed reactions in some member states. In the wake of the Fukushima accident, nuclear energy is on decline in most countries. Ironically, coal use has increased lately in Germany, due to the nuclear power plant closures and flaws in the EU's cap-and-trade system. Romney has proposed a plan that would widen the transatlantic gap further. He proposes to accelerate the development of America's considerable on- and offshore oil and natural resources by opening up federal lands and wildlife refuges, relaxing legislation, extending tax breaks, and approving Keystone XL that would carry shale oil from Canada; to rehabilitate coal by reverting the Environmental Protection Agency's prohibitive clean air standards introduced by the current administration; and to revitalize nuclear power by streamlining the permitting procedures. The underlying tenet of the plan is a complete disregard for the threat of climate change, a term the document does not use. Romney renounces the "myth of green jobs creation" and promotes new jobs in the oil, gas, and coal sectors instead. The plan also stipulates that renewables can compete with other resources on a "level playing field," and implies the cessation of government support for renewable energy projects. The plan, not to mention its implementation, will cause outrage in Europe. To most European policymakers, and the general public alike, shale oil and coal are anathemas, and the "drill baby drill" mentality is considered environmentally reckless. Brussels and other European capitals already resent that President Obama has not spent enough political capital on global climate change negotiations. Europeans worry that a Romney Administration would derail the timeframe agreed to in Cancun last December. Moreover, Europeans believe that a pursuit of US energy independence could prove both elusive and counter-productive. Even if complete self-sufficiency is achieved, oil prices are determined on the global oil market. The United States **might miss breakthroughs** in technologies and **business opportunities** that are offered by the **global scramble for renewables**. While global challenges to stable energy markets prevail, an illusion of energy independence might prompt a more isolationist stance in US foreign policy and a reduced commitment to strategic interests like Europe's energy security. **A transatlantic friction is looming. Would the United States and Europe ultimately be able to reconcile their visions? The transatlantic partners share strategic interests and face common threats and challenges closely linked to energy issues, such as** the proliferation of nuclear weapons, **a resurgent Russia, an unstable Middle East, or China's insatiable appetite for resources** and its repercussions around the globe. **The United States and Europe are uniquely positioned to develop technology, leverage financing, and share experiences in** legislative and **regulatory developments. In times of austerity,** identifying synergies and pooling resources is paramount. There is also plenty to build upon. Owed largely to the increased use of cheap natural gas in electricity generation, to the detriment of coal and measures like enhanced vehicle fuel economy standards, last week the US Energy Information Administration reported that energy-related CO2 emissions in the first three months of the year were the lowest since 1992 (though still much higher per capita than in Europe). While Congress and the US government are paralyzed, more than thirty US states adopted renewable energy portfolio standards similar to the EU's 20 percent target by 2020. Regional emission trading schemes are on the rise in the absence of a federal one. Texas is becoming a renewable energy technology hotspot and wind and solar powerhouse. Many in Europe are willing to learn from the US how to unlock their own shale gas potential that can serve as a bridge fuel to the EU's preferred zero-carbon future as gas emits much less CO2. Conversely, the US is looking to exploit four decades of European experience in energy efficiency improvements and demand reduction. Though politically and financially tricky, both EU member states and the United States should revisit nuclear energy as an essential component in providing affordable and sustainable energy. The list goes on. **The benefits of transatlantic cooperation are beyond doubt**. The consequences of a falling out

between the United States and the EU after the elections are far-reaching. A continued dialogue launched in the framework of the US-EU Energy Council in 2009 would be a way to avoid that. Joint efforts to address climate change, innovation, and investment in clean energy technologies, risk sharing, and cost reduction; joint research and development and harmonized energy diplomacy should be the cornerstones. A value gap that will undermine trust within the alliance is in nobody's interest.

*Grid Collapse – Mexican Renewables

1NC Shell

Plan: The United States federal government should increase investment to develop cross-border grid, transmission, and distribution infrastructure in Mexico.

Bilateral Coop solves power grid

Terry 12 (Alison, Master's candidate at the University of Denver's Josef Korbel School of International Studies, "Policy and Practice in North American Energy Security," International Affairs Review, XX(3), Spring, http://www.iar-gwu.org/sites/default/files/articlepdfs/North%20American%20Energy%20Security.pdf)

Threats to energy security can take the form of **natural** disasters, cyber attacks, or **regional disputes** involving exporting countries. Each of these situations has the potential to **disrupt supply flows** and impair the functioning of critical infrastructure. Hurricane Katrina served as an integrated shock because it simultaneously interrupted flows of oil, natural gas, and electricity throughout North America.2 Canada and Mexico assisted the US Federal Emergency Management Agency with disaster response. This event demonstrates that **cooperative continental defense strategies** can help to ensure energy security. The idea of energy interdependence is particularly relevant to North America because the United States, Canada, and Mexico import and export energy from one another. Rather than operating the North American energy markets individually for each country, the United States, Canada, and Mexico should develop regional markets that can **overlap easily across the international borders**.3 For example, Canada is currently the largest supplier of energy to the United States.4 In 2010, 25.1 percent of net US oil imports came from Canada and 8.5 percent came from Mexico.5 The United States provides 65.9 percent of Mexico's net natural gas imports.6 Although the three countries cannot completely satisfy their energy needs in a North American triad, the relationship of energy sharing could act as a **stabilizing force** for the continent in the face of tenuous import-export relationships in the international energy trade.

Block

Grid interconnectivity is key – enhances grid security and generates additional investment into renewables

Ibarra-Yunez 12 (Dr. Alejandro, Professor of Economics and Public Policy – Instituto Tecnologico de Estudios Superiores de Monterrey (Mexico), "Economic and Regulatory Challenges and Opportunities for US-Mexico Electricity Trade and Cooperation," Policy Research Project Report 174, May, http://repositories.lib.utexas.edu/bitstream/handle/2152/17560/prp_174-econ_reg_challenges_US_Mex_electricity-2012.pdf?sequence=5)

Growth in energy demand and **generating capacity** is outpacing growth in the transmission and distribution system—a situation that poses real challenges on both sides of the United States-Mexico border. The six Mexican states and four US states that comprise the border region face similar energy issues and constraints to each country as a whole. Decreasing reserve margins and peak demand trends suggest the need to **add generating and transmission capacity** in both countries—a concern that can potentially be mitigated by increases in electricity trade and power sharing. Electricity **grid interconnection** can reduce domestic supply concerns and **enhance overall grid reliability** in addition to yielding environmental benefits through the promotion of renewable source generation. No entity has conducted a study of the entire US-Mexico border region as a single geographic region on the topic of energy use. As a result, this chapter seeks to compile relevant data from various studies to provide a holistic view of the main trends and indicators of importance in the border region. Additionally, it analyzes recent developments in the consumption and demand for electricity in the United States-Mexico border region and its impacts for a North American integration scenario—specifically, within the border states of California, New Mexico, Arizona, Texas, Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas. This analysis finds that an optimized, integrated grid would increase overall grid reliability and induce capital investment in generation and transmission capacity.

*Hegemony – OSW

1NC Shell

Text: The United States federal government should develop offshore wind farms.

Offshore wind key to advanced manufacturing clusters

N'dolo 10 – associate principal @ Camoin Associates

(Michael and Bruce Bailey, "Offshore development can yield economic benefits," North American Wind Power, Fall 2010)//BB

Economic opportunities

Wind power is a job-creation **engine**. According to the American Wind Energy Association, the wind industry supported over 85,000 jobs in 2009 alone. Most of these jobs were in manufacturing, an area of the U.S. labor force that has been declining rapidly for years. The wind energy industry represents a **significant opportunity** for **turning this decline around**.¶ Although wind power industry clusters exist in North America, there are many specifics to offshore wind that differentiate it from its onshore cousin. Requirements such as installation vessels, unique turbine components, specialized research focus, and professional and technical experience are not yet present in the North American workforce skill set. All of these unique requirements represent an economic opportunity for job creation, ranging from research, design and manufacturing to operations and maintenance.¶ Vessels. Highly specialized installation vessels must be built, operated, repaired and docked during the off-season. The newest generation of such vessels under development in Europe can cost hundreds of millions of dollars to construct and can require a **small army of workers** in ports with sufficient ship-building capacity. In addition, other smaller vessels are necessary for ongoing maintenance and repair operations.¶ The Jones Act requires that all goods transported by water between U.S. ports are carried in U.S.-flagged ships that are constructed in the U.S., owned by U.S. citizens and crewed by¶ permanent residents of the U.S. Although some developers have been successful in requesting an exception, allowing them to use foreign vessels, the Jones Act creates a significant barrier for off-shore developers. Investing and developing a domestic vessel industry to serve the offshore market would significantly increase the attractiveness of a region to offshore developers and investors, in addition to creating jobs to support the new industry.¶ Components. Offshore components tend to he larger and bulkier. Certain components are either unique to (foundations) or modified for (hermetically sealed nacelles, seaworthy substations, nacelle-mounted or substation-mounted helicopter pads for maintenance, and corrosion-resistant materials) offshore use. One of the largest portions of the installed cost of a typical offshore wind farm is directly attributable to the manufacturing and pro-assembly of turbine and foundation components. In regions where a high level of wind component manufacturing currently exists, there is significant opportunity tor creating offshore wind component manufacturing clusters.¶ Installation. Turbines and foundations must be assembled in a staging area, loaded onto a vessel and installed. There are limitations on the ability of any one state or province to service both coasts, but it is reasonable to assume, for example, that an installation cluster in the Mid-Atlantic region of the¶ U.S. could provide installation capacity for a number of projects on the East Coast.

Strong domestic manufacturing key to maintain hegemony and stave off China

Welsh 14, Editor, writer and social media consultant. He was the Managing Editor of FireDogLake and theAgonist. His work has also appeared at Huffington Post, Alternet, and Truthout

Ian Welsh, "How China Can End American Hegemony" 2014 MARCH 25 http://www.ianwelsh.net/how-china-can-end-american-hegemony/

I concentrate on manufacturing because it and resource extraction are the two things which really matter. All the software in the world, all the "financial services" don't matter if you can't make, mine, or grow what you need. If you were China, and you wanted to destroy US hegemony, how would you do it? The simple answer is "control the means of production". Right now many US companies manufacture in China: Apple may be

located in California, but its manufacturing base is largely in China. As time goes by, those who make goods, learn how to design them. As companies more and more offshore and outsource their design, this becomes more and more true. Companies like Apple can build their goods in China because of patent law: the Chinese may know how to make them, but it's illegal to do so. The logical path for China would be to wait till they have the actual production facilities for every key sector, then break the patents and let the factories (which are already Chinese owned subcontractors, as a rule) make the goods themselves. If you do this in one fell-swoop, because the facilities no longer exist in the US or Europe to make the goods, the US and, indeed, Western governments are faced with two choices: go into an economic tailspin, or buy from China either way. The conventional reply to this is "but the Chinese need Western consumers!" Do they? Will they forever? Or can they take their huge population and turn that into a consumer base? Can they turn various developing countries into consumers of their goods? Africa, in particular, has been looking more and more to China, because China offers development: building roads and factories and ports and airports, which the West no longer does, at least not without insisting on crippling IMF conditions. China doesn't do that, it doesn't care how other countries run their internal affairs: if they want to subsidize food, that's fine by China. Russia, of course, will increasingly turn to China as the West isolates it. Much of Latin America is already looking towards China, and find Chinese influence far less problematic than American influence, since the Chinese don't actively try to overthrow their governments. Will this happen? Perhaps, perhaps not. But, increasingly, it is a route open to the Chinese. They control the actual means of production: the West has very kindly engaged in massive technology and capital transfer to China, moving expertise and the actual production. One might argue that cooperation is better for China. But will it always be? Thanks to massive mismanagement of the economy, the environment and both renewable and non-renewable resources, we are increasingly moving into a period of scarcity. In a negative sum game, cutting America, which consumes far more than its per capita share of resources off at the knees may be exactly what China needs to do to ensure its own prosperity and survival.

Block

OSW promotes fast growth

N'dolo 10 – associate principal @ Camoin Associates

(Michael and Bruce Bailey, "Offshore development can yield economic benefits," North American Wind Power, Fall 2010)//BB

Avoided costs

There are many other ways that offshore development can positively impact local economics, all of which focus on avoided costs. Often misunderstood or ignored, avoided costs are those that, if not addressed, could result in money or **opportunity leaving** an area.¶ For example, is the avoided costs of transmission system upgrades. Many metropolitan areas along the Eastern Seaboard suffer from capacity issues in transmission infrastructure that require tens of billions of dollars to remedy. The extent to which such costs can be delayed, reduced or avoided altogether is an economic benefit to the host community and should be considered as an offset to the perceived higher per-kilowatt power costs of offshore wind.¶ There are additional avoided costs that may be more sig-nificant. Many states and some metropolitan areas have either mandates or policy goals requiring the sourcing of renewable energy by a certain date. If such power cannot be produced locally, providers will be required to source renewable power from elsewhere. This is, in effect, taking local ratepayer dollars and sending them outside of the local economy, a situation analogous to consumer dollars flowing out of the U.S. to pur-chase electronics from low-cost manufacturing countries.¶ These outflows of dollars are tied to **massive job losses**. For the exporting state or province, the ability to recapture these dollars represents new money added to the local economy and additional economic activity. The final avoided cost worth noting is that offshore, while expensive relative to fossil fuels, is less expensive than some other sources of renewable energy such as solar or tidal. The differential costs between offshore¶ wind and other forms of renewable energy can be considered avoided costs that are not passed on to ratepayers.

Fast growth key to hard power but independently solves great power confrontation

Khalilzad 11 – PhD, Former Professor of Political Science @ Columbia, Former ambassador to Iraq and Afghanistan

(Zalmay Khalilzad was the United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush and the director of policy planning at the Defense Department from 1990 to 1992. "The Economy and National Security" Feb 8 http://www.nationalreview.com/articles/259024/economy-and-national-security-zalmay-khalilzad)//BB

Today, economic and fiscal trends pose the most severe long-term threat to the United States' position as global leader. While the United States suffers from fiscal imbalances and low economic growth, the economies of rival powers are developing rapidly. The continuation of these two trends could lead to a shift from **American primacy** toward a multi-polar global system, leading in turn to increased geopolitical rivalry and even war among the **great powers.** The current recession is the result of a deep financial crisis, not a mere fluctuation in the business cycle. Recovery is likely to be protracted. The crisis was preceded by the buildup over two decades of enormous amounts of debt throughout the U.S. economy — ultimately totaling almost 350 percent of GDP — and the development of credit-fueled asset bubbles, particularly in the housing sector. When the bubbles burst, huge amounts of wealth were destroyed, and unemployment rose to over 10 percent. The decline of tax revenues and massive countercyclical spending put the U.S. government on an unsustainable fiscal path. Publicly held national debt rose from 38 to over 60 percent of GDP in three years. **Without faster economic growth** and actions to reduce deficits, publicly held national debt is projected to reach dangerous proportions. If interest rates were to rise significantly, annual interest payments — which already are larger than the defense budget — would crowd out other spending or require substantial tax increases that would undercut economic growth. Even worse, if unanticipated events trigger what economists call a "sudden stop" in credit markets for U.S. debt, the United States would be unable to

roll over its outstanding obligations, precipitating a sovereign-debt crisis that would almost certainly compel a radical retrenchment of the United States internationally. Such scenarios would reshape the international order. It was the economic devastation of Britain and France during World War II, as well as the rise of other powers, that led both countries to **relinquish their empires**. In the late 1960s, British leaders concluded that they lacked the economic capacity to maintain a presence "east of Suez." Soviet economic weakness, which crystallized under Gorbachev, contributed to their decisions to withdraw from Afghanistan, abandon Communist regimes in Eastern Europe, and allow the Soviet Union to fragment. If the U.S. debt problem goes critical, the United States would be compelled to retrench, reducing its military spending and shedding international commitments. We face this domestic challenge while other major powers are experiencing rapid economic growth. Even though countries such as China, India, and Brazil have profound political, social, demographic, and economic problems, their economies are growing faster than ours, and this could alter the global distribution of power. These trends could in the long term produce a multi-polar world. If U.S. policymakers fail to act and other powers continue to grow, it is not a question of whether but when a new international order will emerge. The closing of the gap between the United States and its rivals could intensify geopolitical competition among major powers, increase incentives for local powers to play major powers against one another, and undercut our will to preclude or respond to international crises because of the higher risk of escalation. The stakes are high. In modern history, the longest period of peace among the great powers has been the **era of U.S. leadership**. By contrast, multi-polar systems have been unstable, with their competitive dynamics resulting in frequent crises and major wars among the great powers. Failures of multi-polar international systems produced both world wars. American retrenchment could have **devastating consequences**. Without an American security blanket, regional powers could rearm in an attempt to balance against emerging threats. Under this scenario, there would be a heightened possibility of arms races, miscalculation, or other crises spiraling into all-out conflict. Alternatively, in seeking to accommodate the stronger powers, weaker powers may shift their geopolitical posture away from the United States. Either way, hostile states would be emboldened to make aggressive moves in their regions

*Internet Freedom – Online Gambling

1NC Shell

The United States federal government should legalize online gambling in the United States.

Prohibition destroys internet freedom – legalization solves

Gardner 10, staff writer at Casino Gambling Watch, April Gardner, Gambling Regulations Will Help Obama's World Internet Freedom Mandate, http://www.casinogamblingweb.com/gambling-news/gambling-law/gambling_regulations_will_help_obama_s_world_internet_freedom_mandate_55752.html

President Obama gave a speech today in front of the United Nations General Assembly, and his message was largely one of individual freedom. During the speech, Obama touched on many issues, perhaps the most aggressive of which was having a Palestinian state separate from Israel.

Obama spoke of allowing the Palestinians their own state with the hope that Israelis and Palestinians could live side by side in peace. Obama acknowledged that this could take a long time, but that the goal could become a reality. During the speech, **Obama spoke about how the Internet should remain free from government interference everywhere** in the world. The **freedom** to surf the Internet **would allow people** all **across the globe to research issues and learn from** the wide array of news that is currently found on **the Internet. "We** will **support a free and open Internet, so individuals have the information to make up their own minds," said Obama.** "And **it is time to embrace and effectively monitor norms that advance the rights of civil society and guarantee its expansion within and across borders." That statement may have been much better received had the US not had their own blocks on Internet freedom. The Internet gambling industry currently is operating as a black market** in the US **due to the** 2006 **U**nlawful **I**nternet **G**ambling **E**nforcement **A**ct. **The law is** a form of **Internet censorship** that Representative Barney Frank and other lawmakers have been trying to repeal. **In the quest for Internet freedom, the US proclaims themselves as leaders, however, the country must be careful** with their plea. **If the US can place** Internet **bans on certain industries**, then **little could be done to stop other countries from banning different industries or websites** because of their beliefs. For instance, in countries where religion is unified, **there could be bans on any material that the country finds outside the rules of their particular religion.** In other countries, bans could be placed on industries that are run largely by foreign operators. President **Obama took a strong first step today by promoting Internet freedom. The next step will be making sure the US leads by example**, and **one area to start would be by lifting the ban on Internet gambling. The president** has **laid down the gauntlet**, and **now it is time for him to follow his own lead.**

Block

Gambling is the key precedent for Chinese internet liberalization. Erixon et al 2009

Fredrik, Director of the European Centre for International Political Economy, Protectionism Online: Internet Censorship and International Trade Law, ECIPE Working Paper • No. 12/2009 http://www.ecipe.org/media/publication_pdfs/protectionism-online-internet-censorship-and-international-trade-law.pdf

A case brought before the WTO over censorship would be very likely to give rise to a debate about sovereignty and the ever-expanding scope of trade-related issues under the WTO. However, such a case would mark an important borderline against disproportionate and arbitrary censorship when a partial blockage would be sufficient to achieve the aims of the censors. It would also be economically significant. Censorship is the most important non-tariff barrier to the provision of online services, and a case might clarify the circumstances in w:hich different forms of censorship arc WTO consistent. Such clarification would reduce legal uncertainty for online businesses. Not all WTO rulings, however, result in actual compliance — as mentioned, the member found to be employing WTO-inconsistent measures might decide to continue to use them and accept the consequent retaliation. Even before the ruling in Online Gambling, the US Trade Representative implied that the offending Federal law could not be changed, and that the only way to correct the "drafting error" was to withdraw from its commitments on "other recreational services",** which it is free to do with three months notice under GATS Article XXI. In following this course, how-ever, the US was required to compensate countries injured by its withdrawal from the commit- ment, i.e. to make a deal that not only satisfied Antigua and Barbuda, but all countries who make a claim of having interests against the US in the dispute settlement. In Online Gambling, Australia, Costa Rica, India, Macau, Canada, Japan and the EU joined in with costly demands for compensa- tion . A defendant in a case over censorship who was found to have behaved inconsistently with its WTO obligations, but refused to lift the censorship or correct its form, would therefore have to cither accept authorised retaliation against it or withdrawal from the relevant obligation through compensation. THE WAY AHEAD WEAKNESS OF UNILATERAL ACTION The issue of online censorship can be approached through various different routes under inter- national trade law. Each route has its own limitations, opportunities and political consequences. A regulation, like the once-proposed US Global Online Freedom Act, would discourage invest- ment and market access. Proposals for such types of legislation have been greeted with scepti- cism, whether the proposal is to be put into effect by the EU, the US, or both together. This route has the disadvantage that it damages the companies seeking to export its services by prohibiting businesses from making certain types of investment abroad, and further penalising those w:ho are already limited in their trade through subjection to a censorship regime. Simply put, it taxes the competitiveness of the actors own companies commercially or limits the room for manoeuvre. Furthermore, past experiences from other embargoes show that they are seldom effective to- wards economies that represent significant commercial market potentials. There is also a question of equal treatment between various sectors of industry, in this case the manufacturers versus services. The routers and servers that make up the Great Firewall/Golden Shield of China were provided by IT firms in EU and US—with the consent of their governments, and in some case, these manufacturers even provide training to the personnel in the ministries that administer the censorship. The question of liability, with potential effects (or lack thereof) makes it a dangerous route. POSSIBLE ACTION THROUGH THE WTO The WTO provides principles of proportionality and can impose sanctions on breaches by its members of their WTO obligations; although it has difficulty in ensuring that members found to have acted inconsistently with the WTO restore WTO consistency rather than treating the sanctions as the price of maintaining the inconsistent policy. It is also true that a WTO member found to have violated its WTO obligations could withdraw from the obligation (as the US did after Online Gambling). These are not cheap options, however. Maintaining a policy that has been found to be WTO in- consistent or withdrawing from a commitment is likely to be expensive in terms of losses of trade or direct compensation, and may also be costly in terms of reductions in terms of capital inflows, investment and know-how and losses of service trade. Creating a great fuss in order to maintain censorship, moreover, might be embarrassing, both in terms of attention drawn to the censor- ship and of the air of desperation that would attach to policy shifts for the purpose of maintaining censorship. The WTO route is weak given it is unlikely to be able to abolish

censorship as such. It may, however, have the potential to discipline the clumsier manifestations of censorship: outright blockages by a government that is capable of enforcing selective filtering for example, **and will persuade governments to use more selective and less trade-disruptive means**. Another drawback of the WTO route is that an online industry wishing to use WTO dispute-settlement cannot do so on its own account, but must convince its government to take action. Also, some countries that might be targets of such action are not members of the WTO (for example, Russia, Iran and North Korea). As final note, although the dispute settlement mechanism of neither the WTO nor other trade instruments could be used to eliminate Internet censorship, they might limit the use of its more commercially damaging forms. For businesses, trade with countries ruled by authoritarian re- gimes, or with countries where the concept of the rule of law: is still under development, will always be difficult —if not outright dangerous. Contesting arbitrary and disproportionate blocks on access to such markets will incrementally help to reduce legal uncertainty and therefore contribute in the long run to a regulatory environment where the risks and costs of market par- ticipation are foreseeable.

The plan reverses this.

First, brain drain-Legalizing online gambling revitalizes the high tech sector and attracts skilled workers

Titch, policy analyst at Reason Foundation, 2012 ("Internet Gambling: Keys to a Successful Regulatory Climate" http://reason.org/files/internet_gambling_regulation.pdf)

Another point in favor of online gambling is that it **plays to U.S. technology skill strengths**. While it is true that online casinos do not offer the same types of jobs as brick-and-mortar operations, they do call for 21 st century **knowledge-industry skills** in software-writing and engineering, devel- opment and use of **encryption and security protocols**, and real-time database management. If online gambling were to emerge as analysts currently envision, **it will call on expertise** in four major **information technology areas** where the U.S. leads. • Geographical location verification: To determine that users of an intrastate gambling site are indeed connecting from inside the state. Mobility applications will be especially challenging to engineer. • Age verification: To verify that users meet the minimum age requirement to gamble legally online. • Security: To ensure the validity of player accounts, deposits and withdrawals, protect player funds, protect player privacy, protect the integrity of the games against hacks, cheats or, in the case of poker, collusion or use of computerized playing programs (known colloquially as "poker bots") Database management: Critical for the maintenance and updating of self-exclusion lists, as well as for management of promotions (and to curtail promotions abuse). Internet gambling, especially if it requires every operator to have an in-state presence, will **cre-ate demand for these types of high-paying IT jobs, and help stem the exodus of college graduates skilled in technology sector areas**, to other states. This aim works in tandem with other state efforts to cultivate a **business climate that welcomes tech industry entrepreneurs** and start-ups, and the increase in jobs and tax base these enterprises bring.

Second, competition-legalized gambling would be a major boost to competition in the market-key to innovation and cost reduction

Basham, 2012 (Patrick, founding director of the Democracy Institute, Cato Institute adjunct scholar, served as the founding director of the Social Affairs Center at the Fraser Institute, Canada's leading free market think tank, studied political science at the University of Houston and Cambridge University, "A Safe Bet: Online Gambling's Good for U.S." http://www.cato.org/publications/commentary/safe-bet-online-gamblings-good-us)

Online gambling can be regulated effectively and without excessive cost, to standards that will provide strong protections for consumers and vulnerable players. The principal benefit of regulation to online players is the personal and legal security of funds, whereas currently players in unregulated environments have no legal recourse over matters such as suspected cheating and frozen assets. **A**nother **major benefit** of allowing online gambling is that **competition will be introduced** into a highly regulated marketplace dominated by licensed providers who monopolize the gaming market. Increased competition results in a more efficient allocation of resources, as gambling providers attempt to maintain and attract new customers. The Internet has revealed the potential of technology not only to dramatically increase existing gambling opportunities

but also to introduce new ones. As such, the Internet offers potential consumers **convenient and inexpensive access** to their favorite gambling sites, introducing competition into an industry once dominated by highly restrictive licensing practices. This form of gambling also **encourages private sector businesses to develop network capacity and commerce. Not only will this increased competition result in a wider range of gambling activities, it will reduce cost to consumers.** With legal online gambling, competition among operators would increase to such an extent that they will be **forced by the marketplace**, rather than by governments, to offer a reduced house advantage. Banning online gambling in the domestic American market simply results in the establishment of Internet gaming sites overseas. As other jurisdictions identify the demand for online gambling, they have supplied this service to consumers.

This would spill over to overall improvements in bandwidth

Whittaker, 2007 Jerry, "Impact of Internet Gambling" http://www.gamblingwiz.com/online-gambling/1320-Impact-of-internet-gambling.htm

There are a number of impacts of Internet gambling. Some are good while some are bad. One good thing that can happen is that the Internet Gambling can encourage the private sector to develop a **efficient network capacity and commerce**. When it comes to play internet Gambling it becomes the need of the Internet to offer efficient flash graphics and very sophisticated user interfaces. **This can result in a broader bandwidth and better software for all the types of internet applications.** A very perfect example of this is the real world Casino. The real world casino has therefore resulted in building the most new form of appealing environments.

Plan makes Obama's push for internet freedom credible – key to reversing internet restriction worldwide

Gardner, 10 (Staff Editor & Reporter-Casino Gambling Web, 9/23, Gambling Regulations Will Help Obama's World Internet Freedom Mandate, http://www.casinogamblingweb.com/gambling-news/gambling-law/gambling_regulations_will_help_obama_s_world_internet_freedom_mandate_55752.html)

Gambling Regulations Will Help Obama's World Internet Freedom Mandate President Obama gave a speech today in front of the United Nations General Assembly, and his message was largely one of individual freedom. During the speech, Obama touched on many issues, perhaps the most aggressive of which was having a Palestinian state separate from Israel. Obama spoke of allowing the Palestinians their own state with the hope that Israelis and Palestinians could live side by side in peace. Obama acknowledged that this could take a long time, but that the goal could become a reality. During the speech, Obama spoke about how the Internet should remain free from government interference everywhere in the world. The freedom to surf the Internet would allow people all across the globe to research issues and learn from the wide array of news that is currently found on the Internet. "We will support a free and open Internet, so individuals have the information to make up their own minds," said Obama. "And it is time to embrace and effectively monitor norms that advance the rights of civil society and guarantee its expansion within and across borders." **That statement may have been much better received had the US not had their own blocks on Internet freedom**. **The Internet gambling industry** currently **is operating as a black market in the US** due to the 2006 Unlawful Internet Gambling Enforcement Act. The law is a form of Internet censorship that Representative Barney Frank and other lawmakers have been trying to repeal. In the quest for Internet freedom, **the US proclaims themselves as leaders, however, the country must be careful with their plea**. **If the US can place Internet bans on certain industries, then little could be done to stop other countries from banning different industries** or websites because of their beliefs. For instance, in countries where religion is unified, there could be bans on any material that the country finds outside the rules of their particular religion. In other countries, bans could be placed on industries that are run largely by foreign operators. President Obama took a strong first step today by **promoting Internet freedom. The next step will be making sure the US leads by example**, **and one area to start would be** by **lifting the ban on Internet gambling**. The president has laid down the gauntlet, and now it is time for him to follow his own lead.

Only legalizing gambling solves – prohibitions justify broad regulation of the internet that collapse openness

Telford 10/20/14 Erik, senior vice president at the Franklin Center for Government & Public Integrity, The Hill, October 20, 2014, "Ending the cycle of casino cronyism", http://thehill.com/blogs/congress-blog/politics/221124-ending-the-cycle-of-casino-cronyism

When powerful gaming interest are spearheading the fight to ban online gambling, it should give you pause. Their main policy objective is focused on federal legislation to ban online gambling outright – **stifling their competition** before it ever reaches the market. It is a glimpse of crony capitalism in its most naked form, and represents a very **troubling assault on Internet freedom**, giving government a foot in the door for a broader regulatory regime and usurping our federalist system. The 2011, the Department of Justice's position interpretation on Internet gambling **threw the issue to state legislatures--where it should be**. Almost immediately, Nevada, Delaware, and New Jersey passed legalizing legislation. The Restoration of America's Wire Act, sponsored by Sen. Lindsey Graham (R-S.C.) and Rep. Jason Chaffetz (R-Utah) would prohibit interstate sports betting using wire services, effectively **killing online gambling across the states where it's legal**. While their pretense is to advance a moral good, this policy would **undermine the free market**, **encourage crime**, **and erodes the** constitutional **concept of states' rights**. Proponents of the regulation have brought in political heavyweights to undermine legalized online gambling, including former Arkansas Sen. Blanche Lincoln (D), who represents the Coalition to Stop Internet Gambling, claiming that legalizing online gambling would promote fraud, addiction, and money laundering. "I think it's going to be very difficult to work something out," Lincoln said, "I think it's important to put a time-out on this and to stop and think about what it's going to mean to us as a nation in our economy, to our children and to our society." However, these problems already exist with black market gambling mostly run from overseas with profits funding shady and potentially dangerous operations outside the jurisdiction of state regulation and consumer protections. Alan Feldman, an executive vice president of MGM notes that online gambling "is here, and it's been here for a very long time." Legalizing online gambling would likely see more of a shift from illegal to legal play instead of funneling customers away from traditional casinos and their trappings. Free market advocates agree that consumers would enjoy more security were this pursuit made legal. "In this black market, where virtually all sites are operated from abroad, consumers have little to no protection from predatory behavior." wrote officials of the Institute For Policy Innovation to several congressmen. They then shared wider concern that "Perhaps even more concerning is the fact that this bill allows the federal government to take a **heavy hand in regulating the Internet**, **opening the door for increased Internet regulation in the future**." Just like Prohibition in the 1920's, banning this vice would actually incentivize criminal behavior. Those fearful of fraud, child participation, and profits diverted to gangs or terrorists should push for legalization in every state to make the industry as transparent as possible. Legalizing this long-established, multibillion dollar business gets the profits out of the shadows, expands market opportunities, and puts revenue into the coffers of both legitimate business and state governments that will benefit.

Now is key – the splinternet is coming

Simon 14 (Joel, November, executive director of the Committee to Protect Journalists, "The New Censorship: Inside the Global Battle for Media Freedom", google books)

The threat to the global Internet is not imminent, but it is growing and multifaceted. While the possibility of Chsina and other Internet-restricting countries handing Internet governance to the United Nations is still remote, its effect would be "catastrophic," says MacKinnon, who believes UN governance would represent the end of the Internet as a shared global resource. The fact that more and more people around the world are accessing the Web through mo- bile devices rather than broadband already **gives governments more direct control,** since wireless networks are more easily monitored and censored. A more **immediate concern** is that China's international advocacy is helping advance its argument that the restrictions governments impose on the domestic Internet are legitimate in an international context. **Experts are expressing increased alarm about the possible emergence of a "Splinternet,"** with divergent national systems that arc not fully connected. "Around the world countries are increasingly restricting the Internet and seeking to bring it under state control," notes Dan Gillmor, an author and Internet expert.36 **China's ability to construct a**

domestic Internet with its own norms has global security implications that go beyond its leadership of the antilibertarian movement and its example to authoritarian regimes. This is because as China becomes more adept at managing informa- tion domestically, it also disrupts the flow of information across bor- ders. China's economic and political health, of course, is central to the world economy, yet the government suppresses information on everything from major political developments to mundane economic data. In August 2012, the New York Times reported that as exports had slowed and domestic demand slackened, many industries were accumulating a massive backlog of unsold inventory. Yet the Chinese government sought to obscure the extent of the problem by, for ex- ample, halting the release of data about new car registration.37 Basic information about a variety of issues with a global impact— **from environmental degradation to food safety**—is censored on- line. The government routinely withholds data about air quality in Beijing and actively suppresses information—including on micro- blogs—about popular demonstrations against pollution, like the 2011 mass demonstrations against a chemical plant in Dalian. Food safety issues—from tainted milk, to exploding watermelons treated with growth hormones, to waste oil resold to restaurants for cooking—are routinely censored or covered up.38 Even more alarmingly is that **there is some evidence that Chinese government censorship is undermin- ing the integrity of the global Internet**, according to the blogger and technologist Isaac Mao. Internet users from Chile to California who carry out searches in Chinese can be routed through servers inside China—and thus caught in the country's censorship web. "People liv- ing in New York City who try to study Chinese would hit the wall when websites include some 'sensitive words,'" Mao explained.3'' Even as the overheated Chinese economy begins to cool, China continues to provide a powerful alternative vision of the role of in- formation and media. It's a vision that has an obvious resonance in many parts of the world. While Ai Weiwei's dream may yet come true, there is also a nightmare scenario in which governments around the world continue both to strengthen their ability to manage and con- trol the Internet and to build the international support to do so. The result could be that information would be managed and manipulated not only for citizens of repressive regimes but at least hypothetically for Internet users everywhere. This is obviously a grave threat to the current system of global news and information upon which people around the world depend.

Legalizing online gambling key to internet freedom – it's a Trojan horse for widespread regulation
Telford 10/20/14

Erik Telford is senior vice president at the Franklin Center for Government & Public Integrity, The Hill, October 20, 2014, "Ending the cycle of casino cronyism", http://thehill.com/blogs/congress-blog/politics/221124-ending-the-cycle-of-casino-cronyism

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Plan solves—reverse causal and signal key
Gardner, 10

(Staff Editor & Reporter-Casino Gambling Web, 9/23, Gambling Regulations Will Help Obama's World Internet Freedom Mandate, http://www.casinogamblingweb.com/gambling-news/gambling-law/gambling_regulations_will_help_obama_s_world_internet_freedom_mandate_55752.html)

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No alt causes
Gelb, 10

(Prof-Business & Economic-UH, “Getting Digital Statecraft Right,” Foreign Affairs, 7/28, http://www.foreignaffairs.com/articles/66502/betsy-gelb-and-emmanuel-yujuico/getting-digital-statecraft-right)

All these cases share the same fallacy -- that U.S.-directed methods can spur development in other nations. But U.S. policies seeking to extend freedom through technology can be successful -- if the United States refrains from acting in ways that seem less than sincere, and **if it adopts a gradual, rather than transformative, approach. U.S. protests against censorship would seem more convincing if it were not for its own policies restricting Internet freedom.** Consider, for example, the United States' questionable **prohibition of cross-border trade in Internet gambling**. In 2004, the World Trade Organization ruled in favor of Antigua and Barbuda against the United States when the United States banned online gambling services emanating from the twin-island nation. The United States appealed the case and lost, but in the meantime, Antigua's online gambling industry was virtually destroyed. The United States still has not yet satisfactorily resolved this ruling and should do so by conforming to it.

Fragmentation destroys cloud computing
McDowell, 12

(5/31, FCC Chair, Comm'r. McDowell's Congressional Testimony, http://www.fcc.gov/document/commr-mcdowells-congressional-testimony-5-31-2012)

It is a pleasure and an honor to testify beside my friend, Ambassador Phil Verveer. First, please allow me to dispense quickly and emphatically any doubts about the bipartisan resolve of the United States' to resist efforts to expand the International Telecommunication Union's ("ITU") authority over Internet matters. Some ITU officials have dismissed our concern over this issue as mere "election year politics." Nothing could be further from the truth as evidenced by Ambassador Verveer's testimony today as well as recent statements from the White House, Executive Branch agencies, Democratic and Republican Members of Congress and my friend and colleague, FCC Chairman Julius Genachowski. We are unified on the substantive arguments and have always been so. Second, it is important to define the challenge before us. The threats are real and not imagined, although they admittedly sound like works of fiction at times. For many years now, scores of countries led by China, Russia, Iran, Saudi Arabia, and many others, have pushed for, as then-Russian Prime Minister Vladimir Putin said almost a year ago, "international control of the Internet" through the ITU.1 I have tried to find a more concise way to express this issue, but I can't seem to improve upon now-President Putin's crystallization of the effort that has been afoot for quite some time. More importantly, I think we should take President Putin very seriously. 1 Vladimir Putin, Prime Minister of the Russian Federation, Working Day, GOV'T OF THE RUSSIAN FED'N, http://premier.gov.ru/eng/events/news/15601/ (June 15, 2011) (last visited May 14, 2012). Six months separate us from the renegotiation of the 1988 treaty that led to insulating the Internet from economic and technical regulation. What proponents of Internet freedom do or don't do between now and then will determine the fate of the Net, affect global economic growth and determine whether political liberty can proliferate. During the treaty negotiations, the most lethal threat to Internet freedom may not come from a full frontal assault, but through insidious and seemingly innocuous expansions of intergovernmental powers. This subterranean effort is already under way. While influential ITU Member States have put forth proposals calling for overt legal expansions of United Nations' or ITU authority over the Net, ITU officials have publicly declared that the ITU does not intend to regulate Internet governance while also saying that any regulations should be of the "light-touch" variety.2 But which is it? It is not possible to insulate the Internet from new rules while also establishing a new "light touch" regulatory regime. Either a new legal paradigm will emerge in December or it won't. The choice is binary. Additionally, as a threshold matter, it is curious that ITU officials have been opining on the outcome of the treaty negotiation. The ITU's Member States determine the fate of any new rules, not ITU leadership and staff. I remain hopeful that the diplomatic process will not be subverted in this regard. As a matter of process and substance, patient and persistent incrementalism is the Net's most dangerous enemy and it is the hallmark of many countries that are pushing the proregulation agenda. Specifically, some ITU officials and Member States have been discussing an alleged worldwide phone numbering "crisis." It seems that the world may be running out of phone numbers, over which the ITU does have some jurisdiction. 2 Speech by ITU Secretary-General Touré, The Challenges of Extending the Benefits of Mobile (May 1, 2012),http://www.itu.int/net/pressoffice/press_releases/index.aspx?lang=en (last visited May 29, 2012). 2 Today, many phone numbers are used for voice over Internet protocol services such as Skype or Google Voice. To function properly, the software supporting these services translate traditional phone numbers into IP addresses. The Russian Federation has proposed that the ITU be given jurisdiction over IP addresses to remedy the phone number shortage.3 What is left unsaid, however, is that potential ITU jurisdiction over IP addresses would enable it to regulate Internet services and devices with abandon. IP addresses are a fundamental and essential component to the inner workings of the Net. Taking their administration away from the bottomup, non-governmental, multi-stakeholder model and placing it into the hands of international bureaucrats would be a grave mistake. Other efforts to expand the ITU's reach into the Internet are seemingly small but are tectonic in scope. Take for example the Arab States' submission from February that would change the rules' definition of "telecommunications" to include "processing" or computer functions.4 This change would essentially swallow the Internet's functions with only a tiny edit to existing rules.5 When ITU leadership claims that no Member States have proposed absorbing Internet governance into the ITU or other intergovernmental entities, the Arab States' submission demonstrates that nothing could be further from the truth. An infinite number of avenues exist to 3 Further Directions for Revision of the ITRs, Russian Federation, CWG-WCIT12 Contribution 40, at 3 (2011), http://www.itu.int/md/T09-CWG.WCIT12-C-0040/en (last visited May 29, 2012) ("To oblige ITU to allocate/distribute some part of IPv6 addresses (as same way/principle as for telephone numbering, simultaneously existing of many operators/numbers distributors inside unified numbers space for both fixed and mobile phone services) and determination of necessary requirements."). 4 Proposed Revisions, Arab States, CWG-WCIT12 Contribution 67, at 3 (2012), http://www.itu.int/md/T09CWG.WCIT12-C-0067/en (last visited May 29, 2012). 5 And Iran argues that the current definition already includes the Internet. Contribution from Iran, The Islamic Republic of Iran, CWG-WCIT12 Contribution 48, Attachment 2 (2011), http://www.itu.int/md/T09-CWG.WCIT12C-0048/en (last visited May 29, 2012). 3 accomplish the same goal and it is camouflaged subterfuge that proponents of Internet freedom should watch for most vigilantly. Other examples come from China. China would like to see the creation of a system whereby Internet users are registered using their IP addresses. In fact, last year, China teamed up with Russia, Tajikistan and Uzbekistan to propose to the UN General Assembly that it create an "International Code of Conduct for Information Security" to mandate "international norms and rules standardizing the behavior of countries concerning information and cyberspace."6 Does anyone here today believe that these countries' proposals would encourage the continued proliferation of an open and freedom-enhancing Internet? Or would such constructs make it easier for authoritarian regimes to identify and silence political dissidents? These proposals may not technically be part of the WCIT negotiations, but they give a sense of where some of the

ITU's Member States would like to go. Still other proposals that have been made personally to me by foreign government officials include the creation of an international universal service fund of sorts whereby foreign – usually state-owned – telecom companies would use international mandates to charge certain Web destinations on a "per-click" basis to fund the build-out of broadband infrastructure across the globe. Google, iTunes, Facebook and Netflix are mentioned most often as prime sources of funding. In short, the U.S. and like-minded proponents of Internet freedom and prosperity across the globe should resist efforts to expand the powers of intergovernmental bodies over the Internet 6 Letter dated 12 September 2011 from the Permanent Representatives of China, the Russian Federation, Tajikistan, and Uzbekistan to the United Nations addressed to the Secretary-General, Item 93 of the provisional agenda - Developments in the field of information and telecommunications in the context of international security, 66th Session of the United Nations General Assembly, Annex (Sep. 14, 2011), http://www.cs.brown.edu/courses/csci1800/sources/2012_UN_Russia_and_China_Code_o_Conduct.pdf (last visited May 29, 2012). even in the smallest of ways. As my supplemental statement and analysis explains in more detail below, **such a scenario would be devastating to global economic activity, but it would hurt the developing world the most.** Thank you for the opportunity to appear before you today and I look forward to your questions. Thank you, Chairman Walden and Ranking Member Eshoo, for holding this hearing. Its topic is among the most important public policy issues affecting global commerce and political freedom: namely, whether the International Telecommunication Union (ITU), or any other intergovernmental body, should be allowed to expand its jurisdiction into the operational and economic affairs of the Internet. As we head toward the treaty negotiations at the World Conference on International Telecommunications (WCIT) in Dubai in December, I urge governments around the world to avoid the temptation to tamper with the Internet. Since its privatization in the early 1990s, the Internet has flourished across the world under the current deregulatory framework. In fact, the long-standing international consensus has been to keep governments from regulating core functions of the Internet's ecosystem. Yet, some nations, such as China, Russia, India, Iran and Saudi Arabia, have been pushing to reverse this course by giving the ITU or the United Nations itself, regulatory jurisdiction over Internet governance. The ITU is a treaty-based organization under the auspices of the United Nations.1 Don't take my word for it, however. As Russian Prime Minister Vladimir Putin said almost one year ago, the goal of this well-organized and energetic effort is to establish "international control over the Internet using the monitoring and supervisory capabilities of the [ITU]."2 Motivations of some ITU Member states vary. Some of the arguments in support of such actions may stem from frustrations with the operations of Internet Corporation for Assigned Names and Numbers (ICANN). Any concerns regarding ICANN, however, should not be used as a pretext to end the multi-stakeholder model that has served all nations – especially the developing world – so well. Any reforms to ICANN should take place through the bottom-up multi-stakeholder process and should not arise through the WCIT's examination of the International Telecommunication Regulations (ITR)s. Constructive reform of the ITRs may be needed. If so, the scope of any review should be limited to traditional telecommunications services and not expanded to include information services or any form of Internet services. Modification of the current multistakeholder Internet governance model may be necessary as well, but we should all work together to ensure no intergovernmental regulatory overlays are placed into this sphere. Not only would nations surrender some of their national sovereignty in such a pursuit, but they would suffocate their own economies as well, while politically paralyzing engineering and business decisions within a global regulatory body. 1 History, IThttp://www.itu.int/en/about/Pages/history.aspx">U, http://www.itu.int/en/about/Pages/history.aspx (last visited May 14, 2012). 2 Vladimir Putin, Prime Minister of the Russian Federation, Working Day, GOV'T OF THE RUSSIAN FED'N, http://premier.gov.ru/eng/events/news/15601/ (June 15, 2011) (last visited May 14, 2012). Every day headlines tell us about industrialized and developing nations alike that are awash in debt, facing flat growth curves, or worse, shrinking GDPs. Not only must governments, including our own, tighten their fiscal belts, but they must also spur economic expansion. **An unfettered Internet offers the brightest ray of hope for growth during this dark time of economic uncertainty, not more regulation.** Indeed, we are at a crossroads for the Internet's future. One path holds great promise, while the other path is fraught with peril. The promise, of course, lies with keeping what works, namely maintaining a freedom-enhancing and open Internet while insulating it from legacy regulations. The peril lies with changes that would ultimately sweep up Internet services into decades-old ITU paradigms. If successful, these efforts would merely imprison the future in the regulatory dungeon of the past. **The future of global growth and political freedom lies with an unfettered Internet.** Shortly after the Internet was privatized in 1995, a mere 16 million people were online worldwide.3 As of early 2012, approximately 2.3 billion people were using the Net.4 Internet connectivity quickly evolved from being a novelty in industrialized countries to becoming an essential tool for commerce – and sometimes even basic survival – in all nations, but especially in the developing world. Such explosive growth was helped, not hindered, by a deregulatory construct. Developing nations stand to gain the most from the rapid pace of deployment and adoption of Internet technologies brought forth by an Internet free from intergovernmental regulation. By way of illustration, a McKinsey report released in January examined the Net's effect on the developing world, or "aspiring countries."5 In 30 specific aspiring

countries studied, including Malaysia, Mexico, Morocco, Nigeria, Turkey and Vietnam,6 Internet penetration has grown 25 percent per year for the past five years, compared to only five percent per year in developed nations.7 Obviously, broadband penetration is lower in aspiring countries than in the developed world, but that is quickly changing thanks to mobile Internet access technologies. Mobile subscriptions in developing countries have risen from 53 percent of the global market in 2005 to 73 percent in 2010.8 In fact, Cisco estimates that the number of mobile-connected devices will exceed the world's population sometime this year.9 Increasingly, Internet users in these countries use only mobile devices for their Internet access.10 This trend has resulted in developing countries growing their global share of Internet users from 33 percent in 2005, to 52 percent in 2010, with a projected 61 percent share by 2015.11 The 30 aspiring countries discussed earlier are home to one billion Internet users, half of all global Internet users. The effect that rapidly growing Internet connectivity is having on aspiring countries' economies is tremendous. The Net is an economic growth accelerator. It contributed an average 1.9 percent of GDP growth in aspiring countries for an estimated total of $366 billion in 2010.13 In some developing economies, Internet connectivity has contributed up to 13 percent of GDP growth over the past five years.14 In six aspiring countries alone, 1.9 million jobs were associated with the Internet.15 And in other countries, the Internet creates 2.6 new jobs for each job it disrupts.16 I expect that we would all agree that these positive trends must continue. The best path forward is the one that has served the global economy so well, that of a multi-stakeholder governed Internet. One potential outcome that could develop if pro-regulation nations are successful in granting the ITU authority over Internet governance would be a partitioned Internet. In particular, fault lines could be drawn between countries that will choose to continue to live under the current successful model and those Member States who decide to opt out to place themselves under an intergovernmental regulatory regime. A balkanized Internet would not promote global free trade or increase living standards. At a minimum, it would create extreme uncertainty and raise costs for all users across the globe by rendering an engineering, operational and financial morass. For instance, Harvard and the Massachusetts Institute of Technology (MIT) recently announced placing many of their courses online for free – for anyone to use. The uncertainty and economic and engineering chaos associated with a newly politicized intergovernmental legal regime would inevitably drive up costs as cross border traffic and **cloud computing become more complicated and vulnerable to regulatory arbitrage**. Such costs are always passed on to the end user consumers and may very well negate the ability of content and application providers such as Harvard and MIT to offer first-rate educational content for free. **Nations that value freedom and prosperity should draw a line in the sand against new regulations while welcoming reform that could include a non-regulatory role for the ITU.** Venturing into the uncertainty of a new regulatory quagmire will only undermine developing nations the most.

*Multilat – Offshore Drilling

1NC Shell

Plan: The United States federal government should enhance oil spill prevention, control, and response through development of Arctic specific standards for the oil and gas industry in the Arctic Outer Continental Shelf.

Plan solves mutlilat

Ebinger et al. '14 (Charles Ebinger is a senior fellow and director of the Energy Security Initiative at Brookings. He has more than 35 years of experience specializ- ing in international and domestic energy markets (oil, gas, coal, and nuclear) and the geopolitics of energy, and has served as an energy policy advisor to over 50 governments. He has served as an ad- junct professor in energy economics at the Johns Hopkins School of Advanced International Stud- ies and Georgetown University's Walsh School of Foreign Service. Alisa Schackmann is the senior research assistant in the Energy Security Initiative at Brookings. With a background covering international ener- gy policy and climate change negotiations from abroad, her research focuses on the impact of U.S. policies on global energy markets and security. She has a Master's degree from the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin and a B.A. from the University of Southern California. John P. Banks is a nonresident senior fellow at the Energy Security Initiative at Brookings. He has worked with governments, companies and regulators for over 25 years in establishing and strengthening policies, institutions, and regulato- ry frameworks to promote sustainable energy sec- tors. Mr. Banks also serves as an adjunct professor at the School of Advanced International Studies at Johns Hopkins University. He has worked in over 20 countries. "Offshore Oil and Gas Governance in the Artic: A Leadership Role for the U.S." Published in the March 2014 Policy Brief 14-01 (Energy Security Initiative) for the Brookings Institute. Page xiii)//JHH

The U.S. government must "decide if it is an Arctic nation or not and what our vital interests in the re- gion are."4 Based on our analysis and conclusions, we believe that it is in the U.S. national interest to lead in strengthening the Arctic offshore oil and gas governance regime. The **cornerstone of U.S. leadership** should be enhancing oil spill preven- tion, control and response through the develop- ment of Arctic-specific standards and resource sharing arrangements to ensure adequate stan- dards, procedures, financial resources, equipment, and infrastructure are in place and available.¶ This policy approach supports important ob- jectives of the U.S. **N**ational **A**rctic **S**trategy to strengthen **international cooperation** and "pro- mote Arctic oil pollution preparedness, preven- tion and response." It also addresses U.S. ob- ligations to meet the Arctic Council's Kiruna Declaration to develop effective ways to imple- ment the Arctic Oil Pollution Agreement—namely, to "encourage future national, bi-national, and multinational contingency plans, training and exercises, and to develop effective response mea- sures."5 Moreover, it supports recommendations from the Deepwater Horizon Commission, the Offshore Energy Safety Advisory Commission, and the Department of Interior to develop Arc- tic-specific regulations. In short, we believe that our recommendations provide an opportunity for the U.S. to increase domestic awareness of the strategic importance of the region and improve governance of Arctic offshore oil and gas activi- ties, while meeting stated objectives and commit- ments of U.S. policy in the region.¶ Our specific recommendations are as follows:¶ 1. Establish oil spill prevention, control, and response as the overarching theme for U.S. chairmanship of the Arctic Council in 2015-2017.¶ 2. Create the diplomatic post of "Arctic Am- bassador."¶ 3. Establish a Regional Bureau for Polar Af- fairs in the U.S. Department of State.¶ 4. Accelerate the ongoing development of¶ Alaska-specific offshore oil and gas stan- dards and discuss their applicability in bilateral and multilateral forums for the broader Arctic region.¶ 5. Strengthen bilateral regulatory arrange- ments for the Chukchi Sea with Russia, and the Beaufort Sea with Canada. ¶ 6. Support the industry-led establishment of an Arctic-specific resource sharing organization for oil spill response and safety.¶ 7. Support and prioritize the strengthening of the Arctic Council through enhanced thematic coordination of offshore oil and gas issues.¶ 8. Support the establishment of a circumpo- lar Arctic Regulators Association for Oil and Gas. Climate change is contributing to unprecedented changes in the Arctic. As the ice melts further and hydrocarbon exploration and development move into more ice-infested waters, new regulatory ap- proaches will be needed, including the adoption of Arctic-specific standards and the implementation of systems, infrastructure, and resource sharing arrangements to strengthen oil spill prevention, containment, and response. Despite much debate over how this is best accomplished, there is broad consensus that the prospect of much of the Arc- tic opening up for commercial development on a scale scarcely recognized a few decades ago poses major challenges. Environmental challenges on the local, regional, and international levels and associated risks, especially to indigenous com- munities, must be managed through strengthen- ing the existing offshore governance regime.¶ This policy brief is designed to inform the legis- lative and executive branches of the U.S. govern- ment of the current state of offshore oil and gas governance in the Arctic, the need to strengthen this governance, possible avenues for doing so, and the leadership opportunities available in its chairmanship of the Arctic Council. The brief is intended to highlight that the responsibilities and challenges the U.S. will assume in this role can- not be met with current policies. Rather, **proper leadership** will require a sustained commitment of financial and institutional resources to move forward efforts to improve the prevention, con- tainment, and response to accidents in the Arctic.¶ Congress has the responsibility to understand the importance of establishing strong offshore gover- nance in this region as a national security priority. Even if offshore oil and gas activities in the region take decades to come online at commercial scale, tourism, fishing, and transportation will continue to drive economic development in the Arctic. Hydrocarbon activity is sure to follow this path once paved. When it does, it is critical that proper oil spill prevention, response, and management regimes are in place to avoid environmental dev- astation. In preparing for its chairmanship of the Arctic Council, the U.S. government must not only recognize the opportunity it has to spear- head these efforts but also to embrace them, pushing forward on initiatives such as those rec- ommended in this policy brief.

Block

No multilateral norms now- US leadership solves-

Borgerson 10 SCOTT G. BORGERSON is International Affairs Fellow at the Council on Foreign Relations and a former Lieutenant Commander in the U.S. Coast Guard, April 2008, "Arctic Meltdown: The Economic and Security Implications of Global Warming", http://www.jstor.org/stable/pdfplus/20032581.pdf?acceptTC=true

Washington cannot afford to stand idly by. The Arctic region is not currently governed by any comprehensive multilateral norms and regulations because it was never expected to become a navigable water¬way or a site for large-scale commercial development. Decisions made by Arctic powers in the coming years will therefore profoundly shape the future of the region for **decades. Without U.S. leadership** to help develop **diplomatic solutions** to competing claims and potential conflicts, the region could **erupt in an armed mad dash** for its resources.

Offshore drilling key to US Arctic leadership

Cohen and Altman 11 Ariel Cohen, Ph.D. is a Senior Research Fellow for Russian and Eurasian Studies and International Energy Policy at the Heritage Foundation, Anton Altman is a research volunteer at The Heritage Foundation, August 16, 2011, "Russia's Arctic Claims: Neither LOST nor Forgotten", http://blog.heritage.org/2011/08/16/russias-arctic-claims-neither-lost-nor-forgotten/

Moscow has an unquestionable head start on the rest of the world, and it is not shy about investing in its ambitions. At least six new icebreakers and Sabetta, a new year-round port on the arctic shores—costing $33 billion—are on the agenda, but Prime Minister Putin has said the Kremlin is "open for a dialogue with our foreign partners and with all our neighbors in the Arctic region, but of course we will defend our own geopolitical interests firmly and consistently." Or as they said in Soviet times, "What is mine is mine, and what is yours is negotiable."¶ The Arctic is of **vital geopolitical importance** not just to Russia, but to the entire world. It has enormous quantities of hydrocarbon energy and other natural resources, and as the Arctic is no longer completely icebound, in summertime it may become an important transportation route **vital to U.S. national security**.¶ Despite this, at present the U.S. has made virtually no effort to strengthen its position in the frozen final frontier. The chief concern is America's lack of icebreakers—even Canada and Finland have more than the United States. Icebreakers are vital to exploring the Arctic and enforcing one's sovereignty there. As of 2010, Russia had 29 icebreakers in total and was building more. The United States had two (including one that is obsolete), with no plans to expand. The Heritage Foundation has exposed this problem extensively:¶ The United States has significant geopolitical and geo-economic interests in the High North, but the **lack of policy attention** and insufficient funding have placed the U.S. on track to abdicate its national interests in this **critical region.**¶ The **U**nited **S**tates must **strengthen its position in the Arctic** and make its interests clear to friend and foe alike. Washington should reach out to the Arctic Council members to block Russia's expansion plans at the U.N. Meanwhile, the U.S. should fund and build its icebreaking squadron and deploy it in Alaska.¶ Russia's Arctic aspirations are a serious geopolitical challenge for U.S. and allied interests. America's **security and economic prosperity** in the 21st century will depend on U.S. ability **to access polar waters and the Arctic Ocean bed**.

*Tech Competitiveness – H-1B

1NC Shell

Text: The United States federal government should exempt certain highly skilled workers from employment-based visa limits, reform the per-country quota system for immigrant visas, and recapture unused immigrant visas to ease the burden on oversubscribed categories.

H-1B solves tech competitiveness- costs millions of dollars

Partnership for a New American Economy 14 http://www.mikebloomberg.com/news/new-report-shows-h-1b-visa-denials-slowed-u-s-tech-sector-growth-depressed-wage-and-job-growth-for-u-s-born-workers-following-great-recession/ New Report Shows H-1B Visa Denials Slowed U.S. Tech Sector Growth, Depressed Wage and Job Growth for U.S.-Born Workers Following Great Recession June 04, 2014

2007 and 2008 H-1B Visa Denials in Cities Across the U.S. Cost U.S.-Born Workers Hundreds of Thousands of Jobs and Nearly $3 Billion in Missed Wages View the report from Partnership for a New American Economy here. The Partnership for a New American Economy today released a new report showing how existing H-1B visa lottery caps disproportionately hurt American-born tech workers by slowing job and wage growth in more than 200 metropolitan areas across the United States. H-1B visa denials in 2007 and 2008 caused these areas to miss out on creating as many as 231,224 tech jobs for American-born workers in the years that followed and cost U.S.-born, college-educated workers in computer-related fields as much as $3 billion in aggregate annual earnings. "This report shows that the existing cap on H-1B visas is directly undermining our technology industry's ability to grow and create new jobs for U.S.-born workers," said John Feinblatt, Chairman of the Partnership for a New American Economy. "Our current system jeopardizes the fastest growing sector of our economy and if Congress does not act, other countries will win the race for global talent. It's time for Washington to work with – not against – the industries that make our economy strong." Key Findings The high number of H-1B visa applications that were eliminated in the 2007-2008 visa lotteries represented a major lost opportunity for U.S.-born workers and the American economy overall. The failure of 178,000 H-1B visa applications in computer related fields to make it through the 2007 and 2008 H-1B visa lotteries caused U.S metropolitan areas to miss out on creating as many as 231,224 often highly-sought after tech jobs for U.S.-born workers in the two years that followed. The total number of U.S.-born workers with computer-related jobs would have exceeded 2 million by 2010 with that additional employment. The U.S. tech industry would have grown substantially faster in the years immediately after the recession if not for the large number of visas that didn't make it through the 2007 and 2008 H-1B visa lotteries. The number of jobs for U.S.-born workers in computer-related industries would have grown at least 55 percent faster between 2005-2006 and 2009-2010, if not for the applications eliminated in the recent H-1B visa lotteries. Computer firms could have added as many as three times more jobs for U.S.-born workers than they actually did during that period without all the unsuccessful H-1B visa applications. U.S.-born workers without bachelor's degrees were disproportionately hurt by the H-1B visa lotteries in 2007-2008. Because less-educated tech workers often play valuable roles supporting the work of high-skilled engineers, programmers, and others, they were particularly impacted by recent H-1B trends. By 2009-2010, U.S. metropolitan areas lacked as many as 188,582 computer-related jobs for U.S.-born workers without a college degree as a direct result of the large number of applications that were eliminated in the 2007 and 2008 H-1B visa lotteries. The number of positions missing from the economy for U.S.-born,

college-educated tech workers, in contrast, was between 24,280 and 42,642. The H-1B visa lotteries in 2007 and 2008—and the denials resulting from them—greatly slowed wage growth for workers in computer-related industries. In 2009, the 1.1 million U.S.-born, college-educated workers in computer-related fields missed out on as much as $3 billion in aggregate annual earnings as a direct result of the large number of applications that were unsuccessful in the H-1B visa lotteries in the 2007-2008 period. From 2005-2006 to 2009-2010, wages for college-educated, U.S.-born workers with computer-related jobs grew by 1.7 percent. Without the earlier visa lotteries, their wages could have grown by as much as 4.9 percent during that period. For some cities, the H-1B visa lotteries in 2007 and 2008 had a particularly large impact. In New York City and Northeast New Jersey, the large number of H-1B visas that didn't make it through the lottery for workers in computer-related fields caused the local economy to miss out on creating as many as 28,005 jobs for native-born workers in those industries by 2009-2010. The Washington, DC metropolitan area, including parts of Virginia and Maryland, lost the opportunity to create as many as 30,222 computer-related jobs for U.S.-born workers during that period; Chicago and Dallas Fort Worth passed up the opportunity to create as many as 27,329 such positions together. This report was prepared for the Partnership for a New American Economy by Giovanni Peri, University of California, Davis and the National Bureau of Economic Research; Kevin Shih, University of California, Davis; and Chad Sparber, Colgate University. See the full report, Closing Economic Windows: How H-1B Visa Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession. About the Partnership for a New American Economy The Partnership for a New American Economy brings together more than 500 Republican, Democratic and Independent mayors and business leaders who support immigration reforms that will help create jobs for Americans today. The Partnership's members include mayors of more than 35 million people nationwide and business leaders of companies that generate more than $1.5 trillion and employ more than 4 million people across all sectors of the economy, from Agriculture to Aerospace, Hospitality to High Tech and Media to Manufacturing. Partnership members understand that immigration is essential to maintaining the productive, diverse and flexible workforce that America needs to ensure prosperity over the coming generations. Learn more at www.RenewOurEconomy.org.

Block

Resolves competitiveness- leads to innovation

Hart 9 David Hart, director of the center for science and technology policy at George mason university, Zoltan Acs, director of the center for entrepreneurship and public policy at George Mason University, and Spencer Tracy, head of the national policy research council, 7-2009, "High-tech Immigrant Entrepreneurship in the United States," Small Business Administration

A vigorous high-technology sector is vital to sustain U.S. prosperity in the 21st century. The new products, services, and business models that the high-tech sector generates differentiate this nation's output from that of the rest of the world and enable capital accumulation, wage gains, and productivity growth. A high level of entrepreneurship, by which we mean the founding of new businesses, makes the high-tech sector vigorous. High-tech entrepreneurs, by which we mean the founders of new high-tech businesses, take risks that managers of existing high-tech businesses choose not to take and recognize opportunities that they fail to spot. High-tech entrepreneurship requires a rare combination of inclinations, capabilities, and resources. Half of new businesses fail within five years (Shane 2008), so founders must be optimistic, but also capable of weathering severe challenges. Because the opportunities in high-tech sectors blend together technological and market factors, individual entrepreneurs and founding teams in these sectors typically combine technical expertise rooted in formal education with market savvy that flows from extensive business experience. They must also be able to tap quickly and effectively into networks of customers, suppliers, expertise, finance, and talent as business opportunities ripen. Foreign-born individuals play an important role in U.S. high-tech entrepreneurship. By virtue of having left their native land, they may have entrepreneurial inclinations. Their 7 large presence in American higher education and the U.S. labor force, especially science and engineering disciplines and occupations, equips them with valuable knowledge that bears on high-tech innovation. Their outsider status may allow them, in some cases, to recognize "out-of-the box" opportunities that native-born individuals with similar knowledge and skills do not perceive..

*Tech Leadership – OSW

1NC Shell

Text: The United States federal government should develop offshore wind farms.

Offshore wind solves US tech leadership

Klarevas 9 –Louis Klarevas, Professor for Center for Global Affairs @ New York University, 12/15, "Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony," http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy_b_393223.html

As national leaders from around the world are gathering in Copenhagen, Denmark, to attend the United Nations Climate Change Conference, the time is ripe to re-assess America's current energy policies - but within the larger framework of how a new approach on the environment will stave off global warming and shore up American primacy. By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to secure its **global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will **save the planet from global warming** will allow the U.S. to **outmaneuver potential great power rivals** seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. ¶ Liberals, on the other hand, have recognized that global warming might very well become the **greatest challenge ever faced by (hu)mankind**. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a **nasty zero-sum contest could be looming** on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and **global stability**. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not **undermine international security**, **global warming will**. And in either

case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a **tremendous economic boom**, while simultaneously providing it with means of leverage that can be employed to **keep potential foes in check**. The bottom-line is that the U.S. needs to become green energy dominant as opposed to black energy independent.

Block

Counterplan solves US tech leadership

Caperton et al, 11 – Policy Analyst with the Energy Opportunity group at the Center for American Progress. Kate Gordon: Vice President of Energy Policy, Center for American Progress. Bracken Hendricks: Senior Fellow, Center for American Progress. Daniel J. Weiss: Senior Fellow and Director of Climate Strategy, CenTer for American Progress. (Richard, Kate Gordon, Bracken Hendricks, and Daniel Weiss, "Helping America Win the Clean Energy Race," Center for American Progress, 2/7/2011, http://cdn.americanprogress.org/wp-content/uploads/issues/2011/02/pdf/ces_brief.pdf) //RGP

But these successes cannot continue without a strong signal that the U.S. government is fully committed to building a domestic market for clean energy technologies. Many new business plans were written with the expectation that Congress would pass comprehensive climate and energy legislation that would put a price on carbon pollution that levels the playing field for clean technologies to compete with coal and oil. This effort included a "renewable electricity standard" proposed by Sen. Jeff Bingaman (D-NM), which passed the Senate Energy Committee with bipartisan support. The RES would have required utilities to generate at least 15 percent of their electricity by wind, solar, and other renewable sources. Unfortunately Senate Republican leaders blocked any energy legislation in 2010, just as the Recovery and Reinvestment Act funds began to run their course. The result: Cleantech companies now find themselves in a tight financial position, facing slackening market demand and a tightening supply of private-sector investment capital. This is no way to build a modern industry. Already we have seen cutting-edge solar power manufacturing companies begin to close their doors, either permanently or to move to other countries with strong and dedicated clean energy markets. Evergreen Solar Inc., for example, recently announced plans to close its Massachusetts plant to put more funds into solar panel manufacturing in China. The company followed on the heels of SpectraWatt Inc. in New York and Solyndra Inc. in California closing some of their facilities. As General Electric Co.'s chairman and chief executive, Jeff Immelt, said at last year's ARPA-E summit, those countries with strong demand for renewable energy products will naturally pull these companies into their borders because "innovation and supply chain strength gets developed where the demand is the greatest." Similarly, wind manufacturers in Iowa, once a state leader in this industry, are laying off workers as new orders fail to materialize. Leading global financier Deutsche Bank decided to move billions of investment dollars out of the U.S. clean energy market, and into China and Europe as soon as it was clear there would be no comprehensive climate and energy legislation coming out of the 111th Congress. China and our other economic competitors in Asia, Europe, and emerging markets are not waiting for America to regroup. The home team can win the clean energy race These stories share a common theme: investment dollars leaving the United States to be deployed among our global competitors who have fully embraced the economic and environmental imperative to enter a new era of cleaner, more sustainable and domestic energy. China is the most striking example. In 2009, even as the United States was installing more wind turbines, China driven by stable long-term demand for its products, became the world's largest manufacturer of wind power systems. It was already the world's largest solar manufacturer and developer of efficient nuclear and coal technologies. But China isn't alone. Not by a long shot. Germany is not far behind in linking strong clean energy policies to market growth and manufacturing leadership, as the leading global manufacturer of solar inverters—a key part of solar power systems—and has made huge strides in energy storage solutions that will further accelerate the widespread adoption of renewable power. Denmark, Japan, and the United Kingdom are also global clean energy leaders with

thriving domestic markets. All these countries have comprehensive programs in place to spur robust and stable demand for low-carbon energy, which then creates a market for businesses to manufacture and install the technologies to meet that demand. Last June, China announced its plan to meet a renewable energy standard of 20 percent by 2020, matching the European Union's target. Germany has set a target of 60 percent by 2050. The country already gets 16 percent of all its power from renewables, well on its way to meeting this ambitious goal, and some think it may reach 100 percent by 2050. Denmark has gone a step further, actually announcing its intention to become 100 percent independent of fossil fuels by 2050, something that at least one of its islands has already achieved. This occurred in a country that in 1970 was almost completely dependent on foreign fossil fuels. These countries prove that strong clean energy standards build growing economies. But even more than that, strong clean energy standards are now imperative if we are to compete on the same playing field as China and Europe. America over the course of the 20th century took command of the Industrial Revolution and the communications revolution, and then led the world into the Information Age. It is time for us to lead the clean-tech revolution, too. Today, others are beating us to the punch, not because we lack the technology and innovation to lead this new revolution, but because we are not providing the market signals needed for our private-sector entrepreneurs need to invest over the long haul. This clean energy investment gap is rapidly becoming the greatest threat to America's technology leadership.

*Warming – OSW

1NC Shell

Text: The United States federal government should develop offshore wind farms.

Counterplan generates four times America's electricity consumption – modelled globally

Thaler 12 - Professor of Energy Policy, Law & Ethics

(Jeff, "FIDDLING AS THE WORLD BURNS: HOW CLIMATE CHANGE URGENTLY REQUIRES A PARADIGM SHIFT IN THE PERMITTING OF RENEWABLE ENERGY PROJECTS," 42 Environmental Law Journal 1101)//BB

Unfortunately, as the economic and health costs from fossil fuel emissions have grown so too has the byzantine labyrinth of laws and regulations to be navigated before a renewable energy project can be approved, let alone financed and developed. 6 The root cause goes back to the 19 70s when some of our fundamental environmental laws were enacted, before we were aware of climate change threats, to slow down the review of proposed projects by requiring more studies of potential project impacts before approval.7 But in our increasingly carbon-based 21st century, we need a paradigm shift. While achieving important goals, those **federal laws** and regulations, and similar ones at the state and local levels, have become so unduly burdensome, slow, and expensive that they will **chill investment** in, and kill any significant growth of, renewable carbon-free energy sources and projects, thereby imposing huge economic, environmental and social costs upon both our country and the world8 unless they are substantially changed. Indeed, by 2050 the U.S. must reduce its greenhouse gas emissions by 80% to even stabilize atmospheric levels of carbon, and can do so by increasing generated electricity from renewable sources from the current thirteen percent up to eighty percent9-- but only if there are targeted new policy efforts to accelerate, fifty times faster than since 1990, implementation of clean, renewable energy sources.10 Thus, Part II focuses on one promising technology to demonstrate the flaws in its current licensing permitting regimes, and makes concrete recommendations for reform.11 Wind power generation from onshore installations is proven, generates no GHGs and consumes no water,12 is increasingly **cost-competitive** with most fossil fuel sources, and can be **employed** relatively **quickly** in many parts of the United States and world. Offshore wind power is a relatively newer technology, especially deep-water floating projects, and presently less cost-competitive than onshore wind. However, because wind speeds are on average about ninety percent **stronger** and **more consistent** over water than over land, with higher power densities and lower shear and turbulence,13 America's offshore resources can provide more than our current electricity use.14 Moreover, these resources are near many major cities that are home to much of the population and electricity demand thereby "reducing the need for new high-voltage transmission from the Midwest and Great Plains to serve coastal lands..."15 Therefore, in light Part II's spotlight on literally dozens of different federal (yet alone state and local) statutes and their hundreds of regulations standing between an offshore wind project applicant and construction, Part III makes concrete statutory and regulatory recommendations to much more **quickly enable the full potential of offshore wind** energy to become a reality before it is too late. Greenhouse gases (GHGs) trap heat in the atmosphere; the primary GHG emitted by human activities is carbon dioxide (CO_2), which in 2012 represented 84 percent of all human-sourced U.S. GHG emissions.16 "The combustion of fossil fuels to generate electricity is the largest single source of CO2 emissions in the nation, accounting for about 40% of total U.S. CO2 emissions and 33% of total U.S. greenhouse gas emissions in 2009."17 The significant increased concentrations of GHGs into our atmosphere since the 1750 Industrial Revolution began greater use of fossil fuel sources have caused our world to warm and climate to change.18 Climate change may be the single greatest threat to human society and wildlife, as well as to the ecosystems upon which each depends for **survival**.19 In 1992, the U.S. signed and ratified the United Nations Framework Convention on Climate Change (UNFCC), whose stated objective was: "[s]tabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."20 In 2007, the Intergovernmental Panel on Climate Change (IPCC) concluded that it is "very likely," at least ninety percent certain, that humans are responsible for most of the "unequivocal" increases in globally averaged temperatures of the previous fifty years. 21 Yet in the twenty years since the UNFCCC, it also is **unequivocal** that GHG levels have not stabilized but **continue to grow**, ecosystems and food production have not been able to adapt, and our heavy reliance on fossil-fueled energy continues "dangerous anthropogenic interference with the climate system."22 Equally unequivocal is that 2011 global temperatures were "the tenth highest on record and [were] higher than any previous year with a La Nina event, which [normally] has a relative cooling influence"; "the warmest 13 years of average global temperatures [also] have all occurred in the 15 years since 1997."23 Global emissions of carbon dioxide also jumped 5.9% in 2010 by the largest amount on record -- 500 million extra tons of carbon was pumped into the air, "the largest absolute jump in any year since the Industrial Revolution [began in 1750], and the largest percentage increase since 2003."24 In order to even have a fifty-fifty chance that the average global temperature will not rise more than 2° C25 beyond the temperature of 1750,26 our cumulative emissions of CO2 after 1750 must not exceed one trillion tons; but by mid-July 2012 we had already emitted over 559 billion tons and rising, and at current rates will emit the trillionth ton in July 2043.27 The consequence is that "the current generation are uniquely placed in human history: the choices we make now—in the next 10-20 years—will alter the destiny of our species (let alone every other species) unalterably, and forever."28 Unfortunately, by the end of 2011 the more than 10,000 government and U.N. officials from all over the world attending the Durban climate change conference29 agreed that there is a "significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the

increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels."30 What are some of the growing economic, public health, and environmental costs to our country proximately31 caused by our daily burning of fossil fuels? The National Research Council (NRC) analyzed the "hidden" costs of energy production and use not reflected in market prices of coal, oil, other energy sources, or the electricity and gasoline produced from them. For the year 2005 alone, the NRC estimated $120 billion of damages to the U.S. from fossil fuel energy, reflecting primarily health damages from air pollution associated with electricity generation and motor vehicle transportation. Of that total, $62 billion was due to coal-fired electricity generation; $56 billion from ground transportation (oil-petroleum); and over $2.1 billion from electricity from and heating with natural gas. The $120 billion figure did not include damages from climate change, harm to ecosystems and infrastructure, insurance costs, effects of some air pollutants, and risks to national security, which the NRC examined but did not specifically monetize. 32 The NRC did, however, suggest that under some scenarios climate damages from energy use could equal $120 billion.33 Thus, adding natural resource damages from harm to ecosystems, infrastructure damages, insurance costs, air pollutant costs, and fossil-fueled national security costs to $240 billion, our burning of fossil fuels appears to be costing Americans about $300 billion each year—a "hidden" number likely to be larger in the future. What does the future hold for a carbon-stressed world? Most scientific analyses presently predict that by 2050 the Earth may warm by 2 to 2.5° C due to the rising level of greenhouse gases in the atmosphere; at the high-end of projections, the 2050 warming could exceed 4.5° C.34 But those increases are not consistent globally; rather, "[i]n all possible [predicted] outcomes, the warming over land would be roughly twice the global average, and the warming in the Arctic greater still."35 For example, the NRC expects that each degree Celsius increase will produce in the U.S. double to quadruple the area burned by wildfires in the western U.S.; a 5-15 percent reduction in crop yields; more destructive power from hurricanes; greater risk of very hot summers; and more changes in precipitation frequency and amounts.36 Globally, a summary of studies predicts that a 1°C global average temperature rise will reduce Arctic sea ice by an annual average of fifteen percent and by twenty-five percent in Septembers 37; at 2°C Europe suffers greater heat waves, the Greenland Ice Sheet significantly melts, and many land and marine species are driven to extinction; at 3°C the Amazon suffers severe drought and resultant firestorms that will release significantly more carbon into the atmosphere38; at 4°C hundreds of billions of tons of carbon in permafrost melt, releasing methane in immense quantities, while the Arctic Ocean ice cap disappears and Europe suffers greater droughts.39 To presently assess what a 5°C rise will mean, we must look back into geological time, 55 million years ago, when the Earth abruptly experienced dramatic global warming due to the release of methane hydrates--a substance presently found on subsea continental shelves. Fossils demonstrate that crocodiles were in the Canadian high Arctic, breadfruit trees were growing on the coast of Greenland, and the Arctic Ocean saw water temperatures of 20 °C within 200km of the North Pole itself.40 And a 6°C average rise takes us even further back, to the end of the Permian period, 251 million years ago, when up to 95% of species relatively abruptly became extinct.41 This may sound extreme, but the International Energy Administration warned this year that the 6°C mark is in reach by 2050 at current rates of fossil fuel usage.42 However, even given the severity of these forecasts, many still question the extent that our climate is changing,43 and thus reject moving away from our largely fossil-fueled electricity, transportation and heating sources. Therefore, in this next subsection I provide the latest scientific data documenting specific climate impacts to multiple parts of U.S. and global daily lives, and the costly consequences that establish the urgency for undertaking the major regulatory reforms I recommend in Part III of this Article. B. Specific Climate Threats and Consequences 1. When Weather Extremes Increase A 2011 IPCC Special Report predicted that it is virtually certain [99-100% probability] that increases in the frequency of warm daily temperature extremes and decreases in cold extremes will occur throughout the 21st century on a global scale. It is very likely [90% to 100% probability] that heat waves will increase in length, frequency, and/or intensity over most land areas.... It is very likely that average sea level rise will contribute to upward trends in extreme sea levels and extreme coastal high water levels. 44 Similarly, a House of Representatives Committee report (ACESA Report) found that "[t]here is a broad scientific consensus that the United States is vulnerable to weather hazards that will be exacerbated by climate change."45 It also found that the "cost of damages from weather disasters has increased markedly from the 1980s, rising to more than $100 billion in 2007. In addition to a rise in total cost, the frequency of weather disasters costing more than one billion dollars has increased."46 In 2011, the U.S. faced the most billion-dollar climate disasters ever, with fourteen distinct disasters alone costing at least $53 billion to our economy.47 In the first six months of 2012 in the U.S., there were more than 40,000 hot temperature records, horrendous wildfires, major droughts, oppressive heat waves, major flooding, and a powerful derecho wind storm.48 The IPCC Fourth Assessment Report identified impacts from growing weather hazards upon public health to include: more frequent and more intense heat waves; more people suffering **death**, **disease** and injury from **floods**, storms, fires, and **droughts**; increased cardio-respiratory morbidity and mortality associated with ground-level ozone pollution; changes in the range of some infectious disease carriers **spreading**, for example, **malaria** and the **West Nile** virus; and increased malnutrition and consequent disorders.49 As noted above, $120 billion per year of the NRC's Hidden Energy report's damage assessment were based on health damages,50 including an additional 10,000-20,000 deaths per year.51 And by 2050, cumulative heat-related deaths from unabated climate change are predicted to be an additional 33,000 in the forty largest U.S. cities, with more than 150,000 additional deaths by 2100.52 Weather extremes also **threaten our national security**, whose policy is premised on stability. In 2007 the CNA Corporation's report National Security and the Threat of Climate Change described climate change as a "**threat multiplier for instability**" and warned that p]rojected climate change poses a serious threat to America's national security. The predicted effects of climate change over the coming decades include extreme weather events, drought, flooding, sea level rise, retreating glaciers, habitat shifts, and the increased spread of life-threatening diseases. These conditions have the potential to disrupt our way of life and to force changes in the way we keep ourselves safe and secure.53 The following year, in the first-ever U.S. government analysis of climate change security threats, the National Intelligence Council issued an assessment warning, in part, that climate change could **threaten U.S. security** by leading to political instability, mass movements of **refugees**, **terrorism,** and **conflicts over** water and other **resources**.54 2. When Frozen Water Melts In 2007 the IPCC predicted that sea levels would rise by 8 to 24 inches above current levels by 2100; since then, however, numerous scientists and studies have suggested that the 2007 prediction is already out-of-date and that sea levels will likely rise up to 1.4 meters (55 inches) given upwardly trending CO2 emissions.55 The 2009 ACESA Report found that rising sea levels are already causing inundation of low-lying lands, corrosion of wetlands and beaches, exacerbation of storm surges and flooding, and increases in the salinity of coastal estuaries and aquifers.... Further, about one billion people live in areas within 75 feet elevation of today's sea level, including many US cities on the East Coast and Gulf of Mexico, almost all of Bangladesh, and areas occupied by more than 250 million people in China.56 This year NASA's Chief Scientist testified to Congress that two-thirds of sea level rise from the last three decades is derived from the Greenland and Antarctic ice sheets and the melting Arctic region, then warned: [t]he West Antarctic ice sheet (WAIS), an area about the size of the states of Texas and Oklahoma combined....contains the equivalent of 3.3 m of sea level, and all that ice rests on a soft-bed that lies below sea level. In this configuration, as warm seawater melts the floating ice shelves, causing them to retreat and the glaciers that feed them to speed up, there is no mechanism to stop the retreat and associated discharge, if warming continues. Thus the WAIS exhibits great potential for substantial and relatively rapid contributions to sea level rise. ... In Greenland, the situation is not as dramatic, since the bed that underlies most of the ice is not below sea level, and the potential for unabated retreat is limited to a few outlet glaciers. In Greenland, however, summer air temperatures are warmer and closer to ice's melting point, and we have observed widespread accumulation of meltwater in melt ponds on the ice sheet surface..57 In the West Antarctic ice sheet region, glacier retreat appears to be widespread, as the air has "warmed by nearly 6°F since 1950."58 As for Greenland's Ice Sheet, it also is at greater risk than the IPCC had thought. Recent studies with more complete modeling suggest that the warming threshold leading to an essentially ice-free state is not the previous estimate of an additional 3.1°C, but only 1.6°C. Thus, the 2°C target may be insufficient to prevent loss of much of the Ice Sheet and resultant significant sea level rise.59 The ACESA Report also identified the Arctic as "one of the hotspots of global warming"60 because "[o]ver the past 50 years average temperatures in the Arctic have increased as much as 7 °F, five times the global average."61 Moreover, in "2007, a record 386,000 square miles of Arctic sea ice melted away, an area larger than Texas and Arizona combined and as big a decline in one year as had occurred over the previous decade".62 "Arctic sea ice is melting faster than climate models [had] predict[ed], and is about thirty years ahead" of the 2007 IPCC predictions, thus heading toward the Arctic Ocean being ice-free in the late summer beginning sometime between 2020 and 2037.63 How is the Arctic's plight linked to non-Arctic impacts? "The Arctic region arguably has the greatest concentration of potential tipping elements in the Earth system, including Arctic sea ice, the Greenland ice sheet, North Atlantic deep-water formation regions, boreal forests, permafrost and marine methane hydrates."64 Additionally: Warming of the Arctic region is proceeding at three times the global average....Loss of Arctic sea ice has been tentatively linked to extreme cold winters in Europe... Near complete loss of the summer sea ice, as forecast for the middle of this century, if not before, will probably have knock-on effects for the northern mid-latitudes, shifting jet streams and storm tracks.65 Since 1980, sea levels have been rising three to four times faster than the global average between Cape Hatteras, N.C. and Boston.66 "[P]ast and future global warming more than doubles the estimated odds of 'century' or worse floods occurring within the next 18 years" for most coastal U.S. locations.67 Although land-based glacier melts are not major contributors to sea level rise, they do impact peoples' food and water supplies. Virtually all of the world's glaciers, which store seventy-five percent of the world's freshwater, are receding in direct response to global warming, aggravating already severe water scarcity--both in the United States and abroad.68 While over fifteen percent of the world population currently relies on melt water from glaciers and snow cover for drinking water and irrigation for agriculture, the IPCC projects a sixty percent volume loss in glaciers in various regions and widespread reductions in snow cover throughout the twenty-first century.69 Likewise, snowpack has been decreasing, and it is expected that snow cover duration will significantly decrease in eastern and western North America and Scandinavia by 2020, and globally by 2080.70 Climate change thus increases **food insecurity** by reducing yields of grains, such as corn and wheat, from increased water scarcity and intensification of severe hot conditions, thereby causing corn price volatility to sharply increase.71 Globally, the number of people living in "severely stressed" river basins will increase "by one to two billion people in the 2050s"...About two-thirds of the global land area is expected to experience increased water stress".72 3. When Liquid Water Warms Over the past century, oceans, which cover seventy percent of the Earth's surface, are warming. Global sea-surface temperature has increased about 1.3°F, while the heat has also penetrated almost two miles into the deep ocean.73 This increased warming is contributing to the destruction of seagrass meadows, causing an annual release back into the environment of 299 million tons of carbon.74 Elevated atmospheric carbon dioxide concentrations also are leading to higher absorption of CO2 into the upper ocean, making the surface waters more acidic (lower Ph).75 "[O]cean chemistry currently is changing at least 100 times more rapidly than it has changed during the 650,000 years preceding our [fossil-fueled] industrial era."76 The acidification has serious implications for the calcification rates of organisms and plants living at all levels within the global ocean. **Coral reefs**, the habitat for about a

quarter of (over a million) of marine species, are collapsing, endangering more than a third of all coral species77; indeed, temperature thresholds for the majority of coral reefs worldwide are expected to be exceeded, causing mass bleaching and complete coral mortality.78 "[T]he productivity of plankton, krill, and marine snails, which compose the base of the ocean food chain, [also] declines as the ocean acidifies,"79 adversely impacting populations of everything from whales to salmon80 who also are being harmed by the oceans' warming up. 81 **Extinctions from climate change** also are expected to be significant and widespread. The IPCC Fourth Assessment found that "approximately 20-30% of plant and animal species assessed so far are likely to be at increased risk of extinction if increases in global average temperature exceed 1.5-2.5°C82—a range likely to be exceeded in the coming decades. "[R]ecent studies have linked global warming to declines in such [] species as [] blue crabs, penguins, gray whales, salmon, walruses, and ringed seals[; b]ird extinction rates are predicted to be as high as 38 percent in Europe and 72 percent in northeastern Australia, if global warming exceeds 2°C above pre-industrial levels."83 Between now and 2050, Conservation International estimates one species will face extinction every twenty minutes; the current extinction rate is one thousand times faster than the average during Earth's history, 84 in part because the climate is changing more than 100 times faster than the rate at which many species can adapt.85 4. When Land Dries Out The warming trends toward the Earth's poles and higher latitudes are threatening people not just from melting ice and sea level rise, but also from the predicted thawing of permafrost of thirty to fifty percent by 2050, and as much or more of it by 2100.86 "The term permafrost refers to soil or rock that has been below 0°C (32°F) and frozen for at least two years."87 Permafrost underlies about twenty-five percent of the land area in the northern hemisphere, and is "estimated to hold 30 percent or more of all carbon stored in soils worldwide" —which equates to four times more than all the carbon humans have emitted in modern times.88 Given the increasing average air temperatures in Eastern Siberia, Alaska and northwestern Canada, thawing of the Northern permafrost would release massive amounts of carbon dioxide (doubling current atmospheric levels) and methane89 into the atmosphere. Indeed, there are about 1.7 trillion tons of carbon in northern soils (roughly twice the amount in the atmosphere), about eighty-eight percent of it in thawing permafrost.90 Permafrost thus may become an annual source of carbon equal to fifteen to thirty-five percent of today's annual human emissions.91 But like seagrass meadows and unlike power plant emissions, we cannot trap or prevent permafrost carbon emissions at the source. Similarly, forests, which "cover about 30 percent of the Earth's land surface and hold almost half of the world's terrestrial carbon…act both as a source of carbon emissions to the atmosphere when cut, burned, or otherwise degraded and as a sink when they grow…"92 A combination of droughts, fires, and spreading pests, though, are causing economic and environmental havoc:. "In 2003, [] forest fires in Europe, the United States, Australia, and Canada accounted for more global [carbon] emissions than any other source…"93 There have been significant increases in both the number of major wildfires and the area of forests burned in the U.S. and Canada.94 Fires fed by hot, dry weather have killed enormous stretches forest in Siberia and in the Amazon, "which recently suffered two 'once a century' droughts just five years apart".95 Climate change also is exacerbating the geographic spread and intensity of insect infestations. For example, in British Columbia "the mountain pine beetle extended its range north and has destroyed an area of soft-wood forest three times the size of Maryland, killing 411 million cubic feet of trees—double the annual take by all the loggers in Canada. Alaska has also lost up to three million acres of old growth forest to the pine beetle."96 Over the past fifteen years the spruce bark beetle extended its range into Alaska, where it has killed about 40 million trees, "more than any other insect in North America's recorded history".97 The drying and burning forests, and other increasingly dry landscapes, also are causing "flora and fauna"[to move] to higher latitudes or to higher altitudes in the mountains". 98 The human and environmental costs from failing to promptly reduce dependence on carbon-dioxide emitting sources for electricity, heating and transportation are dire and indisputable. Rather than being the leader among major countries in per capita GHG emissions, our country **urgently needs to lead the world** in cutting eighty percent our emissions by 2050, and using our renewable energy resources and technological advances **to help other** major emitting **countries do the same**. However, significantly increasing our use of carbon-free renewable sources to protect current and future generations of all species—human and non-human—**requires concrete changes in how our legal system regulates and permits renewable energy sources**. One of those sources with the potential for **significant energy production** and comparable elimination of fossil fueled greenhouse gases near major American and global population sources **is offshore wind**. II. THE OFFSHORE WIND POWER PERMITTING AND LEASING OBSTACLE COURSE A. Overview of Technology and Attributes As noted in the Introduction, offshore wind energy projects have the potential to generate large quantities of pollutant-free electricity near many of the world's major population centers, and thus to help reduce the ongoing and projected economic, health, and environmental damages from climate change.99 Wind speeds over water are stronger and more consistent than over land, and "have a gross potential generating capacity four times greater than the nation's present electric capacity."100 The net capacity factor101 for offshore turbines is greater than standard land-based turbines, and their blade-tip speeds are higher than their land-based counterparts.102 Offshore wind turbine substructure designs mainly fall into three depth categories: shallow (30 m or less), transitional (>30 m to 60 m), and deep water (>60 m).103 All of the grid-scale offshore wind farms in Europe have monopole foundations embedded into the seabed in water depths ranging from 5m to 30m; the proposed American projects such as Cape Wind in Massachusetts and Block Island in Rhode Island would likewise be shallow-water installations.

Block

Offshore wind solves warming

Biello 12 – Associate editor @ Scientific American

(David, "The Sky Is the Limit for Wind Power," http://www.scientificamerican.com/article.cfm?id=no-limit-for-wind-power)//BB

Wind turbines on land and offshore could readily provide more than four times the power that the world as a whole currently uses. Throw in kites or robot aircraft generating electricity from sky-high winds and the world could physically extract roughly 100 times more power than presently employed—and the climatic consequences remain minimal.¶ Two new computer-model analyses suggest there are **few limits** to the wind's potential. Although "there are physical limits to the amount of power that can be harvested from winds, these limits are **well above** total global energy demand," explains climate-modeler Kate Marvel of Lawrence Livermore National Laboratory, who led the analysis published September 9 in **Nature Climate Change.** (Scientific American is part of Nature Publishing Group.) Current global demand is roughly 18 terawatts. (A terawatt is one trillion watts.)

Solves multiple warming causes

Rosenberg 8 – Professor of Law, Associate Dean for Academic Affairs, and Director, American Legal Systems (LLM) Graduate Program, William and Mary Law School

(Ronald, "Article: Making Renewable Energy a Reality--Finding Ways to Site Wind Power Facilities," 32 Wm. & Mary Envtl. L. & Pol'y Rev. 635)//BB

3.Total Elimination of Air Pollutants and Greenhouse Gas Emissions

Probably the strongest advantage of wind power is the absence of air pollution and greenhouse gas emissions. Thermoelectric fossil-fuel-fired plants generate the largest percentage of American electricity. 121 They are also the largest single CO_2 contributor, even exceeding contributions from all forms of transportation. 122 Wind power, by definition, does [661] not burn any fuel so it does not emit any air pollutants or greenhouse gases. This lack of air emissions is a permanent feature of a wind power facility. Conventional fossil fuel combustion also results in sulfur dioxide, nitrogen oxides, carbon monoxide, particulate matter, hydrocarbons, mercury and other emissions which are considered to be air pollutants of concern to the public's health and safety and regulated under clean air laws. 123 Additionally, the absence of carbon dioxide resulting from wind power contributes to the reduction of global warming gases. With the increased emphasis on the elimination of greenhouse gases, 124 the substitution of fossil-fuel- generated electricity with non-combustion-produced electricity will reduce the rate of growth of greenhouse gas emissions from America's electrical energy sector. As American climate change policy begins to embrace more rigorous greenhouse gas reduction goals, wind power could be viewed as a viable energy alternative to electricity generated from coal and natural gas.

OSW solves warming

Schroeder 10 - J.D. from University of California, Berkeley, School of Law

(Erica, 2010. And Masters in Environmental Management from Yale School of Forestry and Environmental Studies, "Turning Offshore Wind On", California Law Review)//BB

Many of the most compelling benefits of offshore wind are similar to those of onshore wind, though offshore wind has its own unique set of benefits. To start, wind power generation can help meet the growing energy demand in the United States. The U.S. Energy Information Administration predicts that the demand for electricity in the United States will grow to 5.8 billion MWh in 2030, a 39 percent increase from 2005.58 The more that wind power can help to meet this demand, the more diversified the United States' energy portfolio will be, and the less susceptible the nation will be to dependency on foreign fuel sources and to price fluctuations in traditional fuels.59 In addition, wind power benefits the United States by creating a substantial number of jobs for building and operating the domestic wind energy facilities.60 In an April 2009 speech at the Trinity Structural Towers Manufacturing Plant in Iowa, President Obama predicted that if the United States —fully pursues our potential for wind energy on land and offshore,‖ wind power could create 250,000 jobs by 2030.61 Once a wind project is built, it involves only **minimal environmental impacts** compared to traditional electricity generation. Wind power emits negligible amounts of traditional air pollutants, such as sulfur dioxide and particulate matter, as well as carbon dioxide and other greenhouse gases.62 Lower emissions of traditional air pollutants means fewer air quality-related illnesses locally and regionally.63 Lower **g**reen**h**ouse **g**as emissions will help to **combat climate change**, effects of which will be felt **locally** and **around the world**.64 According to the International Panel on Climate Change (IPCC), the effects of climate change will include melting snow, ice, and permafrost; significant effects on terrestrial, marine, and freshwater plant and animal species; forced changes to agricultural and forestry management; and adverse human health impacts, including increased heat-related mortality and infectious diseases.65 The U.S. Energy Information Administration estimates that the United States emits 6 billion metric tons of greenhouse gases annually, and it expects emissions to increase to 7.9 billion metric tons by 2030, with 40 percent of emissions coming from the electric power sector.66 Thus, if the United States can get more of its electricity from wind power, it will contribute less to climate change, and help to mitigate its negative impacts. Furthermore, wind power does not involve any of the additional environmental costs associated with nuclear power or fuel extraction for traditional electricity generation, such as coal mining and natural gas extraction.67 Wind power generation also does not require the water necessary to cool traditional coal, gas, and nuclear generation units.68Moreover, offshore wind power has certain attributes that give it added benefits compared to onshore wind. Wind tends to be stronger and more consistent offshore—both benefits when it comes to wind power generation.69 This is largely due to reduced wind shear and roughness on the open ocean.70 Wind shear and roughness refer to effects of the landscape surrounding turbines on the quality of wind and thus the amount of electricity produced.71 While long grass, trees, and buildings will slow wind down significantly, water is generally very smooth and has much less of an effect on wind speeds.72 In addition, because offshore wind projects face fewer barriers—both natural and manmade—to their expansion, offshore developers can take advantage of economies of scale and build larger wind farms that generate more electricity.73Importantly, offshore wind also could overcome the problems that onshore wind faces regarding the distance between wind power generation and electricity demand. That is, although the United States has considerable onshore wind resources in certain areas, mostly in the middle of the country, they are frequently distant from areas with high electricity demand, mostly on the coasts, resulting in transmission problems.74 By contrast, offshore resources are near coastal electricity demand centers.75 In fact, twenty-eight of the contiguous forty-eight states have coastal boundaries, and these same states use **78 percent** of the United States' electricity.76 Thus, offshore wind power generation can effectively serve major U.S. demand centers and avoid many of the transmission costs faced by remote onshore generation.77 If shallow water offshore potential (less than about 100 feet in depth) is met on the nation's coasts, twenty-six of the twenty-eight coastal states would have sufficient wind resources to meet at least 20 percent of their electricity needs, and many states would have enough to meet their **total electricity demand**.78

Economy/Competitiveness

NEG

1NC CP

CP Text: The United States Federal Government should limit marginal tax rate dependent tax preferences to 15%

CP solves the economy

Lim 13 Diane Lim is Chief Economists @ the Pew Charitable Trusts, "Proposal 7: Limiting Individual Income Tax Expenditures", February 2013, http://www.hamiltonproject.org/files/downloads_and_links/THP_15WaysFedBudget_Prop7_rev.pdf//OF

Our economy currently faces the dual challenges of persistent demand-side weakness in the short term, and inadequate public and private saving to grow the supply side of the economy over the longer term. Reducing the deficit by raising revenues through base-broadening strategies would be an effective fiscal policy plan to respond to both conditions. If we can raise revenue by broadening and leveling the tax base without having to raise marginal rates**, there unambiguously would be a net positive effect on supply-side economic growth,** from increased public saving (due to lower deficits), an improved allocation of resources (due to a more neutral tax treatment across sectors of the economy), and maintenance of incentives for private saving and labor supply (due to lower or constant marginal tax rates). By raising revenue primarily from higher-income households, there would be less potential damage to the near-term, demand-constrained economy, since high-income households are not as cash-constrained to begin with and hence are less likely to reduce consumption when their incomes fall. In fact, anticipation of near-term reductions in tax expenditures could stimulate those presently subsidized activities, because taxpayers would be encouraged to engage in those activities before effective tax rates on them are scheduled to rise. Reducing these individual tax expenditures primarily at the top also would help reverse the decades-long trend of rising income inequality and the more recent trend (since 2001) of tax policy exacerbating that inequality. By reducing overall tax expenditures, policymakers can minimize the extent to which they would have to increase marginal income tax rates to achieve a given level of deficit reduction. But if a base-broadening effort alone fails to raise adequate revenues to meet these fiscal targets, marginal tax rate increases may be necessary to make up the difference, and are justified provided that the economic benefits of the additional deficit reduction outweigh the economic costs resulting from the increased distortions on private incentives. Experience and research, in fact, suggests that the effects of marginal tax rates on private saving are small relative to the effects of aggregate revenue-level changes on public and national saving (Greenstone, Looney, and Samuels 2012, fact 9). A Policy Approach That Is Politically Feasible, Administratively Easy, and Design Flexible There may be economic arguments for reducing or eliminating some income tax expenditures more than others, but acrossthe-board approaches are probably more feasible than reducing particular tax expenditures, because lobbying pressures may be less prevalent when no one particular interest or industry is being singled out. On the other hand, across-the-board approaches certainly will not be easy unless there is significant public support for "mutual sacrifice" solutions. Many across-the-board approaches to trimming tax expenditures are easy to specify and implement and can be calibrated to different revenue goals and marginal tax rate specifications. Rate-increasing and base-broadening approaches can be viewed as both policy substitutes and complements in order to scale and fine-tune the combined tax policy changes to their various economic purposes and fiscal goals. The Proposal There are several different ways to reduce income tax expenditures across the board, which can be sorted into two categories: those that reduce the tax subsidies by affecting the size of the subsidies at the margin (a price-incentive effect), and those that reduce the subsidies primarily by capping or limiting the total value of the subsidies (an income effect). The following are three policy options that reduce the price subsidy effects of tax expenditures, thereby affecting the price incentive effects: 1. **Limit marginal-tax-rate-dependent tax preferences to one of the lower-bracket rates.** President Obama has proposed a limit of itemized deductions to the 28 percent rate in each of his past budgets; in 2012 he expanded the proposal to include some other tax expenditures such as the exclusion of employer-provided health benefits and the preferential tax rate on dividends. The Congressional Budget Office (CBO) estimated that this expanded version would raise $523 billion over ten years (CBO 2012). (The prior versions of the 28-percent limitation, which were limited to itemized deductions, were estimated to raise almost $300 billion over ten years.) The CBO has also described a proposal to further limit the rate on itemized deductions (but not other tax preferences) to 15 percent. **The CBO estimates this proposal would raise $1.2 trillion over ten years** (see CBO 2011, revenue option 7, pp. 151–152).1

2NC Solvency

The CP controls the largest internal link into economic growth and competitiveness

Baily and Slaughter 8 Martin N. Baily served as chairman of the Council of Economic Advisers during the second Clinton administration, from 1999 to 2001, and as one of three members of the council from 1994 to 1996. He was a Senior Fellow at the Peterson Institute for International Economics from 2001 until 2007. Matthew J. Slaughter is Associate Dean of the MBA Program and Professor of International Economics at the Tuck School of Business at Dartmouth. He is also currently a Research Associate at the National Bureau of Economic Research; a Senior Fellow at the Council on Foreign Relations; an academic advisor to the McKinsey Global Institute; and a member of the academic advisory board of the International Tax Policy Forum. "Strengthening U.S. Competitiveness in the Global Economy", December 2008, http://www.pegcc.org/wordpress/wp-content/uploads/pec_wp_strengthening_120908a.pdf//OF

What is the competitiveness cost to America from the two fiscal problems we have identified? Start with our constrained national discussion of fiscal policy. A government tax on any business or consumer activity tends to curtail it; accordingly, it is widely agreed that sound tax regimes are those with broad and transparent bases, where the breadth allows low rates (for some given target revenue) and the transparency fosters certainty for long-term decision-making by businesses and households. Largely because of the problems of our current national fiscal discussion, we are far from a sound regime. The President's Advisory Panel on Federal Tax Reform opened its bipartisan report with the following characterization. We have lost sight of the fact that the fundamental purpose of our tax system is to raise revenues to fund government … **The current tax system distorts the economic decisions of families and businesses, leading to an inefficient allocation of resources and hindering economic growth** … The **tax system is both unstable and unpredictable.** Frequent changes in the tax code, which often add to or undo previous policies, as well as the enactment of temporary provisions, result in uncertainty for businesses and families. This volatility is harmful to the economy and creates additional compliance costs.28 **The fiscal problem of looming unsustainable deficits threatens America's competitiveness by threatening long-run economic growth.** Large and growing fiscal deficits would draw on America's available pool of savings generated by American households, American companies, and (thanks to globalization) foreigners through the trade deficit. American companies also rely on these same savings to fund their productivity-enhancing capital investments in property, plant, equipment, R&D, and worker training. So larger budget deficits, if not perfectly offset by more savings, will tend to raise real interest rates (the price of savings) and thus reduce the capital investment of U.S. companies. This will mean slower growth in worker productivity and earnings. The exact timing of when rising fiscal deficits would curtail U.S. economic performance would depend a lot on how much foreign investors would be willing to continue supplying their savings to buy this expanding government debt. **If foreign-investor demand were to shift abruptly away from this debt, the resulting sharp depreciation of the U.S. dollar and spike in U.S. interest rates could bring sudden, severe drops in capital investment** (and overall recession as well)—along with higher price inflation and its related problems. How big might these economic impacts be? Very big. CBO calculations of its alternative fiscal scenario predict that expanding federal debt would reduce the total U.S. capital stock in 2040 by 25% compared with what it would be that year if the fiscal deficit did not rise from its 2007 level. By 2050 that reduction would grow to over 40%.

AT: Politics

The counterplan is bipartisan – corporate tax reform has unanimous support

HLSF 2013 Harvard Law School Forum, based off an article written by Lucas Goodman and Robert Pozen, lectures for the Harvard Business School, 1/10/2013, "Corporate Tax Reform", http://corpgov.law.harvard.edu/2013/01/10/corporate-tax-reform/

Amid the current debate over tax policy in Washington, **there is a bipartisan consensus on one issue: the corporate tax rate,** which is currently 35 percent, should be reduced to roughly 25 percent. At the same time, budgetary pressures preclude any significant increase in the deficit to accomplish corporate tax reform.¶ In light of these competing demands, most corporate tax reformers advocate broadening the corporate tax base to pay for any rate reduction. Unfortunately, few politicians have put forth base-broadening measures that would generate revenue sufficient to significantly lower the corporate tax rate on a revenue-neutral basis.¶ In fact, revenue-neutral corporate income tax reform is likely to be very difficult, because corporate tax expenditures represent a relatively small portion of total corporate tax revenues. A preliminary analysis by the Joint Committee on Taxation suggested that the elimination of all corporate tax expenditures—except for the deferral of tax on foreign source profits, a provision whose repeal would be politically and economically infeasible—would allow for the corporate tax rate to be reduced to only 28 percent.¶ Therefore, if policymakers want to reduce the corporate tax rate on a revenue-neutral basis, they will likely have to adopt other types of reforms to broaden the corporate tax base. Ideally, those reforms should offer the potential for significant revenue gains and reduce economic distortions.

Cyber Security

NEG

1NC

The United States Federal government should pass the National Cybersecurity Protection Advancement Act.

NCPAA solves for mistrust between the government and the private sector-avoids link to the terror DA

Anthony **Kimery, 15**, Editor-in-Chief @ Homeland Security today, "Bipartisan Cybersecurity Bill Overwhelmingly Passes House; Now its Up to Senate,"http://www.hstoday.us/single-article/bipartisan-cybersecurity-bill-overwhelmingly-passes-house-now-its-up-to-senate/4cc686c955fce8083b25be7da7fded7d.html

The main provisions of NCPA as reported by the Committee on Homeland Security will: •Authorizes a non-Federal entity (e.g. company) to, for a cybersecurity purpose voluntarily share information with DHS or another non-federal entity about cyber threats (cyber threat indicators) and measures to defend their networks against such cyber threats (defensive measures); (2) monitor their own networks for cyber threats; and (3) operate measures to defend their networks against cyber threats. •Requires both the non-federal entity and DHS to take "reasonable efforts to remove information that can be used to identify specific persons and is reasonably believed at the time of sharing to be unrelated to a cybersecurity risk or incident." •Confers liability protection against lawsuits to any non-federal entity that shares cyber threat indicators or defensive measures or conducts authorized monitoring on their networks when acting in accordance with the requirements of the Act, so long as the non-Federal entity did not engage in "willful misconduct." Additionally, it specifically immunizes non-federal entities for failing to act on information provided. •Establishes substantial oversight and reporting requirements for the DHS Chief Privacy Officer, DHS Chief Civil Rights and Civil Liberties Officer, DHS Inspector General and the Privacy and Civil Liberties Oversight Board. "American companies will have the tools they need to better protect their digital networks with this legislation," said House Committee on Homeland Security Chairman Michael McCaul (R-Texas) and Cybersecurity, Infrastructure Protection and Security Technologies Subcommittee Chairman John Ratcliffe (R-Texas) in a joint statement. The two lawmakers said, "We live in an ever-evolving threat environment where cyber attacks are personally affecting Americans, as well as our businesses and the government's ability to defend the United States. Removing the legal barriers for the voluntary sharing of cyber threats will help keep malicious nation states and cyber criminals out of our vital digital networks. This bipartisan, pro-privacy, pro-security bill has been three years and hundreds of stakeholder meetings in the making. I look forward to moving this landmark bill over to the Senate and getting it to the President's desk as quickly as possible." "I came to Washington to solve problems and make our country a safer place for all Americans. The National Cybersecurity Protection Advancement Act is a much needed bill that accomplishes both," Ratcliffe added, emphasizing that, "By passing this legislation, we are proactively protecting the national security of our country and the personal privacy of our citizens – both of which, under the status quo, remain vulnerable to malicious attacks from cyber adversaries ... Ultimately, it will arm those who protect our networks with valuable cyber threat indicators that they can use to fortify defenses against future cyber intrusions while protecting the personal information of Americans." "Today, the House joined with the President and stakeholders from across our critical infrastructure sectors to make our nation – and our cyberspace – more secure," said Rep. Bennie G. Thompson (D-Miss), ranking member pf the House Committee on Homeland Security.

AT: Can't solve Cybersecurity

NCPAA can solve cyberthreats and build trust between the public and private sphere.

Grant **Gross**, Apr 13, 20**15**, Washington, D.C., correspondent for IDG News Service, "New cyberthreat information sharing bill may be more friendly to privacy," http://www.pcworld.com/article/2909432/new-cyberthreat-information-sharing-bill-may-be-more-friendly-to-privacy.html

A new bill designed to encourage businesses and government agencies to share information about cyberthreats with each other may go farther toward protecting the privacy of Internet users than other recent legislation in the U.S. Congress. The National Cybersecurity Protection Advancement NCPA Act, introduced Monday in the House of Representatives by two Texas Republicans, appears to do a "much better job" at protecting privacy than two bills that have passed through the House and Senate Intelligence Committees, said Robyn Greene, policy counsel at the New America Foundation's Open Technology Institute. The bill differs from the House Intelligence Committee's Protecting Cyber Networks Act [PCNA] and the Senate Intelligence Committee's Cybersecurity Information Sharing Act [CISA] in that it doesn't allow government agencies to share cyberthreat information they've received from private companies with law enforcement for purposes unrelated to cybersecurity, Greene said by email. The new House bill "doesn't verge on cybersurveillance by letting law enforcement use information that it would receive in investigations and prosecutions that have nothing to do with cybersecurity," She added. "The government would only be allowed to use the information for cybersecurity purposes." Still, the NCPA raises some concerns, Greene said. It would allow companies to share some "unnecessary" personal information with government agencies, and it authorizes companies to deploy defensive measures that could harm "innocent" network users who aren't cyberattackers, she said. Privacy advocates have opposed several cyberthreat information sharing bills in recent years over fears that those bills would allow companies to share nearly unlimited information about their users with government agencies. Some of the bills allow agencies such as the Department of Homeland Security to pass that information on to law enforcement agencies such as the FBI for criminal investigations unrelated to cyberthreats. The NCPA was introduced by Representative Michael McCaul, chairman of the House Homeland Security Committee, and Representative John Ratcliffe, chairman of the committee's cybersecurity subcommittee. Congress must take action to defend U.S. networks, they said in a joint statement. "Cybercriminals, hacktivists and nation states will never stop targeting Americans' private information and American companies' and government networks to damage, disturb and steal intellectual property and U.S. Government secrets," they said. Like other cyberthreat information sharing bills, it would shield companies that share information with the government from user lawsuits. Companies sharing information are required to take "reasonable efforts" to avoid disclosing personal information. The bill's lawsuit protections don't apply when a company has engaged in "willful misconduct' while sharing information, according to the bill text.

NCPAA bolsters cybersecurity

Barbara Vergetis **Lundin, 15**, the Editor of FierceMarkets' Energy Group, encompassing FierceEnergy and FierceSmartGrid. Barb has spent the better part of two decades covering the energy industry - first as Editor of Trade Press Publishing's Energy Decisions magazine, then as Web Editor and Analyst for Financial Times Energy's Energy Insight, and most recently as a contributor to various print and online energy industry publications, "Cybersecurity act to encourage threat information sharing with government," http://www.smartgridnews.com/story/cybersecurity-act-encourage-threat-information-sharing-government/2015-04-14

Specifically, the NCPA Act bolsters cybersecurity by: Providing liability protections to companies for the voluntary sharing of cyber threat indicators and defensive measures with the Department of Homeland Security's (DHS) National Cybersecurity and Communications Integration Center (NCCIC) or with other private entities. • Granting liability protections for private companies to conduct network awareness of their own information systems. • Allowing companies to operate defensive measures and conduct network awareness on information systems they own or operate. • Preserving existing public-private partnerships to ensure ongoing collaboration on cybersecurity.

AT: Companies Hate Surveillance

Companies like NCPAA- helps boost income and maintain consumer trust

Dylan Sachs, 7/25, contributor to Business 2 Community, "Minimizing Online Cyber Threats — Beyond the Headline Attacks," http://www.business2community.com/tech-gadgets/minimizing-online-cyber-threats-beyond-the-headline-attacks-01280607#kPfepmbpBIloPsmy.99

Whether or not a business is willing to share its information with the government to potentially help curb large data breaches, these smaller threats will remain a serious threat. If left unchecked, something as simple as a phishing e-mail could have long-lasting ramifications for the brand and its business. That is why implementing a wider, more encompassing security strategy that might include a holistic monitoring approach, could potentially help businesses. By taking the information they already have access to and then identifying risks across multiple online domains, businesses will be able to safeguard companies and citizens alike. And in the end, companies will be able to ensure a better business model with proactive threat monitoring, a more solid brand reputation and a safer consumer community.

AT: Destroys Privacy Rights

NCPAA boosts consumer privacy with multiple safeguards.

Barbara Vergetis **Lundin, 15**, the Editor of FierceMarkets' Energy Group, encompassing FierceEnergy and FierceSmartGrid. Barb has spent the better part of two decades covering the energy industry - first as Editor of Trade Press Publishing's Energy Decisions magazine, then as Web Editor and Analyst for Financial Times Energy's Energy Insight, and most recently as a contributor to various print and online energy industry publications, "Cybersecurity act to encourage threat information sharing with government," http://www.smartgridnews.com/story/cybersecurity-act-encourage-threat-information-sharing-government/2015-04-14

The NCPA Act protects consumer privacy by: • Designating the NCCIC as the lead civilian 'portal' for voluntary cyber threat information sharing. • Enhancing DHS's Privacy Office to ensure the NCCIC complies with all civilian laws that protect Americans' privacy and civil liberties. • Requiring private companies to 'scrub' and remove personal information unrelated to the cybersecurity risk before sharing with the NCCIC or other private entities. • Instructing the NCCIC to conduct a second 'scrub' and destroy any personal information that is unrelated to the cybersecurity risk before further sharing with other government entities or private entities. • Ensuring that cyber threat information is used solely to prevent and respond to cyberattacks and enhance the nation's cyber defenses. It cannot be used for any law enforcement or surveillance purposes.

NCPAA limits scope of info to ensure privacy rights are being upheld

Robyn Greene, 15, policy counsel for the Open Technology Institute at New America Foundation specializing in issues concerning surveillance and cybersecurity, "Flawed, The Homeland Security Committee's Cybersecurity Bill Protects Privacy Better Than Other Information Sharing Bills," https://www.newamerica.org/oti/though-flawed-the-homeland-security-committees-cybersecurity-bill-protects-privacy-better-than-other-information-sharing-bills/

Under the NCPAA, companies would be authorized to share so-called "cyber threat indicators" with the government. Compared to the PCNA, the NCPAA would do a better job of protecting personal information from being shared with the government by more narrowly defining the term "cyber threat indicators" and thereby more narrowly limiting the scope of information to be disclosed. Once the government receives information under the NCPAA, it would be permitted to use it only for cybersecurity purposes. Unlike under PCNA, law enforcement agencies could not use the information to investigate crimes that have nothing to do with cybersecurity. This limitation is critically important to ensuring that this cybersecurity bill doesn't become a backdoor for general-purpose cyber-surveillance. The NCPAA is also an upgrade over the PCNA because it effectively cements civilian control over domestic cybersecurity. It does not include a requirement that DHS automatically disseminate all of the information it receives to the National Security Agency (NSA). The PCNA fails to protect privacy on all of these counts, and this week, OTI joined a coalition of 55 civil society groups, security experts, and academics in a letter voicing our strong opposition. First, its definition for cyber threat indicator is broader than the definition in the NCPAA, so companies would be able to share more personal information with the government. Even worse, the PCNA would authorize the government to use any of the information it receives to prevent, investigate, and prosecute a vast array of crimes the have nothing to do with cybersecurity. Those crimes range the gamut from terrorism to carjacking and arson to garden-variety violent crimes. These excessive use authorizations not only seriously threaten Americans' privacy, they also make the PCNA as much a cyber-surveillance bill as it is a cybersecurity bill. Finally, the PCNA would undermine civilian control of cybersecurity information sharing because it would require the government to automatically disseminate to the NSA every indicator companies share with it. This would vastly increase the NSA's access to Americans' personal information.

AT: Unpopular Among Privacy Advocates

Privacy protections of the bill would make it popular among privacy rights groups

Cory Bennett, 15, cybersecurity journalist for the Hill, "House panel releases bill on cyber threat data-sharing," http://thehill.com/policy/cybersecurity/236497-house-homeland-security-panel-releases-major-cyber-bill

Committee Chairman Michael McCaul (R-Texas) had said earlier this week that the measure, named the National Cybersecurity Protection Advancement Act, was on the brink of release. Cybersecurity information sharing has been a top legislative priority this year for lawmakers, industry groups and government officials. The public and private sectors must share more cyber threat data, they argue, if either wants to stop the glut of cyberattacks that have hammered major companies and government agencies. McCaul's bill did not contain any major surprises. It names the DHS as the "primary interface" in the public-private cyber threat data exchange. It does leave the door open for companies to share with other agencies such as the Treasury Department or National Security Agency, although would not explicitly authorize that sharing. The measure also allows for sharing among agencies within the government. The privacy language has been strengthened throughout from previous iterations of a similar bill, according to Alex Manning, staff director of the House Homeland Security subcommittee on cybersecurity last Congress. "The text made a more concerted effort to appease some of the privacy advocates," said Manning, currently senior government relations director with Arent Fox. There's a greater focus on the role the DHS privacy office will play, with specific guidelines for how it should monitor and file oversight reports on the data sharing program, Manning explained. The bill also bolstered the language requiring companies to strip personal information from their data before sharing it with the government. The DHS is already required to do a scrub of sensitive information in the cyber data it receives. If DHS officials notice a certain company is repeatedly failing to redact personal information, McCaul's bill would allow the department to terminate the company's ability to share with the agency. The alterations will likely appeal to numerous privacy groups. The ACLU already supported a version of the bill last year.

NCPAA key to safeguard privacy and maintain private sector relationships

Ratcliffe, 15, Subcommittee Chairman, "Committee Moves Bill to Improve Cybersecurity, Protect Americans' Privacy: Bill Includes Liability and Privacy Protections for Voluntary Info-Sharing on Cyber Threats," https://homeland.house.gov/press-release/committee-moves-bill-improve-cybersecurity-protect-americans-privacy

Subcommittee Chairman Ratcliffe said: "I'm grateful that this legislation was unanimously passed by the Homeland Security Committee. Securing Americans' privacy and the integrity of their personal information is precisely why Congress must act. The National Cybersecurity Protection Advancement (NCPA) Act will enhance the capabilities and relationships that the private sector has worked so hard to develop, while establishing procedures to safeguard personal privacy. If the private sector does not have access to timely cyber threat indicators – the tools, tactics, and techniques of other attempted intrusions – we are putting our homeland in grave danger. The time is now for legislation like the NCPA Act that protects personal information from cyber intrusions, prevents widespread disruption to vital sectors of our economy, and safeguards our homeland from ongoing cyber threats."

NCPAA has multiple protections to privacy-laundry list

David **Inserra** and Riley **Walters, 15**, Policy Analyst, Homeland Security and Cybersecurity, Research Assistant, "House Cyber Information Sharing Bills: Right Approach but Require Fixes,"

http://www.heritage.org/research/reports/2015/04/house-cyber-information-sharing-bills-right-approach-but-require-fixes

When it comes to cyber information sharing, the types of information that are being shared include the coding of a virus, the route an attacker used, or a hole in security. However, there may be some personal information attached that is not relevant to dealing with cyber threats, indicators, defensive measures, or risks. While security professionals have no interest in this information, there is a trade-off between removing all unnecessary information and sharing information in a timely manner.[5] Both bills require that "reasonable" measures be taken to remove any personal information that is unrelated to a cyber risk or incident before sharing with the federal government or other non-federal entities.[6] The PCNA also provides non-federal entities the ability to take reasonable efforts to "implement a technical capability configured to remove any [personal] information." This technical capability is a possible nod toward the Structured Threat Information eXpression (STIX) standardized language and mechanisms for sharing information that enable sharers to limit what proprietary or private information is shared without slowing information sharing.[7] The PCNA and the NCPAA also establish a series of other privacy guidelines and reports. The PCNA charges the Attorney General, the Privacy and Civil Liberties Oversight Board (PCLOB), the Director of National Intelligence (DNI), and inspectors general (IGs) with this responsibility while the NCPAA charges the Department of Homeland Security (DHS) Under Secretary for Cybersecurity and Infrastructure Protection, the DHS Chief Privacy Officer, IGs, and the PCLOB.[8] While some reports on privacy are certainly important and necessary, both bills seem to create too many reporting requirements and should be streamlined to ensure that duplicative tasks are not being asked of multiple privacy and oversight organizations. Both bills also include provisions that properly punish government workers who wrongfully use information, limit the use and retention of information containing personal data, and notify private-sector sharers when they are sharing information improperly.

Plan guarantees protection of privacy

Daniel **Farris**, Lindsay **Kessler, 15**, co-chairs Polsinelli's Data Center & Infrastructure and Data Privacy & Security teams, "House Passes the National Cybersecurity Protection Advancement Act,"

http://www.jdsupra.com/legalnews/house-passes-the-national-cybersecurity-69958/

The NCPAA grants companies protection against liability for sharing data with the Department of Homeland Security ("DHS") by amending the Homeland Security Act of 2002 to encourage voluntary information sharing about cyber threats, with liability protections, between and among the private sector and Federal government. Without these liability protections, companies sharing data pursuant to the PCNA could expose themselves to class actions or increased regulatory enforcement actions. Responding to privacy concerns, the NCPPA also includes numerous provisions to ensure the protection of the privacy of American citizens and ensure that shared cyber threat information is solely used for cybersecurity purposes. Specifically, the NCPAA allows the DHS's national cybersecurity and communications integration center ("NCCIC") to include tribal governments, information sharing and analysis centers, and private entities among its non-federal representatives. The Act also expands the NCCIC's functions to include global cybersecurity with international partners; requires federal and non-federal entities to take reasonable efforts to remove and safeguard information that can be used to identify specific persons and that is unrelated to cybersecurity risks or incidents prior to sharing; prohibits federal entities from using shared indicators or defense measures to engage in surveillance or other collection activities for the purpose of tracking an individual's personally

identifiable information and bars the usage of such information for regulatory purposes; establishes a private cause of action for a person to bring against the federal government if a federal agency intentionally or willfully violates restrictions on the use and protection of voluntarily shared indicators or defense measures; and exempts from antitrust laws non-federal entities that, for cybersecurity purposes, share certain indicators, measures or assistance in accordance with the NCPAA.

AT: Pass later

Need to solve cyber security now- risk is larger everyday

Erin **Kelly,15**, Reporter for USA Today, covering privacy issues, cybersecurity, “House passes bipartisan cybersecurity information-sharing bill,”
http://www.usatoday.com/story/news/politics/2015/04/22/cybersecurity-information-sharing-bill-house-vote/26188355/

It was the first action in the new Congress in response to recent high-profile cyber attacks that have included Sony Pictures, Home Depot, JPMorgan Chase, Target, Anthem health insurance, the State Department and the White House. Lawmakers voted 307-116 to approve the Protecting Cyber Networks Act, which was passed last month by the House Permanent Select Committee on Intelligence. "The increasing pace and scope of cyber attacks cannot be ignored," said Rep. Devin Nunes, R-Calif., chairman of the intelligence committee. "This bill will strengthen our digital defenses so that American consumers and businesses will not be put at the mercy of malevolent cyber thieves." Although the Obama administration has not endorsed any specific bill, President Obama has called on Congress to pass strong cybersecurity information-sharing legislation, and lawmakers have been moving quickly to do that. "Every day we delay, more privacy is stolen, more jobs are lost, and more economic harm is done," said California Rep. Adam Schiff, the senior Democrat on the intelligence panel. "Let's stop sitting by and watching all of this happen. Let's do something."

AT: Links to politics

CP is bipartisan

McCalley 4/14 Sean McCalley (quoting members of Congress) is a reporter for Federal News Radio, "Bipartisan cybersecurity bill expands information sharing network", 4/14/15, http://federalnewsradio.com/congress/2015/04/bipartisan-cybersecurity-bill-expands-information-sharing-network//OF

To do that, the NCPA Act would offer liability protections for private sector businesses from lawsuits in the event they share personal information about customers. The bill also outlines privacy protocols to protect the rights of citizens who interact with those companies. Rep. Michael McCaul (R-Texas), the committee chairman, introduced the bill yesterday. The NCPA Act would protect companies that report data to the National Cybersecurity and Communications Integration Center (NCCIC) at the Homeland Security Department. It extends protections for information sharing with other private organizations, too. In exchange for liability protections, businesses and federal agencies must follow specific parameters in the bill to protect the privacy of the data. Both Republicans and Democrats on the committee expressed strong support for the bill, which Rep, Bennie Thompson (D-Miss.), the ranking member, called the product of "months of bipartisan stakeholder outreach and collaboration, [and] the bill has strong privacy and civil liberties protections." The markup included a range of amendments that McCaul characterized as "largely bipartisan," with many passing without controversy. Those led to some changes that added more responsibilities for some federal agencies and expanded the network responsible for collaborating on the data supplied by the private sector.

FemStem

cp – solvency advocates

Act solves- creates educational opportunities to encourage women, minorities, and low incomed communities to pursue a higher level STEM education

Christina Wallace and Nathalie Molina Nino, 15, Christina Wallace is the Founding Director of BridgeUp: STEM at the American Museum of Natural History. Nathalie Molina Nino is the co-Founder of Entrepreneurs@Athena at Barnard College and the Chief Revenue Officer of PowerToFly, "How to Get More Girls Involved in STEM," http://time.com/3835310/girls-stem-school/

Creating STEM programming that engages girls earlier in their elementary and secondary-school education will help shift the classroom dynamic away from one that is majority boys and thus more welcoming to girls. Supporting interdisciplinary STEM projects—such as using computer programming in a science class to process or visualize a data set—will give students a better understanding of how these subjects are used in real life. Fostering career exploration activities will give some transparency to and highlight role models in careers that have high opportunity but are often less familiar to students. U.S. Senator Kirsten Gillibrand's STEM Gateways Act would provide federal grants for programs in elementary school, middle school, and high school that would help create educational opportunities in STEM fields for girls, minorities, and children from all economic backgrounds. The STEM Gateways Act includes after-school opportunities, and supports career exploration and workforce training for high school students. Right now, just a fifth of the federal dollars that are spent on STEM training goes toward funding training below an undergraduate degree. Yet, according to the 2013 Brookings report, "The Hidden STEM Economy," as many as half of all STEM jobs are available without a four-year college degree. By supporting STEM career exploration and training during high school, students can make informed decisions about their next steps. The Gillibrand bill isn't a panacea—it doesn't address the "leakiness" of the pipeline into STEM, where women and minorities drop out due to harassment or an unwelcoming environment—but it addresses the beginning of the pipeline and encourages more girls, minorities, and under-resourced youth to start down the path of choosing STEM careers. It is an investment in a future where more girls like Jordyn are given opportunities that could change their lives. The girls and young women of America deserve this. And so does our future workforce.

STEM Gateways Act improves US economic development- minorities and women are key to STEM future

Madeline **Hren, 15**, PR/Communications Intern at HQ Raleigh, "Rep. Kennedy and Latino STEM Alliance push for equal access to job training education ," http://dailyfreepress.com/2015/02/27/congressman-kennedy-and-latino-stem-alliance-push-for-equal-access-to-job-training-education/

Marta Montleon, superintendent of Diman Regional Vocational Technical High School in Fall River, was also present at the roundtable and argued that although the push for more STEM education is relatively new, the need to address this issue has been imperative for a long time. "So much of what we need for economic and job development, and just to move our country forward, is related to students and young people having a good foundation in STEM," Montleon said. "If the population predictions are correct, many of our states are going to be minority-majority populations, and if we don't do a better job of encouraging those populations into our high-demand careers, we will not have enough young people who are qualified and educated and trained for those careers going forward." The

STEM Gateways Act, which Kennedy reintroduced this month, would provide federal funding through the U.S. Department of Education to help schools implement STEM curricula in the classroom, with a special focus on reaching underrepresented groups in the field, the release stated. The Act would also implement partnerships between elementary schools and community colleges, non-profits and other organizations for after-school learning, tutoring and mentoring, and summer programs, the release stated. Several residents said the lack of female presence in STEM fields can be attributed to societal norms, but it's not necessarily a well-known problem. Jude Deeney, 56, of Brighton, said pressures from society have prevented minority groups from becoming involved in the STEM fields. "There seems to have been a trend where women are discouraged from entering into those fields, so any sort of push to increase their participation would be great," Deeney said.

STEM Gateways Act increases US STEM competitiveness- increases domestic opportunities for minorities and women

Triangle Coalition for STEM education, 13, "STEM Gateways Act Introduced to Promote STEM among Underserved Groups," http://www.trianglecoalition.org/stem-gateways-act-introduced-to-promote-stem-among-underserved-groups,

On Tuesday, Senator Kristen Gillibrand (D-NY) and Congressman Joe Kennedy (D-MA) introduced a new STEM education bill to promote and encourage opportunities specifically for underrepresented groups. The STEM Gateways Act (S. 1796, H.R. 3690), co-sponsored by Congressman Mike Honda (D-CA), would provide competitive grants through the Department of Education for elementary and secondary schools and community partners to implement rigorous STEM education programs serving women, minorities and economically disadvantaged students. Funds could be used to support both formal and informal STEM learning and other education activities including teacher professional development, career preparation, mentoring, and internships. Programs would have to support one or more of the following goals: Encourage interest in the STEM fields at the elementary school or secondary school levels. Motivate engagement in STEM fields by providing relevant hands-on learning opportunities at the elementary school and secondary school levels. Support classroom success in STEM disciplines at the elementary school or secondary school levels. Support workforce training and career preparation in STEM fields at the secondary school level. Improve access to career and continuing education opportunities in STEM fields at the secondary school level "New York is home to the greatest colleges and universities, and the world's most innovative minds," said Sen. Gillibrand. "But if we're going to compete and win in the global economy, we must prepare our students with the education they need for the jobs of the future. That starts with getting more talented young women, minorities, and students in high-need communities into the STEM pipeline. We are relying on our children today to be the innovators of tomorrow. It's our job to make sure they are prepared."

cp – women = gr8

There are plenty of STEM women – it's just a question inclusion

Reyes 12 – founder of the Frida Kahlo Institute for Women at the Borderlands (Maria-Elena, "Increasing Diversity in STEM by Attracting Community College Women of Color," 2012, https://www.engr.psu.edu/AWE/ARPAbstracts/CommunityCollege/ARP_WomenofColorCommunityCollege_Literature%20Overview.pdf)

Rationale for Diversifying the STEM Talent Pool

Nelson and Brammer (2007) argue that the United States needs to shift away from the old patterns of importing international students and recruit U.S. students into STEM. While international scientists and engineers might address the critical need to replace retiring U.S. STEM professionals, Nelson and Brammer say that international students will "not fulfill the need for scientists and engineers who will transfer U.S. values, culture, and interests while developing solutions critical to national, international and global crises" (p. 3).

Women, who make up 51% of the U.S. population (U.S. Census Bureau, 2010) and are attending higher education institutions in record numbers, present a ready group of recruits from which to increase the number of U.S.-born engineers and scientists. A focus on recruiting and training women of color also **would diversify the U.S. STEM pool.** The motivation to transfer U.S. values, culture, and interests into solutions is embedded in the expressed desires of women and other underrepresented individuals to work on projects that are environmentally and socially conscious and benefit their own communities (Aronson, Reyes, & Goldberg, 2003; Seymour & Hewitt, 1997), and many individuals in underrepresented groups leave STEM because they believe that the fields have no social relevance (Bonous-Hammarth, 2000; Carter & Hurtado, 2007).

Women = gr8 for STEM

Adkins 12 – senior vice president of IBM's Systems & Technology Group, a National Academy of Engineering inductee, and serves on the national board of the Smithsonian Institution (July 2012, Rodney C., "America Desperately Needs More STEM Students. Here's How to Get Them," http://www.forbes.com/sites/forbesleadershipforum/2012/07/09/america-desperately-needs-more-stem-students-heres-how-to-get-them/)

Second, we need to improve the composition of the STEM education pipeline to include more women and underrepresented minorities. Although women fill close to half of all jobs in the U.S., they hold less than 25% of STEM-related jobs. At the same time, 43% of school-age children today are of African American, Latino, or Native American descent. Yet of all the engineering bachelor's degrees in the U.S., less than 15% are awarded to underrepresented minorities. We need to reconcile these opposing trends so that the composition of our STEM education pipeline reflects America's shifting demographics.

On the national level, Congress and the administration have shown an interest in the issue, pursing legislation and enacting programs to help expand the number of underrepresented minority students studying STEM in college. National nonprofit organizations, like the National Action Council for Minorities in Engineering, also play an important role, by supplying Congress with research and policy analysis, in addition to providing scholarships directly to students.

As we look to the future, improving the size and the composition of the STEM education pipeline will strengthen our country's global competitiveness and unleash new innovations that will propel society forward. Yes, STEM-related education can be challenging at times, but it can also be inspiring. Let's encourage the next generation to study STEM by

teaching them that the technology that surrounds their daily lives is not just for their consumption, it is for them to create and build upon. It will be their innovations that eradicate disease, improve the environment, and power a brighter future.

Women are necessary in STEM

Del Giudice 14 - a national-award-winning journalist and Pulitzer Prize nominee (November 2014, Marguerite, “Why It's Crucial to Get More Women Into Science,” 11/08/14, http://news.nationalgeographic.com/news/2014/11/141107-gender-studies-women-scientific-research-feminist/)

The Power of Collaboration

Including gender in research could attract more women to science as well, Schiebinger says, because careers and avenues of research suddenly can become relevant to women.

She says that as more women get involved in the sciences—or any field historically dominated by men—the general knowledge in that field tends to expand.

"There are lots of places where you can show the direct link between increase in number of women and outcome in knowledge," she says. "History, primatology, biology, medicine."

It's an idea that dovetails with a major shift that has taken place in how scientific inquiry is being carried out by research teams.

Involving more qualified women, as well as additional "social identities"—gay people, African Americans and Latinos, those with physical disabilities, and others—can enrich the creativity and insight of research projects and increase the chances for true innovation, says Scott Page, a professor at the University of Michigan who studies diversity in complex systems.

In this sense, the corporate world is evolving more quickly than the science world.

According to the Atlantic Monthly magazine's cover story in May, "Half a dozen global studies, conducted by the likes of Goldman Sachs and Columbia University, have found that companies employing women in large numbers outperform their competitors on every measure of profitability."

"You need them at leadership positions," he says, "directing the field."

cp – nb

STEM has become a predominately male environment, relegating women to the outskirts

Settles 14 - associate professor in the department of psychology at Michigan State University, a core faculty affiliate of MSU's Center for Multicultural Psychology Research and MSU's Center for Gender in Global Context, d PhD in personality from the University of Michigan (October 2014, Isis H., "Women in STEM: Challenges and determinants of success and well-being," http://www.apa.org/science/about/psa/2014/10/women-stem.aspx)

The STEM Environment

Numerical underrepresentation and negative stereotypes contribute to negative environments for women in STEM. Negative gender-based experiences, such as sexual harassment, are more likely to occur in male-dominated settings like the sciences (e.g., Antecol & Cobb-Clark, 2001; Willness, Steel, & Lee, 2007) and men are far more likely to direct sex-based mistreatment toward women in male-dominated careers (e.g., science) as a means of penalizing them for violating gender-role norms and stereotypes (Dovidio, Major, & Crocker, 2000). Further, Kanter's (1977) classic theory of proportional representation suggests that women who are a numerical minority in an organizational settings ("tokens") will experience additional stressors. Specifically, women may experience greater performance pressure because they are highly visible as tokens and are expected to represent "women" as a group. Women may also experience social isolation because they are seen as outsiders by men in the organization. Finally, perceptions of individual women are filtered through stereotypes about their gender. For example, compared to men, women are stereotyped as less intelligent and less competent in mathematics and science (Lane, Goh, & Driver-Linn, 2012; Shih, Pittinsky, & Ambady, 1999). Moreover, the cultural stereotype of the scientist as objective, rational, and single-minded is consistent with prescribed norms for men, but counter to stereotypes and prescribed norms for women (Barbercheck, 2001; Diekman & Steinberg, 2013; Fiske, Cuddy, Glick & Xu, 2002). Together, these factors contribute to a "chilly" climate for women in STEM, with multiple challenges that contribute to their low numbers at every level.

Structural and Interpersonal Challenges

cp – answers

There are already enough women in STEM

Rosser and Taylor 9 - a scholar who has focused on attracting and retaining women in science, professor who specializes in international relations, political economy, and comparative politics (Sue and Mark Zachary, "Why Are We Still Worried about Women in Science?" May-June 2009, http://www.aaup.org/article/why-are-we-still-worried-about-women-science)

Hidden Trends

Over the past three decades, the overall percentage of women receiving degrees in science, technology, engineering, and mathematics—known collectively as the STEM disciplines—**has increased dramatically**. This growth tends to mask at least three other aspects of the demographics of the science and technology workforce.

To start, it masks a decrease over recent decades in white U.S. men, the traditional group from which this country has drawn its STEM workforce. In the United States, women now earn more bachelor's and master's degrees than men (see table 1). The National Science Foundation (NSF) reported in 2007 in Women, Minorities, and Persons with Disabilities in Science in Engineering that in 2004, women earned 57.6 percent of the bachelor's degrees in all fields and 59.1 percent of all master's degrees. Beginning in 2000, women also earned more of the bachelor's degrees in science and engineering, although they earned only 43.6 percent of the master's degrees in those fields. In 2004, women earned 60 percent of the PhDs in fields other than science and engineering, but only 44 percent of the PhDs in science and engineering received by U.S. citizens and permanent residents.

Border Security CP

1NC Border Security CP

The United States federal government should immediately and fully implement the SAFE Port Act of 2006.

Full implementation of the SAFE Port Act of 2006 delayed till 2016 – better mandates and reinforcement needed now

Homeland Security News Wire 14 – [Homeland Security News Wire, "100% scanning of U.S.-bound cargo containers delayed until 2016", Homeland Security News Wire, 8/1, http://www.homelandsecuritynewswire.com/dr20140801-100-scanning-of-u-s-bound-cargo-containers-delayed-until-2016]

DHS has delayed until 2016 the implementation of key sections of the SAFE Port Act of 2006, which requires that 100 percent of U.S.-bound ocean containers be scanned at the foreign port of origin. U.S. importers welcome the news of the delay, but they urge Congress to eliminate the scanning requirement altogether. "We fully support your waiver," wrote industry groups, including those representing freight forwarders and customs brokers, in their recent letter to DHS chief Jeh Johnson. "However, instead of going through this exercise every two years, we urge you and the Administration to recommend to the Congress that the statutory 100% container scanning requirement be repealed," they wrote.¶ The mandate fails to make clear how DHS defines the word "scanned." Does the department simply want an image of a container before it ships, or must authorities analyze the image and then decide if further inspection is needed? What are the standards for a qualified scan, and who would pay for purchasing, operating, and maintaining the scanning equipment? How will DHS coordinate the scans with foreign port officials? How would the United States react if a foreign government later insisted that containers arriving from the United Sates be scanned before shipping?¶ "We can't just do this as a U.S.-only solution. It has to work for the rest of the world, and our trading partners have pointed this out," said Jonathan Gold, vice president of supply chain and customs policy with the National Retail Federation. For one thing, "the technology just is not there," said Gold. Forbes reports that DHS expects to conclude a review of the scanning technology by the end of 2014; but even with the technology present, the original legislation mandating the scans failed to identify who would cover the cost of the program.

2NC Solves – Economy

US needs to strengthen Port Security and infrastructure– billions of dollars are lost annually

Walters 15 – [Riley Walters, Research Assistant at Douglas and Sarah Allison Center for Foreign and National Security Policy, "The U.S. Needs to Secure Maritime Ports by Securing Network Ports", The Heritage Foundation, 2/23, http://www.heritage.org/research/reports/2015/02/the-us-needs-to-secure-maritime-ports-by-securing-network-ports]

Maritime connectedness continues to be a key asset for U.S. economic and strategic interests. Threats to port and vessel network systems have long been overshadowed by concerns about kinetic attacks and supply-chain security. All maritime stakeholders remain at risk of cyber intrusion as cyber attackers seek any and all means of accessing maritime networks. Therefore, key measures need to be in place to evolve symbiotically as new threats emerge.¶ The U.S. Department of Homeland Security (DHS) and maritime stakeholders need to stay ahead of these risks in order to keep trade flow maximized, while avoiding the creation of regulations that may slow trade and hinder business.¶ Risks for Port Cybersecurity¶ For all U.S. industries, cybersecurity costs are growing.[1] Cyber attacks on port systems can have a variety of negative effects. The economic losses from port delays or closure can vary in severity. One port's failure negatively affects all connecting regional ports. In 2002, the 11-day closure of 29 ports on the West Coast cost an estimated $11 billion. Northeast ports lost an estimated $50 billion—$1 billion in cargo delays alone—because of Hurricane Sandy in 2012.[2] As labor disputes that began in October 2014 continue in West Coast ports, trade partners in Asia are feeling the effects of undelivered goods.[3]¶ With port and vessel network systems implementing new technology, stakeholders are moving away from traditional stand-alone systems, and maritime industrial control systems (ICS) are becoming more integrated. While new systems help to streamline production and increase the flow of trade, the number of vulnerabilities in network systems is also increasing. Cyber threat actors continue to find new ways of accessing network systems, through traditional land-line connections, new or pre-existing Wi-Fi ports, and USB-introduced threats, such as installing malware (Stuxnet) or extracting information (Edward Snowden). Vulnerabilities in smaller systems can be exploited to gain access to larger networks—a time-consuming type of attack for the everyday hacktivist, but a credible investment for drug smugglers and nation-state sympathizers.¶ In September 2014, the Senate Committee on Armed Services reported that Chinese hackers were behind the successful advanced persistent threat (APT) attacks on contractors in U.S. Transportation Command (TRANSCOM), dating as far back as 2008.[4] The military relies on these commercial vessels for strategic and humanitarian contingencies, transporting 95 percent of U.S. Forces' dry cargo annually.[5] According to the report, Chinese military compromised "multiple systems" on a commercial ship contracted by TRANSCOM for logistics routes. Between June 2012 and May 2013, the FBI reported two shipping companies and eight technical service providers of TRANSCOM were victims of cyber intrusion.

2NC – Solves Cyberterror

Cooperation between Congress, DHS, and the Obama Administration is key to prevent further cyber and physical attacks on US Ports

Establishing a concrete policy is key to prevent port threats

Caponi and Belmont 14 – [Steven L. Caponi and Kate B. Belmont, Partner at Blank Rome LLP and J.D. Fordham University School of Law, "Maritime Cybersecurity: A Growing, Unanswered Threat", The Maritime Executive, 10/24, http://www.maritime-executive.com/article/Maritime-Cybersecurity-A-Growing-Unanswered-Threat-2014-10-24]

Government and Industry Response¶ ¶ Numerous governmental agencies in both the EU and U.S. are starting to respond to the cyber threats facing the maritime industry. They have not yet, however, promulgated concrete guiding plans and policies. Instead, the governmental agencies have assumed the role of loudly sounding a clarion call to action and taken a supporting role for industry participants.¶ ¶ Responsibility to actively defend against the risks of a cyber attack and be in a position to effectively respond to an incident rests squarely on the shoulders of individual ship owners, shipping companies, port operators, and others involved in the maritime industry. The failure to assume this responsibility will undoubtedly lead to serious and potentially devastating consequences, including government fines, direct losses, third-party liability, lost customers, and reputational damage that cannot be repaired.¶ ¶ Mitigating the Threat¶ ¶ Companies looking to learn more about the steps they can take to meet the evolving cyber threat head-on should consult with cybersecurity professionals and available literature. Widely available resources include the National Institute of Standards and Technology, which issues the Framework for Improving Critical Infrastructure Cybersecurity and the National Infrastructure Protection Plan ("NIPP"), developed pursuant to the Homeland Security Act of 2002 and Homeland Security Presidential Directive 7 ("HSPD-7"). These documents, along with numerous others, can assist companies in developing a risk management framework to address cyber threats and use proven risk management principles to prioritize protection activities within and across sectors.

CP = Popular

SAFE Port Act is popular in both House and Senate – overwhelming vote for bill Halcoussis and Lowenberg 14 – [Dennis Halcoussis and Anton D. Lowenberg, Department of Economics of California State University and Professor of Department of Economics of California State University, "ALL IN: AN EMPIRICAL ANALYSIS OF LEGISLATIVE VOTING ON INTERNET GAMBLING RESTRICTIONS IN THE UNITED STATES", Wiley Online Library, 3/13, http://onlinelibrary.wiley.com/doi/10.1111/coep.12054/full]

Our roll call voting data are for the Internet Gambling Prohibition and Enforcement Act, H.R. 4411, which passed in the House of Representatives by a vote of 317 to 93 on July 11, 2006. (H.R. 4411 was not voted on by the Senate and never became law.) The UIGEA, as we have seen, was added to an unrelated piece of legislation, the SAFE Port Act, in a Conference Report which was passed by the House on September 29, 2006, by a vote of 409 to 2, and unanimously by the Senate on September 30, 2006. The overwhelming support for the UIGEA in the House likely reflected legislator preferences for the SAFE Port Act to which it was attached and which dealt with issues related to national security. A better gauge of legislator preferences regarding internet gambling is the voting record on H.R. 4411, which was concerned exclusively with this issue. Moreover, the roll call vote on H.R. 4411 contained a much larger number of "nays," thereby providing sufficient variation in the sample to facilitate econometric testing.¶ The content of the UIGEA is very similar to that of H.R. 4411, so that we can infer that the voting record on H.R. 4411 closely mirrored that which would have occurred if the UIGEA had been voted on by itself. In large measure, the UIGEA replicates the language of H.R. 4411, with one notable exception. H.R. 4411 included a provision introduced in an earlier bill sponsored by Rep. Goodlatte, namely, H.R. 4777. The latter bill sought to significantly expand the scope of the Wire Act by amending the definition of "the business of betting and wagering" to make it clear that the Act was not limited to sports gambling but also extended to online casinos and poker rooms (Casinoadvisor.com, accessed February 5, 2011; Doyle 2006, 3). This amendment to the Wire Act was rolled into H.R. 4411, but when the UIGEA was added to the SAFE Port Act, the amendment was dropped (Doyle 2006, 3). Other provisions of H.R. 4411 that were dropped from the UIGEA included an increase in the maximum prison term for violation of the Wire Act from 2 to 5 years and an authorization of $40 million in appropriations spread over 4 years for enforcement of the Wire Act (Doyle 2006, 5).14

Cyber Security CP

1NC Cyber Security CP

The President should propose and the Senate should ratify an international agreement that includes provisions to strengthen cyber warfare regulations and create protected zones for critical cyber infrastructure of civilian interest.

A cyber treaty is key to improving cybersecurity.

Giuseppe G. **Zorzino** 12/20/**14** (security consultant with more than 33 years of experience in the IT industry "Cyber-war or cyber-peace?" Security Affairssecurityaffairs.co/wordpress/31294/cyber-warfare-2/cyber-war-cyber-peace.html)

When dealing with conventional conflicts, the management procedures have been regulated by international treaties over time. The very cyber-war, i.e. the extension of the "armed" confrontation in the fifth domain, should follow the same rules. The doctrines of military officers from many countries qualify it as just like a conventional conflict, but reality is different. There is disagreement on the term "cyber-attack". When can we speak of an "attack to the nation", and what is the limit of the destructive consequences beyond which we can speak of "offensive attack"? Is it necessary that there is loss of life or can't simply be triggered by material damage to the infrastructures? And also in this second case, which is the limit, the extent over which the trigger is configured as "attack"? How is it possible to attribute liability in an incontrovertible manner, to a nation? Like a legal litigation, would it be necessary to have a third-party authority for forensic attribution to accountable actors, now in the cyberspace? When we talk about attack among states, in the "cyber" world the responsibility cannot be mandatorily attributed to military units of a party. Acts of "cyber" hostility can be caused by people not organized in recognized military units. The lack of shared interpretation about the meaning of "cyber-war" and its rules, should not prevent the achievement of international agreements on how to conduct "cybernetic" war. In the opinion of some experts[5], a treaty should include obligations of effective cooperation in the investigation subsequent to cyber-crimes. The lack of cooperation would indicate guilt or complicity by the nation. Other analysts[6] prefer to extend the principles of the Geneva and The Hague Conventions to cyber-confrontations because they consider them also applicable/appropriate to this domain of confrontation. Signing humanitarian agreements for the creation of protected zones for the critical infrastructure of civilian interest, however, would not prevent the possibility of their involvement. The not framed cyber-warriors could be induced to not adhere to these protected enclaves of cyberspace. Particularly "the patriots who group together as cyber-armies"[7] might be tempted to do that. The result of this unregulated use of increasingly sophisticated technologies can still overturn social norms of coexistence or legitimate confrontation. It is therefore necessary to first resolve the ambiguities in the interpretation of Countries' behaviour in cyberspace and create legal instruments for the recognition and attribution of responsibility to Nations. Therefore, it is necessary first of all to resolve ambiguities in the interpretation of the behavior of states in cyberspace and created legal instruments for the recognition and allocation of national responsibilities. Finally, international cooperation[8] has to be shared and reinforced in tackling cyber-crimes that have an alibi for the inevitable buck-passing. Such agreements should regulate the conduct of military confrontation in this domain, establish some rules of deterrence (by denial) based on the response structures to cyber-attacks, strengthen regulations on cyber warfare because they enable the effective tracking threats. The politics should give a crucial impulse to agreements between states. The need for a cyber-treaty to prevent future cyber-wars is turning out to be increasingly urgent. Its achievement would undoubtedly have a positive impact on all countries, reducing the heavy costs caused by cyber-crime[9].

2NC – Solvency

International treaties are key to cybersecurity – past treaties prove.

C. Raja **Mohan** 11/21/**14** (Distinguished Fellow at ORF, leading the Strategic Studies Initiative of the Foundation, foreign affairs columnist and prof, member of INdia's National Security Advisory Board "Towards An International Treaty on Cyber Security: A Bilateral Dialogue Between India and The US" CYFY cyfy.org/towards-an-international-treaty-on-cyber-security-a-bilateral-dialogue-between-india-and-the-us/)

As worldwide concerns on cyber security grow, preventing war and regulating conflict in the cyber domain through a treaty have come to the top of the international agenda. The last few years have seen a growing body of effort to bring the cyber domain under international law. It is based on two sets of convictions. The first is the historical experience. Every new domain that has emerged over the last few centuries of the modern age-maritime, air or space-has been brought under international regulation despite the unique complexities that each presented. All these domains were inevitably securitised; yet, a set of rules and norms have been negotiated for each by the international community. The second is the assessment that no single country can address on its own all the security challenges the cyber domain presents. Therefore, a measure of international cooperation in the cyber realm, many believe, is a necessity. As international negotiations on a cyber security treaty advance incrementally, there is need for a sustained and purposeful engagement between India and America. This paper explores some of the challenges of constructing such a dialogue. The UN Group of Governmental Experts (GGE) established by the Secretary General has provided a valuable forum for discussion on cyber security issues in the last few years among major powers. In a report submitted in August 2013, the GGE presented a number of propositions agreed upon by consensus among its members. The GGE asserted that the traditional principles of international law are applicable to the cyber domain, thereby concluding an important debate. Given the difficulties of delimiting state boundaries and affixing state responsibilities in the cyber domain, many had argued that traditional international law was not of much value in regulating cyberspace. Technological diffusion and the capacity of individuals and non-state actors to inflict considerable damage have also been viewed as limiting the possibility of inter-state agreements. In cyberspace, the GGE held, states should comply with the prohibition on the use of force, respect territorial sovereignty and the principle of settling disputes by peaceful means in much the same way as in the physical world. The right, specified in Article 51 of the UN Charter, to self-defence, including the use of force, would apply if a cyber attack reached the level of an 'armed attack'. The report, however, refrained from spelling out when this could be the case. The report offered a set of recommendations on the principles of responsible behaviour in cyberspace, proposed a slew of confidence building measures such as exchange of information on national cyber policies, sharing of knowledge on best practices, promotion of regional consultations and expansion of cooperation in law enforcement and international assistance for capacity building. While the recommendations of the report are a step forward, translating them into treaty language will not be easy. The devil, as they say, is always in the detail. Yet, the idea of a formal treaty to regulate cyber warfare draws mixed responses in both Washington and Delhi. For an entirely different set of reasons, some of which are rooted in their strategic culture, India and the US are both ambivalent towards cyber security treaties. For America, the question is about sustaining its extraordinary lead in cyber technologies and its freedom of operation in the cyber domain. Many in the US see cyber regulation as they do arms control: they believe both will end up constraining America while allowing its rivals and others catch up. Opponents of cyber arms control also point out that while the US is compelled by its laws to abide by international agreements, other countries may not be so fastidious. This approach of the right is contested by the multilateralists in the American establishment who believe the US should take the lead in regulating cyberspace because American technological primacy is likely to be short-lived in the cyber domain. They also argue that the US is far more vulnerable than its adversaries, given the centrality of cyberspace in the advanced US economy. This also makes the US more

susceptible to asymmetric warfare. Therefore cyber arms control is a useful way of limiting potential threats and serves American interests over the long term. The latter arguments prevailed with President Barack Obama, who has moved beyond the previous administration's opposition to multilateralism in cyberspace. Since then, the US has been more open to engagement with other powers in various UN and other forums. This does not mean there is a domestic consensus in America on the best approach to cyber security. The divide between unilateral and multilateral approaches within the US is deep.

A cyber treaty will solve all cybersecurity problems.

Soafer et al Jun 14, 20**10** (Abraham D. Sofaer Hoover Institution David Clark Massachusetts Institute of Technology Whitfield Diffie Internet Corporation for Assigned Names and Numbers "Cyber Security and International Agreements" Brown EDU cs.brown.edu/courses/csci1800/sources/lec17/Sofaer.pdf)

The current, largely unilateral and defensive measures relied upon to provide cyber security in the U.S. (and elsewhere) are widely viewed as insufficient to ensure an adequate level of safety. 27 It may be possible, as CSIS and others have recommended, to provide adequate protection for certain, critical national security activities by isolating them from the Internet and other outside interventions. For most, current functions, however, some aspects of the principal security deficiencies identified can only be remedied or reduced through increased and more effective international cooperation. The first recommendation for a multilateral treaty to deal with cybersecurity was published by Stanford University's Center for International Security and Cooperation in 2000. That draft proposed creating an international agency with regulatory authority similar to that of established specialized agencies in other areas of transnational activity, but with heavy reliance on private expertise. It expressly excluded state action from its scope. 28 The U.S. has opposed such an approach, but support for multilateral understandings and activities has increased. 29 General Assembly ("GA") resolutions commencing in 1998 (GA Res. 53/70) have been adopted annually, noting various aspects of the cyber security problem including crime, terrorism, critical infrastructure protection, spam, attacks on cyber infrastructure, and the need for capacity building. 30 In addition, conferences supported by the UN, individual governments, regional organizations, and others have been held on several occasions at various places in the world, resulting in calls for increased international cooperation to deal with threats to cyber security. 31 On January 6, 2006, the GA adopted Resolution 60/45, calling among other things for the appointment by the Secretary General of "a group of governmental experts, to be established in 2009 on the basis of equitable geographical distribution," to continue to study "existing and potential threats in the sphere of information security and possible cooperative measures to address them," and "to submit a report on the results of this study to the General Assembly at its sixty-fifth session." The Group of Governmental Experts representing 15 states, including China, India, Russia, and the U.S., met four times and on July 10, 2010 issued a report summarizing the threats currently faced by Information and Communication Technologies ("ICTs"), and recommending the following "further steps for the development of confidence-building and other measures to reduce the risk of misperception resulting from ICT disruptions"

AFF – No Solvency

The need for an international treaty is not actually needed.

Elise **Viebeck 4/28**/15 (national enterprise reporter "A cybersecurity treaty? Not so fast, says State cyber czar" The Hill thehill.com/policy/cybersecurity/240276-a-cybersecurity-treaty-not-so-fast-says-state-cyber-czar)

Calls for an international treaty on cybersecurity are premature given the evolving nature of online threats, the State Department's cyber envoy said Monday. Christopher Painter, the department's coordinator for cyber issues since 2011, acknowledged growing desire in some quarters for an international agreement on what constitutes normal behavior for nation states online. ADVERTISEMENT Persistent cyberattacks against U.S. government agencies, infrastructure and private-sector firms have produced concern that not enough is being done to deter bad actors such as Russia and China. But a treaty is not the answer, at least not now, Painter said. "You often hear people say we need a treaty in cyberspace [and] I've said often I don't know what a treaty is in cyberspace," Painter said at a cybersecurity conference held at Georgetown University, according to FCW. "I don't know who signs that treaty, I don't know who the parties of that treaty are." The problem of cyber deterrence is taking up more and more time in congressional discussions of hacking threats. Some lawmakers have argued that the Defense Department's current strategy is not working, and National Security Agency Director Adm. Mike Rogers appeared to agree in one recent hearing. The Pentagon last week released a new cybersecurity strategy that includes an unprecedented emphasis on offensive cyber weapons. "I think it will be useful to us for the world to know that, first of all, we're going to protect ourselves, we're going to defend ourselves," Pentagon chief Ashton Carter told reporters. Painter, for his part, said he is working on "smaller measures to cultivate trust … including exchanging points-of-contact and discussing cyber doctrine" with his counterparts around the world, FCW reported. He is also promoting a set of peacetime principles for cyberspace, including no attacks on infrastructure. "Let's not try to rush into a treaty that would take years and we're not really even sure what that's about," he said.

Democracy CP

1NC Democracy CP

The United States federal government should increase voter participation in primaries, ensure a fair process for drawing Congressional districts and increase the transparency of political contributions of money

This solves low voter participation, and low bipartisan trust and cooperation, both of which undermine democracy.

Snowe and Glickman 14 (Olympia Snowe, Dan Glickman; Snowe is a former Senator (R-Maine); Dan Glickman is a former Representative (D-Kansas), former Secretary of Agriculture, Senior Fellow at the Bipartisan Policy Center, and co-chair of the BPC's Democracy Project. "Ten Ways to Strengthen American Democracy," Politico, June 24, 2014, http://www.politico.com/magazine/story/2014/06/10-ways-to-strengthen-american-democracy-108203.html#.Vbrgs_lViko)

The current level of dysfunction in Washington is like nothing we could have imagined when we began our journeys in public service. Yet we are convinced, based on our decades of experience encompassing the legislative and executive branches, that the status quo of today need not constitute the new normal of tomorrow.¶ As such, on Tuesday, as part of the Bipartisan Policy Center's Commission on Political Reform, we released more than 60 concrete and achievable recommendations that will improve the federal government's ability to function regardless of the deep ideological divides that exist both among lawmakers and the American public, while addressing some of the root causes of the polarization.¶ What are some politically realistic reforms that could significantly improve the way we govern? Here are 10 key ideas to fix the electoral process, return Congress to legislating and enhance public service.¶ **1. Increase voter participation in primaries**:¶ Only 20 percent of eligible voters vote in congressional primaries. The commission recommends that states and political parties aim for 30 percent by 2020 and 35 percent by 2026. Rather than a yearlong process that confuses voters, we recommend a single June congressional primary date, more open primaries and eliminating congressional caucuses and conventions.¶ **2. Balance access and integrity in our elections**:¶ We recommend that states use the data revolution to (1) identify eligible, unregistered voters and offer them the opportunity to register and (2) greatly improve the accuracy of voter rolls.¶ **3. Ensure a fair process for drawing congressional districts**:¶ To reduce distrust between the two parties, we urge the adoption of redistricting commissions with the bipartisan support of state legislatures and the electorate, to avoid the kind of single-party gerrymandering that has contributed to political polarization.¶ **4. Tackle money in politics**:¶ All political contributions, including those made to outside and independent groups, should be disclosed. Congress should also pass legislation requiring detailed disclosure of spending by congressional leadership PACs and mandate that those funds be used solely for political activities, not personal use.¶ **5. Reform the filibuster and Senate debate**:¶ Eliminate the ability to filibuster the motion to proceed; in other words, don't allow filibusters on whether to move to debate a bill. And, at the same time, guarantee a minimum number of 10 amendments, split between the majority and minority, on each bill debated.¶ **6. Empower congressional committees**:¶ Legislation should go through the full committee and amendment processes to avoid power in Congress being too centralized. By strengthening the role of congressional committees, we will create fertile soil for consensus building across the aisle.¶ **7. Spend more time legislating in Washington — and with one another**:¶ The House and Senate should schedule synchronized, five-day workweeks in Washington, with three weeks in

session followed by one-week recesses. The president and congressional leadership should hold regular monthly meetings, and the president should attend biannual joint caucuses.¶ **8. Adopt a biennial budget cycle**:¶ To avoid the annual clash over the budget and ensure better oversight and long-term thinking, Congress should adopt a two-year cycle for budget and appropriations. The current annual budgeting process is badly broken — as crisis after crisis has shown over the past few years.¶ **9. Create an expectation to serve**:¶ We encourage a year of service for Americans ages 18 to 28, and recommend greatly improving the opportunities to serve in programs like AmeriCorps and the Peace Corps, to run for political office or to serve in appointed office. This would fulfill Americans' enthusiasm to give back.¶ **10. Improve the presidential appointments process**:¶ The onerous appointments process discourages many of the most qualified applicants. We recommend cutting back on unnecessary restrictions to serve, streamlining the financial disclosure process, reducing the number of positions requiring Senate confirmation and encouraging the private sector to allow employees to take a temporary position in government.¶ There is no magic wand for making government work again. Yet indisputably, there are many measures that we can, and must, undertake. Divided government need not, and must not, mean dysfunctional government. After all, Americans are a can-do people, and we deserve to be governed that way.

2NC Solvency

Elections with integrity are key to democracy

Annan 13 (Kofi Atta Annan; Ghanaian diplomat; served as the 77th Secretary-General of the UN from January 1997 to December 2006. "Deepening democracy: why elections with integrity matter", The Elders, March 4, 2013, http://theelders.org/article/deepening-democracy-why-elections-integrity-matter)

Why elections with integrity matter:¶ Elections with integrity are the foundation of democracy. In a true democracy, our elected leaders are simply the temporary custodians of political power; the power ultimately rests with the people. We elect leaders to act on our behalf so that we can go about our lives, caring for our families, teaching at our schools, staffing our hospitals and running our businesses. At election time, the power returns to the people – and they in turn empower the elected.¶ Elections also provide people in each society with the opportunity to resolve political conflict peacefully. When citizens go to the polls and cast their votes – whether in Kenya, the United States or Indonesia – they aspire not only to elect their leaders, but to choose a direction for their nation.¶ The Commission defines an election with integrity as one that is "based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial and transparent in its preparation and administration throughout the electoral cycle." At its core, the ideal of electoral integrity means that all voters should have an equal opportunity to participate in public debate and cast their ballots, all votes are counted equally, and all candidates seeking election do so on a level playing field.¶ Elections as a catalyst for change:¶ As well as conferring legitimacy and public trust on elected officials, and security for the losers, elections are also a powerful catalyst for good governance, security and development.¶ My home country of Ghana experienced a cycle of military coups following independence in 1957, before settling into a series of democratic elections and transfers of power. The new legitimacy of its political institutions enabled both responsive governance and private-sector driven development. Indeed, following the implementation of sound policies including smart agricultural reforms, Ghana is the only country in Africa to have met both the poverty and hunger components of the first Millennium Development Goal.¶ When elections are flawed they corrode public trust, and in severe cases can endanger democracy and even lead to conflict. I saw how harmful flawed elections can be following the disputed presidential elections in Kenya in December 2007. The post-election violence caused tremendous damage and loss, resulting in the deaths of 1,300 people and the displacement of over 600,000. As the country holds its General Election today, I fervently hope that all Kenyans will commit themselves to helping to ensure that the polls are free, fair and credible.

Elections are key to rights-- freedom to participate in the government, freedom of expression, empowerment, fighting corruption, and ending wars

Annan et al. 12 (Kofi Atta Annan; Ghanaian diplomat; served as the 77th Secretary-General of the UN from January 1997 to December 2006. THE REPORT OF THE GLOBAL COMMISSION ON ELECTIONS, DEMOCRACY AND SECURITY", Global Commission on Elections, Democracy, and Security, September 2012, http://www.ycsg.yale.edu/assets/downloads/deepening_democracy.pdf)

Elections with integrity are important to values that we hold dear—human rights and democratic principles. Elections give life to rights enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, including freedom of opinion and expression,

freedom of peaceful assembly and association, the right to take part in the government of one's country through freely elected representatives, the right of equal access to public service in one's country, and the recognition that the authority of government derives from the will of the people, expressed in 'genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot.'

But in addition to promoting democratic values and human rights, elections with integrity can also yield other tangible benefits for citizens. Evidence from around the world suggests that elections with integrity matter for empowering women, fighting corruption, delivering services to the poor, improving governance, and ending civil wars. To be clear, elections with integrity cannot by themselves develop economies, create good governance, or make peace, but recent research does suggest that improved elections can be a catalytic step towards realizing democracy's transformative potential.

When conducted with integrity, electoral processes are at the heart of democracy's ability to resolve conflict peacefully. The ability of a society to resolve conflicts without violence requires debate, information, interaction among citizens, and meaningful participation in their own governance, all of which have the potential to change people's minds and allow governments to take authoritative decisions. Elections with integrity can deepen democracy and enhance public deliberation and reasoning about salient issues and how to address them.

2NC Campaign Finance Reform

Campaign finance reform will gain bipartisan support-- despite political differences, parties will agree that democratic participation in the government is necessary

Schwarz 7/9/2015 (Jon Schwarz, writer for First Look, "You're Not Meeting the Candidates Now, They're All Going Out to Meet Sheldon Adelson", First Look, July 9, 2015, https://firstlook.org/theintercept/2015/07/09/rep-john-sarbanes-plan-de-suck-u-s-government-part-ii/ Note: The writer who published this article is Jon Schwarz, but this card is from his interview of Rep. John Sarbanes.)

Are all 150 of your bill's co-sponsors Democrats?¶ [Sarbanes:] The huge lion's share of that is Democrats, but we think we can begin to build support from the other end of the political spectrum. We have one Republican co-sponsor, Walter Jones of North Carolina, who's very passionate about this issue.¶ We're finding that the sentiment of feeling left out, of your voice not being heard, you can find that on either end of the political spectrum. In fact, if you look at the Tea Party movement on the right, and Occupy Wall Street on the left, they both come from the same place: a feeling on the part of the average person that there's some powerful elite in Washington and New York that is running the country, and that everybody else is getting left behind. I think there's real potential to create a political coalition that cuts across the political spectrum — where you could have people saying, well, you and I don't agree on just about anything when it comes to substantive policy, but we can agree that as a matter of democratic process that our voices should be heard.

Though transparency is good, it's just a referee and doesn't increase participation by voters-- public funding is key to real campaign finance reform

Schwarz 7/9/2015 (Jon Schwarz, writer for First Look, "You're Not Meeting the Candidates Now, They're All Going Out to Meet Sheldon Adelson", First Look, July 9, 2015, https://firstlook.org/theintercept/2015/07/09/rep-john-sarbanes-plan-de-suck-u-s-government-part-ii/ Note: The writer who published this article is Jon Schwarz, but this card is from his interview of Rep. John Sarbanes.)

[Interviewer:]Given the recent Supreme Court decisions, it seems like it's a much more plausible way forward to add money from regular people to the system rather than limiting the amount from other places.¶ [Sarbanes:]I will mention that a good thing about our approach is that we're not trying to put any limits on anybody's speech, we're actually giving speech to people who feel right now that they don't have it. That way we don't get tangled up with our proposal in this whole First Amendment debate, or in the jurisprudence of the Supreme Court, which has led to a call for a constitutional amendment.¶ [With this] you don't need 38 states and two-thirds of the House and Senate, like you do for a constitutional amendment. You need 218 votes in the House and 51 in the Senate and a presidential signature. I'm not saying that's necessarily easy to get. But it's a lot more practical ambition, I think, than getting a constitutional amendment.¶ And this is really important: if you do transparency and disclosure — which I support — all that's doing is just putting a referee on the field to blow the whistle when the big money players go over the line. Yeah, there's a ref down there, but you're still watching, you're not on the field yourself, you're not a player.¶ So we wanted to design something that

said to the people up in the bleachers: “Hey, guess what — we’re going to play a new kind of game where you actually get to come onto the field.”¶You’re not meeting the candidates now, they’re all going out to meet [casino magnate and major donor to right-wing causes] Sheldon Adelson on the field. They’re not going to listen to you. But with this you’re on the field.¶To me that’s so much more exciting and inspirational as a response to the situation we find ourselves in.

CP = Popular

Support for reform is growing in Congress and the public

DeSaulnier, McNerney, Sarbanes, and Huffman 3/31/2015 (Rep. Mark Desaulnier is from California's 11th Congressional District, Rep. Jerry McNerney is from California's 9th Congressional District, Rep. John Sarbanes is from Maryland's 3rd Congressional District, Rep. Jared Huffman is from California's 2nd Congressional District. "Taking Back Democracy", Huffington Post, March 31, 2015, http://www.huffingtonpost.com/mark-desaulnier/government-by-the-people-act_b_6973214.html)

Five years after the Supreme Court's landmark Citizens United ruling, big-money campaign donors and wealthy special interests have amassed unprecedented political power -- and their corrosive influence on our government is growing.¶ Every election brings new examples of special interests drowning out the voices of ordinary citizens. The 2014 election was no exception: With nearly $4 billion spent, it was the most expensive midterm election in American history. Shadowy Super PACs and dark money groups spent more money than ever before, relying on a handful of mega donors to fill their coffers.¶ As a result, in only the first few months of the new, Republican-controlled Congress, we've seen a litany of bills that do favors for the wealthy and well-connected, but a dearth of legislation that would truly help hard-working families.¶ No wonder why voters are cynical about the state of American democracy. What goes on in Washington confirms their worst suspicions: that special interests are calling the shots and blocking progress on important issues, like making the economy work for everyday Americans, creating good jobs, protecting consumers and safeguarding the environment.¶ Despite this grim reality, there is reason for hope. Most people still run for public office for the right reason: a sincere desire to help others and to make a positive difference in their communities. And there are many dedicated, principled leaders in Congress who are frustrated by the outsized role of money in politics and who long to restore Congress' credibility with the public. Moreover, grassroots support is growing among everyday Americans who want to take back our democracy.¶ The key to tapping into all of these sentiments is to ensure that the voices of ordinary citizens are not drowned out by the undue influence of corporations and mega-donors. However, Supreme Court decisions striking down campaign spending limits have made this difficult.

CP = Bipartisan

There is bicameral support for an XO that required transparency

This card is from the website of a Senator for Rhode Island--

http://www.whitehouse.senate.gov/news/release/bicameral-call-for-greater-transparency-in-political-spending

Washington, D.C. – In separate letters sent by House and Senate lawmakers today, Congresswoman Anna G. Eshoo (D-Calif.) and Senator Sheldon Whitehouse (D-R.I.) led over 100 House Members and 26 Senators, respectively, in calling on the president to issue an Executive Order requiring companies that do business with the federal government to fully disclose their political contributions.¶ "Taxpayers have a right to know where their money is spent and you have the power to ensure that the American people can obtain this information," the House lawmakers wrote in a June 22, 2015 letter to President Obama. "With public funds come public responsibilities, and any company receiving federal tax dollars should be required by Executive Order to fully disclose their political spending in a timely and accessible manner."¶ Senators echoed the same sentiment, saying, "Political spending by government contractors is a problem you can address without congressional authorization. You would be on solid legal ground if you were to issue an executive order requiring disclosure of political spending by entities that have been awarded government contracts and their senior leadership… An executive order will not solve our campaign finance problems but it will at least be a step in the right direction, and will show your Administration's commitment to transparency and fairness."¶ Nearly half a billion dollars in undisclosed money has been spent in the last two election cycles. Under current law, the president can take immediate action to increase disclosure by requiring companies that receive federal contracts to fully disclose their political expenditures. Among the top 15 recipients of federal contracting dollars, a recent analysis by Public Citizen found that only 47 percent fully disclose their contributions to non-disclosing 501(c)(4) organizations.¶ In an April letter to White House counsel, Whitehouse was joined by Sens. Bernie Sanders (I-VT), Tom Udall (D-NM), Al Franken (D-MN), and Elizabeth Warren (D-MA) in urging the administration to take similar action. Senators joining today's letter include Judiciary Committee Ranking Member Patrick Leahy (D-VT) and members of Democratic leadership such as Sens. Dick Durbin (D-IL), Chuck Schumer (D-NY), Patty Murray (D-WA), and Amy Klobuchar (D-MN).¶ This is the fourth time Eshoo has led her colleagues in calling on the president to issue an Executive Order. She first wrote to him on the issue in 2011.

Democracy Solves Terrorism

The spread of democracy by the USFG is key to stopping terrorism.

Shadi **Hamid and** Steven **Brooke**, 2/1/**10** (Hamid is deputy director of the Brookings Doha Center and a fellow at the Saban Center for Middle East Policy, Brooke is a Ph.D. student in the Department of Government at the University of Texas, Hoover Institution at Stanford University "Promoting Democracy to Stop Terror, Revisited" www.hoover.org/research/promoting-democracy-stop-terror-revisited) Wadhwani

A new strategy A multitude of factors — economic, political, cultural, and religious — contribute to Islamic radicalism and terror. However, one important factor, and one that appears to have a strong empirical basis, is the Middle East's democracy deficit. Any long-term strategy to combat terrorism should therefore include a vigorous, sustained effort to support democracy and democrats in a region long debilitated by autocracy. Obviously, this is an enormous challenge and should not be taken lightly. However, abandoning such a critical task would mean more of the same — a Middle East that continues to fester as a source of political instability and religious extremism. And, in today's world, such instability, and the violence that so often results, cannot be contained; it will spill over and harm America and its allies. A new democracy promotion strategy in the Middle East should include a variety of measures, including making aid to autocratic regimes conditional on political and human rights reforms; elevating democracy as a crucial part of all high-level bilateral discussions with Arab leaders; coming to terms with the inclusion of nonviolent Islamist parties in the political process; using membership in international organizations as leverage; increasing the budget for programs like the Middle East Partnership Initiative and the Millennium Challenge Account; deepening cooperation with the European Union to spread responsibility; and sponsoring initiatives that bring together Islamist and secular groups to forge inclusive pro-democracy platforms. The pace of democratization should take into account local contexts yet must maintain a consistent focus on expanding the rights of citizens, supporting the development of viable opposition parties, and moving toward free and fair elections. Before moving in such a direction, the idea of Middle East democracy must be rehabilitated in the eyes of policymakers and the public alike. But before moving in such a direction, the idea of Middle East democracy must be rehabilitated in the eyes of policymakers and the public alike. Absent a bipartisan political commitment, any new effort will falter. We realize that elevating democracy promotion will mean breaking with the last several decades of U.S. policy, which has relied upon close relationships with Arab regimes at the expense of Arab publics. But our long-term national security, as well as our broader interests in the region, demand such a reorientation. The first step, however, is to reestablish a consensus here at home on both the utility and value of democracy promotion. Once that happens, the discussion of how to actually do it can be conducted with greater clarity. If, on the other hand, we choose to continue along the current path — paying lip service to the importance of democracy abroad but doing increasingly less to actually support it — a great opportunity will be lost. Turning away from the Arabs and Muslims who overwhelmingly support greater freedom and democracy will rob us of perhaps our strongest weapon in the broader struggle of ideas. For decades, the people of the region have been denied the ability to chart their own course, ask their own questions, and form their own governments. Lack of democratic outlets has pushed people towards extreme methods of opposition and made the resort to terrorist acts more likely. Recognizing this is a crucial step toward a sustained effort to promote Middle East democracy and represents our best chance at a durable and effective counterterrorism policy that protects our vital interests while remaining true to our ideals.

AT: CT K2 Demo Promo

Democracy promotion should be delinked from counterterrorism policy-- it's counterproductive and decreases credibility

Stoddard 2010 (Steve Stoddard, "RETHINKING THE RELATIONSHIP BETWEEN DEMOCRACY AND TERRORISM", International Affairs Review, Spring/Summer 2010, http://www.iar-gwu.org/sites/default/files/articlepdfs/Democracy%20and%20Terrorism.pdf)

First, counterterrorism policy documents and public rhetoric must decrease the prominence of democracy promotion to its traditional, peripheral role. Second, the United States should recast its technical support and foreign aid as "good governance" programs that will encourage states to be more responsive to their populations. Third, instead of attempting to destabilize authoritarian regimes, the United States should focus on stabilizing the failed or failing states that pose an even greater risk of terrorism. Fourth, the United States needs to address its massive credibility problem in the Middle East. Fifth, the United States must pursue energy independence and other policies to reduce the overall strategic importance of the Middle East region. ¶ 1. REMOVE DEMOCRACY PROMOTION FROM COUNTERTERRORISM POLICY AND RHETORIC: ¶ De-linking democracy promotion and counterterrorism policy is not an entirely new suggestion. The Washington Institute for Near East Policy's Presidential Task Force on Confronting the Ideology of Radical Extremism included it as part of their overall strategy for counter-radicalization. The task force argues that the prominence of democracy promotion in policy and rhetoric "has the unintended implication of hurting the ability of both U.S. government and nongovernmental organizations to play an effective role on the ground in supporting democracy and reform efforts, as it raises suspicion that the real purpose of the efforts is regime change."92 Accordingly, the National Security Strategy of the United States, the National Strategy for Combating Terrorism, and other official documents should be revised so that democracy promotion no longer forms a pillar of U.S. counterterrorism policy. The goal of spreading democracy need not be abandoned entirely—and it may still have some role in national security policy—but it needs to be treated as a completely separate matter from counterterrorism.¶ The accompanying public rhetoric must also be toned down substantially. As a recent report by the Center for Strategic and International Studies notes, "flourishing U.S. rhetoric such as Bush's Second Inaugural Address might at times be inspirational, but can also provoke charges of hypocrisy and a loss of credibility if it is too lofty and concomitant actions are not easy to see."93 Many experts interviewed for that study believe U.S. policy should be better conceived of as "democracy support" rather than "democracy promotion;" a wise distinction that is worth adopting in public diplomacy under the Obama administration.94

AT: Military Action Key

Military intervention to promote democracy almost always fails-- don't change the regime in the long term

Stoddard 2010 (Steve Stoddard, "RETHINKING THE RELATIONSHIP BETWEEN DEMOCRACY AND TERRORISM", International Affairs Review, Spring/Summer 2010, http://www.iar-gwu.org/sites/default/files/articlepdfs/Democracy%20and%20Terrorism.pdf)

The most forceful efforts by outside actors to promote democracy involve direct military interventions to stabilize postconflict states, or hostile action to create a regime change. Allied reconstruction of Germany and Japan after World War II is widely considered as the gold standard for successful postconflict democratic nation building, but the overall record indicates that these two cases "appear as outliers: inspiring deviations from a prosaic pattern of long occupations with limited results."39 More often than not occupying powers quickly find that—as with most things—**breaking a nation is far easier than putting the pieces back together**. Large scale studies show that the overwhelming number of military interventions by the United States and other Western democracies, while somewhat successful in creating short-term increases in political liberalization, generally do not yield a lasting impact on the political systems of target states. Peceny's (1999) examination of U.S. military interventions from 1898 to 1992 found that 85 percent of the interventions did not result in democratic change.40 Similarly, a Norwegian study that examined all military interventions by democratic states from 1961-1996 found "that in the short run, democratic intervention does indeed promote democratization[…]However, over the period 1961–96 this democratization appears to have had relatively little effect in terms of moving countries up into the category of democracies."**41 In other words, Western military intervention may create some democratic improvements, but it is generally unable to fundamentally alter the regime type—particularly over the long-term.**¶ Pickering and Peceny (2006) differentiated between hostile and supportive interventions in target states with their comparative analysis of U.S., French, British, and UN military actions from 1946-1996. They found that while U.S. interventions were somewhat more likely to result in democratic change than intervention by France and the U.K., UN interventions were the most successful at bringing about lasting political change. In contrast, British interventions never resulted in lasting political liberalization. However, the small number of cases where liberal interventions did succeed in bringing democratic change—five UN, two U.S., and one French—comprise just eight of the total 49 incidents of successful democratization during the period, which make broad generalizations difficult. Because of the small number of cases, they also conclude that "liberal intervention does not appear to be a prominent explanatory variable in post- 1945 democratization[…]nearly 84 percent of the cases of democratization that occurred from 1946 to 1996 involved no liberal military intervention."42 That statistic should be kept in mind when policymakers consider committing resources to artificially accelerate the democracy timetable elsewhere in the world. ¶ Although these studies are important, they may depict an overly pessimistic view of outside efforts to promote democracy because the actual number of military interventions specifically designed to achieve that goal are much smaller. In an analysis of Peceny (1999) and other studies that examined America's record of military intervention from 1898 to 1992, Russet determined that there were "13 successes for a policy of democratization, and 16 failures. When democratization was not an explicit goal it virtually never happened."43 This study more accurately represents the track record of deliberate U.S. attempts to promote democracy through military methods, but it is also important to note that an explicit policy of democratization was more likely to fail if the target state had no prior history of democratic rule, or experienced a civil war either before or after the intervention.44

Non-military tactics to spread democracy fail-- Cuba and Iran economic sanctions prove

Stoddard 2010 (Steve Stoddard, "RETHINKING THE RELATIONSHIP BETWEEN DEMOCRACY AND TERRORISM", International Affairs Review, Spring/Summer 2010, http://www.iar-gwu.org/sites/default/files/articlepdfs/Democracy%20and%20Terrorism.pdf)

NON-MILITARY METHODS TO PROMOTE DEMOCRACY: The lackluster results of military efforts to promote democracy abroad fundamentally challenge the notion that it can be an effective strategy to combat terrorism, but there are less intrusive methods that states can use to pursue the same objective. Some of the most common non-military tactics are economic sanctions, conditionality of economic or military foreign aid, and technical assistance to help build democratic institutions.51 Most of the evidence indicates that these alternative strategies to promote democracy enjoy, at best, only marginal success.¶ Economic sanctions "do not appear to have any better results than military interventions do in changing regime structure or behavior;" a broad examination of all types of economic sanctions shows that since World War I, "only about one third were judged to be even partly successful at achieving their stated results."52 One need look only to the cases of Cuba and Iran to see how even decades of continued economic sanctions by the United States are ineffective in bringing about democratic change in the targeted regime. Economic sanctions can also easily create negative side effects that outweigh any marginal impact they may have on democratization; they often hurt the most vulnerable members of a society, affect the areas of the economy that would be most receptive to positive economic engagement, and can also inadvertently impact the economies of neighboring countries.53¶ Because authoritarian regimes maintain power by means of a much smaller electorate than democracies, targeted sanctions are generally considered to be more effective against those types of governments. By designing "narrow sanctions affecting the core groups supporting the regime," democratic states will be more likely to coerce authoritarian governments to yield to economic pressure.54 Under most circumstances, however, the goal of economic sanctions is usually to change a state's behavior rather than its governing structure. When threatened with sanctions ultimately designed to remove them from power, self preservation will likely trump even well-calibrated economic pressure against authoritarian regimes.¶ Conditionality of economic or military foreign aid is another tool used extensively to promote various foreign policy objectives, the results of which have been mixed for democracy promotion. Knack (2004) examined foreign aid's specific relationship to democratization from 1975-2000 and concluded "that either the favorable impacts of aid on democratization are minor, or they are roughly balanced by other democracy-undermining effects of aid dependence."55 Other studies of military aid found that "arms imports are significantly and negatively related to democracy[…but…]U.S. military educational exchanges are positively associated with liberalizing trends."56

ILaw CP

1NC ILaw CP

The United States federal government should cooperate with the International Criminal Court without ratifying the Rome Statute.

We have a solvency advocate and it avoids the link to politics.

Dietrich 11 (John W, Bryant University, "Time for the United States to Cooperate with the ICC", http://www.h-net.org/reviews/showrev.php?id=31374)

Lee Feinstein and Tod Lindberg argue that the United States should move to a policy of cooperation with the International Criminal Court (ICC) as a means of reaching the established U.S. goal of seeing gross violators of human rights and perpetrators of mass atrocities held accountable for their actions. U.S. cooperation also would please allies and be morally right. The authors move discussion of the ICC away from the well-worn theoretical debates on the merits of global governance and proper limitations on sovereignty to, first, the broader issue of how the United States works for international justice and, second, the practical question of whether cooperation with the ICC advances U.S. interests. Such intellectual moves force U.S. critics of the ICC into the difficult position of either questioning the merits of the U.S. goal of international justice or showing that this goal could be better achieved through other policies.¶ Feinstein and Lindberg also later add a third shift in the debate by suggesting that the issue should not be defined only as a choice of either U.S. opposition to the ICC or ratification of the Rome Statute, but should include a middle option of **U.S. cooperation with the court without ratification**, at least at this point. Cooperation would give the United States many of the benefits of joining the ICC without subjecting itself to the court's jurisdiction or requiring Senate approval.¶ Overall, the book raises an interesting perspective and advances many practical policy steps. Several of the latter have already been adopted by Barack Obama's administration. ICC critics, though, are likely to be less willing than the authors to move away from theoretical debates or to see the ICC's actions to date in positive terms. How long the United States could, or should, remain with the middle policy of cooperation without ratification also remains unclear.¶ Feinstein was at the Brookings Institution and has worked with notable Democratic politicians. Lindberg is at the Hoover Institution and has worked with key Republican politicians. Both have spent extensive time in Washington policy circles. They intend this work to be similar to other recent bipartisan efforts to assess in practical terms how U.S. interests can be furthered by international institutions. Their background and goal gives the book a different set of arguments and writing style when compared to works on the ICC by academics or lawyers.

2NC Solves CIL

Solves Customary International Law too (CIL)

MCKENNEY 13 (Sydney, writer on E-international relations, E-International Relations, http://www.e-ir.info/2013/05/17/the-united-states-need-to-ratify-the-rome-statute/)

The Rome Statute of the International Criminal Court establishes a permanent court to prosecute individuals who have committed atrocity crimes such as torture, genocide and crimes of war. Initially, the U.S. supported the Court, but several factors caused it to actively work against the Court during the Bush Administration. The main arguments against joining the Court are rooted in its constitutionality (especially the rights of due process), state sovereignty, the role of the UN Security Council and a fear of politicized prosecutions. But the Court is a supranational entity as well as a court of last resort; it does not override national courts but acts only in situations where nations' courts are unable or unwilling to prosecute. Upon examination, the U.S.' concerns reflect a unidirectional model for human rights in that the U.S. supports prosecuting criminals as long as they are not U.S. nationals. But the roots of the ICC are based in customary international law as well as the laws of nature, which should be denied by no state- especially the most powerful nation in the world. Based on the theory of natural law, the United States has an obligation to the international community to support the Court in prosecuting atrocity crimes. The United States has immense power to help shape the Court and often overlooks the option to amend or make reservations on areas of the Court that it sees as unfit. By refusing to ratify the Rome Statue, the United States disrespects the law of nations and fails to play the role in advancing international law that it should.¶Introduction¶The International Criminal Court, although a relatively new instrument in international law, plays a distinctive role in furthering the global community's dedication to human rights.[1] This permanent tribunal works closely with the United Nations, but is its own independent institution. The Court came into being in 2002 through the Rome Statute of the International Criminal Court:[2] the Court aims to prosecute individuals for genocide, crimes against humanity, war crimes and the crime of aggression.[3]

2NC Solves Structural Vio

ICC outlaws sexual and gender based crimes while taking steps to help victims – New policies prove

CFR 14 (Council on foreign relations, independent, nonpartisan membership organization, think tank, and publisher, International Criminal Court's Policy Paper on Sexual and Gender-Based Crimes, http://www.cfr.org/violence-against-women/international-criminal-courts-policy-paper-sexual-gender-based-crimes/p35875#)

1. Over the past few decades, the international community has taken progressive steps to put an end to impunity for sexual and gender-based crimes. The Statute of the ICC is the first international instrument expressly to include various forms of sexual and gender-based crimes — including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence — as underlying acts of both crimes against humanity and war crimes committed in international and non-international armed conflicts. The Statute also criminalises persecution based on gender as a crime against humanity. Sexual and gender-based crimes may also fall under the Court's jurisdiction if they constitute acts of genocide or other acts of crimes against humanity or war crimes. The Rules of Procedure and Evidence (‚Rules') and the Elements consolidate important procedural and evidentiary advancements to protect the interests of victims and enhance the effectiveness of the work of the Court.¶ 2. Recognising the challenges of, and obstacles to, the effective investigation and prosecution of sexual and gender-based crimes, the Office elevated this issue to one of its key strategic goals in its Strategic Plan 2012-2015. The Office has committed to integrating a gender perspective and analysis into all of its work, being innovative in the investigation and prosecution of these crimes, providing adequate training for staff, adopting a victim-responsive approach in its work, and paying special attention to staff interaction with victims and witnesses, and their families and communities. It will increasingly seek opportunities for effective and appropriate consultation with victims' groups and their representatives to take into account the interests of victims.¶ 3. The Office recognises that sexual and gender-based crimes are amongst the gravest under the Statute. Consistent with its positive complementarity policy, and with a view to closing the impunity gap, the Office seeks to combine its efforts to prosecute those most responsible with national proceedings for other perpetrators.

AT: ICC Bad

Ratifying the ICC would lead to international laws, the ICC is one of the largest forms of international law – Sets standards for many of the worse crimes and tries those crimes as well

Sandholtz 14 (Wayne, University of Southern California, "Implementing the International Criminal Court", http://ssrn.com/abstract=2454824)

The International Criminal Court (ICC) is a landmark in the development of international ¶ criminal law: the first permanent international tribunal with the authority to prosecute ¶ individual persons for the most serious international crimes. But the ICC is not a standalone¶ court. It sits atop a system of criminal justice that, in principle, integrates national ¶ and international levels. In fact, the system of international criminal law as a whole relies ¶ on national judicial institutions to carry most of the burden of prosecuting international¶ crimes (genocide, war crimes, and crimes against humanity). For national courts to fulfill ¶ that role, domestic legal provisions that implement international criminal law must be in ¶ place. That is, domestic judicial actors must have the legal tools to prosecute genocide, war ¶ crimes, and crimes against humanity in domestic courts. This study examines the domestic ¶ enactment of laws that would enable states to carry out their responsibilities with respect ¶ to the International Criminal Court. International relations and international law scholars ¶ have analyzed state commitments to human rights treaties and the effects of those treaties ¶ on human rights performance. But surprisingly little research examines why and when ¶ states enact the domestic laws that would enable them to fulfill their international human ¶ rights and international criminal law commitments.1¶ The ICC depends on states in two crucial ways. First, the ICC exercises ¶ "complementary" jurisdiction, prosecuting only when states cannot or will not do so (Rome ¶ Statute, 2002, Preamble, Arts. 1, 17). Domestic courts, under "complementarity," thus have ¶ 1 A recent exception is (Berlin 2014).¶ 3¶ primary responsibility for prosecuting ICC crimes (Schabas 2011). Second, when the ICC ¶ does prosecute, it will depend on the cooperation of national institutions and officials for ¶ everything from gaining custody of the accused to gathering evidence and securing ¶ witnesses. In order to play their role in the ICC system, states must enact legislation that ¶ addresses both aspects of their relationship with the ICC: complementarity and ¶ cooperation. Some states that ratified the Rome Statute of the International Criminal Court ¶ have acted quickly to pass both complementarity and cooperation legislation; other ¶ ratifiers have yet to enact any implementing legislation. This study seeks to identify the ¶ factors that distinguish these two categories of states.

The United States doesn't ratify enough global treaties to foster international law – Only by ratifying more internationally accepted treaties will the US be able to foster international law

Goldsmith and Posner 05 (Jack and Eric, Harvard Law School professor and American law professor, "The limits of international law", http://www.angelfire.com/jazz/sugimoto/law.pdf)

The biggest problem, from the perspective of¶ international law advocates, has been the United¶ States. Long the champion of international legalization¶ and the richest and most powerful country,¶ the United States was a laggard in the 1990s.¶ During treaty negotiations, the United States¶ consistently worked to weaken treaty language¶ and create exceptions. It ended up opposing the¶ International Criminal Court and has cajoled dozens of¶ countries into entering bilateral immunity agreements,¶ which require them

not to turn over Americans on their territory to the ICC. It refused to enter the Kyoto Global Climate Change Treaty. It refused to enter a treaty that banned landmines. It has refused to enter several human rights treaties, and it has entered others only subject to reservations that ensure that they do not change American policy. It led the illegal intervention in Kosovo. Although many other states have been recalcitrant about these and similar international institutions—including Russia, China, India, and other major powers—it has come as a shock to many American internationalists that the United States acts more like these countries than like western European countries. From their perspective, matters only became worse after 9/11. The American military response to the al Qaeda threat has raised grave questions of international law. So has both the invasion of Iraq—arguably, in violation of the UN Charter—and the conduct of the war there. The Bush administration also has forcefully reiterated American opposition to the ICC and to Kyoto, and withdrawn from the ABM treaty with Russia; and many of its officials have shown skepticism about the value of international law for American foreign policy. International law advocates now regard the United States as a rogue state but have no ideas about how to change American behavior. Defenders of American foreign policy sometimes argue that nobody pays attention to international law, and so therefore the United States should not; and, at other times, they argue that weak states are using international law to prevent the United States from acting in its national interest. The partisan debate is hampered by lack of understanding about how international law really operates. The Limits of International Law intends to fill that gap. The book begins with the premise that all states, nearly all the time, make foreign policy decisions, including the decisions whether to enter treaties and comply with international law, based on an assessment of their national interest. Using a simple game-theoretical framework, Goldsmith and Posner argue that international law is intrinsically weak and unstable, because states will comply with international law only when they fear that noncompliance will result in retaliation or other reputational injuries. This framework helps us understand the errors of the international law advocates and their critics. On the one hand, large multilateral treaties that treat all states as equal are unattractive to powerful states, which either refuse to enter the treaties, enter them subject to numerous reservations that undermine the treaties' obligations, or refuse to comply with them. The problem with these treaties is that they treat states as equals when in fact they are not, and they implicitly rely on collective sanctions when states prefer to free ride. Thus, many human rights treaties are generally not enforced, and so they have little effect on states' behavior. And the international trade system is mainly a framework in which bilateral enforcement occurs, so powerful states may cooperate with other powerful states but not with weaker states, whose remedies for trade violations are valueless. On the other hand, international law is not empty or meaningless, as many critics have argued. States are able to cooperate with each other, especially on a bilateral basis, and their patterns of cooperation eventually congeal into the customary international norms. Cooperation also occurs within bilateral treaties and within the general frameworks set up in multilateral treaties. In the absence of a world government, the cooperation remains relatively thin, and often erratic; its character changes as the interests and relative power of nations change. But none of this is to claim that international law is phony or illusory or a great public relations game.

Indo-Pak CP

1NC Indo-Pak CP

The United States federal government should offer Pakistan a formula for nuclear normalization modeled off of its 2008 nuclear cooperation deal with India.

Offering a nuclear cooperation deal to Pakistan would reduce nuclear risks
VCDNP 13

["Overcoming Pakistan's Nuclear Dangers", April 28 2013, Vienna Center for Disarmament and Non-Proliferation, http://vcdnp.org/140415_overcoming_pakistans_nuclear_dangers.htm] -Chan

Therefore, efforts should be made to stabilize the strategic environment in order to curtail the South Asian nuclear arms race. To overcome these nuclear dangers, Fitzpatrick proposed that Pakistan be offered "a formula for nuclear normalization" similar-but not identical-to the 2008 US-India nuclear cooperation deal. This path to nuclear normalization would entice Pakistan to adopt policies associated with global nuclear governance and non-proliferation norms. Under this scenario, Fitzpatrick asserted, Pakistan would be required to ratify the Comprehensive-Nuclear-Test-Ban Treaty, suspend all fissile material production, unblock the Fissile Material Cut-off Treaty negotiations, and make other concessions in return for nuclear legitimacy. Islamabad would have to lift a heavy burden of proof that it deserves such recognition because of its damaged track record due to the A. Q. Khan's network operations and the continuing terrorism threats from non-state actors. While such a proposition would reduce nuclear risks in Pakistan and the region, he conceded that options have yet to be explored that would prevent Islamabad's nuclear normalization from undermining non-proliferation efforts elsewhere, such as in North Korea, or weakening the international regime entirely. He further recommended a continuous focus on preventing acts of terrorism as well as efforts to lower the risk of a new Indo-Pakistani war. To this end, bilateral mechanisms should be developed to avoid a fully-fledged arms race and nuclear exchange in South Asia.

2NC – Solves – India Proves

Nuclear agreement in India worked
DOS 8

["U.S. - India: Civil Nuclear Cooperation", October 2 2008, http://2001-2009.state.gov/p/sca/c17361.htm] - Chan

Under the leadership of President Bush and Prime Minister Singh, the United States and India have moved forward on building the bonds of a strategic partnership. In July 2005, the two leaders announced a broad slate of initiatives as part of the new commitment to a comprehensive bilateral relationship. Among these, the Civil Nuclear Cooperation Initiative has garnered the greatest attention. The United States and India share three objectives in undertaking this initiative: to remove core differences that impeded our strategic relationship for more than 30 years, to support India's economic growth and energy security in an environmentally sound way, and to strengthen the global nonproliferation regime. On July 18, 2005, the U.S. and India announced the launch of the Civil Nuclear Cooperation Initiative. Under the parameters of this initiative, India will commit all of its civilian nuclear facilities to IAEA safeguards. On August 1, 2008 the IAEA Board of Governors approved India's safeguards agreement, paving the way for India's consideration at the Nuclear Suppliers Group. Currently, the United States is seeking a Nuclear Suppliers Group exemption in order to permit trade with India's expanding peaceful nuclear sector. The accompanying agreement for peaceful nuclear cooperation will permit American and Indian companies to partner together in ways that will foster growth in India's civil nuclear sector, create a clean energy source which will benefit the environment, and will offer India greater energy security with stable sources of energy for its large and growing economy. As part of the overall initiative, India will expand international safeguards, adhere to international nuclear and missile export guidelines, continue its voluntary moratorium on nuclear testing, and ensure that all civil nuclear trade will be used only for peaceful purposes. Because India will place a greater number of its reactors under safeguards, it reduces the nuclear infrastructure available for its weapons program. These commitments constitute significant gains for global nonproliferation efforts.

2NC – Third Party Solves

Third-party intervention solves

Ramsbotham, Chairman of the Oxford Research Group and President of the Conflict Research Society, 11

[*Contemporary Conflict Resolution* by: Ramsbotham, Woodhouse, and Miall Pg. 19 Ln. 23-Pg. 20 Ln. 5, February 4 2011] - Chan

Where two parties are reacting to each other's actions, it is easy for a spiral of hostility and escalation to develop through positive feedback. The entry of a third party may change the conflict structure and allow a different pattern of communication, enabling the third party to filter or reflect back the messages, attitudes and behavior of the conflictants. This intervention may dampen the feedback spiral. Although all third parties make some difference, 'pure' mediators have traditionally been seen as 'powerless' – their communications are powerful, but they bring to bear no new material resources of their own. In other situations there may also be powerful third parties whose entry alters not only the communication structure but also the power balance. Such third parties may change the parties' behavior as well as their communications by judicious use of the carrot and the stick (positive and negative inducement); and they may support one outcome rather than another. Of course, by taking action, powerful third parties may find themselves sucked into the conflict as a full party.

Leadership CP

1NC Leadership CP

The United States Congress should fully fund the Mandela Fellows Program.

Solves for leadership and is a better internal link.

Lord, 14

(Kristin Lord was the acting president of the United States Institute of Peace. Served as the Institute's executive vice president from 2013 until her appointment as acting president. "Soft Power Outage" http://foreignpolicy.com/2014/12/23/soft-power-outage/)

First, it has to "walk the walk," aligning actions and values, rhetoric and deeds. This is understandably difficult in a country with complex and wide-ranging foreign policy interests, but the United States could do better in one key respect: weighing potential damage to America's moral authority when considering policy options. Such considerations are often trumped, and not without cause. Policymakers are regularly forced to choose from a series of bad options, and when they do, clear and short-term consequences weigh more heavily than diffuse costs to notions like reputation. If the United States is serious about countering challenges to its national security interests and democratic ideals, however, this must change. Perceptions that the United States does not live up to its own values fundamentally undermine American power and inhibit the country's ability to defend not just its own interests, but also universal standards of what is right and just. They undermine America's ability to defend the time-proven value of the moral high ground, and they empower cynical actors eager to seize the propaganda advantage.? The constant din of social and traditional media is raising the stakes, subjecting policymakers to unrelenting scrutiny and empowering those who are loud and opinionated, whether or not they are right. The simultaneous trends of proliferating information and the decentralization of control over it present real challenges to leaders in government and elsewhere. These trends are a fact, for good or ill, but they are also opportunities. Scrutiny pressures the United States to be better, forcing it to reflect on how its actions will be perceived and whether those perceptions should lead it to behave differently in the first place. The link between scrutiny and virtuous behavior is long recognized. Indeed, Adam Smith's under-studied text The Theory of Moral Sentiments asks the just man to consider how his actions would be perceived by an impartial spectator as a test of their virtue. If the publicity of our actions and how they would be received gives us pause, Smith argued, perhaps we should reconsider those actions in the first place. The most challenging aspect of today's information environment is the constant presence of partial spectators, who are all too ready to eager to seize on any perceived failing, publicize it widely, and use it to their own advantage.? Second, soft power should also be used proactively, which entails actively exposing others to ideas. Confidence is required; others may not choose to share ideas to which they are introduced. But time and time again, people who are exposed to accurate information and universally held values become positive forces in their own communities and strong (if not entirely uncritical) partners.? All too often — and across presidential administrations — soft power falls down the list of foreign policy priorities, underweighted in comprehensive strategies that include diplomacy and defense. Dominating the moral high ground and using it to spur social change is not at the center of national security policymaking, but it should be. Dominating the moral high ground and using it to spur social change is not at the center of national security policymaking, but it should be. Serious public engagement strategies, which are natural components of soft power, are rare. The once frequently heard term "public diplomacy" is falling into increasing disuse.? A recent example of positive public engagement is the Obama administration's creation of the Mandela Fellows Program, also known as the Young African Leaders Initiative (YALI). Inaugurated last summer at the President's U.S.-Africa Leaders Summit, the program brings 500 rising African leaders to the United States for leadership and entrepreneurship training, and also creates sustained professional development for these and many more talented young people on the ground in Africa, in concert with American universities and companies. YALI is one part of a broader strategy to invest in the potential of Africa — a strategy that serves U.S. national security, economic, and humanitarian interests. To be effective, public engagement must be sustained. Though taxpayers may grow weary of funding international broadcasting, educational, and professional exchanges, teacher and journalist training, and mentoring of independent media outlets, such activities are high-yielding investments with costs that pale in comparison to what is spent on defense. Bringing high talent individuals to study in U.S. universities not only enriches the country's campuses and gives future leaders real skills they can use to build their own societies, it creates a network of people around the world who understand cherished American values and often work — on their own accord — to promote them. And supporting independent, professional media sectors not only helps other nations build their own young democracies, such media outlets are better poised than governments to counter politically motivated propaganda and often do, on their own initiative.

2NC – Solvency Ext

CP is key to solve Hegemony – hard power fails

Lord, 14

(Kristin Lord was the acting president of the United States Institute of Peace. Served as the Institute's executive vice president from 2013 until her appointment as acting president. "Soft Power Outage" http://foreignpolicy.com/2014/12/23/soft-power-outage/)

Take the example of nonviolent methods of preventing and resolving conflict, also known as peacebuilding, which entail substantial public engagement and also suffer from a sort of liquidity trap. Investments are often too minimal to achieve significant results, which means that peacebuilders struggle to demonstrate the sort of rigorously measured results they need to justify greater funding. This may change if donors properly fund and then insist on evidence-based peacebuilding strategies, the way the Gates Foundation and others have done in development. Such rigor is rarely applied in peacebuilding, and efforts to truly achieve scale are rarer still. During a recent trip to view peacebuilding projects conducted by the NGO Search for Common Ground (SCG) in the North Kivu province of Congo, I saw glimmers of what might be possible if peacebuilding could be conducted at scale. The evidence was most clear in the changing attitudes of the military and the measurable reduction in incidents of sexual violence. But such efforts are truly exceptional, and SCG's efforts in Congo dwarf its initiatives in other countries, despite intense needs to reduce violence. To be clear, investing in soft power does not negate the need for military force or investments in hard power. Meanwhile, undercutting the appeal of extremist ideologies can be accomplished most effectively through non-military means.

Solves Economy

Education is vital to Economic growth

The OECD Development Centre, 14 ((OECD) is a special platform for knowledge-sharing and evidence-based policy dialogue where developing countries, emerging economies and OECD member countries interact on an equal footing. http://www.oecd.org/innovation/press-release-leo-2015.htm "Better education and skills are key to shift the economy up a gear, says latest Latin American Economic Outlook")

Veracruz, Mexico, 9 December 2014 - Latin America's GDP growth rate has slowed down in 2014, dropping below 1.5%. This is the first time in a decade that the region grows less than the OECD average, according to the OECD Development Centre, the Commission for Latin American and the Caribbean (UN-ECLAC) and the development bank for Latin America (CAF). Given the projections in the past weeks, any recovery in 2015 is likely to be challenging.? In their jointly produced Latin American Economic Outlook 2015, the three organisations call for action to address this slowdown, focusing on the role of education and skills, and noting that despite some recent progress, more needs to be done to raise educational standards and address persistent and substantial socioeconomic inequalities.? "If we want to avoid a decade of low growth in Latin America, we must improve education standards, enhance skills in the workforce and boost innovation. Policymakers need to undertake ambitious efforts to unleash higher and more equitable growth", OECD Secretary-General Angel Gurría said while launching the Outlook at the Ibero-American Summit in Veracruz on 9 December. (presentation by Angel Gurría)? Structural change - such as the diversification of the economy towards knowledge-intensive sectors - is needed to supply the increasing demand for skilled workers. As noted by Alicia Bárcena, Executive Secretary of ECLAC, "without the transformation of the production structure there will be a link missing in the chain that connects education, productivity and innovation."? Such a link has important implications for income distribution. Diversification implies the creation of quality, better-paid jobs, which in turn entails less informality and underemployment - and hence less inequality. Policies for learning and diversification should be at the top of the agenda in the coming years in Latin America and the Caribbean.? "In the absence of an exceptionally favourable external environment, the region needs to deepen regional integration and address the structural challenges of development, to support its growth potential, primarily in the areas of innovation and production patterns, and education and technical capacities that these require", said Enrique García, CAF President and Chief Executive Officer.? The Outlook notes that, on average, the gap in education performance for a student in secondary school in Latin America relative to an OECD student is still quite high: the equivalent of 2.4 additional years of schooling. Furthermore, socioeconomic inequalities strongly influence both access and education outcomes in the region. Only 56% of students in the poorest quarter of the population attend secondary school, versus 87% of students in the wealthiest quarter.? Limitations in the quality of education are also reflected in the skill shortages and mismatches in the labour market, severely impacting the competitiveness of Latin American companies. The region's businesses face greater challenges in finding appropriately skilled employees than any other region in the world. The Outlook shows that the probability of a Latin American firm facing obstacles in finding staff with the adequate capabilities is three times higher than a similar firm in South Asia and 13 times higher than a firm in Pacific Asia. The issue is particularly prevalent in key sectors such as the automotive industry and machinery.? To tackle these acute skills shortages, targeted policies are needed in pre-primary, secondary, technical and professional education. Policymakers need to provide more and smarter investment in pre-primary education, where important soft-skills development takes place, such as socialisation and learning perseverance, which are of critical importance in the labour market. Policies are also needed to ensure that resources are redistributed to reduce socio-economic inequalities. Classroom practices need adaption to ensure better performance, including tutoring, managing teacher expectations and student motivation. Increasing the quality of teaching also relies on monitoring and evaluation, and better incentives.? Finally, government and the private sector should work together to better connect technical and vocational training with the demand for skills in a changing world economy.

CP = Popular

Education programs are popular – USAID proves
USAID, 2015 (The United States Agency for International Development is the lead U.S. Government agency that works to end extreme global poverty and enable resilient, democratic societies to realize their potential. http://www.usaid.gov/philippines/press-releases/mar-13-2015-us-government-extends-post-yolanda-education-support)

On March 9, the U.S. Embassy Manila's United States Agency for International Development (USAID) provided an additional Php 63 million and school equipment for post-disaster education needs in 19 municipalities in Iloilo, Capiz and Bohol.? USAID Mission Director Gloria D. Steele witnessed the signing of an agreement between the mayors, school principals and Synergeia Foundation, USAID's implementing partner for the Education Governance Effectiveness (EdGE) Project, which will help elementary public schools in the target provinces get back on track towards improving learning outcomes.? "Hugpong sa Pagbangon," Ilonggo vernacular for "rising up together," is the post-disaster component of EdGE that will provide community incentive grants, disaster preparedness workshops, and teaching and learning materials. Over 450 schools, 3,800 teachers and 35,000 early grade students will directly benefit from the assistance.? "USAID is your partner in building back better. In addition, this supports our broader goal of strengthening local education governance towards improving early grade reading for at least one million Filipino children," Director Steele said.? Iloilo Governor Arthur Defensor Sr. expressed his appreciation for the "sincerity and gesture of commitment of the American government to the Filipino people."? EdGE seeks to improve education governance at the local level through strengthened government effectiveness, increased transparency and accountability, and increased participation of stakeholders in education policy formulation and implementation.? USAID also led the ceremonial handover of audiovisual equipment such as laptops, printers, televisions and projectors at the Dumangas Municipal Gymnasium.? Dumangas Mayor Rolando Distura remarked that the school equipment provided by the U.S. Government will improve classroom instruction and enhance the quality of education. PTA Federation President Serafin Deduro Jr. added that with the school's inadequate resources, the teaching materials to be given by USAID will enhance students' learning.? Overall, the U.S. Government's support is estimated at approximately 6.3 billion to help the people of the Philippines respond to, and recover from, the devastating effects of Typhoon Yolanda.

Terrorism CP

1NC Terrorism CP

The United States federal government should implement a biometric entry/exit and transfer system.

Biometric technology solves for terrorism – stops passport fraud and able to track people's arrivals and departures

Kephart 15 (Janice, BORDERPOL North America Program Director and former 9/11 Commission counsel, Assuring identity against the growing terrorist travel threat." Biometric Technology Today, http://www.sciencedirect.com/science/article/pii/S0969476515300965)

Biographic information stored on a replicable document such as a passport is well known to be subject to fraud and counterfeiting. However, when a biometric is added to the biographic border process, it becomes extremely difficult for a fake or manipulated real passport to pass through a port of entry undetected.¶ Tracking the arrival and departure of foreign visitors is an essential part of immigration control, law enforcement and a nation's security. While a person may try to lie with his words and his travel document, a person's physiological characteristics cannot be lost, forgotten, stolen, or forged. When truth and lies mix in this environment, truth is much more likely to win. When that truth is against a terrorist, then security wins and maybe even lives are saved.¶ The need for arrival controls is obvious, but recording departures is also important; without it, there is no way to know definitively whether travellers have left when they were supposed to. Biometric entry/exit and transfer solutions are proven in their feasibility, low cost, added security value, increased efficiencies, travel convenience and accuracy. Good products are available off the shelf. They can be customised for many environments.¶ The biometric, secure document and identity management industry is well-versed in integration with back-end data systems while building in flexibility for the future. Biometric solutions such as facial recognition, fingerprints and iris scans assure identity when coupled with biographic information found in travel documents. Voice biometrics may soon provide sufficient reliability to be introduced in the border environment as well. Using only biographic information, however, such as names or passport numbers, provides no assurance that the person departing is the one whose original arrival was recorded.¶ **If the US had implemented a biometric entry/exit system prior to 9/11,** it is possible **that heinous act may have been prevented**. However, the technology was not available at the time. There was no good excuse why a biometric entry/exit system was not in place when Tamerlan Tsarnaev was planning his attack on the Boston Marathon in early 2013 and travelled to Chechnya for training immediately prior to that.¶ These examples are replicated around the world, every day, as terrorists are surging into ISIS controlled territory, training, and moving to points of attack around the world. Al Qaeda has changed its tactics to infiltrate and align in a more subtle, politically astute manner in Yemen, for example. Libya is fighting for its political life against ISIS elements. Europe is under siege with migrant flows fleeing war-torn areas while ISIS takes advantage of the chaos to move recruits and new members.

2NC Solvency

Biometric technology key to stopping terrorism

Amoore 06 (Louise, researches and teaches in the areas of global geopolitics, security, and political theory, "Biometric borders: Governing mobilities in the war on terror." Political geography, http://www.sciencedirect.com/science/article/pii/S0962629806000217)

The deployment of electronic personal data in order to classify and govern the movement of people across borders has become a key feature of the contemporary war on terror. The US VISIT programme, though, extends the use of integrated personal data into biometrics, a move that signals what Levi and Wall (2004, p. 194) have termed a 'new politics of surveillance'. To clarify this point, this is not to say that biometric identifiers have not historically been central to the governing of mobility – after all, signatures are a form of biometric (see Salter, 2003), nor that 'older' forms of surveillance are not still prevalent in the war on terror. Indeed, the historical emergence of body counts to enumerate and account for colonial subjects, as Appadurai (1996, p. 133) suggests in his discussion of systems of classification in colonial India, disciplines the 'unruly body', bringing it back into a zone of calculation and manageability, recuperating it and accounting for it within 'normal' ranges of acceptability. Contemporary biometric body counts bare out much of what Appadurai signals for the creation of 'boundaries around homogeneous bodies' that 'performatively limits their extent', flattening differences and idiosyncrasies into calculable categories. New forms of biometric technology extend this categorization and enumeration of the body via processes of risk profiling, such that they have themselves come to perform and represent a border that approves or denies access.¶ The US Patriot Act defined a set of practices for biometric applications that afforded their almost unlimited use in the investigation and identification of terrorism. In effect, the US VISIT system converges the data from integrated databases with biometric identifiers such as electronic fingerprints, facial and gait recognition, and iris scans. Though the implementation of biometric gateways has been beset by difficulties, the seductive allure of biometrics has taken a strong hold in the governmentality of mobility.6 Mike Davis, director of criminal justice for the FBI, for example, assured a conference of European technology companies that 'the war on terror has come to rely on biometric technology' in a world where 'the only way to trace a terrorist is through biometrics' (cited in "Biometrics: Great", 2004, p. 17). The allure of biometrics derives from the human body being seen as an indisputable anchor to which data can be safely secured. What van der Ploeg (2003, p. 58) has observed as a gradually extending intertwinement of individual physical characteristics with information systems' has served to deepen faith in data as a means of risk management and the body as a source of absolute identification.

More effective use of current technology prevent terrorism at the origin, not just as defense.

Riley, 06 (Jack, Vice President for Rand, August 2006, "Border Security and the Terrorist Threat" http://www.rand.org/content/dam/rand/pubs/testimonies/2006/RAND_CT266.pdf Access Date: 7/27/15) Sharma

Border protection begins far from our shores, airports, and crossing points. Border security is more effective when we have programs that reach toward the points of origin, rather than simply relying on defending the fixed points of the border. A wide variety of programs fall into this category and should be considered part

of the border security effort, including intelligence efforts to monitor the movements of suspected terrorists. The 9/11 Commission Report provides perhaps the most authoritative and comprehensive review weaknesses that were exploited. Efforts to reducing trafficking in stolen passports and make legitimate passports more tamperproof, and efforts to obtain advance information and conduct advance screening of passengers and cargo entering the United States. We can reduce the volume of work and the magnitude of the task through more effective use of information and technology. In some circumstances, we can use information and technology to help "profile out" and allow trusted passengers and cargo to circumvent routine inspection. That is, we can identify pools of passengers and cargo that do not merit attention beyond random checks and screening because they are trustworthy, have been verified by reliable allies, or because the content of their conveyance is known with a high degree of certainty. When low-risk passengers and cargo are profiled out, resources can be focused on remaining, and potentially more troubling, risks. A related concept is the need for faster, less expensive, and more reliable technologies. These technologies, which have uses such as screening cargo, detecting unconventional weapons, and monitoring the border, are vital to our ability to provide for homeland security.

AT: Biometrics Fails

Biometric technology is increasing and getting better – newer technology proves

Wilson 06 (Alyson, Associate Professor in the Department of Statistics and Principal Investigator for the Laboratory for Analytic Sciences at North Carolina University, Springer, Statistical Methods in¶ Counterterrorism¶ Game Theory, Modeling,¶ Syndromic Surveillance, and¶ Biometric Authentication, http://download.springer.com/static/pdf/57/bok%253A978-0-387-35209-1.pdf?originUrl=http%3A%2F%2Flink.springer.com%2Fbook%2F10.1007%2F0-387-35209-0&token2=exp=1438183583~acl=%2Fstatic%2Fpdf%2F57%2Fbok%25253A978-0-387-35209-1.pdf%3ForiginUrl%3Dhttp%253A%252F%252Flink.springer.com%252Fbook%252F10.1007%252F0-387-35209-0*~hmac=89cbd2c9715389450bd1d2adaac980002f5e94e8459d57caacda784a33f03127)

Face recognition is probably the most popular biometric-based method¶ because of its potential to be both accurate as well as nonintrusive and user friendly.¶ It analyzes facial characteristics to verify whether the image belongs¶ to a particular person. Faces are rich in information about individual identity,¶ mood and mental state, and position relationships between face parts, such¶ as eyes, nose, mouth, and chin, as well as their shapes and sizes, are widely¶ used as discriminative features for identification. Much research has been done¶ on face recognition in the past decades in the field of computer science, and¶ yet face authentication still poses many challenges. Several images of a single¶ person may be dramatically different because of changes in viewpoint, color,¶ and illumination, or simply because the person's face looks different from day¶ to day due to appearance-related changes like makeup, facial hair, glasses, etc.¶ Several authentication methods based on face images have been developed¶ for recognition and classification purposes. In face authentication, as in most¶ image processing problems, it is necessary to extract relevant discriminative¶ features that distinguish individuals. But one hardly knows in advance which¶ possible features will be discriminative. For this reason, most of the face authentication¶ systems today use some kind of efficient automatic feature extraction¶ technique. Jonsson et al. [JKL99] used support vector machines (SVM)¶ to extract relevant discriminatory information from the training data and¶ build an efficient face authentication system, and Li et al. [LKM99] used linear¶ discriminant analysis (LDA) for efficient face recognition and verification.¶ Liu et al. [LCV02] applied principal components analysis (PCA) for modeling¶ variations arising in face images from expression changes and registration¶ errors by using the motion field between images in a video clip. Havran et¶ al. [HHC02] performed face authentication based on independent component¶ Biometric Authentication Using Facial Images 49¶ analysis (ICA), and Palanivel et al. [PVY03] proposed a method for videobased,¶ real-time face authentication using neural networks. A recently developed¶ face authentication system is the minimum average correlation energy¶ (MACE) filter [VSV02, SVK02]. The MACE filter was originally proposed¶ by Mahalanobis et al. [MVC87] as an effective automatic target recognition¶ tool, and Vijaya Kumar et al. [VSV02] first used it to authenticate a facial¶ expression database, obtaining impressive results. Savvides and Vijaya Kumar¶ [SV03] showed that the filter-based methods produce more accurate authentication¶ results than traditional methods based on LDA and PCA, especially in¶ the presence of distortions such as illumination changes and partial occlusions.

Biometrics Increasing

Biometric use becoming easier to obtain and to use

Patrick 04 (Andrew, "Usability and acceptability of biometric security systems.", Financial Cryptography, http://www.andrewpatrick.ca/biometrics/NATO-BiometricsAbstract.pdf)

Biometric security systems are receiving a lot of attention because of the potential to increase the accuracy¶ and reliability of identification and authentication functions, especially in border-crossing and military¶ applications. A lot of research has been done to assess the performance of biometric systems, with an¶ emphasis on false acceptances and rejections. Much less research has been done on the usability and¶ acceptability of biometric security systems when used by IT professionals and the general public.¶ A number of factors are increasing the usability of biometric devices. The sensors are getting smaller, cheaper,¶ more reliable, and designed with better ergonomic characteristics. Biometric readers are also being integrated¶ into consumer products, such as mice, keyboards, and cell phones. The biometric algorithms are also getting¶ better, and many systems include features to train the users and provide feedback during use. In addition,¶ biometric devices are being integrated into associated security systems, such as access control and encryption¶ services, to provide a seamless environment.

Biometric technology estimated to grow tremendously in the coming years – Government as well as the private sector are increasing biometric use

Smith 15 (Sarah, Research Advisor at Reportbuyer, Reportbuyer is a leading industry intelligence solution that provides all market research reports from top publishers, "Global Biometrics Market (2014-2020): Market Forecast By Technologies, Applications, End Use, Regions and Countries", http://www.prnewswire.com/news-releases/global-biometrics-market-2014-2020-market-forecast-by-technologies-applications-end-use-regions-and-countries-300095676.html, June 8)

LONDON, June 8, 2015 /PRNewswire/ -- Biometrics market is one of the key growing electronic security markets in the global landscape. Increasing government spending, national ID projects, e-passports & visas, rising crime rates, growing terrorist activities, cybercrimes, and data thefts are the factors that are spurring the market for various biometrics technologies globally.¶ According to 6Wresearch, Global Biometrics Market is projected to reach $21.9 billion by 2020. North America leads the overall biometrics market, where the U.S. is the major revenue generating country in this region. Increasing homeland security, government spending, research and development activities are driving the growth of the U.S. in North American biometrics market.¶ Until 2014, North American region dominated overall biometrics market; however, by the end of 2015, the share of the region is expected to decline to become second largest in the industry. Growth in Asia-Pacific (APAC) biometrics market is exhibited as major factor for the declining share of North American region. Surging security spending, introduction of several government projects, increasing IT spending, data thefts, and shift from traditional smart card based systems towards biometric based systems are boosting the growth of Asia- Pacific biometrics market.¶ Fingerprint biometrics technology accounts for majority of the market share in the overall biometrics market. Ease of usage and affordable in nature have resulted for its market dominance. However, in the forecast period, share of fingerprint technology is expected to decline due to growth in other biometrics technologies such as Face, IRIS, Vein and also the adoption of multimodal biometrics

systems. ¶The key companies in global biometrics market include- Morpho Safran, 3M Cogent, NEC, Suprema, Nuance, Hitachi, Crossmatch Technologies, Iris ID, ZK Technologies and others.

US-China Relations CP

1NC US-China Rel CP

The President should use his 301 authority to enact tariffs on the Republic of China.

Aggressive strategies lead to balanced trade relationships between countries – key to becoming bilateral with China.

Brown, 10 (Sherrod, Senator of Ohio, "For Our China Trade Emergency, Dial Section 301" http://www.nytimes.com/2010/10/18/opinion/18brown.html?_r=0) sharma

Inexpensive products might sound nice, but we lose 13,000 net jobs for every $1 billion increase in our trade deficit. Our $226 billion deficit with China has meant shuttered factories, lost jobs and devastated communities across America. And it's no longer just Chinese bicycles and electronics that are flooding our markets. China will soon make half the world's wind turbines and solar panels, most of which it plans to export to America. And, as usual, China's clean-energy industry relies on large government subsidies, in direct violation of international trade laws. In response, the Obama administration recently accepted a petition, filed by the United Steelworkers under Section 301 of the 1974 Trade Act, to investigate China's state support for clean-energy exports. If the White House finds that the support violates international trade rules, Section 301 allows it to respond with a range of aggressive measures, including tariffs. This strategy has worked before: in the 1980s and '90s, the United States used its 301 authority to combat Japanese and Korean subsidies and trade barriers. Though critics warned of bitter trade wars, the get-tough approach actually **led to more balanced trade relationships,** and even encouraged foreign investors, like Asian auto companies, to build plants in America. In trying to get China to play fair, though, Washington has instead relied on rhetoric and moral suasion. It hasn't worked. Only rigorous enforcement of trade rules by the Obama administration can reverse the harm caused by the permanent normal trade relations agreement. Congress has a role to play, too: when the Senate reconvenes next month, it should vote, as the House did in September, to expand the president's authority to impose tariffs on China or any other country that unfairly manipulates its currency. Many politicians claim they support products "made in America." But the phrase is more than an empty slogan; it means standing up for American manufacturers. Only by learning the lessons of "normal" trade with China — and acknowledging buyer's remorse — can we **reach a truly balanced bilateral relationship** that works for America.

2NC – Solvency

Bilateral relations can be created with China using the authority of Section 301.

Hsieh, 9 (Pasha, Assistant Professor of Law at the Singapore Management University School of Law, China-United States Trade Negotiations and Disputes: The WTO and Beyond,http://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=1524&context=sol_research) Sharma

Both Washington and Beijing realize that they have much to lose and little to gain from an outright trade war. Consequently, both governments have resorted to various means of resolving bilateral trade conflicts. Among these measures are monitoring schemes, including government reports on trade barriers required under domestic laws, and the Trade Policy Review Mechanism and the Transitional Review Mechanism undertaken under the auspices of the WTO. These monitoring schemes have increased interactions among trading partners and enhanced their mutual understanding of where their differences lie. The governments of China and the U.S. have also held high-level negotiations, such as the Strategic Economic Dialogue, in order to settle trade conflicts without resorting to WTO litigation, which would incur substantial expenses and time. To understand China-U.S. trade relations, these monitoring schemes and negotiations are as important as the WTO dispute settlement process. A. Government Reports on Trade Barriers U.S. trade policy toward China is based on a careful analysis conducted under a monitoring scheme administered by an inter-agency group. This inter-agency group, headed by the United States Trade Representative (USTR), consists of several U.S .government agencies in Washington and China. This group is responsible for the "top-to-bottom" review of the United States' China policy and for providing recommendations on the trade strategy toward China. 27 Under the U.S.-China Relation Act of 2000, the USTR also submits to Congress annually a report on China's WTO compliance.28 Based on the USTR's own assessment, as well as written comments from industry groups and experts' testimonies, this report thoroughly reviews China's compliance with its WTO obligations, ranging from import/export regulations, agricultural policy, to intellectual property rights issues. In addition to these government-initiated efforts, private persons can also invoke Section 301 of the 1974 Trade Act to investigate foreign unfair trade practices. 29 This mechanism strengthens U.S. public-private collaboration in dealing with China on trade issues. Similar to the USTR reports, China's Ministry of Commerce (MOC) began issuing the Foreign Market Access Report in 2003.30 The purpose of this report is to assess trade barriers against Chinese businesses. For instance, the 2009 report examines trade measures imposed by 16 major trading partners, including the United States.31 It also emphasizes the importance of tackling foreign trade barriers because in 2008 alone, Chinese exports were subject to 93 trade remedy investigations in 21 countries, and the total value of these exports amounted to USD 61.4 billion.32 From 2009, the MOC's Fair Trade Bureau of Import and Export also began compiling and publishing information on foreign trade barriers.33 Furthermore, in 2005, China enacted the Foreign Trade Barrier Investigation Rules, under which a private person is able to petition to the government to investigate foreign trade barriers.34 As China-U.S. trade frictions grow, it is expected that these mechanisms will be used with increasing frequency.

AFF – Links to Politics

Asia trade bills face democratic opposition in Congress.

Nakamura, 4/15 (David, Washington Post Reporter, "Obama's proposal for more trade with Asia may not go over so well in his own party" http://www.washingtonpost.com/politics/obamas-evolution-on-trade-will-put-him-at-war-with-his-party/2015/04/15/dabd42f4-ccc8-11e4-a2a7-9517a3a70506_story.html) sharma

Ten years later, President Obama's answer to those questions — more trade with Asia — sounds to a lot of people like more of the same, exactly the kind of solution that led to the problems in the first place. As early as this week, Congress is expected to debate "fast-track" legislation that would give the administration more authority to complete a massive, 12-nation free trade pact in the Asia Pacific that Obama has called a cornerstone of his second term — a way to ensure U.S. competitiveness in the face of a rising China.¶ It will mark a leadership test for the president, who has pledged to invest his waning political capital to woo skeptical Democrats. White House allies said the danger is that Republicans are supporting the president on trade in large part because they know it could divide Democrats going into an election year.¶ Obama's embrace of the Trans-Pacific Partnership (TPP) faces fierce opposition from some of his closest political allies and the organizational heart of the Democratic coalition: labor unions, environmental groups and the progressive wing of Congress. His critics on the left contend the pact would help American corporations in state-controlled foreign markets but would lead to job losses and exacerbate the growing income gap at home.¶ If Obama pushes hard but fails, "Republicans will still be fine with that if they can ignite a civil war on the left," said Austan Goolsbee, who chaired Obama's Council of Economic Advisers from 2010 to 2011 and supports the trade push.¶ Already, the AFL-CIO has suspended all political contributions to focus on defeating the TPP. Rust Belt Democrats have accused Obama of betraying his past opposition to big trade deals as a senator. And Sen. Elizabeth Warren's fierce criticism of provisions favoring corporations has made it difficult for Hillary Rodham Clinton to embrace the pact in her White House bid — even though she touted it as secretary of state.¶ "Why, exactly, should the Obama administration spend any political capital . . . over such a deal?" asked the New York Times' liberal economic columnist Paul Krugman in a blog post.¶ For Obama, trade offers perhaps the best chance for him to secure a large-scale, bipartisan legislative achievement in his final two years. But aides described his push in more personal terms, suggesting that his beliefs were shaped by his upbringing in Hawaii and Jakarta and his time as a community organizer for displaced workers in Chicago, where he saw the human costs of international competition.¶ "The president understands that to do trade right we need to put American workers first, and he's seen that we haven't always done it right," said U.S. Trade Representative Michael Froman, Obama's Harvard Law School classmate. "But he's also an internationalist who sees that America's economic interests are intertwined with the rest of the world."

neg

solvency

Plan increases numbers of women in STEM-early education is key to spark interest

Marvi **Matos,14**, Manager in engineering, "Women in STEM: Progress, Asymptote, and Equality ," http://www.huffingtonpost.com/marvi-matos/women-in-stem-progress-as_b_6150120.html

In a study published in the Harvard Educational Review by Espinosa, the author investigates which precollege characteristics and college experiences are predictors for the persistence of all women and women of color in STEM. It was found that women in college leave STEM "in part because of the inability of professors to make science accessible and aligned with their goals of contributing to society." For women of color, the college experience and environment was shown to be contributing factors for their persistence in STEM, more so than their background or high school performance. Among the specific college experiences correlated with retention of women of color are: (a) college community engagement activities, (b) participation in STEM related clubs, (c) co-curricular activities that improve scientific performance, and (d) academic peer relationships (as supposed to strictly social). In Engineering, a predictor for the retention of women is a clear intention to major in the field prior to college. This goal defines their High School curriculum, focusing more in math and, thus, preparing them for college. For anyone intending to study engineering, it is crucial to understand what Engineering is and what Engineers do while students are still in middle school or high school. To put this in perspective and in chronological order the student: (1) is exposed to the field of engineering via an inspiring teacher, science outreach, mentoring, science fairs, etc., (2) internalizes that engineering is a path to help, serve and impact society via innovation, (3) decides that engineering is a potential career to follow, (4) continues to enroll in all math requirements in middle school and high school to ensure a fair chance to be admitted in an engineering program, (5) applies to college engineering programs, (6) participates clubs, co-curricular activities and sustains healthy work/study peer relationships in preparation for industry or graduate school and (7) graduates as an engineer and is recruited.

Curriculum change must occur to spark interest in science- only CP solves

Eileen Pollack,13, teaches on the faculty of the Helen Zell MFA Program in Creative Writing at the University of Michigan, "Why Are There Still So Few Women in Science?," http://www.nytimes.com/2013/10/06/magazine/why-are-there-still-so-few-women-in-science.html

Some critics argue that no real harm is done if women choose not to go into science. David Lubinski and Camilla Persson Benbow, psychologists at Vanderbilt University, spent decades studying thousands of mathematically precocious 12-year-olds. Their conclusion? The girls tended from the start to be "better rounded" and more eager to work with people, plants and animals than with things. Although more of the boys went on to enter careers in math or science, the women secured similar proportions of advanced degrees and high-level careers in fields like law, medicine and the social sciences. By their mid-30s, the men and women appeared to be equally happy with their life choices and viewed themselves as equally successful. And yet the argument that women are underrepresented in the sciences because they know they will be happier in "people" fields strikes me as misdirected. The problem is that most girls — and boys — decide they don't like math and science before those subjects reveal their true beauty, a condition worsened by the unimaginative ways in which science and math are taught. Last year, the President's Council of Advisers on Science and Technology issued an urgent plea for substantial reform if we are to meet the demand for one million more STEM professionals than the United States is currently on track to produce in the next decade. But beyond strengthening our curriculum, we need to make sure that we

stop losing girls at every step as they fall victim to their lack of self-esteem, their misperceptions as to who does or doesn't go on in science and their inaccurate assessments of their talents

Women in STEM should be prioritized – their talents are wasted

NRC 11 – a private, nonprofit organization of the country's leading researchers (National Research Council, "Expanding Underrepresented Minority Participation," 2011, https://grants.nih.gov/training/minority_participation.pdf)

Nevertheless, critical issues for the nation's S&E infrastructure remain unsettled, in particular the future strength of our nation's science and engineering workforce in light of demographic trends in both the U.S. population and the science and engineering workforce. The Gathering Storm provided compelling recommendations for sustaining and increasing our knowledge workforce as part of a larger plan to sustain our scientific and technological leadership. These workforce recommendations focused on improving K-12 STEM education as well as providing incentives to students to pursue S&E education at the undergraduate and graduate levels.3 However, the recommendations are insufficient: A national effort to sustain and strengthen our science and engineering workforce must also include a strategy for ensuring that we draw on the minds and talents of all Americans, including **minorities who are underrepresented in science and engineering and currently embody an underused resource and a lost opportunity.**

The real story is that of international students. Non-U.S. citizens, particularly those from China and India, have accounted for almost all growth in STEM doctorate awards and, in some engineering fields, have for some time comprised the majority of new doctorate awards. Indeed, temporary residents accounted for more than half of the U.S. doctorates in engineering, computer science, and mathematics in 2006. We are coming to understand, then, that relying on the continued growth in the number of non-U.S. citizens in science and technology is an increasingly uncertain proposition, that it does not address our need for more STEM-trained U.S. citizens who are qualified for national security and defense industry positions, that the impending retirements in such fields as geosciences, mathematics, and physics must be a critical concern, and that **we must look for other sources of S&E talent for the long run**.5

solves econ decline

Act key to prevent economic decline- current efforts aren't enough

Joe **Kennedy III, 15**, Congressman, "Expanding the Conversation on STEM, http://www.huffingtonpost.com/joe-kennedy-iii/expanding-the-conversation-on-stem_b_6819090.html

The problem, however, is that federal and state STEM efforts to date have failed to reach three notable groups: women, minorities and low-income communities. Today only 26 percent of all STEM jobs in our country are held by women; 13 percent is held by Hispanics and African-Americans combined. By 2020 there will be an estimated one million unfilled computer programming jobs. But in 2013 there were 11 states where not a single African-American student took the computer science AP test. The numbers weren't much better for Hispanic or female students. This is a massive disconnect; a shortcoming that threatens to put these populations at an economic disadvantage for generations to come and keeps their potential on the sidelines at a time when our country needs it most. We need to dramatically expand our efforts around STEM. Down in Washington, I've introduced a piece of legislation called the STEM Gateways Act, which would help direct federal resources to state and local STEM initiatives that specifically target women, minorities and economically disadvantaged communities. As Congress debates several major updates to education policy in the weeks ahead, I will be working hard to push this key piece forward. Our failure to set up all students for success in an increasingly technology-driven economy is not just limiting their futures. It's limiting our country's future as well. From renewable energy to medical research to cybersecurity, there is no shortage of challenges facing us that can and will be addressed by the students sitting in our classrooms today. Each of those students, regardless of skin color, zip code or gender, should be given the chance to make an impact.

Minorities, women, and disadvantaged communities are key to US economic growth

Kirsten **Gillibrand** and Joe **Kennedy III**,14, congressman,"STEM jobs key to better economy: Column," http://www.usatoday.com/story/opinion/2014/01/10/engineering-mathematics-stem-gillibrand-kennedy-column/4361837/

In 2011, 26% of STEM workers were women and 74% were men. According to a 2011 report by the Department of Commerce, underrepresented minorities account for only 3 out of 10 professionals in STEM fields. Half of all STEM jobs are available to workers without a 4-year college degree, but the vast majority of federal funding is channeled into higher education institutions that students from economically distressed communities are priced out of from the start. These statistics underscore a disconnect in our STEM efforts that – left unchecked – will throw a wrench in our economic future. By excluding critical segments of the American workforce from the STEM pipeline, we don't just hurt those individuals, their families and their communities – we leave a staggering amount of economic potential on the table. Global leadership in the 21st century requires all hands on deck. If we want to preserve this country's competitive edge, we need to increase points of access to STEM for underrepresented populations. With that in mind, we were proud to introduce the STEM Gateways Act in Congress at the end of the year. The Gateways Act will create a grant program for elementary and secondary schools, community colleges, and partner organizations that support students from historically underrepresented and economically disadvantaged backgrounds. Grant funds can be used for classroom learning, career preparation, mentoring, internships, informal learning, and other relevant activities designed to encourage the interest and develop the skills that young women, underrepresented minorities, and students of all economic backgrounds will need to succeed in our country's STEM workforce. Broadening our STEM efforts isn't just about jobs today and tomorrow. It's about leveraging the collective capacity of the American workforce to tackle our most pressing modern

challenges, from renewable energy to medical research to cybersecurity. If we don't keep the doors of opportunity wide open to students of all genders, ethnicities and backgrounds then we will collectively forfeit a huge portion of the talent that these next generation challenges demand.

solves cyber security

Attracting women key to national cybersecurity

Allie **Bidwell, 14**, education reporter for U.S. News & World Report, “The Lack of Women in STEM Is a National Security Issue,” http://www.usnews.com/news/stem-solutions/articles/2014/09/09/attracting-more-women-to-stem-fields-is-a-matter-of-national-security

Attracting more women to study science, technology, engineering and math isn't just an aspirational goal for education leaders and the business community – it's a "national security prerogative," according to the chief operating officer of the National Geospatial-Intelligence Agency. It's no secret that women and minorities are significantly underrepresented in the STEM fields. Although women make up about half of the American workforce, they represent less than one-quarter of those employed in STEM fields, according to the U.S. Department of Commerce. Part of the key to overcoming that disparity, the NGA's Ellen McCarthy said, is continually showing young girls the options available to them in different fields, and engaging them in occupations that might be more meaningful. McCarthy, head of the NGA's daily business operations, said during a town hall discussion hosted by FedScoop on Tuesday that parents, teachers and the public and private business sectors all have a responsibility to push children to think outside the box when it comes to education and career pathways. McCarthy joined two others – Mary Jean Schmitt, business development manager at NetApp, and Veda Woods, chief intelligence security officer and chief intelligence officer of the Recovery and Accountability and Transparency Board – to discuss what business leaders can do to ensure young women are aware of the different opportunities in STEM fields. Jennifer Nowell, U.S. public sector senior director for Symantec, moderated the panel discussion. "This is not something that’s just nice, let’s go study science ... or data curation because that’s where you’re going to get a job. It’s a national security prerogative," McCarthy said. "For the NGA and for the broader intelligence community right now, it is imperative that we keep in front of this incredible technology revolution that we’re living in right now."

fem nb

Introducing more women into STEM integrates feminist perspectives into a male-dominated field

Wajcman 91 – a Professor of Sociology at the London School of Economics and Political Science (Judy, "Feminism Confronts Technology," 1991, https://books.google.com/books?id=_Hiry47GtWsC&printsec=frontcover#v=onepage&q&f=false)

During the eighties, feminists have begun to focus on the gendered character of technology itself. Rather than asking how women could be more equitably treated within and by a neutral technology, many feminists now argue that Western technology itself embodies patriarchal values. This parallels the way in which the feminist critique of science evolved from asking the 'woman question' in science to asking the more radical 'science question' in feminism. **Technology, like science, is seen as deeply implicated in the masculine project of the domination and control of women and nature.**'2 Just as many feminists have argued for a science based on women's values, so too has there been a call for a technology based on women's values. In Joan Rothschild's (1983) preface to a collection on feminist perspectives on technology, she says that: 'Feminist analysis has sought to show how the subjective, intuitive, and irrational can and do play a key role in our science and technology'. Interestingly, she cites an important male figure in the field, Lewis Mumford, to support her case. Mumford's linking of subjective impulses, life-generating forces and a female principle is consistent with such a feminist analysis, as is his endorsement of a more holistic view of culture and technological developments.

at: squo solves

Although women have been pursuing higher education now- still lacking in STEM fields

Marvi **Matos,14**, Manager in engineering, "Women in STEM: Progress, Asymptote, and Equality ," http://www.huffingtonpost.com/marvi-matos/women-in-stem-progress-as_b_6150120.html

In 2010, women were earning 57.2 percent of the bachelor's and 46.8 percent of the doctoral degrees in all fields. In Science and Engineering (S&E), women earned 50.3 percent of the bachelor's and 40.9 percent of the doctoral degrees. Compare these statistics to 1970, when women were awarded 43.3 percent of the bachelor's and 13.5 percent of the doctoral degrees in all fields, while in S&E women earned 28.0 percent of the bachelor's and 9.1 percent of the doctoral degrees. This is undoubtedly great progress towards inclusion and diversity. (National Science Foundation Report) Biological and Agricultural Sciences are examples of outstanding progress with, 58.6 percent of the bachelor's and 51.7 percent the doctoral degrees awarded to women. Other fields such as Psychology and Veterinary Sciences have even higher percentages. However, in math-intensive fields such as Engineering, Computer Science or Mathematics, progress has been limited. In 2010, women were only awarded 18.5 percent of bachelor's and 23.1 percent of doctoral degrees in Engineering. A bigger concern is the fact that progress in the field of engineering has somewhat stagnated since 2000.

at: links to politics

Support for domestic STEM education is high

John **Boozman, 6/21**, Senator, "STEM - Gateway for future job opportunities," http://newtoncountytimes.com/stem---gateway-for-future-job-opportunities/article_82d8eda8-16b6-11e5-97a1-5ba743897e39.html

During the last decade, growth in STEM jobs was three times faster than growth in non-STEM jobs. The Department of Commerce (DOC) expects that trend to continue with an overall growth of 17 percent from 2008 to 2018. Unfortunately, American companies have been looking abroad to fill domestic positions because of the lack of skilled workforce in these areas. That's why we are working in Washington to grow STEM opportunities to get more young Americans prepared for the future. There is bipartisan support in both the Senate and the House to expand STEM education opportunities across the country.

No FEAR Act CP

***Credit to: Riley, Jack, and Andrew. BHL2015

The No FEAR Act was passed by congress in response to the EPA having an awful record in preventing sexual harassment and racial harassment. It is currently not enforced. Enforcement solves the ITP aff. The WPA(Whistleblower Protection Act) does not apply to most of the intelligence community. Whistleblowers shatter the groupthink culture. ***

No FEAR Act CP

1NC Shell

CP: The United States Federal government should:

1. **Strengthen enforcement and protections for Federal employees under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002.**
2. **Extend the Whistleblower Protection act to all intelligence contractors, subcontractors, and grantees.**

The Counterplan does not link to PTX. More than 50 lobbying groups have endorsed it and Democrats are on board.

CP Solves: Whistleblowers and protecting them should be prioritized. Creates a more open government

McCaskill 15 – Claire Mccaskill is a Democratic Senator from Missouri who has been in office since 2006. McCaskill previously served as State Auditor of Missouri, and before that as Jackson County Prosecutor from 1993-1998. McCaskill has a B.A. and J.D. from University of Missouri and Columbia Law School, respectively. The report internally quotes McCaskill and was released by her office. 2015. ("Marking 'Sunshine Week,' McCaskill Introduces Whistleblower-Protection Package" Office of Claire McCaskill, March, 19. Available via LexisNexis. Accessed 07-21-2015.)

"Whistleblowers are the taxpayers' best friend," said McCaskill, a senior member of the Homeland Security and Governmental Affairs Committee. "These folks play a critical role in keeping our government accountable to its citizens by exposing waste, fraud and abuse—and we've got to surround them with the robust legal protections that enable them to come forward to report wrongdoing."

McCaskill is reintroducing a bill that was first introduced in the wake of the VA scandal last year, which included claims of whistleblower retaliation. The bill mandates the firing of any VA employee found to have retaliated against a whistleblower. Currently, a finding of retaliation against a whistleblower is punishable by a range of procedures, including fines and reprimand.

McCaskill's bill to protect whistleblowers in the intelligence community extends whistleblower protections to intelligence contractors, who are often doing similar jobs to federal employees. Last year, the same bill was endorsed by nearly 50 good government groups.

McCaskill is also introducing legislation to extend current whistleblower protections to grantees, subgrantees and subcontractors. Current protections apply only to contractors, but not to employees of grant recipients, even though the federal government plans to distribute $245 billion in grant funding in fiscal year 2015. The bill would also prohibit contractors from getting reimbursed for legal fees accrued in their defense against retaliation claims by whistleblowers.

The Counterplan solves: the problem is enforcement of the No FEAR Act itself

Fears 04 – Darryl Fears is reporting on environmental issues for The Washington Post newspaper. Darryl Fears covers affordable housing and poverty for The Washington Post. He previously worked on

the national desk, covering race, diversity, immigration, politics and criminal justice policy, and helped launch the "Being a Black Man" series. Before arriving at The Post, Fears worked for the Los Angeles Times, Atlanta Journal Constitution and Detroit Free Press. He is a graduate of Howard University. 2004. “Report Is Bleak For Whistle-Blowers” The Washington Post. March 11. Available via LexisNexis. Accessed on 07-21-2015.

A watchdog group issued a report card yesterday that gave failing grades to several federal agencies for allegedly allowing repeated verbal abuse, retaliation and harassment of employees by superiors who were the targets of discrimination complaints.

The No Fear Institute, a Washington-based organization that was formed to monitor treatment of workers after President Bush signed the **No Fear Act of 2002,** said **the law has had little effect on the federal workplace because the administration has not enforced it.**

"Tens of thousands of people are discriminated against on the basis of race, sex and because they are whistle-blowers," said Marsha Coleman-Adebayo, who chairs the institute. She said agencies are too slow to process complaints, investigate them and discipline managers who discriminate.

"We demand that agencies punish and fire managers who break the law," she said.

The institute based its report on data the agencies posted on their Web sites. But an Office of Personnel Management lawyer said the law did not go into effect until last October and does not require agencies to supply data until April 2005. The OPM is charged with collecting data from agencies to help enforce the law, formally titled the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002.

"It did not create any new employee rights or protections," said Mark A. Robbins, OPM general counsel. "All the No Fear Act did was force the agency to reimburse their budgets for judgments based on discrimination and whistle-blower complaints."

Under other regulations, federal agencies are required to file information about how complaints are processed to the Equal Employment Opportunity Commission, **but they often do not**.

"I share their frustrations," Robbins said of employees. "Clearly, there's a problem that Congress is trying to fix. Some of these agencies aren't complying the way they should. Congress tried to hit the agencies where it hurts, in their budgets. Only time will tell whether the law helps. I'm confident that it will work."

Prevents Groupthink

Whistleblowers are key to prevent terror attacks by breaking the echo chamber

Benkler 14 – Yochai Benkler, Benkler is the Jack N. and Lillian R. Berkman Professor of Entrepreneurial Legal Studies, Harvard Law School, Faculty Co-Director, Berkman Center for Internet and Society, Harvard University. 2014. ("A Public Accountability Defense for National Security Leakers and Whistleblowers," *Harvard Law & Policy Review,* Available via LexisNexis. Accessed on 07-22-2015.)

Secrecy insulates self-reinforcing internal organizational dynamics from external correction. In countering this tendency, not all leaks are of the same fabric. "War story"-type leaks that make an administration look good or are aimed to shape public opinion in favor of an already-adopted strategy or to manipulate support for one agency over another, trial balloons, and so forth, are legion. n23 While these offer the public color and texture from inside the government and are valuable to the press, they do not offer a productive counterweight to internal systemic failures and errors. Some leaks, however, provide a critical mechanism for piercing the national security system's [*285] echo-chamber, countering self-reinforcing information cascades, groupthink, and cognitive biases that necessarily pervade any closed communications system. It is this type of leak, which exposes and challenges core systemic behaviors, that has increased in this past decade, as it did in the early 1970s. These leaks are primarily driven by conscience, and demand accountability for systemic error, incompetence, or malfeasance. Their critical checking function derives from the fact that conscience is uncorrelated with well-behaved organizational processes. Like an electric fuse, accountability leaks, as we might call them, blow when the internal dynamics of the system reach the breaking point of an individual with knowledge, but without authority. They are therefore hard to predict, and function like surprise inspections that keep a system honest. n24 By doing so, these leaks serve both democracy and security. This failsafe view of whistleblowing is hardly unique to national security. American law in general embraces whistleblowing as a critical mechanism to address the kinds of destructive organizational dynamics that lead to error, incompetence, and abuse. In healthcare, financial, food and drug, or consumer product industries; in state and federal agencies, throughout the organizational ecosystem, whistleblowers are protected from retaliation and often provided with financial incentives to expose wrongs they have seen and subject the organizations in which they work to public or official scrutiny. n25 Whistleblowing is seen as a central pillar to address government corruption and failure throughout the world. n26 Unless one believes that the national security establishment has a magical exemption from the dynamics that lead all other large scale organizations to error, then whistleblowing must be available as a critical arrow in the quiver of any democracy that seeks to contain the tragic consequences that follow when national security organizations make significant errors or engage in illegality or systemic abuse.

Only strengthening Whistleblower Protections and enabling whistleblowing can challenge Groupthink culture.

Pacella 14 – Jennife M. Pacella, Assistant Professor of Law, City University of New York, Baruch College, Zicklin School of Business. 2014. ("INSIDE OR OUT? THE DODD-FRANK WHISTLEBLOWER PROGRAM'S ANTIRETALIATION PROTECTIONS FOR INTERNAL REPORTING" Temple Law Review, Summer 2014. Available via LexisNexis. Accessed 07-21-2015.)

Corporate and securities law scholar, James Fanto, suggests that negative reactions toward whistleblowers occur because the whistleblower threatens "groupthink," a phenomenon in which members of a group become uniform in their perspectives, acknowledging only the seeming positive aspects of group behavior and disciplining any member who challenges such uniformity. n232 "The whistleblower calls into question the totality of the decisions, and the worldview, of the group; the

whistleblower becomes the embodiment of the truth about the organization that the group cannot accept without admitting the massive impropriety at the heart of its [*755] existence." n233 In this way, the whistleblower brings to light a truth that his or her superiors would prefer to avoid, resulting in a collective sense of resistance toward the whistleblower.

t. In 2009, the Ethics Resource Center (ERC) conducted a survey of whistleblower-employees who experienced retaliation for their actions, noting that past research "has identified fear of retaliation as the leading indicator of misconduct in the workplace." n234 The ERC survey studied employees who observed some form of misconduct, reported their observations to someone within the company, and felt that they were punished as a result of reporting. n235 The survey reveals that, in 2009, fifteen percent of all those who observed and reported misconduct felt that they were retaliated agains n236 This rate is higher for organizations with 100 to 499 employees and for union employees, each at twenty-one percent. n237 One scholar notes that this figure is misleading, as the actual percentage of those who have experienced retaliation varies depending on the type of misconduct reported and the position of power of the person who reports, and that the risk of retaliation for reporting major misconduct is actually much higher. n238 The ERC survey revealed that of the various types of retaliation, the majority of respondents experienced the following with the most frequency: exclusion by supervisors or management from work decisions and activities (sixty-two percent); the cold shoulder by coworkers (sixty percent); and verbal abuse by management or supervisors (fifty-five percent). n239

Only strengthening legislation can solve the culture. The Counterplan solves better than the aff.

Pacella 14 – Jennife M. Pacella, Assistant Professor of Law, City University of New York, Baruch College, Zicklin School of Business. 2014. (“INSIDE OR OUT? THE DODD-FRANK WHISTLEBLOWER PROGRAM'S ANTIRETALIATION PROTECTIONS FOR INTERNAL REPORTING” Temple Law Review, Summer 2014. Available via LexisNexis. Accessed 07-21-2015.)

Further research has revealed that the two most common explanations for why employees do not report internally are fear of retaliation and feelings of futility if they choose to report, with fear of retaliation supported by a very real risk that internal whistleblowers will be penalized for disclosing misconduct. n240 The threat of reprisal itself is a major deterrent to blowing the whistle, causing potential whistleblowers to carefully weigh the possible costs and benefits of reporting wrongful acts. n241 A potential whistleblower's disincentive to report often exists whether or not the actual reprisal is carried out - "perceptions of the likelihood of retribution are just as important [in deciding whether to blow the whistle] as the reality, if not more so." n242 [*756] Such perceptions, which may include fears of being viewed as a troublemaker or liar, or punitive action such as threats, demotion, or termination from employment, have been found to depend on contextual factors that are largely based on the institution itself, making it less likely that an employee will report wrongdoing if the institution has a history of retaliating against past whistleblowers. n243

These disincentives for internal whistleblowers are extremely detrimental to bringing potential violations of the securities laws to the forefront, as those from the inside are the most valuable source of information. As one whistleblower scholar has articulated, "whistleblowing is the single most effective way to detect fraud," n244 because the government relies heavily on private individuals to detect misconduct through reporting. n245 Whistleblowers, as actual insiders, have "better and earlier access to information about the most serious instances of corporate fraud." n246 Over forty percent of

fraud detection results from whistleblower tips. n247 Tips from whistleblowers have been found to be thirteen times more effective than external audits in bringing possible violations to the forefront. n248 A study in which statistics of employee-whistleblowers were examined revealed that, **in eighty-two percent of cases,** the whistleblower experienced **retaliation, such as termination, quitting under duress, or had significantly altered responsibilities.** n249 This study also revealed that many employee-whistleblowers reported that they were forced to move to another industry or even another town to avoid harassment. n250 In fact, given these repercussions, it is surprising that internal whistleblowers decide to report at all.

A2 Whistleblowers undermine National security

Empirically false. Whistleblowers are key to effective National security

Benkler 14 – Yochai Benkler, Benkler is the Jack N. and Lillian R. Berkman Professor of Entrepreneurial Legal Studies, Harvard Law School, Faculty Co-Director, Berkman Center for Internet and Society, Harvard University. 2014. ("A Public Accountability Defense for National Security Leakers and Whistleblowers," *Harvard Law & Policy Review,* Available via LexisNexis. Accessed on 07-22-2015.)

Even if we understand that the national security establishment can make mistakes, there remains the argument that secrecy is vital to security; that the price of transparency is too high. The argument gains force from the fact that understanding how security is enhanced by secrecy is intuitively trivial. A military unit is on its way to execute an attack on an enemy, and someone tips off the enemy who escapes or ambushes the troops. This is classic "**transports on the way**" secrecy that could be subject to prior restraint under the Pentagon Papers case. n62 **Only one case of leaking to the press has ever involved a risk of this type**: the case of Morton Seligman, who leaked decoded Japanese naval dispatches in the midst of World War II, and whose publication after Midway could have disclosed that the United States had broken Japanese naval codes. n63 This is the threat most legitimately interjected against leaks, but in all but that one World War II case, it has been pat **hyperbole in criticisms of press leaks.** Private Manning's disclosures to Wikileaks, for example, were denounced as likely to cause deaths, a claim that the Pentagon was not willing to repeat when asked for a formal assessment by the Senate Armed Services Committee. n64 **Claims of secrecy of this sort** normally assert power in the relationship between **the national security system and the public opinion system.**

No Fear Act solves Terror

Solves terror

Herrara 8—Elizabeth Angela Herrera , August 2008 A Thesis Presented to the Faculty of the Graduate School of Cornell University In Partial Fulfillment of the Requirements for the Degree of Master of Public Administration ("STRIKING A BALANCE: WHISTLEBLOWING PROTECTIONS IN THE INTELLIGENCE COMMUNITY,", august 2008 Available Online athttp://ecommons.cornell.edu/bitstream/handle/1813/11249/Herrera%20Thesis.pdf;jsessionid=63F2A59C9EFD13F3B6F8D50A55C60592?sequence=1, Accessed 7-22-2015)

In the span of the two years it took Congress to succeed in finalizing the No FEAR Act and having it signed into law, the United States experienced the worst terrorist attack in its history on September 11, 2001. After the attack, several whistleblowers came forward about botched investigations, poor security in airports, and several other claims alleging that the federal government could have prevented the attack.19 These disclosures prompted the formation of the National Commission on Terrorist Attacks Upon the United States (also known as the 9-11 Commission), “an independent, bipartisan commission created by congressional legislation and the signature of President George W. Bush in late 2002.”20 Whistleblowers from various intelligence agencies received little protection from reprisal under the law and the enforcement of the No FEAR Act was sidelined while the federal government worked on protecting the U.S. from further attacks.21

No FEAR Solvency card (orig)

The original No FEAR Act solves for Federal workplace Harassment

Coleman-Adebayo 02 – Dr. Marsha Coleman-Adebayo, received her BA degree from Barnard College/Columbia University and her doctorate degree from the Massachusetts Institute of Technology (MIT). She is the author of No FEAR: A Whistleblower's Triumph over Corruption and Retaliation at the EPA. Dr. Coleman-Adebayo was a Senior Policy Analyst in the Office of the Administrator at the US Environmental Protection Agency. She has held various academic positions as Adjunct Professor at the Georgetown University _ School of Foreign Studies and Visiting Scholar in the Department of African-American Studies at George Mason University. On August 18, 2000, Dr. Coleman-Adebayo won an historic lawsuit against the EPA on the basis of race, sex, color discrimination, and a hostile work environment. She subsequently testified before Congress on two occasions. As a result, the Notification of Federal Employees Anti-discrimination and Retaliation Act [No FEAR] was introduced by Congressman F. James Sensenbrenner (R-WI), Congresswoman Sheila Jackson Lee (D-TX) and Senator John Warner (R-VA). Along with the No FEAR Coalition, she ushered the No FEAR Bill through Congress. President George W. Bush signed the No FEAR Act into law. Thousands of federal workers and their families have directly benefited from this law. She serves as a producer on the dramatic film: No FEAR!

WASHINGTON— On May 15, President Bush signed the first civil rights law of the 21st century. The No Fear Act (for Notification and Federal Anti-Discrimination and Retaliation) will change the way the government operates. Managers in federal agencies found guilty of discrimination will no longer find it easy to avoid responsibility for their actions, and their agencies will have to pay for the consequences of their conduct.

The new law will make it less likely that the kind of workplace discrimination and harassment I endured at the Environmental Protection Agency -- and over which I successfully sued -- will go unnoticed and unpunished. As I testified before the House Science Committee while advocating for this law, federal employees should not have to work in a culture of fear and intimidation. The threat of reprisal, including loss of their jobs, prevents them from reporting abuses. Intolerance may prevent them from performing at their most effective level.

My troubles were most intense when I served as the E.P.A. liaison for the environment on the Gore-Mbeki Commission, a Clinton administration foreign policy program with South Africa. After I reported that an American company was poisoning its African workers and their families with toxic waste, I was relieved of my responsibilities on the commission, my efforts to conduct an investigation were stifled and I was made a target of personal abuse. Racial epithets were hurled at me by senior officials; I was denied a promotion, supposedly because I made the choice to become pregnant; and I received threatening phone calls at home.

When I filed a discrimination complaint with the E.P.A.'s civil rights office, my situation grew worse. I sued, and in August 2000 a federal jury found the E.P.A. guilty of discrimination and creating a hostile work environment. It awarded me $600,000 in damages. It was my case that moved Congress to take up the No Fear bill.

Thousands of federal employees are working under the daily stress of discrimination. In 2000, female and nonwhite federal employees made nearly 25,000 complaints against the federal government. Settlements and judgments cost the federal government tens of millions a year, but total expenditures

have been hard to calculate and there has been little Congressional oversight. There is no accountability because most judgments were paid from a general government judgment fund without penalty to the agency at fault.

The No Fear Act will force federal agencies to pay all settlements and judgments for discrimination from their own budgets. It contains reporting requirements that will help determine whether a pattern of misconduct exists within an agency and whether that agency is taking action to address it. It requires that employees and managers be notified of their rights and responsibilities. And it strengthens protections for whistleblowers, who are often forced to choose between remaining silent about a dangerous or illegal situation and risking their careers by telling the truth.

The House and the Senate unanimously passed the No Fear Act. It was sponsored in the House by F. James Sensenbrenner, the conservative chairman of the House Judiciary Committee, and Sheila Jackson Lee, a liberal Democrat. In the Senate, John Warner took the lead on the bill. This bipartisan support shows that both political parties recognize the need to root out discrimination in the federal government and that they can come together to protect the rights of minorities and women.

The No Fear Act will serve society by making it possible for federal employees to raise red flags when they see misconduct. The government should be a leader in protecting employee rights, and the new law will push it in that direction.

No Fear Act Solves

The No FEAR Act can solve the case: it is the strongest legislation to prevent discrimination and allow for whistleblowing

Pell 05 – Lisa Pell, Editor-in-Chief, Cardozo Journal of Conflict Resolution. B.A., Brandeis University, 2001; J.D., Benjamin N. Cardozo School of Law, Yeshiva University, 2005. ("IS ALTERNATIVE DISPUTE RESOLUTION REALLY AN ALTERNATIVE FOR FEDERAL EMPLOYEES?: POSSIBLE SUGGESTIONS FOR ENCOURAGING FEDERAL EMPLOYEES TO PARTICIPATE IN ADR PROGRAMS" Yeshiva University Cardazo Journal of Conflict Resolution. Spring, 2005. Available via LexisNexis. Accessed 07-21-2015.)

In 2002, Congress passed the Notification and Federal Employee Anti-Discrimination and Retaliation Act, Pub. L. No. 107-174, 116 Stat. 566 (2002), in order to hold the federal government accountable for violations of anti-discrimination and whistleblower laws. One of the goals of the No FEAR Act was to protect whistleblowers from retaliation by their employers, particularly in recent times where corporations have come under fire for illegal practices. Additionally, No FEAR's relationship to the federal government is one of accountability. For this reason, the No FEAR Act is an essential aspect of the DOT's ADR program. Accountability regarding anti-discrimination is a method for creating an environment where there is less discrimination and fewer complaints. The hope of the No FEAR Act is to streamline the discrimination complaint process. The Department of Civil Rights hopes to use the No FEAR Act to improve the monitoring, accountability and enforcement of a fair and efficient complaint process, by having the No FEAR Act implemented **in a "timely and high quality fashion.**" See Office of the Secretary, Departmental Office of Civil Rights, State of Equal Employment Opportunity Discrimination Complaints Report, at 14 (2002) [hereinafter Discrimination Complaints Report].

The No FEAR Act as legislation solves, it is about enforcement

Roth 11 – Debra L. Roth is a partner at the law firm Shaw Bransford & Roth, a federal employment law firm in Washington, D.C. She is general counsel to the Senior Executives Association and the Federal Managers Association, host of the "FEDtalk" program on Federal News Radio, and a regular contributor to Federal News Radio's "Federal Drive" morning show. ("Managers should be wary of running afoul of No Fear Act", Ask The Lawyer, Available at: http://askthelawyer.federaltimes.com/2011/10/31/managers-should-be-wary-of-running-afoul-of-no-fear-act/, Accessed 7-26-2015)

Managers should be aware of and wary of the No FEAR Act — the Notification and Federal Employee Antidiscrimination and Retaliation Act — and its requirements. Numerous provisions of the law are potential land mines for managers. For example, the law requires agencies to report to Congress annually about violations of anti-discrimination and whistle-blower reprisal laws, including such information as the number of offending managers who were disciplined, the nature of the discipline and the agency's policy about taking discipline against managers who are found to have discriminated or retaliated against their subordinates.

This alone makes the threat to federal managers very real**, but the rate of actual disciplinary action because of discrimination or reprisal seems low.** This causes managers to relax a little too much and to

not take seriously the threat of discipline because of the No FEAR Act. The cultural change that was supposed to have occurred because of No FEAR has simply not occurred.

This creates frustration and statements of outrage from civil rights groups who believe that managers regularly discriminate, but are almost never held accountable. The result of this pressure means that agencies will begin to take findings of discrimination in EEO cases seriously and may look for a manager to be a scapegoat.

Enforcement Key

The current No FEAR Act is bogged down in red tape; inhibits effectiveness

Hall 2 — Hall, Debbie, Owner of the Village Enterprise and former federal employee, Banner Software. MA from Stanford University Graduate School of Business. 2002 ("Whistle-blower fears `No Fear' Act will be lost in red tape. ,"Insight on the News, 15 Oct. 2002, Available Online at http://go.galegroup.com.proxy2.cl.msu.edu/ps/i.do?p=AONE&u=msu_main&id=GALE|A93457379&v=2.1&it=r&userGroup=msu_main&authCount=1, Accessed 7-22-2015)

I am writing in reference to your article "Bush Must Keep Pledge to Whistle-Blowers" [the last word, Oct. 1-14]. Currently, I am having an experience very similar to Coleen Rowley of the FBI and I too am facing career-ending reprisal from senior federal management after reporting fraud. I can basically quote Rowley's story word for word; however, my headline would read: Will the Real Federal Government Please Stand Up?

It's sad to say that the federal government does not want, support or appreciate employees who expose fraud, waste and corruption. Furthermore**, with little to no support by agencies, it seems that the "No Fear" Act may in fact turn out to be another system of bureaucratic red tape.**

Didn't you see how swift the president was in pouncing on the fraud of corporate America? Where is that same system of punishment for the federal government?

I am very disappointed in the ethical responsibility shown by the federal government across the board. I work for an agency that services customers worldwide; therefore, we are entrusted with millions of dollars. The input of funds by taxpayers and output of mostly contracted services by our agency equates to gross mismanagement, fraud and abuse of power. The unqualified contractors in our office are paid salaries that would make Donald Trump blush! And Congress thinks we are saving money by replacing federal workers with this bombardment of contractors.

I have written our senior management and my congressional leaders on several occasions concerning the problems in my office, but to no avail--and the reprisal has always worsened.

I do not know how we are going to make it as a nation if this type of protected fraud continues.

The Current No FEAR Act has loopholes for enforcement that hinders effectivity.

Young 7 — Joseph Young is a staff writer at the Washington Informer, and online and print newspaper. 2007 ("Whistleblower Protection Law Sought for Federal Workers," No Publication, January 4th, Available via LexisNexis Accessed 7-22-2015)

They call themselves the No FEAR 7 - Marsha Coleman-Adebayo, Matthew F. Fogg, Blair Hayes, Janet Howard, Dennis E. Young, Joyce E. Megginson and Zena D. Crenshaw - all federal workers who blew the whistle on various federal government agencies for discrimination against minority workers.

The No FEAR 7 held a press conference last week at the Cannon House Office Building, announcing the Notification and Federal Employee Antidiscrimination and Retaliation Act (No Fear), which will be introduced in the 110th Congress next year by Rep. John Conyers (D-Mich.), who will chair the House Judiciary Committee when the Democrats take control of the chambers in January.

At the Capitol Hill press conference, Rep. Albert R. Wynn (D-Md.) said the No Fear Act of 2002 has loopholes, and it has not been effective in ending discrimination within the federal workplace. "It has not worked as well as we had hoped," said Wynn. "The bill needs more teeth."

Contractor Protections solve

The Worker's protection act does not protect contractors. We need more Snowdens.

Papandrea 14 – Mary-Rose Papandrea, Papandrea came to the University of North Carolina School of Law in 2015 from Boston College Law School. Her teaching and research interests include constitutional law, media law, torts, civil procedure, and national security and civil liberties. After graduating from Yale College and the University of Chicago Law School, Professor Papandrea clerked for U.S. Supreme Court Justice David H. Souter as well as Hon. Douglas H. Ginsburg of the D.C. Circuit and Hon. John G. Koeltl of the U.S. District Court for the Southern District of New York. 2014. 9"LEAKER TRAITOR WHISTLEBLOWER SPY: NATIONAL SECURITY LEAKS AND THE FIRST AMENDMENT" Boston University Law Review. March, 2014. Available via LexisNexis. Accessed on 07-22-2015)

The paucity of protections for national security employees stands in great contrast to the safeguards afforded to other government employees. The Federal Whistleblower Protection Act (WPA) protects a government employee who discloses information that he "reasonably believes" demonstrates a violation of any law, rule, or regulation, an instance of gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, so long as he is not prohibited by law or required by executive order to keep the information secret. n257 Other federal laws in certain situations protect whistleblowers who act on a "reasonable belief" of wrongdoing n258; still others protect those who report "potential" n259 or "alleged" n260 violations of federal law. n261 The reason for protecting these good faith beliefs is to encourage disclosures. n262

The WPA offers virtually **no protection to national security employees and contractors**. n263 First, the WPA makes **no mention of contractors at all** and [*492] appears on its face to apply only to government employees. n264 **Second, government employees in national security agencies are generally excluded from the WPA's coverage**. n265 Third, federal employees covered under the WPA will find themselves without protection under the WPA if they disclose classified information that is marked as an executive order and regarding defense or foreign affairs to anyone except the Inspector General (IG) or Special Counsel. n266

Protecting private contractors is essential: status quo regulations fail.

Boyne 14 – Shawn Marie Boyne. Professor of Law, Indiana University Robert H. McKinney School of Law-Indianapolis. 2014 ("LABOR LAW: Whistleblowing" Indiana University Law Review. Available via LexisNexis. Accessed on 07-21-2015.)

In recent decades the shortcomings of the extent of whistleblower protection under the FCA have become clearer. In particular, the FCA's provisions did not give plaintiffs a cause of action for several common forms of retaliation. The largest loopholes included: coverage for individuals who were planning to file a qui tam action, individuals who attempted to blow the whistle without filing an action, employees who refused to participate in the fraudulent practices, retaliation [*435] against the whistleblower's family members and colleagues, and retaliation against contractors and agents employed by the defendant who did not fall under a strict construction of the word "employee." n46 In 2009, Congress attempted to close those loopholes in the Fraud Enforcement and Recovery Act (FERA), which is discussed below. In an effort to fight any potential liability, employers still found ways to fight qui tam suits. One of the chief impediments to an FCA suit was

the act's "Public Disclosure Bar." In cases in which some of the information contained in the suit was based on information available to the public, employers moved courts to dismiss suits by alleging that the suits did not further the public interest. The U.S. Supreme Court attempted to weigh in on this issue in Graham County Soil and Water Conservation District v. U.S. ex rel. Wilson, 559 U.S. 280 (2010), when the Court held that relators could not proceed with an action when that action relied in part on information available from publicly available state and local administrative reports, audits, and investigations. However, that portion of the decision was moot before it was announced as, one week prior to the Court's decision, the President signed into law the Patient Protection and Affordable Care Act. This new legislation precluded courts from dismissing future cases under this section of the FCA. Until 2010, the relator had to prove that he or she was the "original source" of the information and that the information provided by the whistleblower was not available from public sources to prevent courts from dismissing claims because they claimed to lack subject matter jurisdiction. n47

No FEAR Act CP Answers

No FEAR Act can't Solve

Alt casuse: espionage Act used to justify persecution of whistleblowers

Kines 13 – Candice M. Kines, JD, West Virginia University College of Law, Class of 2014; BA, Christopher Newport University, 2010. 2013. ("DEFINING THE RIGHTS OF JOURNALISTS AND WHISTLEBLOWERS TO DISCLOSE NATIONAL SECURITY INFORMATION" West Virginia Law Review, num. 735, Winter. Available via LexisNexis. Accessed on 07-26-2015.)

The Espionage Act of 1917 n2 - a law originally created to fight acts of espionage n3 and treason n4 - is increasingly being used to prosecute whistleblowers who, in an effort to raise public awareness, disclose to the media questionable government activity. n5 Consequently, the government has used the Espionage Act to deter whistleblowers from disclosing any information involving national security. n6 However, not all national security disclosures have the purpose or effect of harming our country. In fact, placing substantial restrictions on the disclosure of this kind of governmental information may be even more harmful. Although secrecy is important in preserving the nation's security, public disclosure of certain information or conduct is necessary for a healthy democracy because it adheres to fundamental notions of democracy and significantly increases government accountability. n7 In contrast, nondisclosure of government information creates greater opportunity for the government to engage in activities that are illegal, immoral, and publicly unpopular. n8 Additionally, by substantially restricting disclosure, [*737] the government can conceal such conduct in order to avoid public criticism. n9 Thus, public disclosure of certain government information is also necessary to prevent governmental abuse.

The increased prosecutions of whistleblowers not only demonstrates the government's complete disregard for the benefits of certain disclosures, but also its failure to recognize the fact that whistleblowers are not the only participants of disclosure. In fact, by nationally publishing disclosed information, the media plays an even greater role than whistleblowers in the distribution of classified government information. Without national or world-wide publication - whether through newspapers, online, television, or radio - such information would pose little to no threat because the likelihood of unwanted readers acquiring the information would be slim. Despite this fact, the government prosecutes only whistleblowers but allows journalists to widely distribute without fear of consequence the same information that the government is attempting to protect, namely, information that it believes to be harmful to national security. n10

The Counterplan does not bolster legislation to protect whistleblowers from prosecution

Kines 13 – Candice M. Kines, JD, West Virginia University College of Law, Class of 2014; BA, Christopher Newport University, 2010. 2013. ("DEFINING THE RIGHTS OF JOURNALISTS AND WHISTLEBLOWERS TO DISCLOSE NATIONAL SECURITY INFORMATION" West Virginia Law Review, num. 735, Winter. Available via LexisNexis. Accessed on 07-26-2015.)

As stated above, there are no current laws - including the First Amendment - that provide protection to whistleblowers for disclosing governmental information. Instead, the laws currently recognized only enable greater prosecution of whistleblowers and they do so regardless of the [*758] circumstances surrounding the disclosure (e.g., regardless of the type, purpose, or effect of the disclosure). n167 Part III of this Note analyzes these laws. The first section discusses the adequacy of the reporter's privilege. While the purpose of the privilege is to preserve the confidentiality of reporters' sources n168 - many of

which are whistleblowers - it rarely accomplishes this goal. The second section discusses the Espionage Act, which is increasingly being used to prosecute whistleblowers. n169 The Act allows for the prosecution of any individual who discloses classified information to a journalist; however, the Act does not provide for the prosecution of a journalist who chooses to publish that material for the world to see. n170 Thus, the reporter's privilege and the Espionage Act provide no protection for whistleblowers, but instead only create an avenue for their prosecution.

By failing to provide protection to whistleblowers, these laws also fail to recognize the benefits that disclosure has to offer, particularly the generation of thoughtful public debate and the encouragement of government accountability. Furthermore, by providing an unlimited ability for journalists to publish classified government information, these laws cannot truly protect the nation's security. Therefore, because neither the benefits of disclosure - thoughtful public debate and government accountability - nor the benefits of nondisclosure - protection of national security - are satisfied here, these laws fail to promote the overall public good. n171

Obama Administration doesn't care. Prosecution of whistleblowers ensures circumvention

Kines 13 – Candice M. Kines, JD, West Virginia University College of Law, Class of 2014; BA, Christopher Newport University, 2010. 2013. ("DEFINING THE RIGHTS OF JOURNALISTS AND WHISTLEBLOWERS TO DISCLOSE NATIONAL SECURITY INFORMATION" West Virginia Law Review, num. 735, Winter. Available via LexisNexis. Accessed on 07-26-2015.)

Due to the inability of the reporter's privilege to effectively protect whistleblowers, as demonstrated by Sterling's case, the current Administration has **more than doubled the number of whistleblowers previously prosecuted under the Espionage Act**. n51 Further, while the government's interest in prosecuting whistleblowers is to prevent disclosure of information that could be harmful to the United States, no legislative method is currently in place to deter the media from widely publishing that same harmful information. Therefore, absent any regulation of information published by the media, prosecuting whistleblowers for disclosing national security information cannot adequately serve the government's interest of preventing harmful disclosure.

Nevertheless, the Obama Administration has been increasingly persistent in prosecuting whistleblowers and attempting to force journalists to [*744] testify against them. n52 This aggressive and "unprecedented crackdown over leaks" has been termed Obama's "war on whistleblowers" n53 or more commonly, the "war on leaks." n54 The Obama Administration's reaction to recent disclosures of national security information highlights the disparity that exists between journalists and their sources regarding the ability to disclose information. n55

WhistleBlower Protection Fails

Whistle blower laws decrease the amount of whistle blowing taking place

Martin 03 – Brian Martin (born 1947) teaches in the interdisciplinary area of Science, technology, and society at the University of Wollongong in Australia, where he became a professor in 2007.[1] He was president of Whistleblowers Australia from 1996 to 1999 and remains their International Director. 2003. ("Illusions of Whistleblower Protection" UTS Law Review, No. 5. Available via LexisNexis. Accessed on 07-26-2015.)

Thoms (1992: 83), using a Weberian analysis, argues that "Whistleblower legislation strives to control the agenda of whistleblowers and to contain their disclosures to channels which are under the purview of the state. Under regimes of authorized whistleblowing, the potential for criticism and review of the operations of the state by the public it is said to serve are virtually non-existent." The cynical explanation of whistleblower laws is that they are intended to encourage employees to speak out, revealing their identity and, rather than protecting them, instead making them easier targets for attack. This explanation is espoused by a few disillusioned whistleblowers. These explanations are actually compatible. Promoters of whistleblower laws may be quite sincere but the laws in effect can serve to give the illusion of protection. They may also lead employees to believe, mistakenly, that they are protected and thus to become easier targets than if the laws did not exist.

Whistle Blower protection laws will fail – lots o. warrants why

Martin 03 – Brian Martin (born 1947) teaches in the interdisciplinary area of Science, technology, and society at the University of Wollongong in Australia, where he became a professor in 2007.[1] He was president of Whistleblowers Australia from 1996 to 1999 and remains their International Director. 2003. ("Illusions of Whistleblower Protection" UTS Law Review, No. 5. Available via LexisNexis. Accessed on 07-26-2015.)

A fundamental problem with whistleblower laws is that they usually come into play only after disclosures have been made and reprisals have begun. As in the example at the beginning of this article, many employees make disclosures in good faith, not thinking of themselves as whistleblowers. As a result, they seldom have gathered sufficient evidence about the alleged problem to withstand a concerted cover-up. Not anticipating any adverse reaction, they may not be in a position to document reprisals. As a result, invoking whistleblower laws is seldom a practical proposition. Another problem is that there are many subtle ways for employers to undermine employees without providing clear-cut evidence of reprisals. Rumours and ostracism are two of the most common responses encountered by whistleblowers but are virtually impossible to document. Petty harassment is also potent. It might mean such minor things as unavailability of a company car, awkward rosters, slowness in processing claims, or requests for excessive documentation. Ostracism itself can cause the equivalent of petty harassment, as a worker is denied access to everyday information needed to do the job efficiently. At a more serious scale are job reassignments that reduce or increase work demands, either setting up the employee for failure or making the job tedious; in both cases it is often easy to camouflage the changes as necessary due to changes in the work environment or to a more general organisational restructuring. Ironically, it can be more difficult for an employee to deal with subtle undermining than with a more obvious attack such as demotion or dismissal. Subtle harassment can lead some employees to blame themselves whereas blatant attacks are more readily understood as reprisals. Another problem with whistleblower

laws is that they typically pit a lone employee against a powerful organisation. The organisation can pay for expensive legal advice and has little to lose by making the case as protracted as possible. Individuals in the organisation have little at stake; indeed, many of them may have moved on in the years it takes for a case to run its course. On the other side, the whistleblower is often alone in pursuing the case, sometimes without any income and seldom with dedicated backing from an organisation. Whistleblower laws put the focus on whistleblowers and what is done to them. An unfortunate feature of this focus is a relative neglect of the original issue about which the employee spoke out. Whistleblower laws do not and perhaps cannot require an investigation into an employee's allegations. During the drawn-out process of assessing whether reprisals have occurred, the original issue is not addressed. For a dismissed whistleblower, "success" usually comes in the form of a settlement, not a reinstatement; **success in terms of organisational reform is not part of the agenda of whistleblower laws.** These **shortcomings of whistleblower laws are so systemic that it is worth asking why anyone would bother with them at all.** Three types of explanations can be labelled sincere, symbolic and cynical. Undoubtedly most of those who promote whistleblower laws are completely sincere. This includes many whistleblower activists whose sincerity cannot be doubted, given that they themselves are victims of reprisals. But sincerity of intent is no guarantee of effectiveness in execution. The flaws in the vehicle - whistleblower legislation - are seen as unfortunate weaknesses, due to poor drafting, inadequate resources or ineffectual implementation. A different explanation is that whistleblower laws are a form of symbolic politics (Edelman, 1964), serving to give the appearance of political action without any substantive change in institutional dynamics. Symbolic politics is deployed when popular pressure becomes strong. A law gives the appearance of government concern even though it may not lead to any change in behaviour. For example, governments can placate concerns about crime by passing laws even though there is little evidence that longer prison sentences form a deterrent to violent crime or that more than a tiny proportion of corporate crime is ever prosecuted.

Whistle blower Protection Act offers no protection, and the plan will be circumvented by executive branch.

DW 14 – Deutsche Wells, is an German and American international news organization that runs but US and international news with collaboration in Europa, the US, Latin America, and Beijing. 2014. ("US whistleblower laws offer no protection", DW, January 28th. Available at: http://www.dw.com/en/us-whistleblower-laws-offer-no-protection/a-17391500, accessed 7-26-2015)

Some eight months before Edward bySnowden leaked classified NSA programs to the press, US President Barack Obama issued an order extending whistleblower protections to employees of America's intelligence agencies. The White House often cites this fact when addressing the three felony charges against Snowden, in total carrying a maximum sentence of 30 years in prison. Two of those charges fall under the 1917 US Espionage Act.

In his January speech on NSA reform, President Obama said that he did not want to "dwell on Mr. Snowden's actions or his motivations." But five months earlier, the US commander-in-chief had already made clear that he did not view the 30-year-old as a whistleblower or patriot, saying that Snowden had failed to use official, non-public "proper channels" to express his concerns about NSA surveillance.

But Snowden has said that Obama's extension of whistleblower protections to the intelligence community, under Presidential Policy Directive 19 (PPD-19), does not cover government contractors.

Before his disclosures, Snowden was an employee of the company Booz Allen Hamilton, which contracted with the National Security Agency.

"If I had revealed what I knew about these unconstitutional but classified programs to Congress, I could have been charged with a felony," Snowden said in a live, online question and answer session last Thursday.

'Death by a thousand cuts'

For years, would-be whistleblowers in the US intelligence community had no legal protections to shield them from retaliatory measures by their superiors**. The Whistleblower Protection Act of 1989 covered most of the federal government with the glaring exception of the intelligence agencies.**

In an effort to close this legal gap, Congress passed the Intelligence Community Whistleblower Protection Act (ICWPA) a decade later. The law covers employees and contractors at the Central Intelligence Agency (CIA), the National Security Agency (NSA), the Defense Intelligence Agency (DIA), the National Imagery and Mapping Agency (NIMA) as well as the National Reconnaissance Office (NRO).

But according to Thomas Drake, the act failed to adequately protect whistleblowers from retaliation. A former senior executive at the NSA, Drake blew the whistle on a failed surveillance program called Trailblazer. He used what the government calls "proper channels" to express his concerns about the program's exorbitant cost and its lack of privacy protections, reaching out to his immediate supervisor, the office of the inspector general, and the congressional intelligence committees.

"I was reprised against severely within the proper channels," Drake told DW. "I was identified as a troublemaker."

Thomas Drake at NSA demonstration

Drake used "proper channels," but still faced retaliation

Drake called the NSA's response to his whistleblowing activities "death by a thousand cuts administratively and bureaucratically," saying that the agency found ways to change his job and cut his responsibilities. Ultimately, the NSA re-organized the section he worked in, leaving him with nothing but a "paper title." Drake resigned from the agency in 2008.

"There's nothing within the act that actually protects you. I don't have cause of action - I can't go to the courts for redress," he said, adding that his only recourse was to file evidence with the Defense Department inspector general's reprisal unit. According to Drake, the unit agreed that he had suffered from reprisal, but the case still has not completely resolved itself.

Drake only went public, contacting the Baltimore Sun newspaper, when he felt that the proper channels had failed. The federal government indicted him under the US Espionage Act for supposedly taking classified documents illegally, an allegation that unraveled before the trial. In the end, the government dropped the charges in exchange for Drake agreeing to plead guilty to one misdemeanor count of misusing a NSA computer. He was sentenced to a year of probation and 240 hours of community service.

Murky legal framework

Although the ICWPA covered both employees and contractors, US whistleblower laws have been changed through legislative and presidential action since the Drake case. In 2012, Congress passed and President Obama signed the Whistleblower Protection Enhancement Act. But the law excluded the intelligence agencies from coverage.

Although Obama had issued his directive that same year extending whistleblower protections to the entire intelligence community, PPD-19 only covers intelligence agency employees. Contractors, such as Edward Snowden, are not explicitly protected by the directive. Even for legal experts, it's unclear how exactly all of these different regulations interact with one another, and whether or not contractors such as Edward Snowden are covered by the *whistleblower* laws.

"No one knows exactly how those pieces are supposed to fit together," William C. Banks, an expert on national security law at Syracuse University College of Law, told DW. "But I think the trump card is the criminal law. Regardless of whether the contractor or a regular employee of a US agency is blowing the whistle, **if he or she is** at the same time **violating a criminal law of the United States, the whistleblower protection is worthless."**

And, defendors don't even use the whistleblower protection laws.

DW 14 – Deutsche Wells, is an German and American international news organization that runs but US and international news with collaboration in Europa, the US, Latin America, and Beijing. 2014. ("US whistleblower laws offer no protection", DW, January 28th. Available at: http://www.dw.com/en/us-whistleblower-laws-offer-no-protection/a-17391500, accessed 7-26-2015)

Mark Zaid, an attorney in Washington, D.C., represents intelligence community whistleblowers. Zaid doesn't make use of the whistleblower protection laws when representing his clients, calling the provisions "inadequate." Obama's presidential directive, for example, is largely discretionary and doesn't actually guarantee whistleblowers protection. It only provides a process by which their claims of suffering from retribution can be addressed.

Nevertheless, Zaid said that Edward Snowden had a legal obligation to use the proper channels, even if the protection laws were insufficient.

Edward Snowden Filmstill WikiLeaks

It's murky, at best, whether or not a contractor like Snowden was covered by the whistleblower laws

"He has a legal obligation to do so, and I think he has moral obligation to do so, to at least try to work through the system, as futile as it might be, before taking the last resort, which is to provide the information to third parties without authorization," Zaid told DW.

But according to NSA whistleblower Thomas Drake, the whistleblower system has been corrupted from within, which discourages people from coming forward.

"The reporting chains themselves largely serve to protect the institution from those that would expose it, even from those within," Drake said.

"…Especially when they see what happens to people like me, they will choose to remain silent, they will ultimately censor themselves and not report the wrongdoing, although they're in the best position to do so."

DW R

Cartels/Latin America Stability CPs

**Prosecute banks CP

The United States should prosecute bank employees who launder money.

The counterplan is comparatively better than the plan

Morris 2013 (Evelyn Krache [Research Fellow, International Security Program, Belfer Center for Science and International Affairs @ JFK School of Govt, Harvard]; Think Again: Mexican Drug Cartels; Dec 3;www.foreignpolicy.com/articles/2013/12/03/think_again_mexican_drug_cartels; kdf)

"We Need to Hit Them Where It Hurts: the Wallet." Exactly. **Despite the ongoing arguments about drug legalization** and border security, **the most effective** way to combat the scourge of the DTOs would be to interdict not drugs or people but money. As in any business, money is the fuel that keeps the cartels running. Even if Sinaloa, to give only one example, were to disappear tomorrow, other organizations would quickly rise to take its slice of the lucrative pie. One of the most basic tenets of business is that highly profitable markets attract lots of new entrants. This is true for legal and illegal enterprises alike. The staggering profits of illegal trade would be much less attractive if the DTOs could not launder, deposit, and ultimately spend their money. But shutting down the cartels' financial operations will be a formidable task, given the help they have had from multinational financial institutions, which have profited from the cartels' large-dollar deposits. In 2010, Wachovia bank (which was acquired by Wells Fargo in 2008) admitted that it had processed $378 billion of currency exchanges in Mexico -- an amount equal to about one-third of the country's GDP -- to which it had failed to apply anti-laundering restrictions. In 2012, British bank HSBC settled with the U.S. government for $1.9 billion to escape prosecution for, among other things, laundering hundreds of millions of dollars for the Sinaloa cartel. U.S. law enforcement has also implicated Bank of America and Western Union in DTO money laundering. Although illegal money transfers can happen without banks' knowledge, the volume and widespread occurrence of these transactions indicate just how easy it is for the cartels to clean their dirty money. Paying a fine to avoid prosecution is almost no punishment at all. The fines Wachovia paid amounted to less than 2 percent of its 2009 profit. Even the record fine assessed on HSBC amounted to only 12 percent of the bank's profits. Furthermore, banks can simply accrue funds to offset any possible fines, either by increasing what they charge cartels or by setting aside some of the earnings from laundering, even as they continue to do business with the DTOs. Prosecuting bank employees involved in money laundering, up through the highest levels of an institution, would be a better tack. Pictures of a chief compliance officer as he entered a courtroom for sentencing would have a far greater deterrent effect than any financial penalty. To that end, investigative techniques and legal precedents for going after global criminal networks are increasingly robust, and the political payoffs could be substantial. One of the more successful campaigns in the war on terrorism has been the financial one; experience gained in tracking the funds of al Qaeda could make it easier to similarly unravel Los Zetas' financing. Malfeasance in the financial industry is nothing new, but public sensitivity to banks' wrongdoing is arguably higher than it has been in decades. An enterprising prosecutor could make quite a reputation for herself by tracking DTO money through the financial system. The cartels, along with the violence and corruption they perpetrate, are threats to both Mexico and the United States. The problem is a complicated one and taps areas of profound policy disagreement. **The way to make progress in combating the DTOs is to ignore issues like gun control and illegal immigration and follow the money**. Stanching the cartels' profits will do more to end the bloodshed than any new fence or law.

--xt Solves drug violence

The CP controls the IL to solving drug violence

Murphy 2013 (Dylan; Money Laundering and The Drug Trade: The Role of the Banks; May 13; www.globalresearch.ca/money-laundering-and-the-drug-trade-the-role-of-the-banks/5334205; kdf)

Mexico is in the grip of a murderous drug war that has killed over 150,000 people since 2006. It is one of the most violent countries on earth. This drug war is a product of the transnational drug trade which is worth up to $400 billion a year and accounts for about 8% of all international trade. The American government maintains that there is no alternative but to vigorously prosecute their zero tolerance policy of arresting drug users and their dealers. This has led to the incarceration of over 500,000 Americans. Meanwhile the flood of illegal drugs into America continues unabated. One thing the American government has not done is to prosecute the largest banks in the world for supporting the drug cartels by washing billions of dollars of their blood stained money. As Narco sphere journalist Bill Conroy has observed **banks are "where the money is" in the global drug war.** HSBC, Western Union, Bank of America, JP Morgan Chase&Co, Citigroup, Wachovia amongst many others have allegedly failed to comply with American anti-money laundering (AML) laws. The Mexican drug cartels have caught the headlines again and again due to their murderous activities. The war between the different drug cartels and the war between the cartels and government security forces has spilled the blood of tens of thousands of innocent people. The drug cartels would find it much harder to profit from their murderous activity if they didn't have too big to fail banks willing to wash their dirty money. In March 2010 Wachovia cut a deal with the US government which involved the bank being given fines of $160 million under a "deferred prosecution" agreement. This was due to Wachovia's heavy involvement in money laundering moving up to $378.4 billion over several years. Not one banker was prosecuted for illegal involvement in the drugs trade. Meanwhile small time drug dealers and users go to prison. If any member of the public is caught in possession of a few grammes of coke or heroin you can bet your bottom dollar they will be going down to serve some hard time. However, if you are a bankster caught laundering billions of dollars for some of the most murderous people on the planet you get off with a slap on the wrist in the form of some puny fine and a deferred prosecution deal. Charles A. Intriago, president of the Miami-based Association of Certified Financial Crime Specialists has observed, "… If you're an individual, and get caught, you get hammered. "But if you're a big bank, and you're caught moving money for a terrorist or drug dealer, you don't have to worry. You just fork over a monetary penalty, and then raise your fees to make up for it. "**Until we see bankers walking off in handcuffs to face charges in these cases, nothing is going to change,"** Intriago adds. "These monetary penalties are just a cost of doing business to them, like paying for a new corporate jet." This failure on the behalf of the US government to really crack down on the finances of the drug cartels extends to British banks as well. In July 2012 the US Senate Committee on Homeland Security and Governmental Affairs issued a 339 page report detailing an amazing catalogue of "criminal " behaviour by London based HSBC. This includes washing over $881 for the Mexican Sinaloa Cartel and for the Norte del Valle Cartel in Colombia. Besides this, HSBC affiliated banks such as HBUS repeatedly broke American AML laws by their long standing and severe AML deficiencies which allowed Saudi banks such as Al Rajhi to finance terrorist groups that included Al-Qaeda. HBUS the American affiliate of HSBC supplied Al Rajhi bank with nearly $1 billion in US dollars. Jack Blum an attorney and former Senate investigator has commented, "They violated every goddamn law in the book. They took every imaginable form of illegal and illicit business." HSBC affiliate HBUS was repeatedly instructed to improve its anti-money laundering program. In 2003 the Federal Reserve Bank of New York took enforcement action that called upon HBUS to improve its anti-money laundering program. In September 2010 the Office of Comptroller of the Currency (OCC) sent a,"blistering supervisory letter" to HBUS listing numerous AML problems at the bank. In October 2010 this was followed up with the OCC issuing a cease and desist order requiring HBUS to improve its AML program a second time. Senator Carl Levin chairman of the Senate investigation into HSBC has commented that ,"HSBC's Chief Compliance Officer and other senior executives in London knew what was going on, but allowed the deceptive conduct to continue." Let us look at just a couple of the devastating findings in the Senate report. The main focus of the report is the multiple failures of HSBC to comply with AML laws and regulations: "The identified problems included a once massive backlog of over 17,000 alertsidentifying possible suspicious activity that had yet to be reviewed; ineffective methods foridentifying suspicious activity; a failure to file timely Suspicious Activity Reports with U.S. law enforcement; … a 3-year failure by HBUS [a HSBC affiliate] , from mid-2006 to mid-2009, to conduct any AML monitoring of $15 billion in bulk cash transactions … a failure to monitor $60 trillion in annual wire transfer activity bycustomers …inadequate andunqualified AML staffing; inadequate AML resources; and AML leadership problems. Sincemany of these criticisms targeted severe, widespread,and long standing AML deficiencies,….." The report catalogues in great detail the failings of HSBC affiliates HBUS in America and HMEX in Mexico: "from 2007 through 2008, HBMX was the single largest exporter ofU.S. dollars to HBUS, shipping $7 billion in cash to HBUS over two years, outstripping larger Mexican banks and other HSBC affiliates. Mexican and U.S. authorities expressed repeated concern that HBMX's bulk cash shipments could reach that volume only if they included illegal drug proceeds. The concern was that drug traffickers unable to deposit large amounts of cash in U.S. banks due to AML controls were transporting U.S. dollars to Mexico, arranging for bulk deposits there, and then using Mexican financial institutions to insert the cash back into the U.S. financial system. … high profile clients involved in drug trafficking; millions of dollars in suspicious bulk travelers cheque transactions; inadequate staffing and resources; and a huge backlog of accounts marked for closure due to suspicious activity, but whose closures were delayed." In the Senate hearing on 17 July 2012 Carl Levin Chairman of the Committee on Homeland Security and Governmental Affairs

explained how HMEX helped the Mexican drug cartels: ”Because our tough AML laws in the United States have made it hard for drug cartels to find a U.S. bank willing to accept huge unexplained deposits of cash, they now smuggle U.S. dollars across the border into Mexico and look for a Mexican bank or casa de cambio willing to take the cash. Some of those casas de cambios had accounts at HBMX. HBMX, in turn, took all the physical dollars it got and transported them by armored car or aircraft back across the border to HBUS for deposit into its U.S. banknotes account, completing the laundering cycle.” Senator Levin went on to note how: ”Over two years, from 2007 to 2008, HBMX shipped $7 billion in physical U.S. dollars to HBUS. That was more than any other Mexican bank, even one twice HBMX’s size. When law enforcement and bank regulators in Mexico and the United States got wind of the banknotes transactions, they warned HBMX and HBUS that such large dollar volumes were red flags for drug proceeds moving through the HSBC network.” In December 2012 the Department of Justice cut a deal with HSBC which imposed a record $1.9 billion dollar fine. It may sound a lot to ordinary folks but it is a tiny fraction of its annual profits which in 2011 totalled $22 billion. Assistant Attorney General Lanny Bauer announced the settlement at a press conference on 11 December 2012. His comments reveal why the US government decided to go soft on such criminal behaviour and show quite clearly how there is one law for the richest 1% and one law for the rest of us. Lenny Bauer said: ”Had the U.S. authorities decided to press criminal charges, HSBC would almost certainly have lost its banking license in the U.S., the future of the institution would have been under threat and the entire banking system would have been destabilized.”

**Deportation Policy CP

The United States federal government should increase funding for the Central American Regional Security Initiative and provide advanced warning when deporting criminals.

US policy, not drugs, is at root of Mexican instability

Bloomberg View 2014 (Exporting mayhem across the border; May 15; www.businessweek.com/articles/2014-05-15/u-dot-s-dot-deportations-fuel-violence-in-central-america; kdf)

To secure U.S. borders and win Republican support for immigration reform, President Obama stepped up deportations of unauthorized immigrants, especially those with criminal records. Whether the border is now more "secure" is debatable. **For the nations of Central America, these policies have been a disaster.** An influx of displaced deportees has fed crime and violence that were already out of control—spurring more El Salvadorans, Guatemalans, and Hondurans to seek safety in the U.S., which has led to more asylum requests and deportations. The U.S. government has a strong interest in stopping this perpetual mayhem machine. Central America's instability and weakness have helped make it a transshipment point for 80 percent of the cocaine entering the U.S. From 2000 to 2010, the number of Central American migrants to the U.S. rose by more than 50 percent; after Mexico, the three countries that produce the most unauthorized immigrants to the U.S. are El Salvador, Guatemala, and Honduras. What did the U.S. expect would happen when it dumped more criminals into countries already notorious for their high homicide rates, thriving made-in-the-USA gang networks, and weak judiciaries? With the overwhelming majority of murders—as many as 95 percent of them—going unpunished in the three countries, it's no wonder the number of Central Americans filing U.S. asylum claims based on "fear of return" more than doubled from 2012 to 2013. STORY: The Hostage Situation That Keeps Turkey From Going After Islamic State True, allowing these criminals to stay in U.S. cities and prisons is dangerous and expensive. But if Congress and the Obama administration are going to continue deporting them, they could do some things to make the U.S. and Central America safer. Instead of cutting funding for the Central American Regional Security Initiative by 20 percent this year, to $130 million, they should be raising it and speeding up its delivery. Never mind the immorality of the U.S. outsourcing the drug war to those least capable of prosecuting it and U.S. culpability in incubating Central America's gangs: Day to day, the region's lawlessness and violence affect more Americans than does, say, the war in Afghanistan. The U.S. also needs to shift more of its funding from helping with drug interdiction and beefing up Central American militaries and police to building up judicial and community institutions. To help Central American authorities cope with more deportees, the U.S. ought to provide more advance warning and better information on their criminal records.

--xt Solves instability

Only the CP addresses the root cause of instability

Chardy 2014 (Alfonso; Deportation of criminals blamed for exodus from Central America; Aug 3; www.miamiherald.com/2014/08/03/4270186/deporation-of-criminals-blamed.html; kdf)

The unprecedented surge in unaccompanied children at the U.S.-Mexico border was preceded by a sharp increase in the number of deportations to Central America of convicts, many of them gang members. Between fiscal years 2010 and 2012, almost 100,000 convicts were repatriated to Guatemala, El Salvador and Honduras — exceeding the total of criminal deportations in the previous six years. Immigrant-rights activists say the spike in criminal deportations likely played a key role in spreading gang violence in the three Central American countries — the situation many children cite as a reason for coming to the United States. "I would say that these **deportations are the most important factor** behind the spread of criminal violence in our countries, which is the chief reason behind the children coming here," said Francisco Portillo, president of Miami-based Francisco Morazán Honduran Organization, which assists families who have children at the border.

US deportation policy is the leading cause of crime in Central America

Berestein Rojas 2014 (Leslie; Transnational gangs: The Central American migrant crisis' LA connection; Jul 16; www.scpr.org/blogs/multiamerican/2014/07/16/17018/transnational-gangs-how-the-central-american-migra/; kdf)

As children, teens and families continue to arrive at the U.S.-Mexico border from El Salvador, Honduras and Guatemala, many of these migrants and their advocates have cited gang and drug related violence as one of the main factors driving them north. But much of that gang violence isn't rooted in Central America. It's rooted in the United States, particularly in Los Angeles. It's part of a long and complicated history between the U.S. and Central America, in which the deportation policies of recent decades figure prominently. "Gang violence has increased steadily over the last decade or two, and one factor that has contributed to it is that the U.S. has deported a lot of convicted criminals back to Central America," said Marc Rosenblum, deputy director of the U.S. immigration program for the Migration Policy Institute in Washington. "All three of the countries in the northern triangle are pretty weak states, and so that's given criminal organizations an opportunity to sort of establish themselves and flourish." The transnational gang phenomenon dates back decades, to the initial mass migration refugees fleeing civil war in El Salvador and Guatemala. Central Americans began arriving in the U.S. in large numbers in the 1980s, when both countries were suffering through the height of conflict. Many settled in Los Angeles, especially a large population of Salvadorans, who moved into working-class urban neighborhoods like Pico-Union and Koreatown. There was already heavy gang presence in Los Angeles, predominantly Mexican-American and African-American gangs. Some Central American youths began drawing together for protection, the kernel of what eventually became Mara Salvatrucha, an L.A. gang that has by now become now a powerful international criminal organization. Others joined the rival 18th Street gang, an offshoot of an established gang that accepted Central American youths. At the same time, U.S. immigration laws were growing tougher in relation to immigrants who committed crimes, especially those with gang ties. From the late 1980s on, a series of laws made it easier to deport immigrants with criminal records. But one particular 1996 law sharply stepped up criminal deportations to Central America. The Illegal Immigration Reform and Immigrant Responsibility Act, or IRAIRA, broadly expanded the list of crimes for which people could be deported, even if these offenses were committed in the past. It also took away protection for legal residents, meaning even people who were in the U.S. legally and had spent most of their lives here could be removed if they committed a deportable offense. It became, as former Mara Salvatrucha gang member Alex Sanchez recalls, like "a witch hunt." "What this created was a witch hunt of people that had been convicted of a crime 10 years prior, 20 years prior," said Sanchez, who now directs Homies Unidos, an organization that focuses on gang prevention and helping ex-gang members adjust to society. "That created masses of individuals that were detained, persecuted and picked up at their homes and then processed for deportation." Between the early 1990s and the late 1990s, IRAIRA essentially doubled the number of criminal deportees being flown back to Central America, Rosenblum said. And when these young men arrived, there was no infrastructure to help them adjust. Many did not speak Spanish well, if at all; some no longer had immediate relatives still living in the country. Sanchez, who came to the

U.S. with his parents during the war when he was 7, was deported when he was 22 in 1994, a couple of years before IRAIRA took effect. "I was one of those individuals that ... ended up in El Salvador in an airport with only a piece of paper and an address scribbled," Sanchez recalled. "I didn't know which way to go. Luckily for me, I had a home that belonged to my grandfather, where I went to. Many other individuals didn't have the same luck. Many ended up homeless." Some tried to seek shelter at churches, he said. Others tried to seek out relatives but were rejected for their gang tattoos or for "the stigma that was created in El Salvador and in Central America in general around tattooed individuals, who were considered the worst of the worst," Sanchez said. But there was one receptive audience: Disenfranchised local kids. Sanchez says **there were a few local gangs in El Salvador before deportees from the U.S. began arriving, but that the mass deportations created a monster.**

**Legalize Marijuana

Text: The United States federal government should legalize all uses of marihuana.

US legalization is the first step in reducing cartel violence – key to reconstructing the market structure

Reisenwitz 14 [Cathy, 8-11. Reisenwitz is Editor-in-Chief of a news and politics cite and her writing has appeared in Forbes and the Chicago Tribune. *US Marijuana Legalization Already Weakening Mexican Cartels, Violence Expected to Decline.* http://townhall.com/columnists/cathyreisenwitz/2014/08/11/us-marijuana-legalization-already-weakening-mexican-cartels-violence-expected-to-decline-n1876088/page/full 7/12]//kmc

America's first foray into rolling back prohibition 2.0 is barely underway, and already marijuana prices have dropped low enough to convince some cartel farmers in Mexico to abandon the crop. Mere months after two US states legalized marijuana sales, five Nobel Prize-winning economists released a UN report recommending that countries end their war on drugs. It would seem they were onto something. But in order to further decrease drug-trade violence in so-called producer states, the US first needs to legalize marijuana, but then also the US must stop using the UN to pressure producer countries into supply-based drug prohibition. Latin America is the largest global exporter of cannabis and cocaine. In 2011 the DOJ's now-shuttered National Drug Intelligence Center found that the top cartels controlled the majority of drug trade in marijuana, heroin, and methamphetamine in over 1,000 US cities. **Research into black markets shows that producer countries experience more violence than consumer countries**. In essence, the global war on drugs is a UN scheme to shrug drug war costs off rich countries' shoulders and onto poor Latin American countries, with horrifyingly violent results. Much of the recent child migrant crisis is a direct result of children fleeing cartel violence and conscription into criminal gangs. **When drug prices are high, cartels will step up and produce. By keeping demand for cannabis** and cocaine **high, but supply low, the US in essence forced the Latin America economy to revolve around drugs**. Under prohibition, **there is no more profitable export. And** of course **violence proliferates in illegal industries. So in countries where the dominant export is illegal, violence will be endemic.** That's exactly what the five economists found. Every single one of the 20 cities with the highest murder rates in the world are in Latin America. Half of the top 10 global kidnapping hotspots are Latin American countries. Time magazine reports that the violence in the murder capital of the world, San Pedro Sula, Honduras, is due to the influx of Mexican drug cartels that funnel U.S.-bound drugs through the country. **The cartels are also responsible for an increase in "atrocious crimes" like decapitation, usually used against rival gangs.** Ending the Drug Wars describes drug prohibition as "a transfer of the costs of the drug problem from consumer to producer and transit countries." It references a report called Drugs and Democracy: Toward a Paradigm Shift by the Latin American Commission on Drugs and Democracy, headed by former Latin American presidents Fernando Henrique Cardoso, Cesar Gaviria and Ernesto Zedillo found that Latin America's willingness to cave to first-world pressure has had horrific results, including: A rise in organized crime caused both by the international narcotics trade and by the growing control exercised by criminal groups over domestic markets and territories A growth in unacceptable levels of drug-related violence affecting the whole of society and, in particular, the poor and the young The criminalization of politics and the politicization of crime, as well as the proliferation of the linkages between them, as reflected in the infiltration of democratic institutions by organized crime The corruption of public servants, the judicial system, governments, the political system and, especially the police forces in charge of enforcing law and orders The 200-percent growth rate of the illegal drug market between 1994 and 2008 explains roughly 25 percent of the current homicide rate in Colombia, according to recent research. That means Colombia sees about 3,800 more homicides per year on average associated with the war on drugs. **But when drug prices drop, the cartels will move onto other schemes**. VICE News asked retired federal agent Terry Nelson whether legalization was hurting the cartels. "The cartels are criminal organizations that were making as much as 35-40 percent of their income from marijuana," Nelson said, "They aren't able to move as much cannabis inside the US now." America, the United Kingdom and other wealthy states are epicenters of demand. Not only do demand states prohibit drug production and sales within their borders, but have traditionally used the UN to bully producer countries to do the same through moves such as the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 or the US annual certification process. And for what? The report points out that worldwide drug prohibition has succeeded in raising prices on illicit drugs. This may have impacted rates of use in consumer nations. Even if higher prices suppress demand, for which there's little evidence, there is simply no way to look at the

worldwide cost of prohibition as being worth that possible outcome. “There is now a new willingness among certain states, particularly in Latin America, to be vocal about the inherent problems within the system and to try to extricate themselves from the global drug war quagmires,” according to Ending the Drug Wars. **Ending the Drug Wars acknowledges the “microeconomic contradictions inherent in the supply-centric model of control**.” It calls out the UN for trying to “enforce a uniform set of prohibitionist oriented policies often at the expense of other, arguably more effective policies that incorporate broad frameworks of public health and illicit market management.” However, the ultimately unresolvable problem with prohibition is that: In a world where demand remains relatively constant, suppressing supply can have short-run price effects. However, in a footloose industry like illicit drugs, these price increases incentivise a new rise in supply, via shifting commodity supply chains. This then feeds back into lower prices and an eventual return to a market equilibrium similar to that which existed prior to the supply-reduction intervention. **Fixing this problem might be the most exciting part about ending America’s war on cannabis. Prices will continue to drop as American growth flourishes. Get ready for cheap, high-quality weed. And as prices drop and the supply side moves into the white market, cartels will get out of the game. And just as ending alcohol prohibition greatly diminished the size, influence, and brutality of organized crime, so will legalizing weed diminish the size, influence, and brutality of Mexican cartels.** As the epicenters of supply, Latin American countries resemble America’s inner cities, wracked with violent crime and corruption. Demand countries, however, resemble America’s suburbs, where the size and scope of the violence pales in comparison. Considering the power wielded by rich countries compared with poor ones, it shouldn’t be surprising that they’d be successful in using international pressure to turn poor countries into lawless killing fields. What’s galling is that they would choose to use their power this way, and get away with it for decades. Prohibition doesn’t work. But the way it doesn’t work varies greatly depending on whether a state is primarily a producer or a consumer of illicit substances. Stopping international pressure on producer countries is the first step to a fairer, more effective international approach to drugs.

--xt solves cartel violence

Legalizing marijuana solves root causes of cartel violence – will decrease cartel violence and create comprehensive steps to combat cartels

Grillo 12 [Ioan, 11-1. Grillo is a journalist and author of "El Narco: Inside Mexico's Criminal Insurgency." *Hit Mexico's Cartels With Legalization.* http://www.nytimes.com/2012/11/02/opinion/hit-mexicos-cartels-with-legalization.html 7/12]//kmc

Instead, we have to face up to the hard reasons why thousands of young men (and some women) with full mental faculties have become serial killers. These reasons should be taken into account by residents of Colorado, Washington state and Oregon when they vote on referendums to legalize marijuana next Tuesday. The painful truth is that the monster of Mexican cartels has been pumped up by decades of Americans buying illegal drugs under the policies of prohibition. No one knows exactly how much money Mexican traffickers make, but reasonable estimates find they pocket $30 billion every year selling cocaine, marijuana, heroin and crystal meth to American users. Since 1980, the cumulative jackpot could be close to $1 trillion. **Under the law of the jungle, this money goes to the most violent and sadistic players, so the cartels have spent their dollars on building increasingly ferocious death squads.** There have been a tragic 60,000 killings under President Felipe Calderón that are described as drug-related. But even this description can be misleading. Most cartel assassins do not carry out these brutal acts because they are high on drugs. Their motive is to capture the profits that are so high because in the black market you can buy drugs for a nickel and sell them for a dollar. How many others would love to be in a business with a markup of more than 2,000 percent? Marijuana is just one of the drugs that the cartels traffic. Chemicals such as crystal meth may be too venomous to ever be legalized. But cannabis is a cash crop that provides huge profits to criminal armies, paying for assassins and guns south of the Rio Grande. The scale of the Mexican marijuana business was illustrated by a mammoth 120-hectare plantation busted last year in Baja California. It had a sophisticated irrigation system, sleeping quarters for 60 workers and could produce 120 metric tons of cannabis per harvest. Again, nobody knows exactly how much the whole Mexico-U.S. marijuana trade is worth, with estimates ranging from $2 billion to $20 billion annually. **But even if you believe the lowest numbers, legal marijuana would take billions of dollars a year away from organized crime. This would inflict more financial damage than soldiers or drug agents have managed in years and substantially weaken cartels.** It is also argued that Mexican gangsters have expanded to a portfolio of crimes that includes kidnapping, extortion, human smuggling and theft from oil pipelines. This is a terrifying truth. But this does not take away from the fact that the marijuana trade provides the crime groups with major resources. That they are committing crimes such as kidnapping, which have a horrific effect on innocent people, makes cutting off their financing all the more urgent. The cartels will not disappear overnight. U.S. agents and the Mexican police need to continue battling hit squads that wield rocket-propelled grenades and belt-driven machine guns. Killers who hack off heads still have to be locked away. Mexico needs to clean up corruption among the police and build a valid justice system. And young men in the barrios have to be given a better option than signing up as killers. All these tasks will be easier if the flow of money to the cartels is dramatically slowed down. Do we really want to hand them another trillion dollars over the next three decades?

Legalization brings a laundry list of benefits for both the US and Mexico – economic and social gains

Kleiman 14 [Mark, Spring. Kleiman is a professor of public policy at the University of California Los Angeles. *How Not to Make a Hash Out of Cannabis Legalization.* http://www.washingtonmonthly.com/magazine/march_april_may_2014/features/how_not_to_make_a_hash_out_of049291.php?page=all# 7/12]//kmc

The undeniable gains from legalization consist mostly of getting rid of the damage done by prohibition. (Indeed, as E. J. Dionne and William Galston have pointed out, polling suggests that support for legalization is driven more by discontent with prohibition than by enthusiasm for pot.) Right now, Americans spend about $35 billion a year on illegal cannabis. That money goes untaxed; the people working in the industry aren't gaining legitimate job experience or getting Social Security credit, and some of them spend time behind bars and wind up with felony criminal records. About 650,000 users a year get arrested for possession, something much more likely to happen to a black user than a white one. We also spend about $1 billion annually in public money keeping roughly 40,000 growers and dealers behind bars at any one time. That's a small chunk of the incarceration problem, but it represents a lot of money and a lot of suffering. The enforcement effort, including the use of "dynamic entry" raids, imposes additional costs in money, liberty, police-community conflict, and, occasionally, lives. **Cannabis dealing and enforcement don't contribute much to drug-related violence in the United States, but they make up a noticeable part of Mexico's problems.** Another gain from legalization would be to move the millions of Americans whose crimes begin and end with using illegal cannabis from the wrong side of the law to the right one, bringing an array of benefits to them and their communities in the form of a healthier relationship with the legal and political systems. Current cannabis users, and the millions of others who might choose to start using cannabis if the drug became legal, would also enjoy an increase in personal liberty and be able to pursue, without the fear of legal consequences, what is for most of them a harmless source of pleasure, comfort, relaxation, sociability, healing, creativity, or inspiration**. For those people, legalization would also bring with it all the ordinary gains consumers derive from open competition: lower prices, easier access, and a wider range of available products and means of administration, held to quality standards the illicit market can't enforce.**

--xt legalization key

Marijuana prohibition drives cartel violence---artificially high prices sustain criminal enterprises---legalization is key

Paul **Armentano 09**, Deputy Director of the National Organization for the Reform of Marijuana Laws, an expert in the field of marijuana policy, health, and pharmacology, has served as a consultant for Health Canada and the Canadian Public Health Association, "How to End Mexico's Deadly Drug War", 1/18/09, The Foundation for Economic Education, http://www.fee.org/the_freeman/detail/how-to-end-mexicos-deadly-drug-war

The U.S. Office of Drug Control Policy (more commonly known as the drug czar's office) says more than 60 percent of the profits reaped by Mexican drug lords are derived from the exportation and sale of cannabis to the American market. To anyone who has studied the marijuana issue, this figure should come as no surprise. An estimated 100 million Americans age 12 or older—or about 43 percent of the country—admit to having tried pot, a higher percentage, according to the World Health Organization, than any other country on the planet. Twenty-five million Americans admit (on government surveys, no less) to smoking marijuana during the past year, and 15 million say that they indulge regularly. This high demand, combined with the drug's artificially inflated black-market value (pot possession has been illegal under federal law since 1937), now makes cannabis America's top cash crop.¶ In fact, according to a 2007 analysis by George Mason University professor Jon Gettman, the annual retail value of the U.S. marijuana market is some $113 billion.¶ How much of this goes directly to Mexican cartels is difficult to quantify, but no doubt the percentage is significant. Government officials estimate that approximately half the marijuana consumed in the United States originates from outside its borders, and they have identified Mexico as far and away America's largest pot provider. Because Mexican-grown marijuana tends to fetch lower prices on the black market than domestically grown weed (a result attributed largely to lower production costs—the Mexican variety tends to be grown outdoors, while an increasing percentage of American-grown pot is produced hydroponically indoors), it remains consistently popular among U.S. consumers, particularly in a down economy. As a result, U.S. law officials now report that some Mexican cartels are moving to the United States to set up shop permanently. A Congressional Research Service report says low-level cartel members are now establishing clandestine growing operations inside the United States (thus eliminating the need to cross the border), as well as partnering with domestic gangs and other criminal enterprises. A March 23 New York Times story speculated that Mexican drug gangs or their affiliates are now active in some 230 U.S. cities, extending from Tucson, Arizona, to Anchorage, Alaska.¶ In short, America's multibillion-dollar demand for pot is **fueling the Mexican drug trade and much of the turf battles and carnage** associated with it. ¶ Same Old "Solutions"¶ So what are the administration's plans to quell the cartels' growing influence and surging violence? Troublingly, the White House appears intent on recycling the very strategies that gave rise to Mexico's infamous drug lords in the first place.¶ In March the administration requested $700 million from Congress to "bolster existing efforts by Washington and Mexican President Felipe Calderón's administration to fight violent trafficking in drugs . . . into the United States." These efforts, as described by the Los Angeles Times, include: "vowing to send U.S. money, manpower, and technology to the southwestern border" and "reducing illegal flows (of drugs) in both directions across the border." The administration also announced that it intends to clamp down on the U.S. demand for illicit drugs by increasing funding for drug treatment and drug courts.¶ There are three primary problems with this strategy.¶ First, marijuana production is a lucrative business that attracts criminal entrepreneurs precisely because it is a black-market (and highly sought after) commodity. As long as pot remains federally prohibited its retail price to the consumer will remain artificially high, and its production and distribution will attract criminal enterprises willing to turn to violence (rather than the judicial system) to maintain their slice of the multi-billion-dollar pie.¶ Second, the United States is already spending more money on illicit-drug law enforcement, drug treatment, and drug courts than at any time in our history. FBI data show that domestic marijuana arrests have increased from under 300,000 annually in 1991 to over 800,000 today. Police seizures of marijuana have also risen dramatically in recent years, as has the amount of taxpayer dollars federal officials have spent on so-called "educational efforts" to discourage the drug's use. (For example, since the late 1990s Congress has appropriated well over a billion dollars in anti-pot public service announcements alone.) Yet despite these combined efforts to discourage demand, Americans use more pot than anyone else in the world.¶ Third, law enforcement's recent attempts to crack down on the cartels' marijuana distribution rings, particularly new efforts launched by the Calderón administration in Mexico, are driving the unprecedented wave in Mexican violence—not abating it. The New York Times states: "A crackdown begun more than two years ago by

President Felipe Calderón, coupled with feuds over turf and control of the organizations, has set off an unprecedented wave of killings in Mexico. . . . Many of the victims were tortured. Beheadings have become common." Because of this escalating violence, Mexico now ranks behind only Pakistan and Iran as the administration's top international security concern.¶ Despite the rising death toll, drug war hawks at the U.S. Drug Enforcement Administration (DEA) remain adamant that the United States' and Mexico's "supply side" strategies are in fact successful. "Our view is that the violence we have been seeing is a signpost of the success our very courageous Mexican counterparts are having," acting DEA administrator Michele Lionhart said recently. "The cartels are acting out like caged animals, because they are caged animals." President Obama also appears to share this view. After visiting with the Calderón government in April, he told CNN he intended to "beef up" security on the border. When asked whether the administration would consider alternative strategies, such as potentially liberalizing pot's criminal classification, Homeland Security Secretary Janet Napolitano replied that such an option "is not on the table."¶ A New Remedy¶ By contrast the Calderón administration appears open to the idea of legalizing marijuana—or at least reducing criminal sanctions on the possession of small quantities of drugs—as a way to stem the tide of violence. Last spring Mexican lawmakers made the possession of personal-use quantities of cannabis and other illicit substances a noncriminal offense. And in April Mexico's ambassador to the United States, Arturo Sarukhan, told CBS's Face the Nation that legalizing the marijuana trade was a legitimate option for both the Mexican and U.S. governments. "[T]hose who would suggest that some of these measures [legalization] be looked at understand the dynamics of the drug trade," Sarukhan said.¶ Former Mexican President Vicente Fox recently echoed Sarukhan's remarks, as did a commission of former Latin American presidents. "I believe it's time to open the debate over legalizing drugs," Fox told CNN in May. "It can't be that the only way [to try to control illicit drug use] is for the state to use force."¶ Writing recently on CNN.com, Harvard economist and Freeman contributor Jeffrey Miron said that ending drug prohibition—on both sides of the border—is the only realistic and viable way to put a permanent stop to the rising power and violence associated with Mexico's drug traffickers. "Prohibition creates violence because it drives the drug market underground," he wrote. "This means buyers and sellers cannot resolve their disputes with lawsuits, arbitration or advertising, so they resort to violence instead. . . . **The only way to reduce violence**, therefore, **is to legalize drugs**."

Marijuana's key---legalization weakens the cartels sufficiently to allow current operations to succeed

Ioan **Grillo 12**, author, journalist, writer and TV producer based in Mexico City, has reported on Mexico and Latin American since 2001, "Hit Mexico's Cartels With Legalization", 11/1/12, NYT, http://www.nytimes.com/2012/11/02/opinion/hit-mexicos-cartels-with-legalization.html

Marijuana is just one of the drugs that the cartels traffic. Chemicals such as crystal meth may be too venomous to ever be legalized. But cannabis is a cash crop that provides **huge profits to criminal armies**, paying for assassins and guns south of the Rio Grande. The scale of the Mexican marijuana business was illustrated by a mammoth 120-hectare plantation busted last year in Baja California. It had a sophisticated irrigation system, sleeping quarters for 60 workers and could produce 120 metric tons of cannabis per harvest.¶ Again, nobody knows exactly how much the whole Mexico-U.S. marijuana trade is worth, with estimates ranging from $2 billion to $20 billion annually. But even if you believe the lowest numbers, legal marijuana would take billions of dollars a year away from organized crime. This would inflict more financial damage than soldiers or drug agents have managed in years and substantially weaken cartels.¶ It is also argued that Mexican gangsters have expanded to a portfolio of crimes that includes kidnapping, extortion, human smuggling and theft from oil pipelines. This is a terrifying truth. But this does not take away from the fact that the marijuana trade provides the crime groups with major resources. That they are committing crimes such as kidnapping, which have a horrific effect on innocent people, makes cutting off their financing all the more urgent.¶ The cartels will not disappear overnight. U.S. agents and the Mexican police need to continue battling hit squads that wield rocket-propelled grenades and belt-driven machine guns. Killers who hack off heads still have to be locked away. Mexico needs to clean up corruption among the police and build a valid justice system. And young men in the barrios have to be given a better option than signing up as killers.¶ All these tasks will be **easier if the flow of money to the cartels is dramatically slowed down**. Do we really want to hand them another trillion dollars over the next three decades?

--xt solves stability

Marijuana legalization causes a decrease in US crime – root cause of drug related violence is the use of illegal drugs, not the active THC ingredients

Ferner 14 [Matt, 3-27. *Legalizing Medical Marijuana May Actually Reduce Crime, Study Says.* http://www.huffingtonpost.com/2014/03/27/medical-marijuana-crime-study_n_5044397.html 7/12/15]//kmc

"We believe that medical marijuana legalization poses no threat of increased violent crime," Robert Morris, the study's lead author, told The Huffington Post. Morris, associate professor of criminology at UT Dallas, and his colleagues looked at crime rates for all 50 U.S. states from 1990 to 2006. During this period, 11 states legalized medical marijuana. The researchers examined legalization's effect on what the FBI calls Part I crimes, which include homicide, rape, robbery, aggravated assault, burglary, larceny and auto theft. **"After controlling for a host of known factors related to changes in crime rates** -- we accounted for factors such as poverty, employment, education, even per capita beer sales, among other things -- **we found no evidence of increases in any of these crimes for states after legalizing marijuana** for medical use," Morris said. "**In fact, for some forms of violence -- homicide and assault -- we found partial support for declines after the passing of this legislation."** Data for the study came from state websites, FBI Uniform Crime Reports, the census, The Bureau of Labor Statistics, The Bureau of Economic Analysis and the Beer Institute. The study did not explore a relationship between marijuana use and violent crime, Morris said. Rather, the research team looked at legalization's effect on crime. Other studies have failed to establish a link between marijuana use and crime. "The findings on the relationship between violence and marijuana use are mixed and much of the evidence points toward reductions in violent behavior for those who smoke marijuana," Morris said. "**In fact, researchers have suggested that any increase in criminality resulting from marijuana use may be explained by its illegality, rather than from the substance itself."** Other research suggests alcohol is a much more significant factor than marijuana when it comes to violent crime. A report from the National Institute on Alcohol Abuse and Alcoholism found that 25 percent to 30 percent of violent crimes are linked to alcohol use. A separate study in the journal of Addictive Behaviors noted that "alcohol is clearly the drug with the most evidence to support a direct intoxication-violence relationship," and that "cannabis reduces likelihood of violence during intoxication." The National Academy of Sciences found that in chronic marijuana users, THC -- the active ingredient in pot -- actually **causes a decrease in "aggressive and violent behavior."** Laws in 20 states and the District of Columbia allow marijuana for medical use. Colorado and Washington state have legalized marijuana for recreational use. About a dozen other states are likely to legalize marijuana in some form in the coming years. Michael Elliott, executive director of the Marijuana Industry Group, said he was pleased, but not surprised, by the new research. "As a trade association, we have supported the development of this comprehensive regulatory framework, including transparency, accountability, licensing, background checks, financial disclosures, seed to sale tracking, and consumer safety protections like packaging, labeling, and testing," Elliott said. "While this program is cumbersome for the small business owners in this industry, **it is far better than choosing black market operators who use violence to dominate the sale of marijuana and prey on our children."**

--xt: Solves econ

Drug violence via cartels endangers the US economy – only legalization solves

Tielemans 14 [Otto Raul, 6/16. Research Associate at the Council on Hemispheric Affairs. Authoritarianism On The Rise: The War on Drug's Erosion of Mexican Democracy. http://www.coha.org/authoritarianism-on-the-rise-the-war-on-drugs-erosion-of-mexican-democracy/ 7/13]//kmc

Mexico's progressive shift towards authoritarianism is not simply the result of the executive and military actively pursuing greater power; it is also the net result of a crippling economic environment and violent social atmosphere. Following a series of bank crises and global financial meltdowns, Mexico has been plagued with having to battle a series of economic catastrophes. Its economy has been estimated to have an annual GDP of $1.2 trillion USD, which is limited in its ability to expand due to the high cost of security that is needed for economic enterprises to operate within the country. According to some scholars, security expenditures add an additional 8 to 15 percent to business operations [24]. And although the Mexican government has been on an aggressive campaign to attract foreign investors to the country's burgeoning manufacturing sector, the fact of the matter is that the danger and high costs of business operations handicap economic prosperity. This, in combination with an increased level of militarized warfare, is estimated to decrease economic growth by approximately 1% [25]. The combination of these factors inhibits the government from creating jobs that would otherwise help employ some of the county's 6 million unemployed citizens. With more than 52 percent of the population living in extreme poverty, financial disparity makes the country's impoverished persons prime bait for drug cartels [26]. While dangerous, the hefty salary paid by organized crime ensures the loyalty and steady supply of countless workers. As it stands, drug cartels employ over half a million people in Mexico alone [27]. Their growing network of well-paid criminals not only ensures a steady flow of narcotics to North America and Europe, but also guarantees the perpetuation of the War on Drugs by having citizens feed into the very system that the Mexican government is attempting to dismantle. Due to the increasing scope of the conflict, the government is likely to restrict civil liberties and continue to endow the executive and military with relatively unchecked powers in order to resolve the issue at hand. This erosion of liberal democratic values, regardless of good intentions, will ensure the growth of authoritarianism in a country whose history is blotched with right-wing dictatorships and vast periods of oppression. The War on Drugs is approaching a decade of violence with increasing evidence that the endless violence is setting the stage for antidemocratic governance to engulf the country. With reports citing an approximate 1.6 million people as having been displaced, momentum has grown within the public to equip the government with the power necessary to end the drug cartels' reckless actions [28]. Polls from 2012 demonstrate that 80 percent of the Mexican population supports using the army to combat drug violence [29]. Studies show that almost three in every four individuals (73 percent) viewed the military positively in 2012. Moreover, trust in national government leaped from 54 to 65 percent between 2011 and 2012 [30]. With the average citizen demonstrating an increased sense of trust in their government and the armed forces, civil society has overwhelmingly rejected the notion of defending human rights and basic liberties. As a matter of fact, the argument could be made that the Mexican public has decided to trade basic liberties for security. Especially with one-third of the population being in favor of having the United States send troops to Mexico, sovereignty and civil liberties are viewed as insignificant by a considerable number of the Mexican populace when it comes to combating unmanageable levels of violence [31]. Finally, ambitious politicians and power-hungry military leaders are not the only catalyst in Mexico's reactionary shift towards an illiberal democracy. The government's failure to create an adequate number of jobs, in addition to prolonged warfare between government forces and criminal organizations, has driven desperate citizens into fostering a climate that favors the deterioration of democratic values in exchange for a perceived sense of security. Prospects For A Better Tomorrow? Mexico is cursed by its geography. Although blessed with vast oil reserves, the fact that the country is nestled between the United States (the world's largest consumer of illegal drugs) and South America (a region of vast narcotic production) ensures that it is constantly battling with drugs trafficking across its borders [32]. Needless to say, U.S. pressures to dismantle the operations of drug producers, in addition to social unrest, puts the Mexican government in a difficult position. While everyone who loves Mexico wants to see it flourish as a developed country, the fact is until Mexico can attract investments, create a greater number of jobs, and restore social tranquility; it is inevitable that criminal organizations will continue to prey on impoverished and poorly educated persons. These shortcomings will only add to the conflict, resulting in continued violence and countless fatalities. It is highly unlikely that Mexico's War on Drugs will be resolved in the near future. If violence does subside, then the country will have a much easier task addressing issues of

wealth disparity, lackluster education, and poor labor conditions. Sadly, the reality of the situation is that violence will continue and the government will actively attempt to grant itself with greater, unchecked powers to combat the problem. Doing so will inevitably dismantle what remains of the country's democratic fabric and condemn the nation and its people to oppression by corrupt government officials.

Mexican economy key to US economic stability

Buck 12 [Stephanie, 6-20. *Why You Should Care About Mexico.* http://www.cipe.org/blog/2012/06/20/why-you-should-care-about-mexico/#.VaLHmJNVikp 7/12]//kmc

In addition to providing each other with important export markets, **the Mexican and US economies are becoming increasingly integrated in ways that blur traditional understandings of trade.** The regional supply chains of US companies criss-cross the US-Mexico border, meaning that Mexico and the US work together to manufacture goods that are eventually sold on the global market. For example, cars built in North America may cross the border as many as eight times as they are being produced. In other words, the US and Mexico are more than just neighbors. Economic interdependence, shared cultural heritage, and grim security issues **that both countries must face together mean that what happens in Mexico affects the US in more ways than just immigration and drug trafficking**. Mexico's economic, political, institutional, social, and security challenges are all interconnected: whoever wins the Mexican presidential elections on July 1 will have to face a myriad of complex problems. He or she will help set policies that will both directly and indirectly affect everyone from US business leaders to migrant workers to white suburban teenagers. **A Mexico that is fully equipped with leaders who can help navigate the process to the reforms the country needs is an even more important economic and political ally that can help increase prosperity throughout the region. This is not a zero-sum game. If Mexico flourishes, the US will also flourish.**

at: Links to politics

Avoids the link to politics – states and bipart agreement will take the heat for legalization, not Obama

Ferber 6/16 [Matt, 2015. *Obama: If Enough States Decriminalize Marijuana, Congress May Change Federal Law*. http://www.huffingtonpost.com/2015/03/16/obama-marijuana-decriminalization_n_6881374.html 7/12]//kmc

President Barack Obama said if enough states reform their marijuana laws, Congress may change federal law that continues to make the drug illegal. Obama, during an interview with Vice Media co-founder Shane Smith released in full on Monday, said **he's encouraged that liberal Democrats and conservative Republicans seem to agree that current U.S. marijuana laws don't make sense.** "We may be able to make some progress on the decriminalization side," Obama said. "At a certain point, **if enough states end up decriminalizing,** then Congress may then reschedule marijuana." Last week, Sens. Cory Booker (D-N.J.), Rand Paul (R-Ky.) and Kirsten Gillibrand (D-N.Y.) introduced a bill that would reclassify marijuana from a Schedule I drug, which has high potential for abuse and no medical value, to a Schedule II drug, which has lower potential danger and recognized medical benefits. Nineteen states and the District of Columbia have decriminalized the possession of small amounts of marijuana for personal use. Twenty-three states have legalized marijuana for medical purposes. Four states, as well as D.C., have legalized recreational marijuana. "I'd separate out the issue of criminalization of marijuana from encouraging its use," Obama said. "I think there's no doubt that our criminal justice system, generally, is so heavily skewed towards cracking down on non-violent drug offenders that it has not just had a terrible effect on many communities -- particularly communities of color -- rendering a lot of folks unemployable because they got felony records, disproportionate prison sentences. It costs a huge amount of money to states and a lot of states are figuring that out. **"But what I'm encouraged by is you're starting to see not just liberal Democrats, but also some very conservative Republicans recognize this doesn't make sense -- including the libertarian wing of the Republican Party."** Obama cautioned that legalization or decriminalization of marijuana, or any other substance, isn't a panacea. "I think there is a legitimate concern about the overall effects this has on society, particularly vulnerable parts of our society," Obama said. "Substance abuse generally, legal and illegal substances, is a problem. Locking somebody up for 20 years is probably not the best strategy, and that is something we have to rethink as a society as a whole."

cp will be perceived as bipart – means Obama won't need to push

Angell 7/8 [Tom, 2015. Tom Angell is the founder and chairman of Marijuana Majority, and serves as media relations director of Law Enforcement Against Prohibition. Before joining LEAP's staff, Tom worked for six years with Students for Sensible Drug Policy, first as a student chapter leader and then as a national staffer. *House Bill Creates New Federal Category for Marijuana Research.* http://www.marijuana.com/blog/news/2015/07/house-bill-creates-new-federal-category-for-marijuana-research/ 7/15]//kmc

Some of the biggest supporters and opponents of marijuana law reform in Congress are teaming up on **new bipartisan legislation** that would create a new category of federal law to regulate cannabis research.ð The proposal, which is an amendment to a larger bill aimed at accelerating the development of new medicines, would set up a new section of the Controlled Substances Act, called Schedule I-R, that is "designed to facilitate credible research on the medical efficacy of marihuana."ð It also includes a "Sense of Congress" clause calling on the National Institutes of Health and the Drug Enforcement Administration to collaborate on studying the benefits and risks of using marijuana as a medical treatment.ð Sponsoring the amendment is a collection of strange bedfellows from both

parties, including Rep. Andy Harris (R-MD), who led unsuccessful efforts to block Washington, D.C. from implementing its marijuana legalization and decriminalization laws, and Rep. Earl Blumenauer (D-OR), who is the chief author of bills aimed at increasing military veterans' access to medical cannabis and providing fair tax rates for state-legal marijuana businesses. Also signed on are Rep. Sam Farr (D-CA), who co-led successful efforts to pass amendments prohibiting the Department of Justice from spending money to interfere with state medical marijuana laws, and Rep. Morgan Griffith (R-VA), who is the lead sponsor of legislation to allow use of cannabidiol-rich marijuana strains by children suffering from severe seizure disorders.∂ "Given the widespread use of medical marijuana, it is imperative that doctors better understand how it can be used to treat different people and conditions, as well as the risks involved," Rep. Blumenauer told Marijuana.com. "Our amendment shows members of Congress with widely varying views on marijuana policy are united in support of building a robust body of scientific information on medical marijuana."

Pc isn't key – interest groups and bipart efforts will push the cp through Congress

Hermes 15 [Kris, 3/10. *US Senators Introduce Unprecedented, Sweeping Bipartisan Medical Marijuana Bill Aimed at Protecting Patients*. http://www.thedailychronic.net/2015/41463/us-senators-introduce-unprecedented-sweeping-bipartisan-medical-marijuana-bill-aimed-at-protecting-patients/ 7/15]//kmc

WASHINGTON, DC — Comprehensive medical marijuana legislation was introduced Tuesday in the United States Senate for the first time in the country's history.∂ Senators Rand Paul (R-KY), Cory Booker (D-NJ), and Kirsten Gillibrand (D-NY) introduced the Compassionate Access, Research Expansion, and Respect States (CARERS) Act to end the federal prohibition on medical marijuana and allow states to set their own policies.∂ The CARERS Act is endorsed by several advocacy groups including Americans for Safe Access (ASA), which helped Senate authors develop the legislation.∂ The CARERS Act will reclassify marijuana for medical use, overhaul the banking laws so as not to punish licensed businesses, allow veterans to have access to medical marijuana, and eliminate current barriers to research.∂ Currently, twenty-three states and the District of Columbia have adopted medical marijuana laws, and another twelve states have adopted laws allowing for the consumption of a specific form of cannabis known as Cannabidiol or CBD commonly used to treat seizure disorders.∂ Despite the passage of medical marijuana laws in more than half of the United States, it remains illegal under federal law. Because of this, qualified patients who use medical marijuana in compliance with state law are still at risk of federal enforcement, as are dispensary owners and government regulators.

Census CPs

**Eliminate the Census

Text: The United States federal government should eliminate the census.

The process of naming that the census creates is bad—their author agrees that getting rid of it would solve better than the aff.

Mezey, 03- (Naomi Mezey is an Associate Professor of Law, Georgetown University Law Center) "Erasure and recognition: The census, race and the national imagination" Northwestern Law Review Vol. 94. Issue 4, Summer 2003, NU Law Publishinh, Proquest, //droneofark

One of the most effective ways in which the law calls people into being is by naming them. But it also unnames people, sometimes consciously, sometimes just as a necessary consequence of naming others. To the extent that law enforces some identities, it "unmakes" others.379 So it is with the census. By making and using some racial categories, the census effectively undoes other categorical possibilities. One of the reasons Asian Americans have lobbied to retain a list of specific national origins on the census form is so that the naming of Asians as Asians does not unname Chinese, Samoans, and Vietnamese.380 By failing to recognize a multiracial category, OMB incidentally unnamed those who understand themselves as multiracial. But the Census Bureau unnamed (or renamed) them more overtly by officially calling those who report more than one race "The Two or More Races Population." This is akin to the South African practice of calling African, colored, and Indian people "previously disadvantaged individuals."381 Of course, in naming themselves, groups must create and enforce boundaries of their own, and this is no less true of those within the multiracial movement who have keenly felt the boundaries of other groups.382 The census, by naming and counting, is engaged in a powerful business. "To ask some questions is to sacrifice others. The boundaries of official inquiry are the statistical counterpart to the boundaries of the political agenda; and it is an elementary point of political analysis that the control of such boundaries is a critical face of power."383 Official questions and government classifications are powerful in both creative and repressive ways. They create deep cognitive commitments as well as provide avenues of control. "Official categories may help to constitute or divide groups and to illuminate or obscure their problems and achievements."384 Official categories name, and by naming unname. They recognize, and through recognition erase. While ultimately I agree with David Theo Goldberg that, as paradoxical as it seems, we need "to count by race in order to undo racial counting,"385 the narrative of this Article is not directed toward a decision about whether race counting by the census is, on balance, worth it. Just as rights entail regulation and repression,386 just as culture constrains,387 I have attempted to show how legal and regulatory regimes that recognize identity also erase it. The census, as a powerful legal mechanism, has played a crucial role in affirming and disciplining groups, in making and unmaking, and in naming and unnaming the boundaries of group and national identity.

**Optional Category CP

Text: The United States federal government should make the race portion of the census optional.

The CP would solve polyculturalism better—the inclusion of the racial category has helped different racial groups form a common identity to be recognized which has the power to affirm identity

Mezey, 03- (Naomi Mezey is an Associate Professor of Law, Georgetown University Law Center) "Erasure and recognition: The census, race and the national imagination" Northwestern Law Review Vol. 94. Issue 4, Summer 2003, NU Law Publishinh, Proquest, //droneofark

Needless to say, the modern census classifications of race, like the nineteenth century classifications before them, have influenced the meanings and politics of race. Historian David Hollinger has called Statistical Directive 15 "the single event most responsible for the lines" that configure our understanding of race, an understanding which he calls the ethno-racial pentagon of African American, Asian American, Native American, Hispanic, and white.272 Other scholars mark Directive 15 as the point when "the use of racial classification shifted from one of exclusion to one of explicit inclusion of specific groups."273 In this context, where the census is one of the primary vehicles for the distribution of certain group protections and entitlements based on race, one sees the strategic investment in the politics of enumeration for many groups in the modern welfare state. The engagement with the politics of enumeration has been not only strategic, but also deeply symbolic for some communities of identity. The symbolic consequences of census inclusion might also be said to derive from the civil rights movement in the sense that it helped give rise to identity politics and multiculturalism, movements in their own right which spawned claims for "official" recognition by many groups. These recognition claims were often made on the basis of color, but as often served as a proxy for culture.274 With the demise of scientific accounts of racial difference, and the ascendancy of social and political explanations,275 identity politics became the arena in which communities and individuals alike struggled for cultural recognition by society at large. As Charles Taylor has made clear, identities are always dialogical, forged through interactions and relationships with others, and in that sense they rely on recognition by others (and conversely, can be harmed by misrecognition by others).276 In this way, identity politics emphasized the need to be affirmed by others and the overriding value of recognition by the state, itself symbolic of national inclusion. Thus the census has been an important mechanism for symbolic inclusion in the nation, quite apart from the material consequences of being counted that have inspired the strategic push for inclusion by groups. However, it is important to note that precisely because identities do not have an independent existence, but rather depend on social and cultural acknowledgment to be called into being, the race categories on the census have always played a dual role: of recognizing identity and also of conferring it. As Sharon Lee has observed, "One function of official race classifications is to create a sense of group membership or even community where there had been none before."277 Lee points to the way in which the creation of an official category coalesces a group that may not have understood itself as a group before, or at least was not commonly understood to be a group. For example, "the social construction of a pan-ethnic racial group called White served to minimize ethnic differences among the numerous European ethnic groups while fostering a common racial identity. It also hardened the division between White and Others."278 More recently, the census classification of Asian has had a similar effect of creating, among heterogeneous groups of Asian descent, a common pan-ethnic identity through which people have come to see themselves and others.279 This was also true much earlier of counting the Chinese as Chinese; it created a Chinese identity for people who had not necessarily thought of themselves that way before, and it created a Chinese race, which at least for a time did not include other Asians.280 The National Academy of Sciences report on federal race classification similarly claims that it was the Census Bureau's use of the then uncommon designation of "Hispanic" in the early 1970s that led to its wide circulation and use as an identity referent.281 As that report attests, "[t]here is a symbiotic relationship between categories for the tabulation of data and the processes of group consciousness and social recognition, which in turn can be

reflected in specific legislation and social policy."[282] Because official recognition has the power, not just of acknowledging an identity that already exists, but of conferring or solidifying an identity around a particular set of characteristics, it is not surprising that the census became one of the grand prizes in the politics of identity. More surprising is the easy assumption many make that recognition has effectively displaced erasure as the motivation for enumeration. Certainly the current rhetoric of inclusion adopted by the state has appeared to change the stakes of counting. But just as exclusion depends on categorical recognition, so categorical recognition depends on exclusions: every group that is officially identified as such creates new axes of visibility and power, and new erasures as well. Thus, it is somewhat ironic that roughly 100 years after first counting the Chinese in a retributive act of erasure, the census has become the principle vehicle of official recognition in the politics of identity and in political accounting.

**Ban Racial Profiling

Text: The United States federal government should extend the Justice Department's rules for racial profiling to all government agents.

Profiling is the basis for race-based discrimination- not allowing the government to profile solves for greater state-based instances of racism.

Horwitz, 14- (Sari Horwitz covers the Justice Department and criminal justice issues nationwide for The Washington Post) "Justice Dept. announces new rules to curb racial profiling by federal law enforcement" The Washington Post, December 8, 2014, https://www.washingtonpost.com/world/national-security/justice-dept-to-announce-new-rules-to-curb-racial-profiling-by-federal-law-enforcement/2014/12/07/e00eca18-7e79-11e4-9f38-95a187e4c1f7_story.html //droneofark

The Obama administration on Monday formally announced long-awaited curbs on racial profiling by federal law enforcement, but the new rules will not cover local police departments, which have come under criticism in recent months over allegations that their officers profile suspects. Attorney General Eric H. Holder Jr. expanded Justice Department rules for racial profiling to prevent FBI agents from considering gender, national origin, religion, sexual orientation and gender identity, in addition to race and ethnicity, when opening cases. The department also is banning racial profiling from national security cases for the first time. Holder's revised policy covers state and local law enforcement officers while they participate in federal law enforcement task forces. But it is considered only guidance for police officers in state and local departments. The profiling rules come at a time of racial tension around the country after the recent deaths of three African Americans at the hands of police in Ferguson, Mo., New York and Cleveland, and the absence of criminal charges against the white police officers who were involved. "As attorney general, I have repeatedly made clear that profiling by law enforcement is not only wrong, it is profoundly misguided and ineffective," Holder said. "Particularly in light of certain recent incidents we've seen at the local level, and the widespread concerns about trust in the criminal justice process, it's imperative that we take every possible action to institute strong and sound policing practices." A Justice Department official said the goal is for federal law enforcement agencies to "model" these policies, proving to state and local authorities that successful policing does not require profiling. Holder held a conference call Monday with local law enforcement leaders to brief them on the policy and encourage them to adopt it. "At this historic moment in our nation's race relations, the release of this revised guidance is an important signal of progress, but it does not completely address the need for reform of policing tactics at the state and local level," said Laura W. Murphy, director of the American Civil Liberties Union's Washington legislative office. The rules also apply for the first time to many activities at the Department of Homeland Security, including all Immigration and Customs Enforcement civil immigration enforcement, U.S. Coast Guard law enforcement activities, Border Patrol activities not near the border, DHS officers protecting government buildings and federal air marshals. But DHS officials will not be covered by the new racial profiling ban when they screen airline passengers and guard the country's Southwestern border. Customs and Border Protection, for example, still will be allowed to use profiling when conducting screenings and inspections at the country's ports of entry and interdictions of travelers at the border, government officials said. Secret Service protective activities also will not be covered by the rules. "Having a particular skin color, religious belief or last name is not a crime," said Rajdeep Singh, director of law and policy at the Sikh Coalition, the largest Sikh American civil liberties organization. "This is not a 50-50 issue. The Obama administration can either ban profiling or allow it. It sounds like they're committed to allowing it." A fact sheet on the policy said that some DHS activity is not covered by the policy because of the "unique nature of DHS's mission." "This does not mean that officers and agents are free to profile," according to the DHS fact sheet. "To the contrary, DHS's existing policies make it categorically clear that profiling is prohibited, while articulating limited circumstances where it is permissible to rely in part on these characteristics, because of the unique nature of border and transportation security as compared to traditional law enforcement." President George W. Bush banned racial profiling in 2003, but the prohibition did not apply to national security investigations and covered only race — not religion, national origin, gender or sexual orientation and gender identity. Civil rights groups and Democratic lawmakers have pushed for expanded anti-profiling protections since

President Obama was elected in 2008. Holder began the process to revamp the rules in 2009 and considers the new policy one of the signature accomplishments of his tenure. About six months ago, the Justice Department delivered the rules to the White House. But they applied only to the department, and White House officials wanted the polices to cover additional agencies. The rules have been delayed in part because DHS officials pushed the White House and the Justice Department to allow major exclusions for agencies such as the Transportation Security Administration, Immigration and Customs Enforcement, and Customs and Border Protection. In several high-level meetings, DHS Secretary Jeh Johnson argued that immigration and customs agents and airport screeners needed to consider a variety of factors to keep the nation safe, according to officials familiar with his personal efforts. TSA officials argued that the rules should not apply to them because the TSA is not a law enforcement agency. In its fact sheet, DHS officials said that they will review activities not directly covered by the guidance to ensure that "we are including every appropriate safeguard and civil rights protection in the execution of those important security activities, and to enhance our policies where necessary." But that was not enough assurance for civil liberties advocates. "It's baffling that even as the government recognizes that bias-based policing is patently unacceptable, it gives a green light for the FBI, TSA and CBP to profile racial, religious and other minorities," the ACLU's Murphy said. "This guidance is not an adequate response to the crisis of racial profiling in America."

**Gender Categories CP

Text: The United States federal government should

- **repeal the REAL ID Act and eliminate the requirement for listing gender on driver's licenses and state ID cards.**

- **further update the passport gender marker policy to allow for certification of gender change by licensed therapists, psychologists, and nurse practitioners, and to eliminate remaining burdensome procedural requirements.**

- **eliminate computer matching of gender data in all remaining data-matching programs.**

- **issue an updated Model State Vital Statistics Act that provides for gender change on birth certificates based on certification from a mental health or medical provider, without proof of specific medical or surgical procedures and without a court order**

- **should review all new government forms and updates to forms to eliminate collection of gender data in cases where it does not serve a clear programmatic purpose.**

The aff can't account for the ongoing violence done to groups outside of the census—the cp solves for greater polycultural efforts.

National Center for Transgender Equality, 15- (the nation's leading social justice advocacy organization winning life-saving change for transgender people.) "A Blueprint for Equality: Documents and Privacy (2015)" Transequality.org, 2015 http://transequality.org/issues/resources/a-blueprint-for-equality-id-documents-and-privacy-2015 //droneofark

In today's world, identification documents are needed to travel, open bank accounts, start new jobs, purchase alcohol, and even to purchase some cold medicines. Recent voter suppression efforts by some state legislatures have made voting an activity in which trans people without accurate ID may face unfair difficulties. Historically, state and federal governments have imposed intrusive and burdensome requirements—such as proof of surgery and court orders—that have made it impossible for many trans people to obtain accurate and consistent ID. For many people, financial barriers, medical contraindications or simply a lack of medical need for surgeries make these requirements impossible to satisfy. As a result, out of those National Transgender Discrimination Survey respondents who had transitioned, only one-fifth (21%) had been able to update all of their IDs and records with their new gender. One-third (33%) had not updated any IDs or records. At the time of the survey, only 59% had been able to update their gender on their driver's license or state ID; 49% had updated their Social Security Record; 26% their passport; and just 24% their birth certificate.1 The survey results also confirmed what most trans people already knew—that gender-incongruent identification exposes people to a range of negative outcomes, from denial of employment, housing, and public benefits to harassment and physical violence.2 Because of the work done by NCTE and activists around the country, this trend is now reversing quickly. About half of states no longer impose such burdensome requirements for driver's licenses and state IDs and growing numbers are streamlining procedures. NCTE has worked with the American Association of Motor Vehicles Agencies to educate state agencies about current best practices. Since 2010, onerous requirements for gender change on federal documents and records such as passports and green cards have also been eliminated. State-level efforts have won improvements in birth certificate laws and policies in California, Oregon, New York, Connecticut, Maryland, Vermont, Washington State and the District of Columbia. These developments represent a growing recognition that older, more restrictive policies have served little, if any, purpose, and that reasonable policies enabling everyone to obtain accurate and consistent ID best serve both government agencies and individuals. There is still more to do, however. While eliminating the most draconian requirements for ID change, many existing federal

and state policies are still unduly burdensome in requiring medical certifications from physicians, rather than accepting certifications from therapists or other non-physician health providers, or simply from the individuals themselves. In addition to ID documents, other government records and programs unintentionally cause the disclosure of information about a person's transgender status without their consent. Chief among these are computer matching programs used by the Social Security Administration (SSA) for identity verification, which have outed individuals when gender data is inconsistent between records. In response to NCTE's efforts, SSA announced in 2011 that it would halt gender matching in its Social Security Number Verification System, the largest matching service used by private employers. This change alone has prevented workplace problems for many trans people. However, automated gender matching has not yet been eliminated in other SSA programs used to share data with state programs and other entities. Government should not needlessly compel the disclosure of a person's medical history or transgender status. The federal government has taken important steps to end these problems and should act promptly to modernize and harmonize policies across agencies. Ultimately, listing gender on driver's licenses, state ID cards and many other documents is simply unnecessary and should be eliminated.

--xt: solvency

The CP solves

National Center for Transgender Equality, 11- (the nation's leading social justice advocacy organization winning life-saving change for transgender people.) "Policy Brief: Birth Certificate Gender Markers" Transequality.org, 2011 http://transequality.org/issues/resources/a-blueprint-for-equality-id-documents-and-privacy-2015 //droneofark

A birth certificate is an important document used to prove one's identity and citizenship. For those who can afford one, a passport can serve the same purposes. However, the ability to change one's sex designation on birth certificates remains an important issue for many transgender people. As lawyers at Lambda Legal point out, states have varying procedures for updating these documents, and a few actually prohibit changing the gender marker on birth certificates. Many states model their policies for amending birth certificates on the Model Vital Statistics Act and Regulations (or Model Law). Currently being revised, the Model Law is developed by consultation between the state and federal governments and was last updated in 1992. The Model Law is intended to be a guide for states, so that states can model their own vital statistics laws and regulations after its suggestions. What's wrong with these laws? The 1992 Model Law says that a person wanting to change their sex on their birth certificate should present a court order certifying that their sex "has been changed by surgical procedure." There are three problems with this approach, which many states still use. First, the requirement of a court order can create a barrier to those transgender people who don't have enough money to hire a lawyer or who don't have enough knowledge to navigate the legal system on their own. Also, some courts are hesitant to issue orders amending birth certificates that were issued by another state, creating problems for transgender people who want to change their birth certificate after they move away from the state where they were born. Second, the Model Law's requirement of "a surgical procedure" in every case is at odds with the medical community. The World Professional Association for Transgender Health (WPATH) recognizes that different patients will have different medical needs. Surgical treatments may be necessary and appropriate for some transgender individuals, but not for others. The Model Law' ignores the differing needs of transgender communities. Third, the Model Law does not say what the new birth certificate should look like after the proper documentation is submitted. Ideally, the state would create a new birth certificate that reflects the amended gender, and some states do this. However, other states simply change the existing birth certificate, issuing one that shows the previous gender, while others designate on the new birth certificate that the gender has been changed. These approaches out transgender people whenever birth certificates are used to verify their identity. NCTE's Proposal: An updated version of the Model Law is currently being developed by a group of state officials coordinated by the National Center for Health Statistics (a part of the CDC). NCTE and allies have been advocating with NCHS to change this outdated and restrictive policy about amending birth certificate sex designation. Specifically, NCTE has suggested that NCHS make three changes in its revisions of the Model Law based on approaches developed by some states and federal agencies. The revised Model Law should allow people to change the sex designation on their birth certificate by submitting the required documentation directly to the vital statistics agency, rather than requiring a court proceeding. This will eliminate the unnecessary costs and other obstacles sometimes associated with going through the state court systems. The revised Model Law should not require proof of specific medical procedures in order to amend birth certificates. Instead, the Model Law should reflect contemporary standards of care, and require only that an individual's physician certify that the individual has completed the treatment the physician deems necessary to achieve gender transition. This change would recognize that different people have different medical needs, and avoid disclosure of any confidential medical information. The revised Model Law should make clear that a new birth certificate should be issued after an individual presents the proper documentation, rather than a birth certificate that shows the original gender designation or states that the gender has been changed. These recommendations reflect a growing trend in state and federal policies. The Department of State modernized its policy on passports in 2009, and the policy for "Consular Reports of Birth Abroad," which are federal birth certificates for U.S. citizens born outside of the U.S., also no longer requires proof of surgery. Recent legislation in Vermont adopted the same approach for that state's birth certificates, and a similar bill is being considered in California. NCTE will continue to advocate for these changes in the new Model Law, and support the work of activists at the state level. Ensuring that transgender people are able to change their identity documents to reflect their gender identity is a major priority for NCTE.

Human Rights NB-_Can be used for any gender cp

The net benefit is human rights—not specifying gender allows trans people the basic human rights of recognition that cisgender people aren't subject to.

Cray and Harrison, 12- (Andrew Cray is a Research Associate for LGBT Progress at the Center for American Progress. Jack Harrison is Manager of the Policy Institute at the National Gay and Lesbian Task Force.) "ID Accurately Reflecting One's Gender Identity Is a Human Right" Center for American Progress, December 18, 2012 https://www.americanprogress.org/issues/lgbt/report/2012/12/18/48367/id-accurately-reflecting-ones-gender-identity-is-a-human-right/ //droneofark

This past week our nation joined others around the globe in celebrating International Human Rights Day, which marked the 64th anniversary of the U.N. Declaration of Human Rights, signed on December 10, 1948. This document declares that "inherent dignity" and "equal and inalienable rights" are the foundation for a just, peaceful, and free world. Decades later these principles continue to guide human rights policies established around the world, acting as a foundation for the evolving global understanding of what it means to acknowledge the equality of all people. Transgender people, however, continue struggling to attain this innate right to dignified treatment and equality. As the Council of Europe's Commissioner for Human Rights has stated, "It is clear that many transgender persons do not fully enjoy their fundamental rights both at the level of legal guarantees and that of everyday life." One way in which transgender people have struggled is in accessing identity documents that provide legal recognition of their gender identities. The failure of governments to acknowledge the gender identities of all people represents a rejection of the fundamental rights of self-determination, dignity, and freedom. Moving forward as a global community, it is essential that all people—transgender or not—be given access to official documents that accurately reflect each individual's gender identity and that respect the rights belonging to each of us as humans. The daily importance of identity documents Having access to identity documents is important because of the very reason they are taken for granted: They are an integral part of daily life in most cultures. Identity documents are needed for many activities of daily life—working, voting, traveling, accessing government institutions, and proving that one is who one claims to be. Yet for many transgender people, accessing this basic proof of identity is out of reach, pushing them further into the margins of society. Historically, many obstacles have been placed in the way of obtaining accurate ID. For many transgender people, these financial, medical, and legal barriers are impossible requirements to satisfy. Adding an additional layer of complexity to this landscape is the wide variety of identity requirements that citizens are required to have in many countries. In the United States alone, for example, most people need consistent access to accurate birth certificates, driver's licenses, passports, and social security cards. The requirements for these documents are set by different levels of government—both federal and state—often require different standards for amending the information they reflect, and utilize different administrative processes for amendment. The two most common forms of identity documents used by people across the globe, however, are birth certificates and passports. There is currently no international standard for verifying or amending the information contained on birth certificates. Moreover, the standards that are in place are set by each nation or by sub-jurisdictions within that nation. Similarly, standards for passport documentation are set at the national level. Passports, however, are subject to a foundational set of international standards established by the International Civil Aviation Organization. The standards set by this organization dictate that passports must include an individual traveler's name, date of birth, nationality, and sex. In the "sex" field, the standards dictate that permissible options are "M" for male, "F" for female, or "X" for unspecified gender. Countries, therefore, are given significant leeway to establish policies that affirm the identities of transgender and gender nonconforming citizens, and this flexibility should be exercised in a way that protects the human rights of the diverse people in each nation. Transgender people face significant consequences from policies preventing access to accurate identification When a government agency is unwilling to issue identification that reflects a person's identity, they are making a value judgment on the legitimacy of that identity and, as an extension, on an individual's right to citizenship. Yet being forced to live, move, and contribute in society without accurate, updated identification have impacts for transgender people that go far beyond an administrative lack of access. Presenting inaccurate identification all too often becomes a trigger for various forms of abuse and discrimination. Transgender people who may otherwise move through the world undetected by those who would discriminate against them are often "outed"

by an old gender marker, an old name, or an old photograph. The results of the National Transgender Discrimination Survey, conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, reveal how common these outcomes are in the United States. Forty percent of respondents who reported presenting ID that did not match their gender identity experienced harassment—3 percent were physically assaulted and 15 percent were asked to leave the premises where the ID had been presented. Furthermore, those respondents who were unable to update their driver's licenses reported much higher rates of discrimination in hiring and housing. Even when antitransgender bias is not specifically at play, a perceived mismatch between an individual and the information on a presented ID can trigger heightened scrutiny and create barriers to accessing services and spaces. This has been the case for many transgender voters in the United States. Leading up to the 2012 presidential election, Jody Herman, Peter J. Cooper public policy fellow at the Williams Institute at the University of Los Angeles School of Law, estimated that as many as 25,000 transgender voters in states with strict photo ID voter requirements could be disenfranchised, not just because of antitransgender bias but also because they simply may not have appeared to be the person on their ID. Transgender people are frequently subjected to excessive requirements to access accurate identity documents Many countries impose restrictive standards that require individuals seeking recognition of their gender to undergo unnecessary or unwanted medical procedures. In other countries, transgender people may be barred in some situations from changing their identity documents to accurately reflect their gender. And some places, including some jurisdictions in the United States, bar transgender people from changing their legally recognized gender under any circumstances. These are the harsh realities felt by transgender people throughout many parts of the world.

The cp solves the net benefit

Cray and Harrison, 12- (Andrew Cray is a Research Associate for LGBT Progress at the Center for American Progress. Jack Harrison is Manager of the Policy Institute at the National Gay and Lesbian Task Force.) "ID Accurately Reflecting One's Gender Identity Is a Human Right" Center for American Progress, December 18, 2012 https://www.americanprogress.org/issues/lgbt/report/2012/12/18/48367/id-accurately-reflecting-ones-gender-identity-is-a-human-right/ //droneofark

United States: Placing barriers to birth certificate changes, including outright prohibition U.S. states are permitted to set their own policies for the amendment of birth certificates, which creates a divided system of policies between state and federal identification documents. Even more confusing is the wide variation in state standards. First, some states issue entirely new birth certificates upon amendment, whereas others offer amended birth certificates, which make it apparent that an individual's gender has been changed, triggering privacy and safety concerns for many transgender people. Among those states offering some option for changing the gender marker indicated on a birth certificate, standards can range from having no requirement for specific medical treatments to requirements relating to genital surgery. The result is a system where a person would be eligible to have their birth certificate amended in one state but deemed ineligible to do so if they had born in a neighboring state. These arbitrary variations between state standards, however, are not the most disconcerting aspect of birth certificate policies in the United States. Most egregious are the states that refuse to issue amended birth certificates altogether. Though several states in practice refuse to allow transgender people access to birth certificates that accurately reflect their gender identity, Tennessee is the only state that has a statute specifically prohibiting the amendment of birth certificates for transgender people. But regardless of how these policies have been adopted, the intent and the effect are the same: Transgender people are specifically and intentionally isolated from the processes available to others to obtain accurate identity documentation. Thankfully, however, many jurisdictions in many countries have moved beyond discriminatory policies targeting transgender people to offer more equitable access to IDs that correspond with an individual's gender identity.

**Abolish Race on Birth Certificates CP

Text- The United States federal government should abolish the race portion of United States birth certificates.

The cp solves for state control and discrimination

Kertzer and Arel, 02- (David Kerzer is the Paul Dupee University Professor of Social Science and Professor Anthropoligy and Italian Studies at Brown University—Dominique Arel is Assistant Professor at the Watson Institute for International Studies at Brown University.) "Politics of Race, Ethnicity, and Language in National Census" p. 3-4, Cambridge University Press, 2001, print,//droneofark

The emergence of nationalism as a new narrative of political legitimacy required the identification of the sovereign "nation" along either legal or cultural criteria, or a combination of both. The rise of colonialism, based on the denial that the colonized had political rights, required a clear demarcation between the settlers and the indigenes. The "Others" had to be collectively identified. In the United States, the refusal to enfranchise Blacks and native Americans led to the development of racial categories. The categorization of identities became part and parcel of the legitimating narratives of the national, colonial, and "New World" state. States thus became interested in representing their population, at the aggregate level, along identity criteria. The census, in this respect, emerged as the most visible, and arguably the most politically important, means by which states statistically depict collective identities. It is by no means the sole categorizing tool at the state's disposal, however. Birth certificates are often used by states to compile statistics on the basis of identity categories. These include ethnic nationality (a widespread practice in Eastern Europe); mother tongue, as in Finland and Quebec (Courbage 1998: 49); and race, in the United States (Snipp 1989: 33). Migration documents have also, in some cases, recorded cultural identities. The Soviet Union, for instance, generated statistics on migration across Soviet republics according to ethnicity. The US Immigration Service, from 1899 to 1920, classified newly arrived immigrants at Ellis Island according to a list of forty-eight "races or peoples," generally determined by language rather than physical traits (Brown 1996). Parallel to the need for statistical representation was the need for control. In order to establish a "monopoly of the legitimate means of movement" (Torpey 2000: 1), states imposed the use of personal identity documents to distinguish the citizen from the foreigner (Noiriel 1996) and, in some cases, attempted to control the internal migration of their population through residency permits and internal passports (Matthews 1993). In a number of cases, such identification documents contained an identity category beyond the civic or legal status of the individual: for example, the Soviet Union, where citizens had their "nationality" (in the ethnic sense) indicated on their internal passports (Zaslavsky and Luryi 1979); Rwanda, with Hutu or Tutsi ethnicity (actually called "race") appearing in identity cards (Uvin, this volume); Greece, Turkey, and Israel, with religion recorded in identity cards (Courbage 1997: 114; Goldscheider, this volume) 1 ; and apartheid South Africa, with racial categories inscribed on identification papers (Petersen 1997: 97). The categorization of identities, along culturally constructed criteria, on individual documents can serve nefarious or well-meaning purposes. In the United States, a racial category in birth certificates was long used to discriminate against Blacks and Indians. Following the rigid principle of the "one-drop rule," according to which a single Black ancestor, however remote, made one Black, birth certificates were often used in Southern states to bar individuals of racially-mixed ancestry from marrying Whites (Davis 1991: 157). The rise of affirmative action, based on the notion that achieving true equality required special consideration to be given to historically disadvantaged minorities in access to jobs and education, implied the bureaucratic categorization of "minorities." As a consequence, particularly in the case of Blacks and Indians, it has meant continuing commitment to the determination of race according to "objective" ancestry, as opposed to simple self-definition. Thus, the Indian Health Service of the Bureau of Indian Affairs continuse to hold that eligible patients must have a minimum of one-fourth "blood quantum," which in practice entails that they must prove that at least one of their grandparents appeared on tribal enrollments (tribal rolls) of recognized tribes (Snipp 1989: 34). A similar policy was employed by Nazi Germany to identify both Jews and Germans. In spite of the shrill propaganda on the physical alienness of Jews, the criterion actually chosen to separate the Jews eventually targeted for destruction was a mixture of religion and descent, and not anthropometric measurement. Those

with at least three Jewish grandparents were categorized as Jews. Ancestry, in turn, was determined by birth certificates issued by religious institutions (Hilberg 1985). At the outset of World War II, when the Nazi government sought to transfer Germanspeaking populations from the East (Baltics, Ukraine, Romania) to newly annexed territories from Poland, the question of defining German identity arose. In this case, religion was not deemed determinative and ethnicity did not appear on birth certificates. In Estonia, where a liberal minority law in 1925 had established officially recognized ethnic associations, claimants had to show a certificate, delivered either by their German association or by the Estonian Ministry of the Interior, attesting to their German ancestry (Institut national de la statistique 1946: 80). 2 Interestingly, since post-war Germany has adopted a kind of Law of Return, granting automatic citizenship to ethnic Germans from abroad, the issue of legally documenting one's ethnic German affiliation remains germane today. After apparently relying on the self-declaration of applicants during the Cold War, the German state devised a complex questionnaire in the early 1990s to determine who can be deemed "German" (Brubaker 1996).

**Abolish Gender on Birth Certificate CP

Text- The United States federal government should abolish the race portion of United States birth certificates.

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Kertzer and Arel, 02- (David Kerzer is the Paul Dupee University Professor of Social Science and Professor Anthropoligy and Italian Studies at Brown University—Dominique Arel is Assistant Professor at the Watson Institute for International Studies at Brown University.) "Politics of Race, Ethnicity, and Language in National Census" p. 3-4, Cambridge University Press, 2001, print,//droneofark

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--xt: Solvency

The aff can't take into account the discourse of trans people effected by effective control of the state—the CP solves this

Spade, 08- (Dean Spade is Spade is assistant professor at the Seattle University School of Law, teaching administrative law, poverty law, and law and social movements) "Documenting Gender" p. 806-88, Hasting's Law Journal, Vol. 59:731, March 2008, http://ssrn.com/abstract=1200902 //droneofark

Overall, a detailed examination of the gender classification rules of the United States exposes the internal contradictions and assumptions that are for the most part ignored or unrecognized in the numerous administrative contexts where these rules operate day-to-day. This Article makes the initial intervention of exposing the under-discussed policy matrix that messily and incoherently defines gender categories in the United States. The analytical insight provided by examining that rule matrix creates an opportunity to critique its problems and consequences and question the assumption that gender has more benefits than costs as a category of classification in administrative governance. Further, it allows us to see at work the production of insecurity and vulnerability for certain populations in the creation of systems of classification that administer caretaking programs. Because the administration of population caretaking interventions aimed at creating a healthy population and national security mobilizes and relies upon ideas of the characteristics of that population, subsequently naturalizing those characteristics such that they appear as "common sense" truths rather than political choices, the production of unhealth and insecurity for some subpopulations is obscured. Antidiscrimination discourses that rely on the perpetrator perspective individualize difference like transgender identity to the victim and individualize invidious intentions to the perpetrator, making invisible the systemic conditions producing identity categories from multiple locations. Finally, recognizing the high stakes of administrative governance— identifying it as a key location of legal production of equality/inequality and distribution of chances at security and insecurity, health and sickness, life and death—also enables us to understand the significance of the administrative nature of the War on Terror as more than a set of concerns over the accuracy of records and the privacy of individuals. Instead, it might be an opportunity to understand the key role of administrative governance in forms of domination that have often been conceptualized through individual discrimination. Further, it offers a chance to re-imagine political responses to surveillance and to question whether caretaking functions of the state, such as the redistribution of wealth through taxes and public benefits, national security, disease control, and even the remediation of long histories of oppression and exploitation, require the kinds of data collection that are increasing at a rapid pace in the United States, or whether they could be better accomplished through other means.

Spills over to broader criticism of state categorization

Spade, 08- (Dean Spade is Spade is assistant professor at the Seattle University School of Law, teaching administrative law, poverty law, and law and social movements) "Documenting Gender" p. 806-88, Hasting's Law Journal, Vol. 59:731, March 2008, http://ssrn.com/abstract=1200902 //droneofark

Conclusion As the work of Bowker and Star shows us, classification systems operate on the basis of norms that often appear non-controversial to most people but have significant ethical consequences. The operation of administrative governance in the United States, specifically the "caretaking" programs that intervene with the aim of health, safety and well-being for the population, require data collection that forms a basis of identity surveillance. This identity data, gathered by disparate agencies for varying purposes, is being mobilized in new ways by War on Terror innovations aimed at increasing immigration enforcement. The categories of classification used in this data collection are so ubiquitous in culture and law that rulemakers, judges, scholars, and advocates often fail to question their use and frequently presume their coherence and stability. Only those whose lives are subject to the conflicts between these rules and to the social and economic exclusion that results from not being legible in a ubiquitous classification system tend to be aware of the issues. Looking at the role of administrative governance in the modern state, the history of population-level intervention, and the creation of sub-populations that necessarily results from classification

processes central to standardization provides space to ask key questions. Even as we watch the ongoing process of privatization and deregulation in many realms advocated as reducing government intervention, we can see that a moment of steady expansion of state powers, often under the "law and order" or "anti-terrorism" rubric, is at hand.388 In this moment, it is useful to broadly and critically examine administrative governance as a productive process where the conditions of existence of individuals and groups are determined by fundamental assumptions and norms of the administrative state. It is imperative to neither uncritically embrace state caretaking projects as requiring growing levels of surveillance for purposes of security and health, nor to turn to individual privacy rhetoric wholeheartedly and valorize an end to government data collection. Recent political debates show that the pro-surveillance or antisurveillance position can be mobilized on either side of equality struggles articulated by marginalized groups. In some instances we see a push for "colorblind" governance opposed by groups interested in remedying racial inequality.389 In others we see the "privacy" argument articulated to stop race-based data collection and aggregation motivated by concerning theories of racial difference.390 In some instances we see advocates seeking reduced data collection about HIV status because of surveillance concerns.391 In others, advocates push for increased data collection seeking the distribution of resources to communities severely impacted by HIV.392 In these examples and many others, we can see "privacy" arguments and the demand for data articulated on both sides of a political divide about domination.393 This dilemma points to a need to develop analysis about the intertwined surveillance and caretaking roles of the state that can account for our frequently conflicting beliefs about data collection. Can we imagine a state that meets demands for caretaking without surveillance, for example by providing public benefits without a recordkeeping system to determine who has received a distribution of benefits? Can we imagine public health programs that collect health data without any link to individual identities? Would this resolve surveillance issues or could regional surveillance or other markers on data expose the same concerns? How might entire notions of property, criminality, individuality and collectivity have to be restructured in order to conceptualize a reduced reliance on data collection and identity verification? Exploring these questions may be initial steps in analyzing the complex role of data collection in state formation and assessing the political possibilities at hand for rethinking current data collection and standardization practices. Reaching out to these more distant visions of relations between caretaking and surveillance makes possible new understandings of the politics of current controversies about data collection and classification, and may enhance the potential to envision strategic approaches to change.

at: Permutation

Perm can't solve—the census data collected is actually used to help communities at large

Spade, 08- (Dean Spade is Spade is assistant professor at the Seattle University School of Law, teaching administrative law, poverty law, and law and social movements) "Documenting Gender" p. 806-88, Hasting's Law Journal, Vol. 59:731, March 2008, http://ssrn.com/abstract=1200902 //droneofark

Another area where compelling reasons for the continued use of gender classification exists is with respect to affirmative action and other programs focused on remedying the long-term effects of oppression of women and transgender people. Here, again, we can see parallels to controversies that have occurred regarding the use of other contested identity categories. In the context of race, the debates that occurred regarding putting a "multiracial" category on the U.S. Census are instructive.375 Those discussions focused on the proposal that a "multiracial" category would lead to more accurate data, because the Census requirement that people pick a single racial category obscured the fact that many people are multi-racial.376 Opponents of the proposal argued that while it is true that many people are multi-racial, certain groups would be undercounted if their identity categories were emptied by more people choosing "multi-racial" rather than the race category they would have previously chosen.377 This argument was especially made with regard to people of African ancestry in the United States378 While requiring multi-racial people with African heritage to only identify that heritage in their identification on the Census mirrored the racist rule of hypodescent also known as the "one drop rule," establishing a "multiracial" category would likely drastically reduce the number of people identifying as African-American.379 Opponents argued that because much discrimination and exclusion has occurred and continues to occur through the rule of hypodescent, with historical and present day racism regarding people through the one-drop lens, eliminating the ability to identify people of African descent specifically would impede the ability to use Census data to understand the conditions in that population and formulate appropriate policies related to redistribution and remediation.380 Thus, even though the racial categories formulated by the rule of hypodescent do not reflect a scientifically verifiable classification that would be desirable in many other areas of government identity classification, they still operate on individuals and communities impacted by racism. Tools like Census data that are used to evaluate policies aimed at remedying discrimination and exclusion and redistributing government services and support, therefore, need to measure race in ways that do not obscure the existence of communities and issues constituted around those categories. Similarly, we might suggest that in programs collecting data for purposes of evaluating efforts to remedy the impact of long-term discrimination and exclusion of women and transgender people collecting data about gender might be useful. Such data collection could be undertaken with an understanding that what is being measured is the impact of social processes of gender production that result in discrimination and exclusion in contexts where systemic sexism and transphobia exist. Again, as in the health context, the gender categories used in such collection might not simply be "male" and "female" depending on the kind of problems being assessed. If a deeper question were asked, one that addressed whether gender data was really necessary, and if so what aspect of gender data should be collected and how, more nuanced and effective policymaking might result. This is not an argument for a simplistically "gender-blind" government, but rather for a shift toward a more critical view of the use of gender data in government recordkeeping. If collecting data on gender had to be justified by a close connection to institutional purposes, and false assumptions about the use of gender data to verify identity fell by the wayside, the use of this data could have less unintended negative consequences for both individuals and institutions. The confusion currently being caused by batch checking procedures aimed at immigration enforcement and terrorism prevention exposes the incoherency of gender classification, allowing us to consider putting an end to the administrative attempts to make gender a stable marker of identity verification and a logical way of dividing and managing the population when it clearly does not achieve either purpose consistently. It is worth noting that this underlying question about the significance of gender classification has also played an important role in discrimination

law. The use of intermediate scrutiny rather than strict scrutiny for laws and policies distinguishing people on the basis of gender,381 controversies about sex as a bona fide occupational qualification,382 and debates about whether pregnancy discrimination is a form of sex discrimination383 all bear a relation to the fundamental concern over what kind of classification sex represents. Does it relate to a meaningful difference among humans that can be used as a legitimate basis for differential treatment in some instances?384 Or is it a classification arising from a system of dominance, such that differential treatment on this basis should be viewed under serious suspicion of discrimination? The jurisprudence related to gendered dress codes also relates to these questions,385 asking courts to determine whether cultural expectations about gendered appearances in certain industries are reasonable professional standards or illegal limitations on the lives of individuals based on discriminatory stereotypes. Similarly, the Title VII cases where courts have wrestled with whether discrimination against transgender people is prohibited by Title VII require a determination of basic understandings of how the law views gender classification.386 Are transgender people who are fired being impermissibly discriminated against because of failure to live up to a stereotype about masculinity or femininity,387 or is their gender expression so far outside cultural norms that it is beyond the ambit of what Title VII exists to protect? Many of the fundamental tensions in sex discrimination law have related to these questions about how the law views sex as a category—whether it is "real" enough to be a legitimate basis of differential treatment or whether we see it primarily as a set of social norms arising out of a system of domination. While these issues are too numerous to treat here, the insight into the instability of gender provided by the examination of the gender reclassification rule matrix might also be a helpful consideration in the resolution of these questions.

Cyber/Internet CPs

**Cyber-Vulnerability CP

The United States federal government should establish a cyber-vulnerability purchasing program.

The CP solves cyber-crime and internet governance

Brake 2015 (Benjamin [International Affairs Fellow at the Council on Foreign Relations]; The Bug Trade; Apr 22; https://www.foreignaffairs.com/articles/2015-04-22/bug-trade; kdf)

To ensure their efforts to control this industry succeed, cyber officials should pay close attention to the shifting economics of the software vulnerabilities market. As cyber security specialist Dan Geer proposed last year, the purchasing power of the United States can do much to **restructure the market** for software vulnerabilities. By becoming its largest customer, the United States can make the licit market more attractive and lower the quality of tools available to cybercriminals. According to NSS Labs, a vulnerability purchasing program would reduce economic losses resulting from cybercrime by at least ten percent. It would also increase the talent pool of skilled information security researchers and degrade the ability of foreign intelligence agencies to acquire sophisticated exploits or attract talented researchers. In addition, the likelihood of a catastrophic attack on critical U.S. infrastructure would be diminished if individuals had an incentive to look for and sell flaws to reputable vendors or the U.S. government (provided that U.S. agencies maintain an effective process to responsibly disclose a vast majority of the bugs to the public). Without such a program, the market for vulnerabilities could become a bazaar for a wide array of private purchasers with no interest in public disclosure of the bugs. The United States cannot, though, expect to buy its way out of the problem entirely. A newly announced study from researchers from MIT, Harvard, and the information security firm HackerOne maintains that while bug bounties are an effective tool, the market is not driven by price alone. For a more enduring solution that avoids the danger of drawing too much attention to finding bugs and not enough to fixing them, officials and software developers must also work to encourage the development of automated solutions for vulnerability discovery. Thomas Schelling observed in his work on economics and criminal enterprise that unsavory markets always offer policymakers several options to restructure the market: increasing the legal competition, relaxing prohibitions, or selective enforcement. There are no easy choices when it comes to dealing with the problem of commercial hacking, but at least there are choices. Private hacking firms will inevitably thrive as encryption becomes more ubiquitous, but the United States can affect the market in which these firms operate. **A bug-bounty program led by the United States** can drive up their costs of doing business, as well as the costs to U.S. adversaries in cyberspace. It may, as Dan Geer noted, be "the cheapest win we will ever get."

--xt Solves internet freedom (affs that read Kehl)

The CP discloses vulnerabilities which is sufficient to solve internet freedom – their author

Kehl et al 2014 (Danielle Kehl is a Policy Analyst at New America's Open Technology Institute (OTI). Kevin Bankston is the Policy Director at OTI, Robyn Greene is a Policy Counsel at OTI, and Robert Morgus is a Research Associate at OTI; Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity; Jul 2014; https://www.newamerica.org/downloads/Surveilance_Costs_Final.pdf; kdf)

The NSA's apparent stockpiling of security vulnerabilities in widely-used hardware and software products (rather than responsibly disclosing them to vendors so that they may be patched) threatens cybersecurity writ large. **The U.S. government needs to establish a clear and consistent policy of disclosing vulnerabilities to vendors by default.** To the extent such a policy allows vulnerability stockpiling at all, it must explicitly define when, under what circumstances, and for how long the government may delay disclosure, if ever. A central tenet of this policy should be that if the U.S. government holds onto security vulnerabilities for future exploitation at all, it should only do so in extraordinarily rare cases, such as where there are no other legitimate means to access information that is necessary to protect against an immediate national security threat. It is critical that any such policy authorizing the stockpiling of vulnerabilities spell out in explicit and precise terms the limited circumstances that would qualify for such an exception, as well as specific guidelines for when and how vendors should be informed of the flaw after it has been used for that limited purpose As Bellovin et al. write, "In a world of great cybersecurity risk… public safety and national security are too critical to take risks and leave vulnerabilities unreported and unpatched… Law enforcement should always err on the side of caution in deciding whether to refrain from informing a vendor of a vulnerability. Any policy short of full and immediate reporting is simply inadequate."364 Similarly, Recommendation #30 from the President's Review Group recommends that "US policy should generally move to ensure that Zero Days are quickly blocked, so that the underlying vulnerabilities are patched on US Government and other networks," carving out an exception for rare instances when "US policy may briefly authorize using a Zero Day for high priority intelligence collection, following senior, interagency review involving all appropriate departments."365 Additionally, any decision not to disclose a vulnerability should be subject to a rigorous review process. The President's Review Group recommends the creation of an interagency process to regularly review "the activities of the US government regarding attacks that exploit a previously unknown vulnerability in a computer application or system."366 To the extent such a "Vulnerabilities Equities Process" already exists as the Administration now claims, the government must be much more transparent about its operation and the standards under which it operates, in order to reassure users of American hardware and software products that both industry and government are fully dedicated ensuring the security of those products.

--xt Regulation solves

Regulating the sale of the info drives R&R and stops cyber-crime

Brake 2015 (Benjamin [International Affairs Fellow at the Council on Foreign Relations]; The Bug Trade; Apr 22; https://www.foreignaffairs.com/articles/2015-04-22/bug-trade; kdf)

The United Kingdom isn't the only country concerned about the rising abuse of spyware. As early as 2012, Dutch EU parliament member Marietje Schaake spearheaded a push for a ban on exports of surveillance software. Several dozen nations, including the United States, Canada, and all EU member states, have since pledged to introduce export controls on surveillance software and new export control procedures are beginning to evolve in countries where many of these firms are headquartered, including Germany, Italy, and France. But the multilateral framework used to contain and control the trade—a legacy regime originally developed to curb arms proliferation in a bipolar world—cannot address the challenge of this new digital industry alone. Countries will still be left with the question of how to regulate this market without pushing it underground, driving spyware developers into more permissive jurisdictions, or imposing unnecessary restrictions that stymie commercial and scientific development. SOFT LAW FOR SOFTWARE In late 2013, 41 countries pledged under the Wassenaar Arrangement to adopt export controls for the types of surveillance tools HackingTeam and other firms were selling around the world. Wassenaar is the successor to a Cold War effort aimed at preventing the sale of conventional military and dual-use capabilities to the Soviet bloc. As the political scientists Kenneth Abbott and Duncan Snidal pointed out soon after its adoption, Wassenaar was already hard enough to enforce with physical goods. Wassenaar had too many members and too little consensus. It was not directed at a common enemy, and the costs of export bans fell unevenly across countries. Finally, some states were more technically prepared than others to oversee an effective control system. Digital goods like spyware will be all the more challenging to control. In the case of hacking products, the size and expertise of the leading firms make them difficult to control through a treaty. Unlike the middle aged, Ph.D. wielding engineers at Lockheed Martin that develop advanced fighter jets, software developers that create malware are often young, some may be detached from the community, and many are willing to move around frequently—much like the hacking firms that recruit them. There is also little equipment that can be physically monitored or controlled. Traditional defense industries use assembly lines, machine tools, and other types of manufacturing infrastructure that are difficult and costly to duplicate abroad; hackers' most valuable products are often computer code, which can go wherever they go. With only a few dozen employees, firms like HackingTeam will have a relatively easy time recruiting or luring their best and brightest to countries with less oversight over the development and distribution of spyware. European officials have already warned that Vupen, a French vendor of exclusive zero-day exploits, may be moving its offices out of the EU due to tightening export control policies.

--xt Government purchasing good

The CP solves crime and is sound economics

Dunn 2014 (John; Governments urged to set up global bounty system to buy security vulnerabilities; Jan 7; www.techworld.com/news/security/governments-urged-set-up-global-bounty-system-buy-security-vulnerabilities-3495978/; kdf)

The criminal market for software vulnerabilities is now so sophisticated and dangerous that governments should consider setting up a global programme to purchase flaws before they fall into the wrong hands, a researcher has argued. Last month Dr Stefan Frei of NSS Labs calculated that criminals probably had access to around 100 zero-day software flaws known only to them at any moment in time, which represented a huge security risk to organisations, governments and consumers alike. In a follow-up report before Christmas Frei and co-author Francisco Artes suggested that the level of insecurity was now far beyond what could be mopped up by commercial software bounty programmes such as those run by Microsoft, Google, Yahoo or specialist firms such as HP TippingPoint. Flaws could take months to discover and possibly years to patch across the world's population of PCs, leaving criminals free to exploit them more or less at will. With the uncosted economic and social toll rising and the industry no nearer producing secure software or accepting liability for its effects, the time had come for governments to resort to more drastic measures, Frei said. Meanwhile a lucrative market has developed for flaws with security disclosures that depended on the efforts of a small population of security researchers, a worrying minority of whom were willing to sell flaws to the highest bidder, often criminals. One solution would be a fully-fledged International Vulnerability Purchase Program (IVPP), which would seek to purchase serious flaws before criminals got hold of them. The main advantage of this approach is that it could include software products not currently covered by bounty programs while also paying market rates high enough to encourage more security research as a whole. Even paying above market rates – as high as $150,000 (£100,000) per flaw - "the cost of purchasing all vulnerabilities in a given year, and at competitive prices, is remarkably low compared to the losses that are estimated to occur as a result of cybercrime, or the economic output of major countries, or the revenue of the software industry for the same time period," wrote Frei. If such a program had purchased every known flaw during 2012, he calculated that the bounty costs would still only represent only 0.3 percent of the revenue of the world software industry, about 0.01 percent of US GDP. Put another way, the costs of paying for all those flaws would be dwarfed by the economic effects of the same flaws once they are wielded by criminals. The price offered for a specific flaw would depend to some extent on the financial damage it might cause, a number that would always in theory be higher than the profit criminals could make from the same vulnerability.

at: Bad economics

Leading study – CP is good economics

Frei & Artes 2013 (Stefan and Francisco; International Vulnerability Purchase Program; https://www.nsslabs.com/sites/default/files/public-report/files/International%20Vulnerability%20Purchase%20Program%20%28IVPP%29-1.pdf; kdf)

Over the past few decades, the global economy increasingly has come to rely on information systems, and yet society remains in the early phases of adapting to the related opportunities and threats. Criminals, however, are fast adopters (as with any new technology), and worldwide financial losses occurring as a result of cyber crime are estimated in the billions of dollars per year. The continued discovery of new vulnerabilities in software and their subsequent abuse by cyber criminals is the root cause of a considerable portion of the losses experienced by society. Every exploitable security vulnerability in the possession of cyber criminals (particularly those vulnerabilities that affect popular products) subsequently induces significant direct and indirect losses for users and for society as a whole. There is no indication that the status quo will change any time soon, not least because software manufacturers have yet to produce secure software and, since they do not bear the costs and consequences of the vulnerabilities within their products, there is little to indicate that they ever will. Experience has shown that traditional approaches based on "more of the same" do not deliver better overall security. The question to ask is: "How much are those that bear the costs willing to pay to reduce their losses incurred as a result of cyber crime?" It is time to examine the economics of depriving cyber criminals' access to new vulnerabilities through the systematic purchase of all vulnerabilities discovered at or above black market prices. By comparing the total losses occurring as a result of cyber crime against the costs involved in purchasing all vulnerabilities a compelling case is made for a centralized vulnerability purchase program. NSS Labs has discovered that the cost of purchasing all of the vulnerabilities of a given software vendor is minimal when compared with that vendor's revenue for the same period of time. Further, the cost of purchasing all of the vulnerabilities for all of the vendors is minimal when weighed against the expected overall reduction in losses incurred as a result of cyber crime. NSS' data reveals that it is **economically viable for governments** to make largescale purchases of vulnerabilities to reduce losses, establish proper incentives, provide transparency, and transfer costs to the appropriate parties.

**Cybersecurity Treaty 1NC

Text: The United States Federal Government should establish and ratify an international cybersecurity treaty.

Treaties with other countries prevents miscalc and intentionally targeting other countries

Mueller 14—Benjamin is the Stonex PhD scholar in international relations at the London School of Economics. His report, The Laws of War in the Era of Cyber conflict, is published by LSE IDEAS ("Why we need a cyberwar treaty" June 2, 2014 http://www.theguardian.com/commentisfree/2014/jun/02/we-need-cyberwar-treaty)//JLee

One decisive act of statesmanship could drastically turn this picture around. There is no regulation whatsoever of war in cyberspace – unlike conventional forms of battle, **which are subject to an extensive set of international treaty laws signed** and respected by the vast majority of the world's states. The laws of armed conflict regulate when a nation state may legally use military force against another state, and what means it may use to do so. Official military doctrine in many countries is that these laws apply to cyberspace as they do to all other domains of warfare. But cyberspace is unlike any of these domains. Attacks can take place from someone's desk, thousands of miles removed. The very meaning of the word "attack" is unclear: is any unauthorised digital incursion into another state's networks an offensive attack? Need it bring about destructive consequences to count as one? **An international treaty on cyberwar must clarify the meaning of cyber attack,** set out permissible responses, and include an obligation for states to assist one another in the investigation of digital crimes. A nation's failure to cooperate in the aftermath of a cyber incident must imply a degree of culpability. Digital industrial espionage falls under the World Trade Organisation, which ought to take steps to outlaw what is an anti-competitive tactic, and expand the scope of its dispute settlement mechanism to include such behaviour. Some argue that because attributing acts of cyber hostility is so difficult, a treaty would be a fool's errand. In fact, anonymity on the internet is impossible by definition: all internet traffic consists of electronically fired communication impulses which are traceable (as Mandiant's report shows). Attacks can be analysed using a mixture of digital forensics and traditional investigative methods. A cyberwar treaty will bring about three profound benefits. First, militaries will no longer have to perpetuate a boundless arms race in a domain that is currently unconstrained by rules and conventions: expectations of military behaviour in cyberspace will be anchored in norms (just as most states do not have to fear attack by nuclear, chemical or biological weapons). Second, setting out response structures to cyber attacks will finally establish a modicum of deterrence in cyberspace. Third, once the military applications of cyberspace become more predictable, states can devote more effort to cross-border law enforcement cooperation in the pursuit of cyber criminals.

--xt Solves privacy and internet

CP solves threats—doesn't violate privacy, allows free information flow

Mueller 14—Benjamin is the Stonex PhD scholar in international relations at the London School of Economics. His report, The Laws of War in the Era of Cyber conflict, is published by LSE IDEAS ("The laws of war and cyberspace on the need for a treaty concerning cyber conflict" June 2014 http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SU14_2_Cyberwarfare.pdf)//JLee

The overall aim is to move the international community of states into a position where cyber-related cross-border cooperation of law enforcement is a matter of routine, regulated by treaty. An accord on cyber war is needed to clarify the definitions of LOAC in cyberspace, helping to bring clarity into what is currently an underregulated domain of warfare. By creating a degree of certainty as regards permissible state behaviour in cyberspace, governments can step away from the risky game of maximising cyber operations without breaching the armed attack threshold, and focus on the scourge of cyber criminality, which is undermining confidence in the Internet as a whole. An institutionalised basis for international cooperation on cyber crime would make life harder for cyber criminals. As an added benefit, a treaty on cyber crime would lessen the attribution dilemma, since non-cooperation by a state can then be seen an indication of a degree of state responsibility for a cyber incident.45 In practical terms, it is up to states to initiate the treaty process. The Budapest Convention provides a solid basis for combating cyber crime; it could be amended as per the points above and an effort launched to bring on board more signatories. The UN Disarmament & International Security Committee appears to be the most appropriate forum for talks to commence on a cyber war treaty. The incentive structure for states to engage in such a process is easily framed in the game theory terms that are familiar to students of bargaining and cooperation under anarchy.46 The simplest explanatory analogy is the Prisoner's Dilemma: it is in the interest of all states if cyberspace becomes a more ordered military domain, by anchoring expectations and introducing a degree of certainty for governments. It is in the private interest of each state to defect from this regime and secure the benefits of unrestrained cyber warfare on its own. To avoid all states from following their private interest and defecting, it is necessary to monitor compliance, ideally through an institution charged with this task (which generates what Axelrod and Keohane call the 'shadow of the future'). Curiously, although international law has no formal enforcement mechanism, states' adherence to it, as has been noted, is widespread and consistent. The reasons are likely to be a mixture of enlightened self-interest in an ordered international community, legitimacy (both of international law and of the compliant state in the eyes of its population as well as the international community) and the norms of socialisation that have built up over the past century as international law grew in depth and breadth.47 The main hurdle facing this scheme is that states fear giving up a military advantage – a fear that is nullified if all states sign up to the treaty – and the worry that regulating a decentralised, non-hierarchical network like cyberspace is antithetical to its fundamental purpose. Specifically, concerns have been voiced that regulating cyberspace will generate momentum for those states that seek to exert censorship and state control over the Internet.48 The idea that information is free, with the Internet as the medium to decentralise the global flow of knowledge and empower citizens across the globe, is indeed appealing to those who believe in freedom of speech as a fundamental force for good in the world. At the same time, it is easy to romanticise this point. Whether or not citizens enjoy a 'free web' still depends first and foremost on the domestic legal situation in which they find themselves. A state intent on censoring the Internet can do so easily, with or without a treaty on cyber war. What advocates for an open Internet seem to miss is that a key ingredient of the web is trust between the disparate nodes and actors in the network. A gradual militarisation of cyberspace will hamper cyberspace's effectiveness as a tool for commercial and social exchange. Moreover, the arms race dynamic that can develop absent a treaty on cyber war is a boon to cybercriminals, who, if left unchecked, will make e-commerce an increasingly slow, costly and cumbersome affair. That is in nobody's interest.

Japan Solvency

Japan is totally on-board

Bennett 15—Cory is a Cybersecurity reporter for The Hill. He was the Assistant Editor at Warren Communications News covering the Federal Trade Commission and Internet privacy/surveillance regulations and legislation ("US, Japan near cyber defense agreement" April 8, 2015 http://thehill.com/policy/cybersecurity/238264-us-japan-near-cyber-defense-agreement)//JLee

The U.S. and Japan are close to striking a bargain on bilateral defense rules that would bolster joint efforts to defend cyberspace. The move comes amid growing hacking threats from Asian power China and the reclusive North Korea. The agreement will update a standing defense alliance that has not been revisited since 1997 Japanese Minister of Defense Gen Nakatani said at a press conference Wednesday with his U.S. counterpart, Defense Secretary Ashton Carter. The revised defense guidelines will "give us the opportunity to extend [the alliance's] reach into new domains like space and cyber," said Carter, who is making his first trip to Asia since being installed as head of the Pentagon. Cybersecurity, Nakatani said, "has become a common security issue for both nations." The press conference was short on specifics regarding the cyber arrangement. The rules are expected to be finalized when Japan's prime minister visits President Obama in Washington later this month. Cybersecurity is increasingly dominating geopolitical relationships across Asia. China has moved to implement a broad set of new cybersecurity rules that would require companies to implement Beijing-approved encryption and open all source code to government inspection. Japan and the U.S. have aligned in opposition to the rules, which they argue will unfairly discriminate against foreign companies who do not want to expose customer data to the Chinese government. Security experts have widely accused China of hacking many major foreign companies operating in the region. Elsewhere, North Korea has emerged as a burgeoning cyber power in the region, launching digital attacks on South Korean nuclear plants and Sony Pictures Entertainment in the U.S., which is owned by Japan-based Sony. The restructured defense guidelines will help defend against instability resulting from these type of cyberattacks, as well as cyberattacks that look to knock out critical infrastructure. The rules "detail how our two governments will continue to work together around the world and in new domains such as space and cyberspace ... to ensure Japan's peace and security," Carter said. "And they will help us respond flexibly to the full scope of challenges we face, both in the Asia Pacific and around the globe." The world has changed since the U.S. and Japan last reviewed their guidelines, more than 17 years ago, Nakatani said. "During this time in the areas surrounding Japan, the security situation has become even more severe," he said. "And also in cyberspace and outer space, in these new fields there are various issues that we need to respond to."

China Solvency

CP Solves—a treaty would prevent espionage against China and solve miscalc

AP 14—Associated Press ("US seeks resumption of cyber talks with China" June 27, 2014 http://www.cnbc.com/2014/06/27/us-seeks-resumption-of-cyber-talks-with-china.html)//JLee

The United States next month will urge China to resume discussions on cybersecurity that were suspended abruptly after the U.S. charged five Chinese military officers with hacking into U.S. companies to steal trade secrets, a U.S. official said Thursday. Assistant Secretary of State Daniel Russel told The Associated Press the U.S. would push for a resumption of the cyber working group when Cabinet-level officials of both sides meet at the annual U.S.-China Security and Economic Dialogue in Beijing in the second week of July. After the indictments against the five officers were unsealed in May, Beijing pulled the plug on the group. It had been set up a year ago in what Washington viewed at the time as a diplomatic coup after President Barack Obama and China's President Xi Jinping held a summit in California, aiming to set relations between the two global powers on a positive track. Those ties have come under growing strain, also because of China's assertive actions in the disputed South and East China seas. Russel, the top U.S. diplomat for East Asia, reiterated those concerns Thursday, saying the U.S. views it as essential that China show greater restraint and use diplomacy to manage its differences on territorial issues. Asian nations, particularly treaty allies like Japan and the Philippines, look to the U.S. to counter China's increasingly muscular actions, but some in the region have voiced doubts about whether the second-term Obama administration can follow through on its commitment to focus on the Asia-Pacific, because of its preoccupation with the chaos in the Middle East. Russel said Asia remains a strategic U.S. priority, even as Washington considers some form of military action to combat the rapid advances of Sunni militants in Iraq who now straddle the border with Syria. "The fact that events conspired to demand high-level U.S. attention in the Middle East or elsewhere is simply a fact of life," Russel said. "It's always been thus. The strategic imperative, though, that's made the Asia-Pacific region a priority for us in security, economic and political terms is unaffected by the short-term demands of crises here and there. "I have no trouble in enlisting Secretary (of State John) Kerry's efforts on our agenda in the region," Russel added, "and that applies to the president and vice president as well." Kerry and Treasury Secretary Jack Lew will lead the U.S. delegation at the talks in Beijing, which are an annual fixture and viewed as important in forging a more cooperative relationship with Beijing, notwithstanding current frictions and China's growing challenge to America's post-World War II military predominance in the Asia-Pacific. The two sides will discuss issues including turmoil in the Middle East, North Korea's nuclear program and cooperation on climate change, and the U.S. will raise human rights. They'll also address a slew of economic and trade issues, including progress on a bilateral investment treaty that China agreed to negotiate in earnest at last year's talks. While the cyber working group remains on hold, Russel said the U.S. side will raise concerns over cyber-enabled theft of U.S. corporate data and intellectual property that the U.S. contends is shared with Chinese state-owned enterprises for commercial gain. "That's an economic problem as well as a bilateral problem, and that kind of behavior risks undermining the support for the U.S.-China relationship among the U.S. and international business community," Russel said. "It's a problem we believe the Chinese must and can address." Although the revelations from former National Security Agency contractor Edward Snowden on U.S. surveillance tactics have embarrassed Washington - leaving it open to accusations of hypocrisy when it accuses others of cyber espionage - the Obama administration has taken an increasingly trenchant stance on intrusions from China. The indictment accused the Chinese officers of targeting U.S. makers of nuclear and solar technology, stealing confidential business information, sensitive trade secrets and internal communications for competitive advantage. But after the indictments were unsealed, the five men were not placed on a public, international list of wanted criminals. There is no evidence that China would even entertain a formal request by the U.S. to extradite the five officers. It has rejected the charges and demanded they be withdrawn.

Solves—prevents further tensions with each other

Wroughton et al 6/24—Lesley is a staff writer for Reuters. Idrees Ali, Arshad Mohammed, Anna Yukhananov and Krista Hughes are also staff writers for Reuters ("US airs deep concerns over cyber security in China meetings" June 24, 2015 http://www.channelnewsasia.com/news/world/us-airs-deep-concerns/1936630.html)//JLee

WASHINGTON: The United States said on Tuesday that cyber theft sponsored by the Chinese government was a major problem and stressed the need to keep Asian sea lanes open as the world's two biggest economies held annual talks aimed at maintaining working relations in spite of rising tensions. At the wide-ranging Strategic and Economic Dialogue in Washington, both sides expressed a desire for constructive relations, with China saying the two countries could manage differences and should avoid confrontation. But tensions over security matters, including cyber attacks on U.S. government computers that U.S. officials have blamed on Chinese hackers and China's pursuit of territorial claims in the disputed South China Sea, have threatened to hamper efforts to deepen economic ties worth US$590 billion in two-way trade last year. "On cyberspace, in particular, we remain deeply concerned about Chinese government-sponsored cyber-enabled theft," U.S. Treasury Secretary Jack Lew said at the forum, which has brought together more than 400 Chinese officials and eight U.S. Cabinet secretaries. Lew said the targets of this hacking were U.S. firms and did not mention recent attacks on computers of the Office of Personnel Management. U.S. Vice President Joe Biden said the two sides might not resolve all of their differences in the meetings, which began on Monday and continue until Wednesday, but should commit to working on them. "We have to keep at it, day after day after day after day," Biden said. "T**his relationship is just too important.** Not only do we depend on it, but the world depends on our mutual success."China's Vice Premier Liu Yandong said differences could be managed "as long as our two countries adopt an overall perspective, respect and accommodate each other's core interests."

China Says Yes

China says yes

Robinson 6/26—Teri is an Associate Editor for the SC Magazine. Teri writes many articles about cybersecurity problems for the SC Magazine. ("U.S., China agree to cybersecurity code of conduct" June 26, 2015 http://www.scmagazine.com/us-china-summit-talks-turn-to-cybersecurity/article/423175/)//JLee

After a tumultuous couple of years of exchanging accusations and expressing distrust over cyberespionage and spying – most recently with Director of National Intelligence (DNI) John Clapper laying responsibility for the Office of Personnel Management (OPM) breaches squarely at the feet of the Chinese – the U.S. and China said they've reached an accord of sorts, a code of conduct for cybersecurity going forward. The code emerged after a three-day U.S.-China Strategic and Economic Dialogue where delegates from the two countries covered the gamut of topics likely to affect future collaboration and relations. While details of a specific code were not released, nor did it appear on a 127-item outcomes list, both China's Vice Premier Wang Yang and U.S. Secretary of State John Kerry in the fifth round of the meeting's Strategic Security Dialogue pledged to cooperate on cybersecurity measures. After the close of the meet-up, Kerry told members of the press that "there was not a direct kind of confrontational pushback" on cybersecurity during the talks. Instead, the two countries orchestrated what Kerry called for "an honest discussion," minus finger-pointing and accusations "about the problem of cyber theft and whether or not it was sanctioned by government or whether it was hackers and individuals that the government has the ability to prosecute." The Secretary of State said the U.S. made it "crystal clear" that that type of activity is "not acceptable," but noted that "China also has a very clear interest in making certain that everybody is behaving by a certain set of standards." Kerry refused to comment specifically on the breaches at the OPM, which exposed a treasure trove of sensitive information, much of it confidential, because the incident is still being investigated by the FBI "and we have not come out with specific statements from the government." DNI Clapper didn't show similar restraint, with the Wall Street Journal reporting that he fingered China as the "leading suspect" during remarks made an intelligence conference in Washington. "You have to kind of salute the Chinese for what they did," the Journal quoted Clapper as saying.

**Online Gambling 1NC

The United States federal government should legalize online gambling.

The US has set a double-standard on internet freedom—only repealing UIGEA allows for it on a massive scale

Gardner 2010 (April; Gambling regulations will help Obama's world internet freedom mandate; Sep 23; www.casinogamblingweb.com/gambling-news/gambling-law/gambling_regulations_will_help_obama_s_world_internet_freedom_mandate_55752.html; kdf)

President Obama gave a speech today in front of the United Nations General Assembly, and his message was largely one of individual freedom. During the speech, Obama touched on many issues, perhaps the most aggressive of which was having a Palestinian state separate from Israel. Obama spoke of allowing the Palestinians their own state with the hope that Israelis and Palestinians could live side by side in peace. Obama acknowledged that this could take a long time, but that the goal could become a reality. During the speech, Obama spoke about how the Internet should remain free from government interference everywhere in the world. The freedom to surf the Internet would allow people all across the globe to research issues and learn from the wide array of news that is currently found on the Internet. "We will support a free and open Internet, so individuals have the information to make up their own minds," said Obama. "And it is time to embrace and effectively monitor norms that advance the rights of civil society and guarantee its expansion within and across borders." That statement may have been much better received had the US not had their own blocks on Internet freedom. The Internet gambling industry currently is operating as a black market in the US due to the 2006 Unlawful Internet Gambling Enforcement Act. The law is a form of Internet censorship that Representative Barney Frank and other lawmakers have been trying to repeal. In the quest for Internet freedom, the US proclaims themselves as leaders, however, the country must be careful with their plea. If the US can place Internet bans on certain industries, then little could be done to stop other countries from banning different industries or websites because of their beliefs. For instance, in countries where religion is unified, there could be bans on any material that the country finds outside the rules of their particular religion. In other countries, bans could be placed on industries that are run largely by foreign operators. President Obama took a strong first step today by promoting Internet freedom. The next step will be making sure the US leads by example, and one area to start would be by lifting the ban on Internet gambling. The president has laid down the gauntlet, and now it is time for him to follow his own lead.

--xt Solves internet freedom

CPlan solves internet freedom

Kibbe 4/28/14 (Matt, FreedomWorks, "Coalition Letter: No Federal Ban on Internet Gambling")

We, the undersigned individuals and organizations, are writing to express our deep concerns about the Restoration of America's Wire Act (H.R. 4301), which would institute a de facto ban on internet gaming in all 50 states. The legislation is a broad overreach by the federal government over matters traditionally reserved for the states. H.R. 4301 will reverse current law in many states and drastically increase the federal government's regulatory power. As we have seen in the past, **a ban** will not stop online gambling. Prohibiting states from legalizing and regulating the practice only ensures that it will be pushed back into the shadows where crime can flourish with little oversight. In this black market, where virtually all sites are operated from abroad, consumers have little to no protection from predatory behavior. Perhaps even more concerning is the fact that this bill allows the federal government to take a **heavy hand in regulating the Internet**, opening the door for increased Internet regulation in the future. By banning a select form of Internet commerce**, the federal government is setting a troubling precedent** and providing fodder to those who would like to see **increased Internet regulation in the future**. We fear that H.R. 4301 will begin **a dangerous process of internet censorship** that will simultaneously be circumvented by calculated international infringers while constraining the actions of private individuals and companies in the United States.

Current gambling laws gut any and all US cred on internet freedom

Minton 2011 (Michelle; Fed's online poker shutdown assaults internet freedom; May 13; www.breitbart.com/Big-Government/2011/05/13/Feds----Online-Poker-Shutdown-Assaults-Internet-Freedom; kdf)

On April 15, a day now known as "Black Friday", the U.S. Department of Justice (DOJ) effectively shut down three major online poker websites by seizing their domain names. The DOJ's heavy-handed prosecution of the websites, all of which are based abroad, has made a mockery of America's stated commitment to Internet freedom. The seizures have also hindered the online gambling operations in nations where Internet poker is completely lawful and the U.S. government has no jurisdiction. Given that the seized poker websites are housed and regulated by foreign nations—Poker Stars is registered in the Isle of Man, Full Tilt in Ireland, and Absolute Poker in Antigua—how could the U.S. government unilaterally seize their domain names? The short answer is that all of the sites end in ".com." All such domains are registered in the U.S. and, hence, are subject to U.S. civil forfeiture laws. Author and legal scholar Larry Downes has critiqued civil asset forfeiture laws on the Technology Liberation Front blog. He argues that the laws are actually intended to punish suspects before they are convicted. "The purpose of forfeiture laws," Downes laments, "is to help prosecutors fit the punishment to the crime, especially when restitution of the victims or of the cost of prosecution is otherwise unlikely to have a deterrent effect." Domain name seizures often occur without a trial and often without any warning to the owners, as was the case in Black Friday's seizure of poker domains. The government's move has reignited the controversy over U.S. federal agencies using domain seizures to punish foreign entities allegedly in violation of U.S. laws. While the DOJ did not technically "take down" the poker websites, federal agents obtained a court order that compelled Verisign, the global operator of the .com registry, to reroute the poker sites' domain names to a government page featuring intimidating federal logos notifying users of the seizure. As a result of the seizure, no computer in the world—even those in countries where poker is explicitly legal—could access the poker sites via their domain names. This latest round of seizures follows a series of similar actions taken in recent months by Immigration and Customs Enforcement (ICE), which has seized the domain names of dozens of websites alleged to be engaged in copyright infringement. One such site, the Spain-based Rojadirecta.com, had actually been deemed legal by Spanish courts. Perhaps in an effort to stem discussion of seizures' legality, the DOJ agreed to unfreeze the .com domains for Poker Stars and Full Tilt to allow players to cash out their accounts and allow foreign gamblers to continue playing on the sites. In return, the websites were required to promise to prevent American-based customers from playing poker games for money on their websites. The third major site, Antigua-based Absolute Poker, has reportedly been offered the same "privilege" in exchange for agreeing to bar U.S. customers from playing for money. However, Antigua's finance minister issued a statement last week accusing the U.S. of shutting the sites down in order to stamp out competition. Online gambling is Antigua's second largest employer after the tourism industry, so it comes as little surprise that Antigua is considering rejecting DOJ's "compromise" and instead challenging the U.S. government's action before the World Trade Organization (WTO). It is deeply troubling that the United States, a country that purports to value individual freedom, has so miserably failed to protect it when it comes to politically incorrect pursuits like online gambling. In effect, our government is bullying its own citizens and holding innocent foreign companies hostage. Hopefully, the events of Black Friday will focus public attention on the flaws of civil asset forfeiture laws and encourage foreign nations to stand up to U.S.

authorities. The DOJ's war of intimidation may have put a temporary hold on Internet poker in the United States, but its heavy-handed tactics should outrage anybody who values freedom and individual rights.

Legalizing online gambling key to internet freedom – it's a Trojan horse for widespread regulation

Telford 10/20/14- Erik Telford is senior vice president at the Franklin Center for Government & Public Integrity, The Hill, October 20, 2014, "Ending the cycle of casino cronyism", http://thehill.com/blogs/congress-blog/politics/221124-ending-the-cycle-of-casino-cronyism

When powerful gaming interest are spearheading **the fight to ban online gambling**, it should give you pause. Their main policy objective **is** focused on federal legislation to ban online gambling outright – **stifling** their **competition** before it ever reaches the market. **It** is a glimpse of crony capitalism in its most naked form, and **represents a very troubling assault on Internet freedom**, **giving government a foot in the door for a broader regulatory regime** and usurping our federalist system. The 2011, the Department of Justice's position interpretation on Internet gambling threw the issue to state legislatures--where it should be. Almost immediately, Nevada, Delaware, and New Jersey passed legalizing legislation. The Restoration of America's Wire Act, sponsored by Sen. Lindsey Graham (R-S.C.) and Rep. Jason Chaffetz (R-Utah) would prohibit interstate sports betting using wire services, effectively killing online gambling across the states where it's legal. While their pretense is to advance a moral good, this policy would undermine the free market, encourage crime, and erodes the constitutional concept of states' rights. Proponents of the regulation have brought in political heavyweights to undermine legalized online gambling, including former Arkansas Sen. Blanche Lincoln (D), who represents the Coalition to Stop Internet Gambling, claiming that legalizing online gambling would promote fraud, addiction, and money laundering. "I think it's going to be very difficult to work something out," Lincoln said, "I think it's important to put a time-out on this and to stop and think about what it's going to mean to us as a nation in our economy, to our children and to our society." However, these **problems already exist with black market gambling** mostly **run from overseas with profits** funding shady and potentially dangerous operations outside the jurisdiction of state regulation and consumer protections. Alan Feldman, an executive vice president of MGM notes that online gambling "is here, and **it's been here for a very long time.**" **Legalizing online gambling would** likely **see more** of **a shift from illegal to legal play** instead of funneling customers away from traditional casinos and their trappings. Free market advocates agree that consumers would enjoy more security were this pursuit made legal. "In this black market, where virtually all sites are operated from abroad, consumers have little to no protection from predatory behavior." wrote officials of the Institute For Policy Innovation to several congressmen. They then shared wider concern that "Perhaps **even more concerning is the fact** that this bill **allows the federal government to take a heavy hand in regulating the Internet, opening the door for increased Internet regulation in the future."** Just like Prohibition in the 1920's, **banning this vice** would **actually incentivize criminal behavior.** Those fearful of fraud, child participation, and profits diverted to gangs or terrorists **should push for legalization in every state to make the industry as transparent as possible.** Legalizing this long-established, multibillion dollar business gets the profits out of the shadows, expands market opportunities, and puts revenue into the coffers of both legitimate business and state governments that will benefit.

--xt – International Signal

Legalization signals return to internet freedom

Legal Casino 14 Portal for gambling news and articles http://legalcasinous.com/

The United States must **change their online gambling laws** to **show** to the other nations that the time of the **disrespect for the international agreements** is ended. One of these agreements is with the European Union. The European Commission has warned USA a long time ago that their online casino laws violates the economic agreements with the European union. The actual Obama administration has shown, finally, the good wish to conform with such agreements. The Representative Barney Frank has been a proponent for years of the online games legalization. He has tried to oppose to the UIGEA (Unlawful Internet Gambling Enforcement Act) last year, but not in vain. The Republicans had the control, but now, with the democrats, in the US there is the hope for a new law Internet Gambling Law. Frank believes that all the citizens of the United States have the right to play for money at the online casino, in the privacy of their houses. Even some Republicans in past had fought for **the Internet freedom.**

**Internet Federalism CP

The fifty states of the United States should legalize nearly all online gambling in the United States.

State level regulation allows internet federalism

King, 10 [J.D. candidate 2010, Northwestern University School of Law, B.A. Middlebury College 2002, ARTICLE: GEOLOCATION AND FEDERALISM ON THE INTERNET: CUTTING INTERNET GAMBLING'S GORDIAN KNOT, Lexis]

V. CONCLUSION Gambling, like most divisive social issues, is best regulated **at the state level**. n190 Yet migration of gambling to the Internet has complicated matters greatly, giving rise to difficult questions as to which governmental entities are best suited to regulate and what the proper substantive regulatory regime ought to be. The failure of energetic federal and state efforts to prohibit Internet gambling over the past decade suggests that the issue may present a nearly impregnable problem, or as this Article terms the matter, an Internet gambling Gordian knot. The rise of geolocation technologies in recent years offers a new opportunity to cut through that Gordian knot via a jurisdictionally differentiated regulatory framework for Internet gambling. Geolocation technologies are not perfect. However, when they are integrated into a federal-state framework in which **states choose their** own substantive policies from a limited "menu" of options, these technologies can **dramatically improve the democratic responsiveness of Internet gambling laws, increase compliance with the rule of law, and internalize the large and increasing costs associated with prohibition of Internet gambling.** Such an approach is not immune to criticism, particularly in terms of its potential impact on the fundamental openness of the Internet in the long-term. In light of the market advantages associated with jurisdictional differentiation and the need for law to be supreme over code in divisive areas such as Internet gambling, those drawbacks [*75] fail to outweigh the potential benefits offered by aggressive use of geolocation technologies. These conclusions **carry implications that go well beyond the Internet gambling debate**. If jurisdictional differentiation is a **normatively superior approach** with respect to Internet gambling, then it **may be in other market sectors as well**. This consequence, along with the degree to which technological advances have undermined previous court decisions on electronic commerce issues, suggests that geolocation technologies may **play a role in enabling federalism on the Internet for years to** come.

**Internet Freedom Agenda CP

Text: The United States federal government should submit a review of [the plan] to the Freedom Online Coalition to insure international standards of internet freedom are being met.

CP solves 100% of case – creates an internationally modeled form of internet freedom, checks the circumvention disad

Kehl et al. 14 [Danielle, Kevin Bankston, Robyn Greene, Rober Morgus July, 2014. Kehl is a Senior policy analyst at New America's Open Technology Institute. Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity. Pdf. 7/13]//kmc

The United States must act immediately to restore the credibility of the Internet Freedom agenda, lest it become another casualty of the NSA's surveillance programs. As described in Part IV, various agencies within **the U.S. government have taken initial steps** to demonstrate goodwill in this area, particularly through the NTIA's announcement that it intends to transition stewardship of the IANA functions to a global multistakeholder organization and the State Department's speech outlining six principles to guide signals intelligence collection grounded in international human rights norms. However, it will take a broader effort from across the gov- ernment to demonstrate that the United States is fully committed to Internet Freedom, includ- ing firmly establishing the nature of its support for the evolving multistakeholder system of Internet governance and directly engaging with issues raised by the NSA surveillance programs in international conversations. **Supporting international norms that in- crease confidence in the security of online communications and respect for the rights of Internet users all around the world is integral to restoring U.S. credibility in this area**. "We have surveillance programmes that abuse human rights and lack in transparency and ac- countability precisely because we do not have sufficiently robust, open, and inclusive debates around surveillance and national security pol- icy," writes Matthew Shears of the Center for Democracy & Technology.339 It is time to begin having those conversations on both a national and an international level, particularly at key upcoming Internet governance convenings including the 2014 Internet Governance Forum, the International Telecommunications Union's plenipotentiary meeting, and the upcoming WSIS+10 review process.340 Certainly, the United States will not be able to continue promoting the Internet Freedom agenda at these meetings without addressing its national security appa- ratus and the impact of NSA surveillance on individuals around the world. Rather than being a problem, this **presents an opportunity for the U.S. to assume a leadership role in the promo- tion of better international standards around surveillance practices.** Moreover, the U.S. should take steps to further internationalize its Internet Freedom efforts writ large and work with foreign governments to broadly promote democracy and human rights online. In 2011, Richard Fontaine and Will Rogers of the Center for a New American Security wrote that **"the United States should counter the view that Internet Freedom is merely an American project cooked up in Washington, rather than a notion rooted in universal human rights**... The response to [concerns about the Internet Freedom agenda's ties to U.S. foreign policy should be] to internationalize the effort."341 Today, more than ever, **it is critical that the United States heed this advice and take steps to broaden the base of support for the Internet Freedom agenda. Future meetings and activities of the Freedom Online Coalition,** which the State Department played a key role in convening**, will serve as one test of these efforts as the group attempts to transition from a discussion forum for like-minded governments into a more ac- tion-oriented coalition.**342 The United States has the opportunity to urge other member countries to live up to the commitments they made at the 2014 meeting in Tallinn with respect to account- ability, transparency, and other policies ground- ed in human rights. As Toomas Hendrik Ilves, the President of Estonia, articulated in his remarks at the 2014 meeting, "We must be honest with ourselves and admit that recent developments

regarding purported surveillance by the NSA and similar organisations in different countries make the defense of an open Internet more difficult. That, too, is a challenge that Freedom Online Coalition must face."343 Outside of the Freedom Online Coalition, but consistent with its goals, the U.S. can urge both companies and foreign governments to join organizations like the Global Network Initiative or commit to other voluntary processes that promote the centrality of human rights in the policymaking process.344

They say yes

DDP 15 [Digital Defenders Partnership, a subset of Freedom Online Coalition. *WG 3 – Privacy and Transparency Online* . https://www.freedomonlinecoalition.com/how-we-work/working-groups/working-group-3/ 7/14]//kmc

FOC working group (WG) "Privacy and Transparency Online" focuses on the relationship between governments and information & communications technology (ICT) **companies, with a particular emphasis on respecting human rights online, including freedom of expression and privacy**. In furtherance of that objective, this group intends to explore the privacy and transparency practices of governments and companies, including through requests for user data, content restriction, and network shutdown. This group will remain mindful of the applicability of key principles from the Tallinn Agreement, such as the rule of law, collection for a legitimate purpose, non-arbitrariness, and effective oversight, which should guide the interaction between ICT companies and governments**.ð The discussion on transparency in the ICT sector has largely focused on major Internet companies in the United States, Canada, and Europe. With the proliferation of new laws and regulations in this area, and the growing range of companies handling user data and content, this conversation should have a global framework, applying to governments from all regions and companies from all parts of the ICT sector.**ð By bringing together governments, companies, civil society experts, and academics, this WG aims to contribute to the global discussion on transparency and accountability with respect to ICT relationships by seeking to provide clarity to the following areas:ð General understandings of the laws, policies, and processes through which governments make requests to ICT companies that may impact privacy.ð How ICT companies in such countries receive and process government requests.ð The implications of these practices for the privacy and freedom of expression of users, as well as broader considerations related to law enforcement and national security.ð Opportunities for and challenges to greater transparency, including legitimate law enforcement, national security, and other considerations.ð The WG will focus, at least initially, on the practices of ICT companies and governments in areas that could implicate privacy and free expression as described above, and may also include broader multi-stakeholder discussions on how ICT companies can respect human rights, and how governments can help or hinder company efforts to do so.

AT: perm

perm doesn't solve FOC credibility – causes international backlash

IFEX 14 [4-22. In letter to Freedom Online Coalition, NGOs speak out on surveillance of rights organisations. https://www.ifex.org/international/2014/05/01/surveillance_rights_organisations/ 7/14]//kmc

In response to Edward Snowden's testimony before the Council of Europe that the NSA and GCHQ monitored the confidential communications of human rights and civil society organisations, PEN International as part of a coalition human rights organisations sent a letter to members of the Freedom Online Coalition (FOC) on April 22, 2014 before its upcoming annual meeting in Tallinn, Estonia on April 28-29. The FOC is a leading intergovernmental coalition, currently with 22 members, established in 2011 with the express purpose of advancing Internet freedom (in particular, free expression, assembly, association and privacy online). Both the US and UK are members of the coalition. ∂ The April 22, 2014 letter follows. ∂ Dear Minister, ∂ On April 8, 2014, former US National Security Agency (NSA) contractor Edward Snowden testified before the Parliamentary Assembly of the Council of Europe (PACE) via video-conference that the NSA and the United Kingdom Government Communications Headquarters (GCHQ) have used their surveillance capabilities to spy on the communications of human rights organizations and civil society groups, both domestically and internationally. Snowden did not reveal which groups the NSA or GCHQ have spied upon, but indicated that the types of organizations whose communications had been compromised included major global organizations similar to Amnesty International and Human Rights Watch, and other NGOs. ∂ Snowden explicitly told PACE members that the NSA had "specifically targeted the communications of either leaders or staff members in a number of purely civil or human rights organizations … including domestically, within the borders of the United States." ∂ If Snowden's assertion is accurate, such facts would not only point to fresh dimensions of the overreach of NSA surveillance, but also would constitute an outrageous breach of the US government's stated commitment to human rights and freedom online. It also raises the very real possibility that these organizations' communications with confidential sources have been intercepted. Sharing this information with other governments could put victims and human rights defenders the world over in imminent danger. ∂ The US frequently criticizes repressive states for unjustified government spying on human rights organizations, media organizations, and civil society because such surveillance has a chilling effect on freedom of expression and association and constitutes a clear form of harassment and intimidation. ∂ Furthermore, as you are well aware, the US and the UK have taken leadership roles in the Freedom Online Coalition (FOC), the leading intergovernmental coalition, established in The Hague on December 8, 2011, for the purpose of "advancing Internet freedom - free expression, association, assembly, and privacy online - worldwide." **FOC members have joined in a shared commitment to work together to voice concern over measures that restrict Internet freedom and to support individuals whose human rights online are curtailed.** ∂ **FOC members also have undertaken obligations to adopt and encourage policies and practices, domestically and internationally, which ensure the protection of human rights and fundamental freedoms online, in particular freedom of expression, the right to privacy, freedom of assembly and access to information.** ∂ If the allegations about US and UK surveillance of human rights and civil society organizations are true, such practices would contradict the express commitments made by the US and the UK to the FOC. ∂ We, the undersigned civil society and human rights organizations, seek clarification as to the allegations that the NSA and GCHQ monitored or are monitoring the communications of our organizations, or of other civil society organizations, media organizations, and human rights groups. Where the facts support these claims, we ask the US and UK governments to explain the reasons why this is occurring or has occurred in the past, and the extent of such monitoring, its continuance, and its justification. ∂ We call upon members of the FOC to live up to their stated commitment to support civil society members or journalists whose human rights online may have been violated. We seek FOC member assistance in ascertaining the underlying factual basis for the Snowden allegations with respect to NSA and/or GCHQ spying on civil society and human rights groups, and in ensuring a halt to any violations of our privacy, freedom of expression and other human rights

online. ∂ Sincerely, ∂ Access ∂ Advocacy for Principled Action in Government ∂ AGEIA DENSI ∂ Alternative Informatics Association ∂ Amnesty International ∂ ARTICLE 19 ∂ Asociación de Internautas ∂ Association for Progressive Communications (APC) ∂ Benetech ∂ Big Brother Watch ∂ Bits of Freedom ∂ Breadboard Society ∂ Bytes for All, Pakistan ∂ Center for Constitutional Rights ∂ Center for Democracy & Technology ∂ Center for Freedom of Expression and Freedom of Information (CELE), Palermo University School of Law ∂ Centre for Internet and Society, Bangalore, India ∂ Charity & Security Network ∂ Committee to Protect Journalists ∂ The Constitution Project ∂ ContingenteMX ∂ Council on American-Islamic Relations (CAIR) ∂ Digital Rights Foundation ∂ Digital Rights Ireland ∂ Electronic Frontier Foundation ∂ Electronic Privacy Information Center (EPIC) ∂ Foundation for Information Policy Research ∂ Free Press ∂ Freedom House ∂ Freedom of the Press Foundation ∂ Global Voices Advocacy ∂ Hiperderecho ∂ Human Rights in China ∂ Human Rights Watch ∂ Institute for Reporters' Freedom and Safety ∂ International Federation for Human Rights (FIDH) ∂ La Quadrature du Net ∂ Movimento MEGA ∂ New America Foundation's Open Technology Institute ∂ Online Policy Group ∂ Open Net Korea ∂ OpenMedia.org ∂ OpenTheGovernment.org ∂ Panoptykon Foundation ∂ PEN American Center ∂ PEN International ∂ Privacy International ∂ Project On Government Oversight (POGO) ∂ Reporters sans frontières ∂ Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) ∂ Son Tus Datos ∂ Thai Netizen Network ∂ World Press Freedom Committee ∂ World Privacy Forum

AT: Surveillance Key (Aff that reads Fontaine)

They author says the US can push internet freedom and maintain surveillance

Fontaine 2014 (Richard; Bring Liberty Online; Sept; www.cnas.org/sites/default/files/publications-pdf/CNAS_BringingLibertyOnline_Fontaine.pdf; kdf)

Reenergizing the Internet freedom agenda begins with acknowledging that the United States must promote that agenda **even as it continues to engage in electronic surveillance** aimed at protecting national security. The U.S. government will simply have to endure some significant amount of continuing criticism and opposition. At the same time, it should continue to draw a sharp distinction between surveillance for national security purposes (in which all governments engage) and monitoring as a means of political repression (which democracies oppose). To those who see no distinction between American surveillance and that of autocracies, government officials should point out that key legal guarantees matter: the U.S. Constitution's first amendment protects against censorship and political repression at home, while in autocratic systems such safeguards are nonexistent or not enforceable.49

Democracy CP

**1nc

Text: The USFG should revise its election process by:

-Encouraging voter participation in primaries

-Updating elections information

-Redrawing congressional districts to avoid partisanship

-AND requiring disclosure of political contributions

The counterplan addresses partisanship and low voter turnout which stifle democracy

Snowe and Glickman 14 [Olympia Snowe and Dan Glickman. Former Sen. Olympia Snowe (R-Maine) and former Agriculture Secretary and Rep. Dan Glickman (D-Kan.) "Ten Ways to Strengthen American Democracy." June 24, 2014. http://www.politico.com/magazine/story/2014/06/10-ways-to-strengthen-american-democracy-108203.html#ixzz3fnopvI9E]//EMerz

The current level of dysfunction in Washington is like nothing we could have imagined when we began our journeys in public service. Yet we are convinced, based on our decades of experience encompassing the legislative and executive branches, that the status quo of today need not constitute the new normal of tomorrow. As such, on Tuesday, as part of the Bipartisan Policy Center's Commission on Political Reform, we released more than 60 concrete and achievable recommendations that will improve the federal government's ability to function regardless of the deep ideological divides that exist both among lawmakers and the American public, while addressing some of the root causes of the polarization. What are some politically realistic reforms that could significantly improve the way we govern? Here are 10 key ideas to fix the electoral process, return Congress to legislating and enhance public service. **1**. **Increase voter participation in primaries.** Only 20 percent of eligible voters vote in congressional primaries. The commission recommends that states and political parties aim for 30 percent by 2020 and 35 percent by 2026. Rather than a yearlong process that confuses voters, we recommend a single June congressional primary date, more open primaries and eliminating congressional caucuses and conventions. **2. Balance access and integrity in our elections**. We recommend that states use the data revolution to (1) identify eligible, unregistered voters and offer them the opportunity to register and (2) greatly improve the accuracy of voter rolls. **3. Ensure a fair process for drawing congressional districts** To reduce distrust between the two parties, we urge the adoption of redistricting commissions with the bipartisan support of state legislatures and the electorate, to avoid the kind of single-party gerrymandering that has contributed to political polarization. **4.** Tackle money in politics All political contributions, including those made to outside and independent groups, should be disclosed. **Congress should also pass legislation requiring detailed disclosure of spending by congressional leadership PACs** and mandate that those funds be used solely for political activities, not personal use. 5. Reform the filibuster and Senate debate Eliminate the ability to filibuster the motion to proceed; in other words, don't allow filibusters on whether to move to debate a bill. And, at the same time, guarantee a minimum number of 10 amendments, split between the majority and minority, on each bill debated.

Elections are the I/L to democracy

Elections with integrity are key to democracy

Annan 13 (Kofi Annan. Annan is a Ghanaian diplomat who served as the seventh Secretary-General of the United Nations. "Deepening Democracy: Why Elections with Integrity Matter." March 4, 2013. http://theelders.org/article/deepening-democracy-why-elections-integrity-matter)//EMerz

Elections with integrity are the foundation of democracy. In a true democracy, our elected leaders are simply the temporary custodians of political power; the power ultimately rests with the people. We elect leaders to act on our behalf so that we can go about our lives, caring for our families, teaching at our schools, staffing our hospitals and running our businesses. At election time, the power returns to the people – and they in turn empower the elected. Elections also provide people in each society with the opportunity to resolve political conflict peacefully. When citizens go to the polls and cast their votes – whether in Kenya, the United States or Indonesia – they aspire not only to elect their leaders, but to choose a direction for their nation. The Commission defines an election with integrity as one that is "based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial and transparent in its preparation and administration throughout the electoral cycle." At its core, the ideal of electoral integrity means that all voters should have an equal opportunity to participate in public debate and cast their ballots, all votes are counted equally, and all candidates seeking election do so on a level playing field.

at: CP Links to PTX

Snowe and Glickman 14 indicate that the current election system is contributing to partisan gridlock- things like congressional districts are not bipartisan in the status quo- fixing the problems in elections contributing to partisanship is bipartisan.

at: Democracy CP

Election reform is super partisan- past controversies over jurisdiction prove- links to politics

DeWitt 14 (Nathan DeWitt. Professor of English and Philosophy at DePaul University. "Presidential Commission on Election Administration offers worthwhile ideas for reform (but don't hold your breath)." January 23, 2014. https://compliancecampaign.wordpress.com/2014/01/23/presidential-commission-on-election-administration-offers-ideas-for-reform-but-dont-hold-your-breath/)//EMerz

The Presidential Commission on Election Administration yesterday presented its final report with a series of recommendations designed to help elections officials improve the voting process in the United States. The report is the result of a six-month study conducted by the bipartisan 10-member commission focused on the election day problems that have plagued voting in recent U.S. elections. At first glance, it may appear to some that the commission is attempting to limit discussion of U.S. electoral problems to simple and relatively uncontroversial issues such as modernizing voting technology and reducing average wait times for voters. (The commission proposes a maximum nationwide wait time of 30 minutes.) As Ben Jacobs at the Daily Beast pointed out, "The commission dodged issues normally associated with partisan battles, such as voter ID and the Voting Rights Act." Avoiding even more contentious matters such as opening up the two-party system to multi-party competition or leveling the playing field by implementing genuine campaign finance reform, the commission's key recommendations call for: modernizing the registration process through continued expansion of online voter registration and expanded state collaboration in improving the accuracy of voter lists; improving access to the polls through expansion of the period for voting before the traditional Election Day, and through the selection of suitable, well-equipped polling place facilities, such as schools; introducing state-of-the-art techniques to assure efficient management of polling places; and, reforming the standard-setting and certification process for new voting technology to address soon-to-be antiquated voting machines and to encourage innovation and the adoption of widely available off-the-shelf technologies. Delving a little deeper into the report, there appear to be several worthwhile recommendations that are surprisingly frank in their criticism of the highly flawed U.S. electoral system. Some of the document's most useful recommendations arguably pertain to improving the general professionalism of election administration in the United States. The report explains the unique nature of the U.S. electoral system in relation to the rest of the world, with most other electoral systems having central election commissions that govern national elections. "Other countries exhibit one or another of these features in their election systems, but none have the particular combination that characterizes administration in the United States," the report explains. "Decentralization and reliance on volunteers ensure that the quality of administration varies by jurisdiction and even by polling place. The **involvement of officials with partisan affiliations means that the rules or their interpretations will be subject to charges of partisanship depending on who stands to win from the officials' decisions**." One overriding problem that the commission identified was the partisan nature of election administration. Because all election officials (whether elected or appointed) are selected on a partisan basis, "those who run our elections are subjected to competing pressures from partisans and political constituencies, on the one hand, and their obligation to the voting public as a whole, on the other," the commission noted. Because the selection of election officials on a partisan basis can risk public confidence in the quality and impartiality of administration, the commission recommended that the responsible agency in every state should have on staff individuals chosen solely on the basis of experience and expertise. In a section of the report on "Incorporation of Recommendations Made by Other Commissions and Organizations," there is curiously no mention of recommendations made by the Organization for Security and Cooperation in Europe, which has been observing U.S. elections since 2002, or the long-outstanding recommendations of the 2005 Commission on Federal Election Reform, the so-called Carter-Baker Commission. In its preliminary post-election statement issued in November 2012, the OSCE reminded U.S. authorities of the 87 recommendations of the Carter-Baker Commission, most of which have never been implemented. One of that commission's most important recommendations was for the United States to move toward nonpartisan election administration. Carter-Baker recommended in particular that states strip election responsibilities from partisan elected secretaries of state, placing them instead in the hands of professional election administrators appointed by governors and approved by a supermajority vote of state legislators. There are several other important issues that are conspicuously absent from the report released yesterday by the Presidential Commission on Election Administration, some of which have been repeatedly highlighted as problematic by international election observers of the OSCE. There is no mention in the report, for example, of the election-rigging practice known as gerrymandering, which enabled Republicans to keep control of the House of Representatives despite losing the popular vote nationwide by 1.4 million votes in 2012. In a recent publication outlining best electoral practices for OSCE member states (including the U.S.), the OSCE Office for Democratic Institutions and Human Rights tacitly criticized the American system of drawing congressional districts. "Electoral constituencies should be drawn in a manner that preserves equality among voters," noted ODIHR, adding that "the manner in which constituencies are drawn should not circumvent the principle of equal suffrage." Yet, many U.S. states use an arcane and highly politicized system of drawing district

boundaries based on past voting histories and racial composition in order to dilute the voting power of certain groups and virtually ensure preferred electoral outcomes. Following the 2010 census and redistricting process, the GOP gerrymandered congressional districts in such a way to guarantee Republican victories. There is also the matter of permanent felon disenfranchisement in many U.S. states, which contravenes the international obligation of the United States to ensure universal and equal suffrage to each citizen who has reached the age of majority. Yet, in the U.S., an estimated 5.85 million Americans are denied the right to vote (or seek office) because of laws that disenfranchise people with felony convictions. Because of institutionalized racial disparities in the criminal justice system, these policies have resulted in one of every 13 African Americans unable to vote. The OSCE has repeatedly expressed serious concerns over the disproportionate impact of felon disenfranchisement in the United States. As explained in its final report on Election 2012, Minorities are disproportionately affected and it is estimated that 2.2 million African-Americans are disenfranchised. Prisoner and exprisoner voting rights are determined by state law and vary widely. Citizens from different states, who have committed the same crime, have their voting rights affected differently. Restrictions are often disproportionate to the crime committed and some states do not differentiate between types of crimes. Four states deprive all people with a criminal conviction of the right to vote, irrespective of the gravity of the crime or if the sentence has been served, unless pardoned by the state governor. Another major problem in the United States is the discriminatory laws against independent, or "third," parties. "The legal framework should ensure that all political parties and candidates are able to compete in elections on the basis of equal treatment before the law," explained the OSCE. Despite some of these notable ommissions, the reaction from election reform advocates to the report released yesterday seems to be generally positive. The League of Women Voters President Elisabeth MacNamara said, We are pleased to see that the bipartisan Commission was able to roll up their sleeves and get to work on some of the endemic troubles plaguing our nation's polling places. PCEA's prescription for what to do about lack of resources, inadequate compliance with federal laws, the need for professionalization of the election workforce, and creating a benchmark of no one waiting to vote longer than 30 minutes, are badly needed fixes for election administrators and voters. Common Cause's Karen Hobert Flynn noted that While some of the commission's recommendations require legislative action and appropriations, state and local election officials should act on others on their own initiative. For example, voting locations often can be better organized, and sample ballots printed more clearly and distributed earlier without added costs. All that's needed is the will to act. But unfortunately, **as the commission itself points out, due to "the complexity and variation in local election administration … no set of practices can be considered 'best' for every jurisdiction."** Some reforms that work well in certain contexts will be unnecessary or fail in others, noted the commission. In other words, don't hold your breath for any meaningful and comprehensive nationwide election reform.

Doctor Patient Trust

**1nc

Text: The United States Federal Government should track healthcare companies' quality of care using the Department of Health and Human services to evaluate health care companies.

Institutional trust is key to patient doctor trust

Rowe and Calnan 6 (Rosemary Rowe and Michael Calnan. Professor of Medical Sociology, School of Social Policy, Sociology and Social Research at the University of Kent. "Trust Relations in Health Care- the New Agenda." 2006. http://eurpub.oxfordjournals.org/content/eurpub/16/1/4.full.pdf)//EMerz

Given that trust remains important, how can new forms of trust relations be developed and sustained? There is considerable evidence as to what factors encourage patient trust in clinicians: the clinician's technical competence, respect for patient views, information sharing, and their confidence in patient's ability to manage their illness.8 Patient participation per se does not necessarily result in higher trust, rather it is associated with value congruence regarding participation, patient involvement produced higher trust where patients wanted to participate.9 In contrast, evidence as to what builds institutional trust is sparse, with trust relations between providers and between providers and managers a particularly neglected area. Hall et al US survey of HMO members found that system trust could help the development of interpersonal trust, where there was no prior knowledge of the clinician, but it is not known how interpersonal trust affects institutional trust. Medical errors and cost containment are associated with distrust of health care systems, whereas relationship building with the local community is regarded as an important trust building mechanism. However, little research has been conducted to identify how different modes of governance affect institutional trust. The focus of trust relationships may of course differ according to the model of health care delivery; **in market based systems such as the US patient trust may be more important to secure loyalty to particular providers** whereas in tax-financed systems which are organized by national or regional agencies public trust may be more necessary. However, as health systems converge and increasingly share common challenges including: providing adequate patient choice; managing a mixed economy of provision; and more explicit rationing, then both interpersonal and institutional trust will continue to be important for all health systems. In conclusion, we would argue that clinicians and managers need to address and respond to the changing nature of trust relations in health care. The benefits of trust demonstrate the value to be Trust and the sociology of the professions 5 gained from ensuring that both interpersonal and institutional trust are developed, sustained, and where necessary rebuilt. Trust is still fundamental to the clinician–patient relationship but as that relationship has changed so has the nature of trust. Trust is now conditional and has to be negotiated but, whilst clinicians may have to earn patients' trust, there is good evidence as to what is required to build and sustain such interpersonal trust. The lack of knowledge about how institutional trust can be developed indicates the need for research, ideally through inter-country comparisons to identify whether such trust varies by health system and how it can be generated. The cost of failing to recognize the importance of trust and to address the changing nature of trust relations could be substantial: economically, politically, and most important of all, in terms of health outcomes.

Government monitoring of healthcare quality ensures trust in patients

CQHCA '1 (Committee on the Quality of Health Care in America. "Crossing the Quality Chasm: A New Health System for the 21st Century." March 1, 2001. http://www.ncbi.nlm.nih.gov/books/NBK222265/)//EMerz

Recommendation 2: All health care organizations, professional groups, and private and public purchasers should pursue six major aims; specifically, health care should be safe, effective, patient-centered, timely, efficient, and equitable. The committee believes substantial improvements in safety, effectiveness, patient-centeredness, timeliness, efficiency, and equity are achievable throughout the health care sector. This opportunity for improvement is not confined to any sector, form of payment, type of organization, or clinical discipline. Problems in health care quality affect all Americans today, and all can benefit

from a rededication to improving quality, regardless of where they receive their care. The committee applauds the Administration and Congress for their current efforts to establish a mechanism for tracking the quality of care. Title IX of the Public Health Service Act (42 U.S.C. 299 et seq.; Agency for Healthcare Research and Quality Part A) provides support for the development of a National Quality Report, which is currently ongoing. Section 913(a)(2) of the act states: "Beginning in fiscal year 2003, the Secretary, acting through the Director, shall submit to Congress an annual report on national trends in the quality of health care provided to the American people."

Recommendation 3**: Congress should continue to authorize and appropriate funds for, and the Department of Health and Human Services should move forward expeditiously with the establishment of, monitoring and tracking processes for use in evaluating the progress of the health system in pursuit of the above-cited aims of safety, effectiveness, patient-centeredness, timeliness, efficiency, and equity.** The Secretary of the Department of Health and Human Services should report annually to Congress and the President on the quality of care provided to the American people. Without ongoing tracking of quality to assess the country's progress in meeting the aims set forth in this chapter, interested parties—including patients, health care practitioners, policy makers, educators, and purchasers—cannot identify progress or understand where improvement efforts are most needed. Continued funding for this activity should be ensured.

Drone Strikes CP

**1nc

Text: The United States Federal Government should

- **End signature strikes**
- **Limit targeted killings to a limited number of specific terrorists**
- **Improve congressional oversight of drone strikes**
- **Continue restrictions on armed drone sales**
- **Work internationally to establish rules and norms governing the use of drones**

Zenko 13—Micah is a Senior Fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at Harvard University's Kennedy School of Government, and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning. ("Reforming U.S. Drone Strike Policies" January 2013 http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)//JLee

Zenko puts forward a substantive agenda. He argues that the United States should end so-called signature strikes, which target unidentified militants based on their behavior patterns and personal networks, and limit targeted killings to a limited number of specific terrorists with transnational ambitions. He also calls Congress to improve its oversight of drone strikes and to continue restrictions on armed drone sales. Finally, he recommends that the United States work internationally to establish rules and norms governing the use of drones.

--xt Solves US-EU Relations

CP solves—Drones are hated more than surveillance by the EU—encourages a limiting of drone strikes

Dworkin 13—Anthony is a senior policy fellow at ECFR, where he leads the organisation's work in the area of human rights, democracy, and justice. ("Actually, drones worry Europe more than spying" July 18, 2013 http://www.ecfr.eu/article/commentary_actually_drones_worry_europe_more_than_spying)//JLee

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages. Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, **but rather America's use of armed drones to kill terrorist suspects away from the battlefield**. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease. In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama's presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe's muted stance on drone strikes looks likely to change. Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level. But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim. However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, **it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S.** That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time. European countries might be more willing to accept an approach based on this kind of "self-defense" idea. However, there remain some big stumbling blocks. First, a good deal about Obama's new standards is still unclear. How does he define a "zone of hostilities," where the new rules will not apply? And what is his understanding of an "imminent" threat? European countries are likely to interpret these key terms in a much narrower way than the United States. Second, Obama's new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes. But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely. For a start, **it should cut back the number of drone strikes** and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also **elaborate its criteria for determining who poses an imminent threat** in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone

strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

--xt Solves Terrorism

Top military official – drone strikes cause terror

Hussain 2015 (Murtaza; Retired General: Drones Create More Terrorists Than They Kill, Iraq War Helped Create ISIS; Jul 16; https://firstlook.org/theintercept/2015/07/16/retired-general-drones-create-terrorists-kill-iraq-war-helped-create-isis/; kdf)

Retired Army Gen. Mike Flynn, a top intelligence official in the post-9/11 wars in Iraq and Afghanistan, says in a forthcoming interview on Al Jazeera English that **the drone war is creating more terrorists than it is killing.** He also asserts that the U.S. invasion of Iraq helped create the Islamic State and that U.S. soldiers involved in torturing detainees need to be held legally accountable for their actions. Flynn, who in 2014 was forced out as head of the Defense Intelligence Agency, has in recent months become an outspoken critic of the Obama administration's Middle East strategy, calling for a more hawkish approach to the Islamic State and Iran. But his enthusiasm for the application of force doesn't extend to the use of drones. In the interview with Al Jazeera presenter Mehdi Hasan, set to air July 31, the former three star general says: "When you drop a bomb from a drone … you are going to cause more damage than you are going to cause good." Pressed by Hasan as to whether drone strikes are creating more terrorists than they kill, Flynn says, "I don't disagree with that." He describes the present approach of **drone warfare as "a failed strategy."**

The CP solves—drones do not do anything to solve terrorism—other military tech solves

Zenko 13—Micah is a Senior Fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at Harvard University's Kennedy School of Government, and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning. ("Reforming U.S. Drone Strike Policies" January 2013 http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)//JLee

T**he combination of persistence and responsiveness, high-quality¶ intelligence infrastructures, and tacit host-state support have made¶ drones the preeminent tool for U.S. lethal operations against suspected¶ terrorists** and militants where states are unable to singlehandedly¶ deal with the threat they pose. As a result, **drones** are not just another¶ 8 Reforming U.S. Drone Strike Policies¶ weapons platform. Instead, they **provide the United States with a distinct¶ capability that significantly reduces many of the inherent political,¶ diplomatic, and military risks of targeted killings**.¶ Compared to other military tools, **the advantages of using drones**—¶ particularly, that they avoid direct risks to U.S. servicemembers—¶ **vastly outweigh the limited costs and consequences**. Decision-makers¶ are now much more likely to use lethal force against a range of perceived¶ threats than in the past. Since 9/11, over 95 percent of all nonbattlefield¶ targeted killings have been conducted by drones—the remaining attacks¶ were JSOC raids and AC-130 gunships and offshore sea- or air-launched¶ cruise missiles. And the frequency of drone strikes is only increasing¶ over time. George W. Bush authorized more nonbattlefield targeted¶ killing strikes than any of his predecessors (50), and Barack Obama¶ has more than septupled that number since he entered office (350). Yet¶ **without any meaningful checks**—imposed by domestic or international¶ political pressure—or sustained oversight from other branches of government,¶ U.S. drone strikes create a moral hazard because of the negligible¶ risks from such strikes and the unprecedented disconnect between¶ American officials and personnel and the actual effects on the ground.14¶ However, targeted killings by other platforms would almost certainly¶ inflict greater collateral damage, and **the effectiveness of drones makes¶ targeted killings the more likely policy option** compared to capturing¶ suspected militants or other nonmilitary options.

CP solves terrorism

Zenko 13—Micah is a Senior Fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at Harvard University's Kennedy School of Government, and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of

Policy Planning. ("Reforming U.S. Drone Strike Policies" January 2013 http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)//JLee

The U.S. use of armed drones has two unique advantages over manned¶ aircraft, distant missile strikes, and special operations raids when¶ it comes to destroying targets. First, **drones allow for sustained persistence¶ over potential targets**. **The existing U.S. arsenal of armed¶ drones**—primarily the Predator and Reaper—**can remain aloft**, fully¶ loaded with munitions, **for over fourteen hours**, **compared to four¶ hours or less for F-16 fighter jets** and A-10 ground attack aircraft.5 And¶ unlike manned aircraft or raids, **drones fly directly over hostile territory¶ without placing pilots or ground troops at risk of** injury, capture,¶ or **death**.¶ Second, **drones provide a near-instantaneous responsiveness—¶ dramatically shrinking** what U.S. military targeting experts call **the¶ "find-fix-finish" loop**—that most other platforms lack. For example,¶ **a drone-fired missile travels faster than the speed of sound, striking a¶ target within seconds**—often before it is heard by people on the ground.¶ This ability stands in stark contrast to the August 1998 cruise missile¶ salvo targeting Osama bin Laden, which had to be programmed based¶ on projections of where he would be in four to six hours, to allow time¶ to analyze the intelligence, obtain presidential authorization, program¶ the missiles, and fly them to the target.6 Intercontinental ballistic missiles¶ (ICBMs) loaded with conventional munitions can reach distant¶ targets much faster than cruise missiles, but they carry the dire risk of¶ misattribution as a U.S. nuclear first strike against Russia or China, for¶ instance. Finally, **drone-fired missiles can be—and have been—diverted¶ at the last moment if noncombatants enter the likely blast radius.7**

--xt Solves Credibility

CP solves credibility—drone strikes will always be blamed on the US

Zenko 13—Micah is a Senior Fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at Harvard University's Kennedy School of Government, and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning. ("Reforming U.S. Drone Strike Policies" January 2013 http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)//JLee

The problem with maintaining that drone strikes are covert is that both the American and international publics often misunderstand how drones are used. And in affected states, citizens often blame the United States for collateral damage that could have been caused by the host states' own weapon systems. According to a recent report from Yemen: It's extremely difficult to figure out who is responsible for any given strike. . . . It could be a manned plane from the Yemeni Air Force or the U.S. military. Or it could be an unmanned drone flown by the U.S. military or the CIA. . . . But no matter who launches a particular strike, Yemenis are likely to blame it on the Americans. What's more, we found that many more civilians are being killed than officials acknowledge.37 Congressional oversight of drone strikes varies depending on whether the CIA or the U.S. military is the lead executive authority. The CIA, according to the chair of the Senate Select Committee on Intelligence, Senator Dianne Feinstein, meets its "fully and currently informed" legal obligations through "monthly in-depth oversight meetings to review strike records and question every aspect of the program."38 Individual JSOC strikes are not reported to the relevant armed services committees, but are covered under the broad special access program biannual reporting to Congress. According to senior staff members on the Senate Foreign Relations Committee and House Foreign Affairs Committee, many of their peers have little understanding of how drone strikes are conducted within the countries for which they are responsible for exercising oversight. Even serving White House officials and members of Congress repeatedly make inaccurate statements about U.S. targeted killings and appear to be unaware of how policies have changed over the past decade.39 At the same time, the judiciary committees have been repeatedly denied access to the June 2010 Office of Legal Counsel memorandum that presented the legal basis for the drone strike that killed U.S. citizen and alleged leader of AQAP Anwar al-Awlaki in September 2011.40 Finally, despite nearly ten years of nonbattlefield targeted killings, no congressional committee has conducted a hearing on any aspect of them.2

at: Links to the Terrorism DA

Wrong—they just are just a recruitment tool for terrorist—CP solves

Abbas 13—Hassan is a senior advisor at Asia Society and the author of the forthcoming book The Taliban Revival. ("How Drones Create More Terrorists" August 23, 2013 http://www.theatlantic.com/international/archive/2013/08/how-drones-create-more-terrorists/278743/)//JLee

Drone strikes may create more jihadi militants. (Ibraheem Abu Mustafa/Reuters) Recently, strong evidence has begun to suggest that terrorists use drone strikes as a recruitment tool. Of course, the value of drones in the arena of intelligence-gathering and secret surveillance of foes (and even friends) is unmistakable. In warzones too, it can support ground operations in significant and even decisive ways. None of this is controversial, though the ones on the receiving end will certainly not like it. What is debatable is its use as a counter-terrorism instrument in theaters that are not declared war zones, or in cases where a sovereign state is not fully and publicly on board with this policy. Lack of transparency in regulations that govern this new type of warfare, the unverifiable nature of targets, and questions over the credibility of intelligence only complicates the matter. Mark Bowden's important contribution to the drone debate raises critical questions that policy makers will be wise to consider for the future use of this new tool of war. One of the important arguments mentioned in the piece revolves around the notion that drone strikes might be less provocative than ground assaults for terrorists, meaning that standard warfare might create more terrorists than drones do. Lets first accept what is obvious: more civilians are killed in standard warfare, and the history of warfare in the 20th century sufficiently proves the point. When it comes to drones strikes, the ratio of civilian deaths is certainly lower, but the issue is not about the number of civilian casualties alone. The inherently secret nature of the weapon creates a persistent feeling of fear in the areas where drones hover in the sky, and the hopelessness of communities that are on the receiving end of strikes causes severe backlash -- both in terms of anti-U.S. opinion and violence. Response to drone strikes comes in many varieties. First, revenge is targeted at those within the easy range of the insurgents and militants. The victims of those revenge terrorist attacks also consider the drone strikes responsible for all the mayhem. Consequently, terrorists and ordinary people are drawn closer to each other out of sympathy, whereas a critical function of any successful counter-terrorism policy is to win over public confidence so that they join in the campaign against the perpetrators of terror. Poor public awareness -- which is often a function of inadequate education -- about terrorist organizations indeed plays a role in building this perspective. Public outrage against drone strikes circuitously empowers terrorists. It allows them space to survive, move around, and maneuver. Pakistan is a perfect example of this phenomenon. Many in Pakistan now believe that drone strikes tend to motivate Al Qaeda and the Pakistani Taliban to conduct terrorist attacks that target Pakistan's security forces as well as civilians. The duplicity of Pakistan's political and military elite in giving a green light to the U.S. drone policy proved to be counterproductive. The sponsors and supporters of drone strikes in U.S. policy circles apparently ignored the wider socio-political impact and indirect costs when evaluating its efficacy.

Drone Strikes are unpopular—most attempts of terrorism are because of drone strikes

Gerges 13—Fawaz is Professor of International Relations at the London School of Economics and Political Science (LSE), and holder of the Emirates Professorship in Contemporary Middle East Studies. He was also the inaugural Director of the LSE Middle East Centre from 2010 until 2013. Gerges' most recent books are The New Middle East: Protest and Revolution in the Arab World (Cambridge University Press, January 2014) and Obama and the Middle East: The End of America's Moment? (Palgrave Macmillan, September 2013). On the ten-year anniversary of 9/11 , Oxford University Press released Gerges' book, The Rise and Fall of Al Qaeda. In his highly anticipated counterterrorism speech last month, U.S. President Barack Obama publicly acknowledged -- for the first time -- the human toll that drone attacks inflict on Muslim civilians. ("Why drone strikes are real enemy in 'war on terror'" June 21, 2013 http://www.cnn.com/2013/06/21/opinion/terrorism-gerges/)//JLee

"It is a hard fact that U.S. strikes have resulted in civilian casualties," he admitted, adding, "These deaths will haunt us." While he pledged to curtail the use of drone strikes in the future, those words rang hollow when he went on to reaffirm his commitment to the targeted killings because, in his view, any alternative would invite far more civilian casualties. Obama's drone calculus ignores the CIA's warning about the continuing "possibilities of blowback." Officials in Washington ignore the high-cost ways in which the U.S. "war on terror" and the use of tactics such as drone strikes fuel the fires of home-grown radicalization in Western societies. This is a rising phenomenon that has not been seriously debated, despite a string of high-profile attacks. While trials have yet to take place, the Woolwich attack in London and the Boston Marathon bombings are suspected to be the latest cases in point. In case after case over the past few years, attackers and would-be attackers have cited the war on terror, first in Iraq and now in Afghanistan, Pakistan, Yemen, Somalia and elsewhere as proof that the West is at war with Islam. The presence of Western boots in Muslim lands and the continuing use of drone strikes have triggered a backlash among scores **of deluded young Muslims** who live in America and Europe, and who come from different educational and class background, including high achievers. What is surprising is that these attackers are not unified by a core set of ideological beliefs, or a belonging to a particular terrorist group, but by a core set of grievances, real or imagined. These are a different set of terrorists, in that they radicalized themselves -- enraged by specific grievances, while also having been integrated into life in Western society. Falling under the influence of militant preachers mostly online, they have internalized the kind of religious-political worldview that justified their taking matters into their own hands -- in short, a license to kill. Instead of trying to dismiss how the manner in which the US "war on terror" has been waged has motivated these angry, deluded young men to kill, it behooves us to take stock of their voices and to understand the drivers behind this pattern of violent rage. The goal is not to rationalize or justify their murders but to make sense of their violent actions. Boston Marathon bombing suspect Dzhokhar Tsarnaev, for example, allegedly left a note claiming responsibility for the April attack, describing it as retribution for U.S. wars in Afghanistan and Iraq. The purported message was handwritten on the interior wall of the boat where he hid from authorities, bleeding from gunshot wounds. In the note, Tsarnaev is said to have described the bombing victims as "collateral damage": "When you attack one Muslim, you attack all Muslims," Tsarnaev wrote. He described his brother Tamerlan, who died in a shootout with police, as a martyr. And after his Times Square bombing attempt, Faisal Shahzad -- who held a master's degree in business administration and who seemed fully integrated into American life - reportedly told investigators that he acted out of anger over the CIA's **Predator strikes** in Pakistan, especially a drone attack that took place while he was visiting the country. Asked later by U.S. District Judge Miriam Cedarbaun whether he was sure he wanted to plead guilty, Shahzad replied that he wanted "to plead guilty 100 times because unless the United States pulls out of Afghanistan and Iraq, until they stop drone strikes in Somalia, Pakistan and Yemen **and stop attacking Muslim lands,** we will attack the United States and be out to get them." Pressed by the judge to explain his motivations, Shahzad answered: "I consider myself a Mujahedeen and a Muslim soldier," he said. Asked by Cedarbaum whether he understood that children and other innocents might have been among his victims, Shahzad was unapologetic. "They don't see the drones killing children in Afghanistan," he said. "It's a war and I'm a part of it." Shahzad is not unique. Najibullah Zazi, who pleaded guilty to plotting to detonate a bomb in the New York subway, is also an example of bottom-up radicalization. Like Shahzad, Zazi told the court that in August 2008 he decided to go with friends to Pakistan to join the Taliban in fighting the **United States' invasion of Afghanistan**. He went to the Taliban, not the other way around, and while in Pakistan he was persuaded by al Qaeda operatives to return to America to be a suicide bomber. "I would sacrifice myself to bring attention to what the United States was doing to civilians in Afghanistan by sacrificing my soul for the sake of saving their souls," Zazi told the court. Likewise, the Pakistani-born suspect charged in an alleged plot to blow up the Washington subway system in October 2010 came to the FBI's attention because he had asked people about ways to fight U.S. troops in Afghanistan and Pakistan, according to unsealed court records. Farooque Ahmed, a 34-year-old naturalized U.S. citizen, reportedly hoped to journey to his native country and to fight there. The Taliban and al Qaeda did not recruit him. Ahmed, an engineer with a bachelor's degree from the City College of New York, was supposedly radicalized by the conflict in Afghanistan-Pakistan. His ultimate goal, according to an FBI affidavit, was "traveling to Afghanistan to fight and kill Americans." Similarly, the Sweden suicide bomber, Taimour Abdulwahab al-Abdaly, who blew himself up in Stockholm, studied in Britain and was married with three children. Al-Abdaly's friends paint a picture of man who enjoyed basketball and a good party, yet who had become increasingly angry over the past few years. His Facebook wall posts give a hint of his gradual radicalization. One shows a blindfolded Iraqi man being taunted and abused by U.S. soldiers. Several more are part of a series on

"Russia war crimes in Chechnya." According to the New York Times, al-Abdaly sent an audio recording to Swedish authorities minutes before the explosions warning his actions would "speak for themselves." "Now, your children -- daughters and sisters -- will die like our brothers and sisters and children die," The Times reported. "As long as you do not end your war against Islam and the insult against the prophet and your stupid support for that pig Vilks" (Sweden has about 500 signals intelligence specialists in the NATO force in Afghanistan). As a round-up of these violent voices show, home-grown extremism is a phenomenon driven by identity politics, a blowback against what they see as the U.S. "war on terror" in Muslim countries, a war that kills more civilians than al Qaeda operators. In this sense, the fight disproportionately inflames anti-Western sentiments and creates more terrorists at home. According to a 2006 Pew poll, the U.S. "War on Terror" is very unpopular among Muslims in Europe, with 83% of Muslims in Spain opposed, 78% in France, 77% in Britain, and 62% in Germany. Three years later, a survey of British Muslims for the BBC showed that 75% said it was wrong for the "West" to intervene militarily in Pakistan and Afghanistan, though a majority of respondents -- 78% -- said they opposed Taliban attacks against Western troops there. In his national security address, Obama hinted that the U.S. might begin to bring a closure to the "war on terror". With al Qaeda's core now "on the path to defeat," he argued, "this war, like all wars, must end." Although Obama did not go far enough by suspending drone strikes, his scaling back of the targeted killing and recommitting to closing the prison at Guantánamo Bay, Cuba, are steps in the right direction. The importance of Obama's speech lies in educating the nation about the diminishing terrorist threat. One would hope that the president would level with Americans about the limits and costs of force in international affairs. Terrorism cannot be eradicated by pushing a button, as in drone attacks, or even military intervention that might cause a backlash that spurs more, not less, terrorism. Deescalating the "war on terror" by halting the questionable use of tactics such as drone attacks might not bring an end to home-grown radicalization. But it could go a long way to deactivating the cultural and religious minefields that entrap disillusioned Muslim teens and spur some of them down a violent path.

at: Links to Politics - Bipart support

Bipart support exists for limiting drone use

Serle 2014 (Jack; New bill would force Barack Obama to publish US drone strike casualties; Apr 5; https://www.thebureauinvestigates.com/2014/04/05/new-bill-would-force-president-obama-to-publish-drone-strike-casualties/; kdf)

A bipartisan Bill that would force President Obama to reveal casualties from covert US drone strikes has been put before the US Congress. If successful, the bill would require the White House to publish an annual report of casualties from covert US drone strikes. The reports would include the total number of combatants killed or injured, the total number of civilians killed or injured, and the total number of people killed or injured by drones who are not counted as combatants or civilians. The Bill would also compel the White House to reveal how it defines combatants and civilians in its covert drone war. However the annual casualty counts proposed by the bill will not include those killed and injured in drone attacks on conventional battlefields, including Afghanistan and any country where the US officially declares war in the future. The Bureau revealed the US and UK had launched almost 1,200 drone strikes in Afghanistan between 2008 and 2012. However in March 2013 the Bureau discovered the US military had stopped publishing data on drone use in Afghanistan and had deleted the few months' data it had previously released from its publicly available records. The bill says the first report would include casualties from the strikes in covert operations from the six previous years, ensuring all drone strikes under President Obama were included. There have been at least 397 drone strikes in Pakistan, Yemen and Somalia during Obama's two terms. They have killed at least 2,183 people including 279 civilians according to the Bureau's estimates, based on open-source information. While there were fewer drone strikes launching during President Bush's administration – 52 strikes between 2002 and January 2009 – they killed more people on average than the Obama's strikes. At least 416 people died in Bush era strikes, including 167 civilians. The bill is co-sponsored by California Democrat Adam Schiff and North Carolina Republican Walter Jones. Schiff said: 'An annual report will provide a modest, but important, measure of transparency and oversight regarding the use of drones.' 'Despite our best efforts to ensure to a near-certainty that no civilians will be killed or injured, sometimes strikes do result in civilian casualties. We must be more transparent and accountable, both with ourselves and with the world, and narrow the perception gap between what really happens, and what is reported or assumed.' Jones said: 'Our government's use of drones for targeted killings should be subject to intense scrutiny and oversight.' He added: 'I believe this legislation is an important step in that direction,' he added. The sponsors are trying to gather bipartisan support for their bill which has been referred to the House Permanent Select Committee on Intelligence and the House Armed Services Committee. The intelligence committee then armed services committee will consider whether to allow the bill to progress to be debated by the House of Representatives. The independent legislative-data-analysis firm GovTrack gives the bill a negligible chance of passing the committee stage. However the bill has similar language to the Intelligence Authorisation Act and could be offered as an amendment to that bill if it reaches the House. Calls for transparency over drone strikes have grown steadily over the past 18 months. In October 2013 both Amnesty International and Human Rights Watch (HRW) called for greater transparency and accountability after investigating US drone attacks in Pakistan and Yemen.

at: Links to Politics - No Obama Push

Obama doesn't push the CP

Baker and Davis 2015 (Peter and Julie Hirschfeld; Amid Errors, Obama Publicly Wrestles With Drones' Limits; Apr 24; www.nytimes.com/2015/04/25/us/politics/hostage-deaths-show-risk-of-drone-strikes.html; kdf)

And yet, for all of Mr. Obama's achingly public struggle over the right approach to terrorism and war, he does not seem likely to overhaul his drone-oriented strategy. Reviews of the strike that killed the hostages may yield better ways to conduct the war — officials were already talking about forming a "fusion center" that would link agencies to deal with hostage situations — but aides gave no sense that Mr. Obama would embrace a wholesale shift. "These kinds of counterterrorism operations have diminished the effectiveness of Al Qaeda," said Josh Earnest, the White House press secretary. "This kind of pressure has been effective in enhancing the national security of the United States." Aides say that the president views the strikes as a critical tool in confronting Al Qaeda in dangerous and remote regions such as the one where Mr. Weinstein and Mr. Lo Porto died. They argue that the practice has undermined Al Qaeda's ability to plot and execute attacks against the United States, recruit followers and operate a military organization.

International Model Net-Benefit

The CP gets modeled—creating a drone framework solves terrorism and promotes human rights

Zenko 13—Micah is a Senior Fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at Harvard University's Kennedy School of Government, and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning. ("Reforming U.S. Drone Strike Policies" January 2013 http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)//JLee

Beyond the United States, drones are proliferating even as they are¶ becoming increasingly sophisticated, lethal, stealthy, resilient, and¶ autonomous. At least **a dozen other states and nonstate actors could¶ possess armed drones** within the next ten years **and leverage the technology¶ in unforeseen and harmful ways**. It is the stated position of **the¶ Obama** administration that its **strategy toward drones will be emulated¶ by other states and nonstate actors**. In an interview, President Obama¶ revealed, "I think creating a legal structure, processes, with oversight¶ checks on how we use unmanned weapons is going to be a challenge for¶ me and for my successors for some time to come—partly because technology¶ may evolve fairly rapidly for other countries as well."71¶ **History shows that how states adopt and use new military capabilities¶ is often influenced by how other states have—or have not—used¶ them in the past**. Furthermore, **norms can deter states from acquiring¶ new technologies**.72 Norms—sometimes but not always codified as¶ **legal regimes—have dissuaded states from deploying blinding lasers¶ and landmines, as well as chemical, biological, and nuclear weapons**. **A well-articulated and internationally supported normative framework,¶ bolstered by a strong U.S. example, can shape armed drone proliferation¶ and employment in the coming decades**. **Such norms would** not¶ hinder U.S. freedom of action; rather, they would **internationalize¶ already-necessary domestic policy reforms** and, of course, they would¶ be acceptable only insofar as the limitations placed reciprocally on U.S.¶ drones furthered U.S. objectives. And **even if hostile states do not accept¶ norms regulating drone use, the existence of an international normative¶ framework, and U.S. compliance with that framework, would preserve¶ Washington's ability to apply diplomatic pressure**. **Models for¶ developing such a framework would be based in existing international¶ laws that emphasize the principles of necessity, proportionality, and¶ distinction—to which the United States claims to adhere for its drone¶ strikes**—and should be informed by comparable efforts in the realms of¶ cyber and space.¶ In short, **a world characterized by the proliferation of armed¶ drones—used with little transparency or constraint—would undermine¶ core U.S. interests, such as preventing armed conflict, promoting¶ human rights, and strengthening international legal regimes**. It would¶ be a world in which targeted killings occur with impunity against anyone¶ deemed an "enemy" by states or nonstate actors, without accountability¶ for legal justification, civilian casualties, and proportionality. Perhaps¶ more troubling, **it would be a world where such lethal force no longer¶ heeds the borders of sovereign states. Because of drones' inherent¶ advantages over other weapons platforms, states and nonstate actors¶ would be much more likely to use lethal force against the United States¶ and its allies.¶**

Economy

**H1-B Visas

Text: The United States federal government should increase the amount of H1-B visas rewarded in a fiscal year to 195,000.

Increasing h-1b visas to 195,000 solves

Sherk 2009 [James, 5/13. Sherk is Bradley Fellow in Labor Policy in the Center for Data Analysis at The Heritage Foundation. *Restricting H-1B Visas Is Bad for Business and the Economy*. http://www.heritage.org/research/reports/2009/05/restricting-h-1b-visas-is-bad-for-business-and-the-economy 7/16]//kmc

Unfounded Fears of the H-1B. Current law restricts the H-1B visa to highly skilled foreigners who have an undergraduate degree or higher. Each year, the federal government allows 65,000 visas to be issued, with an additional 20,000 visas for people who have masters degrees or higher. The visas are granted to individuals who have been offered employment in the United States. It is valid for three years and can be renewed once for an additional three years. Many believe H-1B workers merely compete with Americans looking for work. They are wrong. **The U.S. workforce is not a "zero-sum game**." One hired H-1B worker does not mean an American is out of a job. In fact, the National Foundation for American Policy found that **employers hired four new American workers for each new H-1B employee they hire.** Additionally, hiring H-1B employees does not lower the wages of American workers. Current law requires that when employers apply for H-1B visas, they must attest that they will pay the visa recipient the same wage they would pay an American with similar skill sets. Rather than limiting the ability of employers to hire H-1B workers by adding more rules and restrictions, Congress should ensure the federal government exercises appropriate oversight in enforcing current laws. Closing the Doors on H-1B. **Preventing companies from hiring foreign workers harms the U.S. economy's ability to rapidly adapt to marketplace demands**. Companies must be able to hire persons best suited to fill positions based on their skill sets—not their nationality. People have varying skill sets unrelated to their country of residence. Simply requiring companies to hire Americans means that the company may not get the best qualified person or even the individual with the right set of professional skills to do the job. The federal government should not be making personnel decisions for American businesses. Keeping the Visa Successful. Adding regulations to the H-1B program would be a serious setback to U.S. visa policy and would only end up hurting the U.S. economy. Instead, Congress should: • Return the cap to the 2001 quota of 195,000 visas a year. • Make the program flexible. If the visa quota is met the year before, the cap should be automatically increased by a preset amount legislated by Congress. In addition, unused visas should be recaptured and used the following year. • Create interoperable databases. Making sure the Department of Labor and the Department of Homeland Security databases are interoperable will help minimize the number of fraudulent cases. • Increase oversight. The federal government should keep employers who have hired H-1B employees accountable to the program rules. Random site visits should be conducted to ensure employers are following the rules. **By improving and expanding the H-1B visa program, Congress can ensure that American businesses have the workforces necessary for further economic growth.**

H-1B Immigrants key to maintaining many parts of the economy – laundry list of advantages: agriculture, start ups, patents

Mills 15 [Karen, 2/3. Mills is a senior fellow with the Harvard Business School and was a member of President Obama's Cabinet, serving as Administrator of the U.S. Small Business Administration from 2009 to 2013. *What's missing in America's immigration debate.* http://fortune.com/2015/02/03/whats-missing-in-americas-immigration-debate/ 7/16]//kmc

The immigration debate continues to be driven by politics instead of putting fact-based analysis at the forefront of our policies. In Washington, policy makers should be focused on the critical question of whether or not steps toward

reform will actually grow the American economy and create jobs and prosperity, both for legal immigrants and native-born job seekers.ð The discussion should include substantive considerations like:ð **Immigrants are filling engineering, computer science and other high-skilled jobs, and in doing so, helping create other jobs**. A recent paper by Harvard Business School professor William Kerr showed firms that hired immigrants into high-skilled jobs **through programs like the H1B visa program created additional jobs**, including for non-immigrant workers.ð The rate of new startups has been declining. A worrisome trend considering they are part of our economic formula for job creation. But, data from The Partnership for a New American Economy, and the SBA shows that immigrants are more than twice as likely to start a business than native-born citizens.ð **Innovation is a key driver of our future economic growth.** Interestingly, immigrants were involved in more than 75% of the nearly 1,500 patents awarded at the nation's top 10 research universities in 2011. Yet, many foreign-born graduate students of these universities can't stay in the country once they get their degree. As a result, they take their ideas to their home countries where some governments have established funds to help them bring their innovations to market.ð **Foreign-born workers over-index in maintenance, construction and manufacturing production jobs, according to the U.S. Bureau of Labor Statistics. They also play a critical role in our nation's agriculture economy. There is critical demand for this workforce and employers continue to have trouble finding workers to fill many of these available jobs.**ð A crucial catalyst for the spirit and aspiration that drives the U.S. economy is the fact that throughout our history immigrants have come to the U.S. in pursuit of the American Dream. And, in doing so, they've created opportunities for themselves and countless other Americans.

Avoids the link to politics – interest group and bipartisan support pushing the counter plan
Wallsten 13 [Peter, 3/20. *Visas for high-skilled workers could double under bipartisan Senate plan*. http://www.washingtonpost.com/politics/visas-for-high-skilled-workers-could-double-under-bipartisan-senate-plan/2013/03/20/8b74c08a-9194-11e2-bdea-e32ad90da239_story.html 7/16]//kmc

The expansion of the visas, known as H1Bs, is one element of talks among a bipartisan group of eight senators, whose legislation is expected to serve as the basis for a deal between Congress and the White House to retool the immigration system. The number of visas available would approximately double from the current limit of 65,000 per year. The H1B program was created in 1990 to attract high-skilled workers from around the world, but it has become a way for outsourcing firms to bring lower-paid employees to the United States.ð Most of the top 10 employers of H1B visa holders, for instance, are India-based technology consultancies with large U.S. operations. Those firms often train workers in the United States before sending them back home to do the same jobs for considerably less money, say critics of the program on the Hill and in the labor movement.ð Sen. Richard J. Durbin (D-Ill.), a member of the bipartisan immigration working group, has been trying to persuade the negotiators to accept two key restrictions on the visas, according to people familiar with the talks. One would prevent certain firms that rely heavily on H1B visas from hiring more workers under the program, and the other would require companies to make a "good faith" effort, subject to federal oversight, to recruit American workers.ð But instead, the group has tentatively agreed to impose stiff fees on some outsourcing companies that hire H1B workers and to require modest measures to encourage the hiring of Americans, such as advertising the jobs, but with limited federal oversight. And while Durbin has pushed to increase the lowest wage levels permitted by the visa program, it's likely that only certain firms would be required to pay more.ð Durbin, who has been a lone voice in the room on the issue, is likely to back down, according to people familiar with the talks, because he has gotten his way on other points, such as a path to citizenship for the estimated 11 million illegal immigrants living in this country. A Durbin spokesman declined to comment, stressing that negotiations were continuing into the night Wednesday and that nothing was final.ð Andrea Zuniga DiBitetto, a lobbyist for the AFL-CIO, said in an interview that the plan could be a "reckless" change that may keep Americans from getting good jobs.ð But advocates for tech companies welcomed the developments, describing the still-evolving immigration plan as a potential watershed moment.ð "We're encouraged," said Scott Corley, executive director of Compete America, a coalition of companies that includes Intel, Google, IBM and other tech giants. Explaining why the industry has sought such a big increase in high-skilled visas and

other means to attract workers, Corley said: “On an issue where the politics are so hard, you can’t overbuild when you know you might not get another shot at it for 25 years.”

--xt: solves the economy

Visas are key – the number of jobs and students that require are visas are up – the CP is a key starting point to solving economy

Baron 6/21 [Ethan, 2015. *Why Business Schools Want More H-1B Visas.* http://poetsandquants.com/2015/06/21/why-business-schools-want-more-h-1b-visas/ 7/16]//kmc

APPLICATIONS SURGE FOR MBAS' VISA OF CHOICEð In the latest round of H-1B visas, awarded by lottery, U.S. immigration services received 233,000 applications from companies for the Congressionally mandated 85,000 work permits. Last year, 172,500 applications were submitted, up significantly from 124,000 a year earlier.ð Meantime, **U.S. schools have significantly expanded the percentage of international students in their classrooms so the need for more work visas is greater than ever**. At the University of Virginia's Darden School of Business, some 36% of the latest entering class were born outside the U.S., triple the 12% representation of 20 years ago. At Duke University's Fuqua School of Business, MBA students with non-U.S. passports now account for 38% of the class, up from only 19% two decades ago. And at Northwestern University's Kellogg School of Management, some 36% of the latest class is composed of international, compared to only 24% 20 years earlier.

Solves the economy – creates jobs and economic competition

Bier 12 [David, 6/17. *H1-B Visa Quotas Greatly Restrain Small Business Expansion.* http://www.forbes.com/sites/realspin/2012/06/17/h1-b-visa-quotas-greatly-restrain-small-business-expansion/ 7/16]//kmc

U.S. Citizenship and Immigration Services (CIS) announced this week that it had filled its annual H-1B visa quota for foreign high-skilled workers. The announcement comes about five months earlier than last year, signaling that U.S. businesses are expanding again. But many companies must now wait until next year to attempt to hire needed talent. This constraint is slowing their renewed growth, while unfairly disadvantaging small businesses that lack the resources necessary to navigate America's complex immigration code.ð **As America's technology and service-based economy has expanded over the last decade, its demand for high-skilled labor has increased greatly**. Global competition requires access to the world's best talent. Yet during this same period, Congress has allowed the H-1B quota for high-skilled workers to drop in half—from 195,000 in 2001 to 85,000 today. In 2006, the quota was tapped in less than two months. In 2008, it vanished in less than a day—nearly 125,000 applications were received in just two days.ð Market-driven demand grew while government-controlled supply shrank. "In most years," the Government Accountability Office found last year, "demand for new H-1B workers exceeded the cap." This mismatch is further exacerbated by fees and regulations that prevent businesses, particularly small firms, from even applying. One company estimated the cost of the H-1B and green card process at $16,000. More than sixty percent of small businesses surveyed by the GAO "incurred significant business costs resulting from petitions denied due to the cap, delays in processing H-1B petitions, and other costs."ð **H-1B regulations advantage large companies because they can absorb application costs and afford more qualified consultants**. Complicated forms and regulations—and the imperative of speed and accuracy—force most businesses to hire experts for $3,000 for a single applicant. Multinational companies surveyed by the GAO "were generally able to hire their preferred candidates because the firms were skilled at navigating the immigration system." **This legal inequity places start-ups and small firms at a disadvantage.**ð "Some companies would not want to be bothered with foreign students because it would require a lawyer to do all the paperwork," Elias Shiu, a professor at the University of Iowa's department of statistics and actuarial science, told The Des Moines Register earlier this year. International students constitute more than sixty percent of Shiu's department, like many science, engineering, and technology departments at other universities. Yet finding jobs for these highly-qualified workers in the U.S. is almost impossible due to H-1B regulations.ð Not only can big players navigate the system better

than small firms, they often manage to avoid it completely. Large firms like Principal can afford to have actuary offices in China and Brazil. Similarly, Microsoft recently opened offices in Vancouver to make use of Canada's more expeditious immigration system for foreign software designers. Not only is stimulating off-shoring bad policy, it is unfair to small U.S. competitors who cannot afford offices overseas to avoid visa constraints.∂ Multinational firms do not always need to leave the U.S. to hire the workers they want—they can also use an L-1 visa to bring workers from their foreign offices to a U.S. site for up to seven years, or they can use a B-1 visa to conduct short-term activities like holding business conferences. While these options are unavailable to most small firms and start-ups, the best response to such inequality isn't to restrain multinationals, but to open competition for all American businesses by eliminating H-1B restrictions.∂ Highly-skilled foreign workers do not "take jobs"—they make jobs. H-1B applications fell dramatically during the recession because companies use H-1B visas not to replace Americans during downtimes, but to recruit workers during expansion. A 2009 National Foundation for American Policy study found that **every H-1B request is correlated with five new jobs at major firms and more than seven jobs at firms with less than 5,000 employees. H-1B restrictions slow this expansion and hurt economic growth.**∂ Immigration quotas and restrictions are fundamentally unfair and stand in the way of America's future prosperity. **Increasing the H-1B quota would constitute progress**. But better yet, abolishing the quota system and H-1B constraints entirely would not only allow more highly-skilled workers to come, but also make America's immigration system fair for small competitors. Fairer competition would increase innovation, entrepreneurship, and job creation, **benefiting all Americans.**

--xt: k2: solve brain drain

Reform key to solve the brain drain

Case et al. 11 [Steve 5/19. Case, CEO of Revolution, John Doerr, Partner, Kleiner Perkins Caufield & Byers ; Paul Otellini, CEO of Intel Corporation, and Sheryl Sandberg, COO of Facebook, are members of the President's Council on Jobs and Competitiveness. *America needs a 21st century immigration policy.* http://blogs.reuters.com/great-debate/2011/05/19/america-needs-a-21st-century-immigration-policy/ 7/16]//kmc

President Obama's recent focus on immigration highlights America's "broken" system and its impact on our economy. Fixing it requires Republicans and Democrats to show political courage and implement reforms to expand and strengthen the American economy. As members of the President's Council on Jobs and Competitiveness, we share his deep concern that our nation's ability to compete economically is being damaged by the two parties battling over immigration laws and policies.∂ To some, **the link between immigration reform and economic growth** may be surprising. To America's most innovative industries, it is a link we know **is fundamental.**∂ The global economy means companies that drive U.S. job creation and economic growth are in a worldwide competition for talent. While other countries are aggressively creating policies and incentives to attract a highly educated workforce, America has stagnated. Once a magnet for the world's top minds, America now faces a "reverse brain drain" and is no longer the first choice for many entrepreneurs creating new companies and jobs.∂ **America needs a pro-growth immigration system that works for U.S. workers and employers in today's global economy**. And we need it now.∂ First, we need to invest in homegrown talent that is educated and trained in the critical science, technology, engineering and math fields. The U.S. education system must be improved, top to bottom, so that our most precious resource – our children – can compete in the increasingly global world economy. Statistically our K-12 students are falling farther behind students in Korea, China and elsewhere in the physical sciences. We can and must do better.∂ Second, the United States must allow employers to recruit and retain the world's best brains. We need a pro-growth based green card system to replace the current system that is plagued with years-long backlogs. Waiting a decade or more during the H1B specialty visa and green card process demoralizes the next great American immigrant Nobel laureate. More of them are returning to their home countries, like China and India, and driving new scientific breakthroughs and innovations there.∂ Third, we should staple a green card to every advanced diploma in critical fields to keep foreign-born students graduating from a U.S. university or college here in America, working for our future. Today foreign nationals account for 50% of master's degrees and 70% of Ph.D. degrees in electrical and electronic engineering in the U.S. Yet, our antiquated immigration laws numerically limit the numbers of these individuals, by the thousands, from entering our country annually. What kind of strategy is it to train the world's best and brightest in our great universities – and then require them to leave?∂ America's cutting-edge job creating industries – from computing to biotech – rely on immigrant scientists, engineers and entrepreneurs to remain competitive. And as the President said in his speech, they are responsible for founding iconic companies like Google, Yahoo and eBay.∂ According to a Kauffman Foundation study, 40 million jobs have been created in the past 25 years by high growth U.S. entrepreneurial companies. Of those, according to a Duke and UC Berkeley report, more than a quarter of U.S. technology and engineering businesses launched between 1995 and 2005 had a foreign-born founder. And in 2005, companies created by immigrants produced $52 billion in sales and employed 450,000 workers, so getting this right is paramount.∂ Silicon Valley offers a good example of the impact foreign nationals make on U.S. innovation – and the arduous process companies must go through to retain them. With 80% of Intel R&D conducted in the U.S., employing people with specific expertise in U.S. facilities is imperative. Right now, there are software engineers in the UK, who cannot come to work in a U.S. Intel facility until visas are available in the next fiscal year. And experts in next-generation mobile technology who must remain in Finland, rather than joining an Intel research and development team in the U.S.∂ At Facebook, Javier Olivan was instrumental in creating the technology that has translated the site into more than 70 languages, connecting people and businesses in the U.S. with markets around the world. Despite making a significant contribution to economic growth, Javier was lucky to be able to stay in this country. The year he applied for an H-1B visa, there were 150,000 applicants and only 65,000 visas.∂ **U.S. employers must look ahead to coming talent shortages and plan their workforce needs years in advance. They need policy certainty from Washington to know they will be able to hire the very best talent to meet the demands of the global innovation marketplace. It is time for Congress and the Administration to pass bi-partisan immigration reforms. In particular, taking quick action to attract and retain science and engineering talent is critical to the**

growth of our economy. Let's create a pro-growth immigration system that works. Our global competitiveness should not be a partisan debate, it should be a top American priority.

aff answers

H-1B is politically unpopular – immigration is too polarizing of an issue

Baron 6/21 [Ethan, 2015. *Why Business Schools Want More H-1B Visas.* http://poetsandquants.com/2015/06/21/why-business-schools-want-more-h-1b-visas/ 7/16]//kmc

Of course**, immigration issues in the U.S. generate highly polarizing debate,** and recent allegations that Disney and utility Southern California Edison used outsourcing companies to replace American workers with foreign H-1B employees have complicated the politics even more. D**emocrats join Republicans in unholy legislative alliances, none of which have so far found success**. Major U.S. corporations have also banded together in pressure groups – one boasts Facebook CEO Mark Zuckerberg and Microsoft founder Bill Gates among its leaders, and wants immigration policy changes that will give companies more access to educated, skilled foreign workers; another group, pushing for similar changes, is led by titans including former Microsoft CEO Steve Ballmer and News Corp. chairman Rupert Murdoch – but also by Bob Iger, CEO of Disney, a firm now mired in allegations that it forced American workers to train foreign, H-1B-carrying replacements before being laid off.ð "I'm sure there are violators out there," Piemonte says. "But they're not the companies that are hiring our graduate students from the United States."

No shortage of STEM workers

Eidelson 14 [Josh, 11/24. *The Tech Worker Shortage Doesn't Really Exist.* http://www.bloomberg.com/bw/articles/2014-11-24/the-tech-worker-shortage-doesnt-really-exist 7/16]//kmc

Along with temporary deportation relief for millions, President Obama's executive action will increase the number of U.S. college graduates from abroad who can temporarily be hired by U.S. corporations. That hasn't satisfied tech companies and trade groups, which contend more green cards or guest worker visas are needed to keep tech industries growing because of a shortage of qualified American workers. **But scholars say** there's a problem with that argument: **The tech worker shortage doesn't actually exist.**ð "There's no evidence of any way, shape, or form that there's a shortage in the conventional sense," says Hal Salzman, a professor of planning and public policy at Rutgers University. "They may not be able to find them at the price they want. But I'm not sure that qualifies as a shortage, any more than my not being able to find a half-priced TV."ð For a real-life example of an actual worker shortage, Salzman points to the case of petroleum engineers, where the supply of workers has failed to keep up with the growth in oil exploration. The result, says Salzman, was just what economists would have predicted: Employers started offering more money, more people started becoming petroleum engineers, and the shortage was solved. In contrast, Salzman concluded in a paper released last year by the liberal Economic Policy Institute, real IT wages are about the same as they were in 1999. Further, he and his co-authors found, only half of STEM (science, technology, engineering, and mathematics) college graduates each year get hired into STEM jobs. "We don't dispute the fact at all that Facebook (FB) and Microsoft (MSFT) would like to have more, cheaper workers," says Salzman's co-author Daniel Kuehn, now a research associate at the Urban Institute. "But that doesn't constitute a shortage."ð The real issue, say Salzman and others, is the industry's desire for lower-wage, more-exploitable guest workers, not a lack of available American staff. "**It seems pretty clear that the industry just wants lower-cost labor,"** Dean Baker, the co-director of the Center for Economic and Policy Research, wrote in an e-mail. A 2011 review by the U.S. Government Accountability Office found that the H-1B visa program, which is what industry groups are lobbying to expand, had "fragmented and restricted" oversight that weakened its ostensible labor standards. "Many in the tech industry are using it for cheaper, indentured labor," says Rochester Institute of Technology public policy associate professor Ron Hira, an EPI research associate and co-author of the book Outsourcing America.

PRISM Specific CP

Counterplan: The United States federal government should

-reform U.S. intelligence collection law and processes in line with the President's Review Group on Intelligence and Communications Technologies ,

-create a senior U.S. government position to serve as the primary contact person and advocate for U.S. industry global data issues,

-add Germany and France to the "Five Eyes" intelligence sharing group,

-elevate the issue of data flows within the global trade bodies; include data flow issues within existing and future trade negotiations

-encrypt all user traffic to the extent commercially and logistically possible,

Solves their perception internal link to data localization – as long it is perceived that privacy is protected, it doesn't matter how effective in actuality these reforms are

Hill 14, (Jonah Force, Internet Policy Specialist at the US Department of Commerce, "THE GROWTH OF DATA LOCALIZATION POST-SNOWDEN: ANALYSIS AND RECOMMENDATIONS FOR U.S. POLICYMAKERS AND BUSINESS LEADERS")

Recommendations for the U.S. Government 1. Reform U.S. intelligence collection law and processes in line with the President's Review Group on Intelligence and Communications Technologies120 The primary justification raised in favor of data localization policies is the need to protect citizens and companies from government surveillance of the like orchestrated by the NSA. While the U.S. government should not compromise what it perceives as essential national security objectives in the face of threats to American businesses (especially in light of the hypocrisy involved in some of those threats), it should nevertheless seriously address the concerns of the international community. Specifically, the U.S. can start by adopting some of the important recommendations of the President Review Group on Communications and Technologies, in particular, "Chapter IV: Reforming Foreign Intelligence Surveillance Directed at Non-United States Person," recommendations 12-15, focusing on reforming section 702 of the Foreign Intelligence Surveillance Act, such as applying the 1974 Privacy Act to non U.S. persons. These are serious recommendations, and their implementation ought to go a long way towards reducing (though surely not eliminating) international concerns over the surveillance policies of the United States. Implementation will demonstrate a willingness on the part of the U.S. government to respect global opinion and to impose limits on the reach of its intelligence agencies. 2. Create (or refocus) a senior U.S. government position to serve as the primary contact person and advocate for U.S. industry global data issues. At present, there is no single point-person in the U.S. government coordinating data flow issues, or advocating on behalf of the U.S. for freedom of data flows. The head of the Federal Trade Commission, the U.S. Trade Representative, the Privacy and Civil Liberties Oversight Board, the Department of Commerce (importantly, the Deputy Assistant Secretary for Services), the Chief Privacy Officer of the NSA, several individuals within the Department of State (importantly the U.S. Coordinator for International Communications and Information Policy) as well as many, many others, are all working on the problem, but largely separately, with inevitably separate institutional viewpoints and objectives. While multiple individuals and agencies should be addressing the issue simultaneously, there is a need for a single coordinating office to track and manage this vital economic issue. Perhaps an office of Chief Privacy Officer in the U.S. State Department and/or U.S. Trade Representative could be developed, or the newly-created White House Chief Privacy Officer position could take on this broader international responsibility. President Obama has suggested, in a speech delivered at the U.S. Department of Justice on January 17, 2014, that his administration plans to create a new position at the U.S. State Department "to coordinate [American] diplomacy on issues related to technology and signals intelligence."121 This new role – which has only been vaguely described – could also potentially fill the leadership vacuum within the U.S. government on these issues. However the reorganization happens, is clear that the current

bureaucratic arrangement needs to be restructured to ensure that the antilocalization outreach strategy is effectively coordinated and harmonized across the entire U.S. government and among U.S. industry leaders. 3. Reform and streamline the Mutual Legal Assistance Treaty process. The cumbersome MLAT process has proven to be one of the leading motivations behind many localization proposals. In order to expedite the MLAT process, the Department of Justice's should develop an online MLAT submission form, and devote the resources necessary to respond in a timely fashion, recognizing the urgency of many law enforcement requirements. In addition, the Department of Justice should (consistent with the reasonable confidentiality requirements of sound law enforcement) also publish regular government transparency reports, including breakdowns of number of requests received from different countries, the response provided, the crimes to which the requests relate, and the time each request required, and should provide clear, public guidance on what information can be obtained through an MLAT. These reports would not only result in an anticipated speed-up of response time (no one wants publicly to be shown to be dilatory), but would also demonstrate to foreign law enforcement personnel that their queries are receiving treatment not meaningfully less prompt than are other nations' requests of a similar nature.1224. Consider adding Germany (and perhaps France and other European nations) to the "Five Eyes" intelligence sharing group, or another intelligence-sharing organization and agreement. This recommendation may be the most difficult for the United States government to entertain, because, as we know, intelligence agencies are loathe to share their information, even with sister agencies within their own governments. Nevertheless, the United States surely recognizes that Germany, France, and other European nations have become essential partners in a variety U.S. national security endeavors over the past decade, assisting in national security operations from Afghanistan to Libya, and perhaps most significantly, in anti-terrorism. Yet these nations, and especially Germany (and to a lesser degree, France) have been especially troubled by the Snowden disclosures, in large part due to the fact that the U.S. is supposed to be an ally. As Viviane Reding, a European Commission Vice President, lamented (surely disingenuously), "Friends and partners do not spy on each other."123 In response, some U.S. lawmakers have proposed the idea of including Germany in the privileged "five eyes" intelligence group, 124 the group of the U.S., U.K., Australia, Canada, and New Zealand that have agreed to share significant intelligence information. It is a proposal that merits continued discussion, as would the inclusion of France, the Scandinavian nations, Holland, and perhaps others.125 To the extent that these friendly governments are recipients of significant American intelligence information, they are likely to accept as credible future American assurances that their citizens, their leadership and their companies are not the subject of broad surveillance (or, if they are so subject, the sound security reasons for that surveillance). 5. Elevate the issue of data flows within the global trade bodies; include data flow issues within existing and future trade negotiations To the extent possible, the U.S. government should elevate data localization and global data flow issues within the global trade bodies, including the G8, G20, APEC, OECD, and WTO. Towards that end, the U.S. should strongly identify data restrictions as a global barrier to economic growth and trade. In addition, the U.S. should use multilateral trade negotiations, such as the Trans Pacific Partnership, the Transatlantic Trade and Investment Partnership, and the Trade in Services Agreement, as well as bilateral trade negotiations, to include provisions on open data flows.1266. Encourage independent studies on the potential economic and security impacts of data localization for the countries considering them, and disseminate the findings of those studies to key global stakeholders A March 2014 survey by NTT Communications of over 1000 "IT decisionmakers" found that ICT decision-makers are broadly in favor of localization measures.127 Part of the reason this may be the case is that too few leaders are aware of the potential negative effects of such policies. They should be exposed to analyses not tainted by national or industry self-interest. To that end, industry ought to encourage the production of truly disinterested, peer-reviewed studies of the economic, security, and other effects of localization, and the dissemination of these studies to key stakeholders around the globe. 7. Work to reframe the privacy and surveillance discussion to one of security and economics Localization has been debated since the beginning of Snowden's revelations largely as an answer to privacy and surveillance concerns. Certainly, there is another "narrative" worthy of discussion, and to that end industry should work to alter the one-sided nature of the current discussion by including the issues of cybersecurity, cyber crime, economic integration, and Internet freedom. For developed countries, messaging to counter localization should focus on the urgent need to combat cybercrime and improve cyber security,128 the adverse effects on freedom of expression, and interference with the expansion of Internet-borne commerce at just the time that their economies are emerging from the Great Recession. These views might resonate within developing countries as well, as would the additional argument that localization could leave them permanently on the poorer side of the "digital divide." 8. To the extent commercially and logistically possible, encrypt all user traffic to reassure customers of the security of their data In order to reassure foreign customers (as well as American customers for that matter), U.S. technology companies should seek to encrypt all data traffic. Encrypting information flowing among servers will not make it impossible for intelligence agencies to snoop on individual users of Internet services, and it will not have any significant effect on valid subpoenas for data. Still, widespread use of encryption technology makes mass surveillance more difficult, whether conducted by governments or

other sophisticated hackers, and would serve to give customers some reason to believe that American firms were sensitive to their concerns. 9. Expand joint ventures with foreign enterprises, and increase technology sharing, particularly with companies in developing countries. The calls for localization may be muted if American technology firms can be seen as supportive of foreign enterprises, and particularly of the efforts of developing countries to build Internet sectors able to provide efficient and inexpensive services to their populations. To that end, American companies ought to use some of their resources to launch joint ventures with foreign companies, especially companies in the developing world. This process will inevitably entail some technology transfers with the attendant risk of the loss of proprietary intellectual property, but the mitigation of that risk is largely within the control of the sharing company, unlike the political risks involved in data localization. While joint ventures and technology sharing would be especially welcome in developing countries (and thus turn down the heat generated by their political elites), ventures with the companies of developed countries might also serve the anti-localization cause – would Deutsche Telekom be so eager to exclude American companies if it would profit more immediately, and perhaps more securely, as a partner, rather than as a competitor, of its American counterparts?

Federalism CP

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Text: The USFG should substantially reduce its aid directed to state governments and decrease its regulation of state commerce.

Federal aid programs to states increases federalism- it forces state governments to spend more to resolve new problems and limits the ways states can use the funds

Edwards 13 (Chris Edwards. Director of tax policy studies at Cato "Fiscal Federalism." June 2013. P. 3-4. http://www.downsizinggovernment.org/sites/downsizinggovernment.org/files/pdf/fiscal-federalism_0.pdf)//EMerz

The theory behind grants-in-aid is that the federal government can create subsidy programs in the national interest to efficiently solve local problems. The belief is that policymakers can dispassionately allocate large sums of money across hundreds of activities based on a rational plan designed in Washington. The federal aid system does not work that way in practice. Most federal politicians are not inclined to pursue broad, national goals, but are consumed by the competitive scramble to secure subsidies for their states. At the same time, **federal aid stimulates overspending by state governments and creates a web of top-down rules that destroy state innovation**. At all levels of the aid system, **the focus is on maximizing the money spent and regulatory compliance, not on delivering quality services**. The following are eight reasons why the federal aid system doesn't make any economic or practical sense and ought to be downsized or eliminated. 1. No magical source of federal funds. Aid supporters bemoan the "lack of resources" at the state level and believe that Uncle Sam has endlessly deep pockets to help out. But every dollar of federal aid sent to the states is ultimately taken from federal taxpayers who live in the 50 states. It's true that the federal government has a greater ability to run deficits than state governments, but that's an argument against the aid system not in favor of it. By moving the funding of state activities up to the federal level, the aid system has tilted American government toward unsustainable deficit financing. 2. Grants spur wasteful spending. The basic incentive structure of aid programs encourages overspending by federal and state policymakers. One reason is that policymakers at both levels can claim credit for spending on a program, while relying on the other level of government to collect part of the tax bill. Another cause of overspending is that federal policymakers create program structures, such as matching, that prompt the states to increase spending. A typical match is 50 percent, which means that for every $2 million a state expands a program, the federal government chips in $1 million. Matching reduces the "price" of states' added spending, thus prompting them to expand programs. Most federal aid is for programs that have matching requirements, with Medicaid being the largest such program. One way to reduce spending incentives is to convert open-ended matching grants to block grants. Block grants provide a fixed sum to states and give them flexibility on program design. The best example of such a reform was the 1996 welfare overhaul, which turned Aid to Families with Dependent Children (an open-ended matching grant) into TemporaryAssistance for Needy Families (a lump-sum block grant). Similar block grant reforms should be pursued for Medicaid and other programs. Converting programs to block grants would reduce incentives for states to overspend, and it would make it easier for Congress to cut federal spending in the future. 3.Aid allocation doesn't match any consistent idea of need. Supporters of federal grants assume that funding can be optimally distributed to those activities and states with the greatest needs. But even if such redistribution was a good idea, the aid system has never worked that way in practice.A 1940 article in Congressional Quarterly lamented: "The grants-in-aid system in the United States has developed in a haphazard fashion. Particular services have been singled out for subsidy at the behest of pressure groups, and little attention has been given to national and state interests as a whole."22And a 1981 report by the Advisory Commission on Intergovernmental Relations concluded that "federal grant-in-aid programs have never reflected any consistent or coherent interpretation of national needs."23 It's the same situation today. With highway aid, for example, some states with greater needs due to growing populations—such as Texas—consistently get the short end of the stick on funding.24 Even if funds were allocated to the states based on need, state-level decisions can nullify federal efforts. For example, the largest education grant program, Title I, is supposed to target aid to the poorest school districts. But evidence indicates that state and local governments use Title I funds to displace their own funding of poor schools, thus making poor schools no further ahead than without federal aid.25 4. Grants reduce state policy diversity**. Federal grants reduce state diversity and innovation because they come with one-size-fiscal mandates**. A good example

was the 55-mile-per-hour national speed limit, which was enforced between 1974 and 1995 by federal threats of withdrawing highway grant money. It never made sense that the same speed should be imposed in uncongested rural states and congested urban states, and Congress finally listened to motorists and repealed the law. Another example of top-down federal rules is the No Child Left Behind education law of 2002. To receive NCLB grant funding, the law required states to meet federal mandates, such as ensuring that all teachers were "highly qualified," that Spanish-language versions of tests be administered, and that certain children be tutored after school. Many states passed resolutions attacking NCLB for undermining states' rights. The Davis-Bacon labor rules are another example of harmful regulations tied to federal aid. state public works projects that receive federal aid must pay workers "prevailing wages." Since that generally interpreted to mean higher union-level wages, Davis-Bacon rules increase construction costs on government investments, such as highway projects. 5. Grant regulations breed bureaucracy. Federal aid is not a costless injection of funding to the states. Federal taxpayers pay the direct costs of the grants, but taxpayers at all levels of government are burdened by the costly bureaucracy needed to support the system. The aid system engulfs government workers with unproductive activities such as proposal writing, program reporting, regulatory compliance, auditing, and litigation**. Many of the 16 million people employed by state and local governments must deal with complex federal regulations related to hundreds of aid programs.** There are specific rules for each program, which may be hundreds or even thousands of pages in length. There are "crosscutting requirements," which are provisions that apply across aid programs, such as labor market rules.And there are "crossover sanctions," which are the penalties imposed on the states if they don't meet federal requirements. Each of the more than 1,100 aid programs have different rules, and the activities funded by the programs often overlap, which causes more confusion. For example, state and local officials deal with 16 different federal programs that fund first responders, such as firefighters.26 **That tangle of programs not only creates a lot of paperwork, it may also lead to more fragmented planning of disaster response**. 6. Grants cause policymaking overload. One consequence of the large aid system is that the time spent by federal politicians on state and local issues takes away from their focus on truly national issues. In the years after 9/11, for example, investigations revealed that most members of the House and Senate intelligence committees did not bother, or did not have time, to read crucial intelligence reports.27 Many of these members were probably spending their time trying to steer budget monies toward local activities in their home states. The federal involvement in hundreds of nonfederal policy areas overloads Washington's policy agenda. President Calvin Coolidge was right in 1925 when he argued that aid to the states should be cut because it was "encumbering the national government beyond its wisdom to comprehend, or its ability to administer" its proper roles.28 7. **Grants make government responsibilities unclear**. The three layers of government in the United States no longer resemble the tidy layer cake that existed in the 19th century. Instead, they are like a jumbled marble cake with responsibilities fragmented across multiple layers. Federal aid has made it difficult for citizens to figure out which level of government is responsible for particular policy outcomes. All three levels of government play big roles in such areas as transportation and education, thus making accountability difficult. To make matters worse, politicians have become skilled at pointing fingers of blame at other levels of government, as was evident in the aftermath of Hurricane Katrina in 2005. When every government is responsible for an activity, no government is responsible.

--xt: solvency

The federal government uses state funding to extend its power further by attaching conditions to the aid- that increases federalism- only cutting funding can solve

Waters 15 (Jim Waters. President of the Bluegrass Institute. He cites topic experts in the card. "Bluegrass Beacon: The Seduction of States." April 10, 2015. http://www.bipps.org/tag/federal-funding-to-states/)//EMerz

"When our emotions are engaged, we often have trouble seeing things as they are," Robert Greene writes in his international bestseller "The Art of Seduction." It happens frequently with politicians. When the federal government waves big money in front of state lawmakers – especially for sexy projects that politicians can rush back to their districts, wave big checks and claim credit for – it's almost impossible for policymakers from a poor state like Kentucky not to feel the euphoria and gladly accept it. Federal dollars now comprise more than 35 percent of Kentucky's general revenues. More than $8 billion of the $23 billion that Kentucky collected in general revenues in 2013 came from Washington. According to State Budget Solutions, only four states received more federal-aid dollars than Kentucky. Nationwide spending on federal grants to states and local governments has grown from $24 billion in 1970 to $640 billion today. In 2010, there were 1,100 different grants totaling $608.4 billion – 17 percent of the entire federal budget – waved in front of states. Most troublesome is the rapid growth we've seen in federal grants-in-aid spending in states just since the turn of this century. The number of state depending on the federal government for at least one-third of their total revenues has more than doubled – from 11 in 2001 to 24 states in 2012 to 30 states in 2013. Only nine states have not increased their dependency on federal-government revenues since 2001. Don't be fooled into thinking that Washington is just filled with benevolent betters who simply want states to have resources to spend as they see fit. **An increase in federal funding results in a corresponding decrease in state and local control "while threatening the states' long-run autonomy,"** writes Washington Examiner commentator David Freddoso. "The reason is that with f**ederal patronage comes federal leverage**." Perhaps no more blatant example of this occurred when the Obama administration threatened to cut off all federal matching funds if states didn't expand their Medicaid programs. While that particular scheme was struck down by the Supreme Court, the courts dismayingly have upheld the right of Congress to wave federal dollars to get states to submit to its authority – even when such power is completely outside the feds' constitutional purview. "Congress may achieve by seduction what it has no power to compel directly," James L. Buckley writes in his new book "Saving Congress from Itself: Emancipating the States and Empowering the People." In 1987, for example, the high court in South Dakota v. Dole upheld the constitutionality of withholding federal funds from states whose legal drinking age did not conform to what Washington wanted. The court's majority completely ignored limits on federal power and the Ninth and Tenth amendments – which place a majority of authority in states' hands – and instead ruled that the Constitution's "general welfare" clause essentially invites the federal government to seduce states with its money. However, "if the spending power is to be limited only by Congress' notion of the general welfare, the reality … is that the Spending Clause gives power to the Congress … to become a parliament of the whole people, subject to no restrictions save such as are self-imposed," Justice Sandra Day O'Connor wrote in her Dole dissent. "This was not the Framers' plan and it is not the meaning of the Spending Clause." The debate here is not about whether establishing a legal drinking age, education al standards, requiring seatbelts or myriad other policies forced upon states by Washington are good or bad ideas. Rather, it's about which scope of authority – the feds or state and local governments – is most constitutionally appropriate in which to enact such policies, and whether Washington's use of seduction to get its way is acceptable.

State dependence on federal assistance is increasing rapidly- that leaves states at the hands of federal power

Freddoso 14 (David Freddoso. American political conservative commentator, journalist, and author. "Exography: State government dependence on federal funding growing at alarming rate." April 15, 2014. http://www.washingtonexaminer.com/state-government-dependence-on-federal-funding-growing-at-alarming-rate/article/2547209)//EMerz

Only 11 states depended on the federal government for more than one-third of their total revenues in 2001. By 2012, 24 states found themselves in this situation. State-by-state data from the U.S. Census Bureau, compiled by the State Budget Solutions nonprofit, illustrates the trend of increasing state dependence on federal financial assistance. Forty-one of the 50 states have become more dependent on the federal government since 2001 — with federal dollars accounting for an increasing share of their total revenues. This trend of increased state dependency on Washington reduces state and local control, while threatening the states' long-run autonomy. The reason is that with federal patronage comes federal leverage. The original Obamacare plan, for example, was to force states to expand Medicaid by threatening them with loss of all federal matching Medicaid funds if they refused. Although that particular scheme was struck down by the Supreme Court, **state governments hate to turn down revenue, and federal dollars have strings attached that force states either to operate as Washington prefers or lose the money.** This problem is exacerbated by the federal government's control of the currency and ability to borrow virtually unlimited amounts of money. No state can print money, and most states must balance their annual or biennial budgets. States that depend on federal funds are also vulnerable when Washington cuts programs. Below is a look at the five states whose financial dependency on Washington grew the most between 2001 and 2012. Keep in mind that this is not merely a measure of federal dollars spent in any particular state, but rather a look at the share of federal money making up a state's overall budget, and how fast that share has grown since 2001. The federal money that goes to states -- known officially as "intra-governmental revenue" -- includes everything from one-time stimulus and disaster grants to highway funds and federal contributions to state-run welfare programs. Also note that some states with lower taxes and smaller governments will appear to be more dependent because federally funded programs necessarily comprise bigger portions of their budgets.

Hege CPs

**Seabasing 1NC

Text: The United States Federal Government should develop and implement a mobile Sea Basing naval capability aimed at ensuring adequate United States forward deployment and power projection capabilities.

Seabasing solves hegemony—allows rapid deployment and global deterrence

Perry 9—Michael is a US Navy Commander ("IMPORTANCE OF SEABASING TO LAND POWER GENERATION" 2009 Lexis Nexus)//JLee

Seabasing supports numerous aspects of America's National Security, Defense and Military Strategies. This is best summarized by President George W. Bush recently declaring that the U.S. is "developing joint sea bases that will allow our forces to strike from floating platforms close to the action, instead of being dependent on land bases far from the fight." 36 In particular, U.S. National Defense Strategy relies upon the "ability to rapidly deploy and redeploy forces" as the "keystone" of U.S. National Military Strategy.37 Seabasing facilitates rapidly assembling and projecting the forces required to address any traditional, irregular, catastrophic and/or disruptive challenge and denies the sanctuary needed to plan attacks against the U.S. and develop weapons of mass destruction. 38 This directly addresses national objectives regarding "strategic access" to "retain freedom of action," "strengthening alliances and partnerships" and establishing "favorable security conditions."39 Thus, Seabasing reassures our allies, helps deter and defeat potential adversaries, maximizes use of the "global commons" of the high seas, and ensures "timely generation and deployment of military forces" throughout the world. 40 This approach to force design and planning "focuses less on a specific adversary" and more on flexibly responding to how an "adversary might fight" at a nearly unlimited number of locations.41 Thus, the extremely flexible capabilities of Seabasing are ideally aligned with the extremely flexible requirements of the National Security, Defense and Military Strategies of the United States.

--xt: Solves Hegemony

Leverages our best military asset to boost flexibility and reduce response times

Perry 9—Michael is a US Navy Commander ("IMPORTANCE OF SEABASING TO LAND POWER GENERATION" 2009 Lexis Nexus)//JLee

The rise of the Soviet Navy during the Cold War presented a new peer competitor and slowed development of sea based support of land power generation. However, **the fall of the Soviet Union has renewed interest in "Seabasing." 3 Once again, the U.S. lacks a peer competitor on the high seas and must reconsider its relevance to national security**. The primary difference is that Huntington's advice has become even more relevant and important. In particular, **Seabasing supports the National Security Strategies of the U.S. with mobile operational and logistics platforms that help offset the dramatic decline in U.S. access to overseas bases**. These **national security strategies require rapid access to potential Joint Operating Areas and deployment of follow-on forces as necessary to deter potential aggressors and execute and reinforce U.S. Foreign Policy**. In response, **Sebasing allows the U.S. Navy to project military power on short notice anywhere in the globe either unilaterally or in support of Joint and combined operations**. This **eliminates the need to support marginally democratic regimes for fear of losing access to overseas bases or forcibly seize or establish marginally useful expeditionary air and sea ports.** Rather, Joint Force **Commanders can apply force directly to an objective at the time and place of their choosing from the relative safety of the high seas** As a result, **Seabasing has become a Joint Integrating Concept of great importance to all aspects of the U.S. Department of Defense**. Specifically, **Sebasing forms one of the "Pillars" of the "Sea Power 21" strategy to evolve the U.S. Navy from a "blue-water, war-at-sea" force to a "global joint operations**" force, **which is capable of confronting "regional and transnational dangers" on land as well as sea.**4 Similarly, **Seabasing is essential to transforming the U.S. Army and Air Force to a more responsive and truly joint force**. Yet, over 50 years after Huntington first described its importance, the U.S. Navy and Department of Defense are still struggling to clearly define the goals and objectives of Seabasing and overcome the "mythology and misunderstanding" that has "stifled" its development.5

**Compensation CP

Text: The Department of Defense must reduce its civilian payroll expenses using furloughs, reform its compensation system by using the preference-based benefits optimization approach, and reexamine the size and structure of the Department of Defense civilian workforce.

Solves Hegemony and has bipartisan support

Adams et al. 13—Gordon is a Professor in the US Foreign Policy Program at the School of International Service, American University. He is also a Distinguished Fellow at the Stimson Center. He was a Fellow at the Woodrow Wilson International Center for Scholar David Barno, Lieutenant General USA (Ret.), Center for a New American Security Nora Bensahel, Center for a New American Security David Berteau, Center for Strategic and International Studies Barry Blechman, Stimson Center Shawn Brimley, Center for a New American Security Thomas Donnelly, American Enterprise Institute Mackenzie Eaglen, American Enterprise Institute Paul Eaton, Major General USA (Ret.), National Security Network Eric Edelman, Foreign Policy Initiative Nathan Freier, Center for Strategic and International Studies Mark Gunzinger, Center for Strategic and Budgetary Assessments Christopher Griffin, Foreign Policy Initiative Todd Harrison, Center for Strategic and Budgetary Assessments Lawrence Korb, Center for American Progress Andrew Krepinevich, Center for Strategic and Budgetary Assessments Maren Leed, Center for Strategic and International Studies Clark Murdock, Center for Strategic and International Studies Michael O'Hanlon, Brookings Institution Christopher Preble, Cato Institute Russell Rumbaugh, Stimson Center Jim Thomas, Center for Strategic and Budgetary Assessments Kim Wincup, Center for Strategic and International Studies Robert Work, Center for a New American Security Dov Zakheim, Center for Strategic and International Studies (" Consensus on defense reforms" June 3, 2013 http://www.aei.org/publication/consensus-on-defense-reforms/)//JLee

A striking bipartisan consensus exists today across the think tank community on the need for Pentagon and Congressional leaders to address the growing imbalances within the defense budget that threaten the health and long-term viability of America's volunteer military.¶ **It is our** shared **belief that the Department of Defense** urgently **needs to close excess bases and facilities, reexamine the size and structure of the DoD civilian workforce, and reform military compensation**. While we do not all agree on the best approach to reform in each case, we agree **that if these issues are not addressed**, **they will gradually consume the defense budget from within**. **This will leave a smaller share of the budget to pay for the manning, training and equipping of our armed forces that make the U.S. military second to none.**¶ There is no shortage of useful ideas on how to begin addressing these pressing matters. The challenge has been getting Congress and the administration to admit change is required and take action. For example, many in Congress are understandably fearful of repeating the mistakes of the most recent round of base closures in 2005. This round of closures was an anomaly in many respects because it occurred during a period of growth in defense spending and emphasized moving and consolidating facilities instead of outright closures. Consequently, DoD's inventory of buildings only fell from 2.4 billion square feet to 2.3 billion — roughly 85 percent of which is within the United States. This did not yield the kind of historical savings previous rounds of base closures have brought the taxpayer. Yet by DoD's own estimates, it currently pays to maintain some 20 percent excess capacity in its infrastructure—resources that could be better used to sustain our military muscle. To its credit, the administration has asked Congress to initiate another round of closures to reduce this excess capacity. **Members of Congress on both sides of the aisle should partner with the Pentagon to identify the true scale of excess capacity and then work expeditiously to better match the Department's vast network of facilities to its shrinking force.**¶ **The size and structure of the civilian workforce is another area in need of careful examination** and restructuring that Pentagon leadership has been reluctant to address. From 2001 to 2012, the active duty military grew by just 3.4 percent. Yet over the same timeframe the number of civilian defense employees grew by 17 percent, an increase five times greater than the armed forces. While this large workforce supports essential missions of the Department and warfighter, its growth over the past decade has, by and large, been unchecked and imbalanced. In the last four years alone, **DoD civilians have grown by ten percent, but it is unclear if that growth was appropriately matched to the changing**

needs of a downsizing military and shifting strategy. This is a critical unanswered question for policymakers since DoD civilians are directly employed by the government, consuming $74 billion of the annual defense budget. Under sequestration, **DoD must reduce its civilian payroll expenses in 2013 using furloughs**, **but furloughs are merely a temporary means of reducing costs**. When the new fiscal year begins on October 1, DoD will still have more civilian employees than it can afford and quite possibly more than it needs. It is past time for the Pentagon to rightsize this workforce and make permanent reductions in a thoughtful and targeted manner.¶ Finally, **we all agree on the need for a comprehensive evaluation and modernization of the military compensation system**. **This system has remained** essentially **unchanged** for forty years, yet America's highly-mobile youth expect and value various forms of compensation differently today. Better meeting the needs of a 21st century workforce should be the driving force behind reform. But cost should be a consideration, as should the outdated forms of payment for the 80 percent of service members who serve less than a full 20-year career. From FY 2001 to FY 2012, the compensation cost per active duty service member grew 56 percent, adjusting for inflation, or a rate of 4.1 percent annually**. DoD has proposed many incremental changes to the compensation system** over the past five years to reduce this rate of growth, **but each time Congress has largely rejected DoD's proposals**. **Yet if Congress fails to curb the growth in military compensation costs**, **they will continue to grow as the defense budget shrinks, crowding out funds needed for training, readiness and for the replacement of worn out equipment**. Congress took a modest step forward on this issue in 2012 by establishing a bipartisan commission to examine the military compensation system but stopped short of requiring itself to act on the commission's recommendations. To make meaningful progress on this issue, leaders of both parties should, at a minimum, commit to bringing the recommendations of this commission to a vote in both chambers.¶ None of these **reforms** will be easy, painless, or popular. But they **are** absolutely **essential to maintaining a strong national defense over the long term.** These smart and responsible initiatives should be undertaken by Pentagon and Congressional leaders regardless of the level of defense spending. While these reforms are necessary, they are not of themselves sufficient to meet the fiscal and strategic challenges the military currently faces. Those of us who have joined together in support of these efforts find ourselves with differing views on many other issues, including the proper level of defense spending and how that money can best be allocated. But **we are all in strong agreement on the need to pursue these key reforms for a transforming military**. To paraphrase President Eisenhower, every unnecessary base that remains open, every excess civilian employee that remains on the payroll, and every mis-targeted dollar of military compensation signifies, in the final sense, a theft from both the training and equipping of our young men and women in uniform and, ultimately, the security of our citizens. **It is time for Congress and the Obama administration to act.**

Indefinite Detention CP

**Release or Trial 1NC

The United States federal government should either grant a habeas trial to prisoners within a reasonable time or granting them release.

The CP guarantees that

Chow 2011 [Samuel [JD @ Cardozo]; The Kiyemba Paradox: Creating a Judicial Framework to Eradicate Indefinite, Unlawful Executive Detentions; 19 Cardozo J. Int'l & Comp. L. 775; kdf)

This Note examines the availability of habeas review in executive terrorist detentions. Specifically, the scope of habeas is examined in light of recent interpretations of the judicial branch's ability, or lack thereof, to order release as a remedy. Courts have a rightful place in the foreign relations debate and recent detainee cases point to habeas review as a means to exercise that role. n41 For habeas review to be meaningful, the ability to order functional release, or release where the detainees are no longer being physically detained, must be available. The restraints Munaf has placed on functional release are not problematic so long as the detainees' liberty interests are adequately accounted for. This Note will argue that Kiyemba poses the archetypal situation where detainees have been unlawfully held for an unreasonable length of time, eroding that liberty interest. If release-plus is necessary to effectuate functional release under these conditions, courts must have the authority to grant it - even if those circumstances only occur in a limited class of cases. Indeed, both historical evidence of the judicial branch's role in such circumstances and the Zadvydas v. Davis n42 line of cases has already answered the question of what balance must be struck between the liberty interests of a detainee held unlawfully and the executive immigration prerogative. **Limits must be placed** on how long a detainee may be held and the liberty interest, under circumstances where the detention has become unreasonably lengthy, must win out. n43 Functional release, therefore, must apply when unlawful detentions reach a point where they can be characterized as unreasonable.

Part II examines the historical evolution of habeas corpus and demonstrates that its significance as a judicial remedy depends on the courts' ability to order a detainee's functional release. Part III [*782] introduces the contemporary application and scope of habeas corpus in the context of executive terrorist detentions. Part IV examines the application of immigration paradigms to habeas jurisprudence. Part V argues, based on the Kiyemba paradox, that the courts' role in reviewing such detention cases is substantially diminished if they are unable to meaningfully offer release as a remedy for unlawful detentions. Ultimately, this Note concludes that under particular circumstances, the courts must have the authority to order release into the United States because the availability of release as a remedy is an essential element of habeas corpus. Furthermore, if the availability of habeas review is constitutionally-guaranteed, then as a general rule, the availability of release as a remedy must also be guaranteed. This Note will show that these propositions do not, contrary to what the government argued in Kiyemba, run counter to current understandings of the executive immigration authority.

--xt Solves deference

The CP will create a restriction on the president's power

Chow 2011 [Samuel [JD @ Cardozo]; The Kiyemba Paradox: Creating a Judicial Framework to Eradicate Indefinite, Unlawful Executive Detentions; 19 Cardozo J. Int'l & Comp. L. 775; kdf)

The Kiyemba petitioners were seventeen Uighurs from China's Xinjiang Province who had traveled to Afghanistan and then to Pakistan prior to September 11, 2001. n124 They were subsequently captured by United States military in Pakistan during its military campaign in Afghanistan. n125 All seventeen had been held in Guantanamo Bay since 2002 on CSRT determinations made in 2004 that they were enemy combatants. n126 After Parhat v. Gates, n127 the government retracted that determination. n128 There, the D.C. Circuit Court determined that there was insufficient evidence linking the petitioner, Huzaifa Parhat, to the ETIM. n129 In fact, the court acknowledged that even if it had determined that Parhat was affiliated with the ETIM, that determination would be insufficient to sustain an enemy combatant status in light of the unreliability of the evidence linking the group to al Qaeda or the Taliban. n130 This finding was subsequently applied to all the [*794] Kiyemba petitioners. n131¶ Following Parhat, the government conceded that the Uighurs' detention was unlawful. n132 In Kiyemba, the government admitted that it no longer had a legal basis to hold the Uighurs. n133 Indeed, the D.C. Circuit Court agreed that the Uighurs may be entitled to release based on their habeas petition. n134 However, it also held that it did not have the authority to release the detainees into the United States nor could it overturn the government's transfer determinations. n135 This conclusion was based on the understanding that the court had no authority to intrude on the Executive's immigration authority, n136 which effectively precluded the court's ability to provide a meaningful remedy for release. The Uighurs sought release into the United States because the United States government could not legally return them to their home country of China on the basis of a high likelihood of torture upon their return. n137 Additionally, despite the Executive's attempts to find an alternative asylum destination, no other third-party countries were willing to receive them. n138 Political pressure from the Chinese government n139 and the Executive's prior [*795] determination that the Uighurs were enemy combatants n140 may have contributed to the government's inability to resettle them.¶ After the D.C. Circuit Court issued its opinion and while the petition for certiorari was pending, the Executive expressly recognized the troubling scenario that the continued detention of the Kiyemba petitioners posed. Defense Secretary Robert M. Gates concluded that it was "difficult for the State Department to make the argument to other countries they should take these people that we have deemed, in this case, not to be dangerous, if we won't take any of them ourselves." n141 Indeed, the Executive was poised to send as many as seven of the petitioners to the United States in 2009. n142 However, in response to the threat of such action, Congress attached a rider to the Supplemental Appropriations Act which prevented the use of defense funds to release any Guantanamo detainees into the United States. n143 Congress also passed two additional pieces of legislation restricting the ability of Guantanamo detainees to enter the United States. n144 The National Defense Authorization Act n145 granted Congress a substantial degree of control over such releases and a spending provision banned the Department of Homeland Security from effectuating such release. n146 The detainees' hope for release, therefore, turned again on the pending petition for certiorari.¶ By the time the Supreme Court granted certiorari in Kiyemba on October 2009, ten of the seventeen petitioners had been [*796] granted refuge and transferred; four to Bermuda and six to Palau. n147 The offer extended by Palau was qualified as being an offer for temporary relocation pending permanent resettlement without the hope of obtaining citizenship. n148 Six of the remaining seven petitioners were also given the opportunity to transfer to Palau, but declined. n149 Only one petitioner, Arkin Mahmud, had not received an offer of refuge from any country, prompting his brother and the five other petitioners to reject the offer from Palau. n150 A favorable decision by the Supreme Court seemed to be Arkin Mahmud's only hope of escaping his unlawful detention, until the Swiss government announced it would provide refuge for both Mahmud and his brother. n151 The Supreme Court, deciding that the underlying facts of the case had changed because all of the petitioners had now received at least one offer of resettlement, vacated the D.C. Circuit Court decision and remanded the case to allow the lower courts to make a determination in the first instance. n152 The D.C. Circuit Court promptly reinstated its original decision, holding that regardless of any settlement offers (of lack thereof), the petitioners had "no right to be released into the United States." n153 The remaining five petitioners, still detained at Guantanamo, have since filed a second petition for writ of certiorari. n154¶ The facts in Munaf and Kiyemba are vastly different. Yet, both sets of petitioners sought release-plus, and in both circumstances, the "plus" they sought was release into the United States. The courts' reasoning for refusing such a remedy, however, is entirely distinguishable in each respective case. In Munaf, the immigration issue faced by the Kiyemba petitioners was absent since both Munaf petitioners had been American citizens. n155 In that case, denial of the "plus" factor turned on the fact that the petitioners were attempting to ride roughshod over an international obligation the United States had to hand over [*797] individuals who had committed crimes on Iraqi soil to Iraqi officials, n156 an analogous element that did not exist in Kiyemba.¶ Ultimately, the outcomes in Munaf and Kiyemba point to the overarching principle that courts may have the legal authority to hear a habeas petition, but are limited as to the allocation of relief. A desirable remedy may not be appropriate, particularly when the remedy sought is release-plus. However, it is unlikely that Munaf intended to preclude release-plus in all circumstances because doing so could potentially create unconstitutional suspension. With this in mind, the next issue that must be confronted is

determining when restrictions on the effectiveness of release are appropriate and when they are not. Munaf serves as an example of the former, where limits on release are appropriate. Kiyemba, arguably, serves as an example of when such limits are inappropriate.¶ IV. Immigration in Habeas Jurisprudence¶ ¶ It is well-established that the availability of habeas in the context of executive detentions is its most significant role. n157 "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." n158 A remedy is typically granted where the detention is unlawful; for executive detentions, that remedy has historically meant release. n159 Munaf's relevance after Boumediene concerned the Supreme Court's interpretation of "release." While Munaf is factually different from Kiyemba, it provided a window into the government's interpretation of what constitutes release. Munaf is also instructive in determining, ultimately, how release should be viewed as a constitutional matter.¶ The historical development of habeas corpus and the holding in Boumediene demonstrated first, that release is imperative to maintain the integrity of the writ n160 and second, that habeas corpus [*798] is a constitutionally-guaranteed right for certain individuals. n161 These two principles support the argument that efforts to limit the availability of release as a habeas remedy should, in the very least, require a high degree of scrutiny. Indeed, in Boumediene, Justice Kennedy noted that there are instances of unlawful detention where release may not be appropriate. n162 Therefore, in a limited set of circumstances the grant of release may not be constitutionally required. Munaf suggested that requests for release-plus go beyond what the Constitution requires. In Kiyemba, the government successfully argued that the detainees should be denied release into the United States based on Munaf's release-plus analysis. n163 However, preclusion of functional release is arguably inappropriate there. In fact, this understanding of release-plus in Kiyemba may have been an unconstitutional reading of the immigration laws that the court had relied on.¶ The government's argument in Kiyemba was based on Shaughnessy v. Mezei n164 and broad interpretations of Boumediene and Munaf. n165 The government's argument was twofold. First, the government relied on Mezei to ground the legal authority for excluding the Kiyemba petitioners from entering the United States. n166 Second, Munaf was used to reconcile the petitioners' right to release with their continued detention. n167¶ A. Mezei and the Government's Immigration-Based Framework¶ ¶ In Mezei, the Supreme Court held that the indefinite detention of a non-citizen on Ellis Island was not a "[deprivation] of any statutory or constitutional right." n168 The petitioner, Ignatz Mezei, was born in Gibraltar and lived in the United States for [*799] over twenty-five years. n169 He left to visit his dying mother in Romania but was denied entry to the country and attempted to return to the United States, only to discover that a change in immigration laws while he was abroad meant that he could no longer legally re-enter. n170 He was stuck on Ellis Island and attempts at resettling him failed miserably. n171 The government argued that rather than viewing Mezei's confinement as detention, it should be construed as exclusion n172 - the authority of which was, the government argued, based on well-founded legal foundations in United States immigration law. n173 The Court agreed. n174 Employing habeas corpus to order the release of Mezei into the United States, it argued, was an improper exercise of judicial discretion. n175 In Kiyemba, much like in Mezei, the government argued that releasing the petitioners into the United States would amount to an unlawful intrusion into the authority of the political branches to exclude non-citizens from entering United States territory. n176¶ However, there are serious flaws with the government's Mezei-based argument. The government was correct in asserting that it was "unprecedented" to grant the courts authority to order the Executive to release detainees into the United States. n177 It is also true, however, that a Kiyemba-type situation is unprecedented. One of the glaring differences between the immigration analysis adopted in Mezei and the facts in Kiyemba is the nature of the detentions. First, in immigration cases, detainees voluntarily come under the jurisdiction of the United States government upon choosing to enter the country - this is simply the nature of immigration-based detentions. The Uighurs, in contrast, [*800] were captured in Pakistan and forcibly brought under the jurisdictional umbrella of the United States. n178 This is relevant to determine the source of the detainees' predicament, or how the detainees came under United States authority. This suggests that indefinite executive detention is less disconcerting when the situation is created by the detainee himself. The government recognized, despite its reliance on immigration-based analysis, that judicial review based on immigration laws is inappropriate. n179 Second, the government in Mezei determined that the plaintiff posed a threat to national security. n180 The same cannot be said for the petitioners in Kiyemba. While the petitioners were initially characterized as enemy combatants - and, therefore, national security threats - the government has since withdrawn support for that determination. n181 Additionally, the government had not made any further allegations or arguments to that effect. This indicates the government conceded there was no legal basis for the indefinite detention of the Uighurs. By applying Mezei in the Kiyemba proceedings, the government ignored the significant elements that distinguish immigration-based detentions founded on the concept of exclusion from terrorist detentions. In light of the pronounced factual differences, that application is troubling.

--xt solves EU Relations

The CP solves—closing Gitmo would help end the friction between the US-EU relations

Archick 14—Kristin is a specialist in European Affairs for the Congressional Research Service ("U.S.-EU Cooperation Against Terrorism" December 1, 2014 https://www.fas.org/sgp/crs/row/RS22030.pdf)//JLee

U.S. and European officials alike maintain that the imperative to provide freedom and security at home should not come at the cost of sacrificing core principles with respect to civil liberties and upholding common standards on human rights. Nevertheless, the status and treatment of suspected terrorist detainees has often been a key point of U.S.-European tension. Especially during the former George W. Bush Administration, a number of U.S. policies were subject to widespread criticism in Europe; these included the U.S.-run detention facility at Guantánamo Bay, Cuba; U.S. plans to try enemy combatants before military commissions; and the use of "enhanced interrogation techniques." The U.S. practice of "extraordinary rendition" (or extrajudicial transfer of individuals from one country to another, often for the purpose of interrogation) and the possible presence of CIA detention facilities in Europe also gripped European media attention and prompted numerous investigations by the European Parliament, national legislatures, and judicial bodies, among others. Some individuals held at Guantánamo and/or allegedly subject to U.S. rendition have been European citizens or residents. Many European leaders and analysts viewed these U.S. terrorist detainee and interrogation policies as being in breach of international and European law, and as degrading shared values regarding human rights and the treatment of prisoners. Moreover, they feared that such U.S. policies weakened U.S. and European efforts to win the battle for Muslim "hearts and minds," considered by many to be a crucial element in countering terrorism. The Bush Administration, however, defended its detainee and rendition polices as important tools in the fight against terrorism, and vehemently denied allegations that such policies violated U.S. human rights commitments. Bush Administration officials acknowledged European concerns about Guantánamo and sought agreements with foreign governments to accept some Guantánamo detainees, but maintained that certain prisoners were too dangerous to be released. **U.S.-EU frictions over terrorist detainee policies** have subsided to some degree since the start of the Obama Administration. EU and other European officials welcomed President Obama's announcement in January 2009 that the United States intended to close the detention facility at Guantánamo within a year. They were also pleased with President Obama's executive order banning torture and his initiative to review Bush Administration legal opinions regarding detention and interrogation methods. In March 2009, the U.S. State Department appointed a special envoy to work on closing the detention facility, tasked in particular with persuading countries in Europe and elsewhere to accept detainees cleared for release but who could not be repatriated to their country of origin for fear of torture or execution. Some EU members accepted small numbers of released detainees, but others declined. At the same time, the Obama Administration has faced significant challenges in its efforts to close Guantánamo. Some observers contend that U.S. officials have been frustrated by the reluctance of other countries, including some in Europe, to take in more detainees. Congressional opposition to elements of the Administration's plan for closing Guantánamo, and certain restrictions imposed by Congress (including on the Administration's ability to transfer detainees to other countries amid concerns that some released detainees were engaging in terrorist activity), have also presented obstacles. Consequently, the Obama Administration has not **fulfilled** its promise to shut down Guantánamo. In March 2011, President Obama signed an executive order that in effect created a formal system of indefinite detention for those detainees at Guantánamo not charged or convicted but deemed too dangerous to free. The Administration also announced in March 2011 an end to its two-year freeze on new military commission trials for Guantánamo detainees.73 Some European policy makers continue to worry that as long as Guantánamo remains open**, it helps serve as a recruiting tool for Al Qaeda,** its affiliates, and other Islamist extremist groups. European officials have also voiced concern about the physical well-being of those detainees at Guantánamo who began hunger strikes in early 2013 to protest their ongoing incarceration. In May 2013, the European Parliament adopted a resolution that expressed concern for those on hunger strike, and again called upon the United States to close the detention facility.74 The Obama Administration asserts that it remains committed to closing Guantánamo. In late May 2013, President Obama renewed his pledge to work toward this goal, and announced that U.S. authorities would restart the process of sending home or resettling in third countries those detainees already cleared for transfer. In August 2013, the Administration released two Algerian detainees (the first such releases in nearly a year), after certifying to Congress that they no longer posed a threat to U.S. national security. Media sources indicate that

nine additional detainees were transferred to other countries during the remainder of 2013, including three to Slovakia. In December 2013, Congress passed a measure in the FY2014 defense authorization bill (P.L. 113-66) easing restrictions on the Administration's ability to transfer low-risk detainees to other countries. In signing the bill into law, President Obama asserted that it was a "welcome step" toward ultimately closing the detention facility, but urged Congress to lift other restrictions that still prevent the transfer of Guantánamo detainees to prisons on U.S. soil for trial in U.S. courts. Some commentators suggest, however, that Congress may not be inclined to take further action aimed at shuttering Guantánamo amid the controversy that erupted in late May 2014 following the Administration's transfer of five Taliban prisoners from Guantánamo to Qatar (without prior congressional notification) in exchange for the release of Sgt. Bowe Bergdahl from captivity in Afghanistan. Of the almost 800 individuals detained at Guantánamo since early 2002, press reports indicate that 143 remained as of the end of November 2014.75 European concerns also linger about the past role of European governments in U.S. terrorist detainee policies and practices. In September 2012, the European Parliament passed a nonbinding resolution (by 568 votes to 34, with 77 abstentions) calling upon EU member states to investigate whether CIA detention facilities had existed on their territories.76 The resolution urged Lithuania, Poland, and Romania in particular to open or resume independent investigations, and called on several other member states to fully disclose all relevant information related to suspected CIA flights on their territory. Meanwhile, some U.S. and European officials worry that allegations of U.S. wrongdoing and rendition-related criminal proceedings against CIA officers in some EU states (stemming from the Bush era) continue to cast a long shadow and could put vital U.S.-European intelligence cooperation against terrorism at risk.77

--xt Solves Soft Power

The counterplan is key to solve soft power

Shulz 9 – Senior Fellow, Center for American Progress William F. Schulz, 2009, Center for American Progress, "The Future of Human Rights: Restoring America's Leadership", www.policyarchive.org/handle/10207/bitstreams/10918.pdf, 7/15/2015, \\BD

What has been far more problematic over the last few years than random disparities between domestic and international interpretations of human rights law has been a fundamental disparagement of the authority of the international community itself. Such depreciation started early: in 2000 Condoleezza Rice, then foreign policy advisor to candidate George W. Bush, wrote in Foreign Affairs magazine, "Foreign policy in a Republican administration…will proceed from the firm ground of the national interest, not from the interests of an illusory international community [emphasis added]." Over the past seven years the U.S. has repeatedly demonstrated its contempt for that allegedly chimerical community by doing such things as "unsigning" the Rome statute of the International Criminal Court (ICC); declaring the Geneva Conventions inapplicable to prisoners at Guantanamo Bay and other so-called "unlawful combatants;" ignoring UN findings and resolutions in the run-up to the Iraq War; or refusing to stand for election to the UN Human Rights Council. The consequences have been devastating for the reputations both of the U.S., which has seen its favorability ratings drop precipitously around the world,5 and, paradoxically, of human rights themselves. The U.S. has long prided itself on being a champion of human rights and with much good reason. We would have had no Universal Declaration of Human Rights had it not been for Eleanor and Franklin Roosevelt; the U.S. pushed hard for the civil rights provisions of the Helsinki Accords, thereby contributing to the eventual liberation of Eastern Europe; the U.S. judicial system with its wide array of due process protections has been a model emulated by newly emerging countries around the world; U.S. diplomats have frequently intervened on behalf of political dissidents; the Kosovo War was spearheaded by an American commitment to prevent ethnic cleansing; and the annual State Department human rights reports have long been an invaluable resource to the cause of human rights. The current U.S. administration's commitment to battling HIV/AIDS in Africa and its outspokenness on Darfur are consistent with this tradition. But for the most powerful nation in the world, long looked to as a model of human rights virtue, to undermine the international system itself—the very framework upon which human rights are predicated—is to cause immeasurable damage to the struggle for liberty. Backtracking on our commitments to international treaties and norms in the name of defending human rights is not just ironic. One of the consequences of the Iraq War with its latter-day human rights rationale and of the "War on Terror" with its oft-stated goals of defending freedom and the rule of law is that human rights themselves have come to be identified with America's worldwide ambitions. For human rights to be conflated with, fairly or not, in the words of the critic David Rieff, "the official ideology of American empire,"6 only exacerbates the customary suspicion in which human rights have been held by some in the developing world who see them as a guise for the imposition of Western values. The truth is that if human rights and the U.S.'s pursuit of them are discredited, American interests are put in peril. Reserving the option to torture prisoners, denying them habeas corpus, sending them into "black site" prisons—all this makes it harder to defend America against the charge of hypocrisy; the claim that we are carrying out a war in defense of the rule of law by abandoning that very rule. Such a charge hands fodder for recruitment to our adversaries and makes the world less safe for Americans. No country can claim protection for its own citizens overseas (be they soldiers taken as prisoners, nationals charged with crimes, or corporations faced with extortion) if it fails to respect international norms at home. Global relations are based in good part on reciprocity. Nor can the U.S. offer effective objection to the human rights violations of others if it is guilty of those same violations itself or has shunned cooperation with international allies. No nation, no matter how powerful, can successfully pursue improvements in human rights around the world independent of the international community. Unilateral sanctions imposed upon a country to protest human rights abuses will inevitably fail if they lack the support of others

Indefinite detention collapses international cooperation

Scheinin 12 – Professor of International Law, former UN Special Rapporteur on Human Rights and Counter-Terrorism

Martin Scheinin, 1/11/2012, "Should Human Rights Take a Back Seat in Wartime?", www.realclearworld.com/articles/2012/01/11/national_defense_authorization_act_scheinin_interview-full.html, 7/15/2015, \\BD

CLC: As a world leader and active promoter of universal human rights, the practice of indefinite detention without charge would seem to clash with U.S. ideals. Could you comment on this contradiction? MS: One of the main lessons learned in the international fight against terrorism is that counter-terrorism professionals have gradually come to learn and admit that human rights violations are not an acceptable shortcut in an effective fight against terrorism. Such measures tend to backfire in multiple ways. They result in legal problems by hampering prosecution, trial and punishment. The use of torture is a clear example here. They also tend to alienate the communities with which authorities should be working in order to detect and prevent terrorism. And they add to causes of terrorism, both by perpetuating "root causes" that involve the alienation of communities and by providing "triggering causes" through which bitter individuals make the morally inexcusable decision to turn to methods of terrorism. The NDAA is just one more step in the wrong direction, by aggravating the counterproductive effects of human rights violating measures put in place in the name of countering terrorism. CLC: Does the NDAA afford the U.S. a practical advantage in the fight against terrorism? Or might the law undermine its global credibility? MS: It is hard to see any practical advantage gained through the NDAA. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being "tough" or as "doing something." The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism. By constraining the choices by the executive, it nevertheless hampers effective counter-terrorism work, including criminal investigation and prosecution, as well as international counter-terrorism cooperation, markedly in the issue of closing the Guantanamo Bay detention facility. Hence, it carries the risk of distancing the United States from its closest allies and the international community generally. And of course these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes. CLC: Do you think the U.S. adoption of the indefinite detention provisions sets a precedent for other countries to do so? MS: Of course, these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes. Nevertheless, one of the conclusions I drew at the end of my six-year tenure as United Nations Special Rapporteur on human rights and counter-terrorism was that such copying of bad laws is less frequent than expected. It is much more common that countries are willing to learn from each other about what really works in the fight against terrorism, and for my part I did my best to identify and promote such best practice. There are a lot of good models showing how laws can at the same time comply with human rights and produce real results in the fight against terrorism. I don't think countries genuinely concerned about terrorism will be tempted to follow the NDAA approach. But repressive governments may do so for their own political purposes.

Ending indefinite detention is sufficient to solve

UNU 10 – United Nations University

United Nations University, 3/3/2010, “Event report: Obama and the World: One Year Later, With Jean-Marc Coicaud and Tom Farer”, http://www.ony.unu.edu/events/Obama%20and%20the%20world_Event%20report.pdf, 7/15/2015, \\BD

The Ambassador of Zambia asked Dean Farer to give an assessment of Obama’s policy towards Africa, given that he made no reference to this continent during the talk. Dean Farer explained that he saw an overlap between the policies of George W. Bush and Obama in relation to Africa. Indeed, the US has increased the flow of resources to the continent and has placed an emphasis on medical assistance, in particular for HIV/AIDS, as well as for improved governance (openness, pluralism, and corruption reduction). He also mentioned that the message of both presidents was very much focused on development, stability and increased production of public goods in order to make African countries attractive to private investment. Finally, a UNICRI representative criticized the Obama administration’s lack of action in closing Guantanamo. Dean Farer responded that the president had to consider the intensity of the domestic political opposition he would encounter. Moreover, the Guantanamo issue, a very important symbol of **soft power**, is closely related to matters such as **indefinite detention** without trial and trial by

special military tribunal. Further issues arose when Obama was briefed about the legal and political complexities of convicting dangerous individuals for whom evidence was secured through forms of intelligence that cannot be disclosed.

**Torture Reports 1NC

Text: The Central Intelligence Agency should release all torture reports. The Central Intelligence Agency should institute a ban on torture.

Releasing torture reports solves – that's their internal link evidence

The CIA already banned torture, but the counterplan's durable fiat means it's not circumvented

Lewis 6/16 – writer for The Guardian

Paul Lewis, 6/16/2015, The Guardian, "Senate passes torture ban despite Republican opposition", http://www.theguardian.com/law/2015/jun/16/senate-passes-torture-ban-republicans, 7/15/2015, \\BD

She described the bipartisan support of the amendment as "a huge repudiation" of the former Bush administration officials who, she said, have fought hard since publication of the Senate report to defend the CIA's tactics and "turn this into a partisan issue".ð Laura Pitter, a senior national security counsel at Human Rights Watch, said that the techniques used by the CIA were "already clearly prohibited under US law" when they were practiced, and it was possible a future administration could once again find a way around the rules.ð However she argued the legislation cementing Obama's order, which mandates the US military and agencies to only use techniques permitted in the army manual, would serve as an additional bulwark and "help reinforce the ban in the future".Opponents of the McCain-Feinstein amendment, Pitter added, may have raised reservations about the US committing to rules over detention that are contained in the army manual, which is a public document.ð Prior to the vote, Feinstein told fellow senators that Obama's ban on torture was "only guaranteed for as long as a future president agrees to leave them in place". Although the techniques employed by the CIA were illegal, Feinstein added, there was also a possibility that flawed legal opinions justifying the techniques "could be written again".ð She pointed out that CIA director John Brennan agreed with the president's 2009 prohibition of enhanced interrogation techniques and called on fellow senators "to recommit ourselves to the fundamental precept that the United States does not torture, without equivocation, without exception".ð However that was not a position that more than a third of Republican senators could agree with. McConnell and his majority whip, John Cornyn - the two most senior lawmakers in the Senate – were among the 21 senators to oppose the measure. All those who voted against the amendment were Republican.ð McCain used a speech before the vote to read out a list of senior military figures who he said backed the permanent ban on those past interrogation practices which, he said, "compromised our values, stained our national honor and did little good".

Internet Freedom CPs

**Internet Gambling

The United States federal government should legalize nearly all online gambling in the United States.

Solves internet freedom

Kibbe 4/28/14 (Matt, FreedomWorks, "Coalition Letter: No Federal Ban on Internet Gambling")

We, the undersigned individuals and organizations, are writing to express our deep concerns about the Restoration of America's Wire Act (H.R. 4301), which would institute a de facto ban on internet gaming in all 50 states. The legislation is a broad overreach by the federal government over matters traditionally reserved for the states. H.R. 4301 will reverse current law in many states and drastically increase the federal government's regulatory power. As we have seen in the past, **a ban** will not stop online gambling. Prohibiting states from legalizing and regulating the practice only ensures that it will be pushed back into the shadows where crime can flourish with little oversight. In this black market, where virtually all sites are operated from abroad, consumers have little to no protection from predatory behavior. Perhaps even more concerning is the fact that this bill allows the federal government to take a **heavy hand in regulating the Internet**, opening the door for increased Internet regulation in the future. By banning a select form of Internet commerce**, the federal government is setting a troubling precedent** and providing fodder to those who would like to see **increased Internet regulation in the future**. We fear that H.R. 4301 will begin **a dangerous process of internet censorship** that will simultaneously be circumvented by calculated international infringers while constraining the actions of private individuals and companies in the United States.

Current gambling laws gut any and all US cred on internet freedom

Minton 2011 (Michelle; Fed's online poker shutdown assaults internet freedom; May 13; www.breitbart.com/Big-Government/2011/05/13/Feds----Online-Poker-Shutdown-Assaults-Internet-Freedom; kdf)

On April 15, a day now known as "Black Friday", the U.S. Department of Justice (DOJ) effectively shut down three major online poker websites by seizing their domain names. The DOJ's heavy-handed prosecution of the websites, all of which are based abroad, has made a mockery of America's stated commitment to Internet freedom. The seizures have also hindered the online gambling operations in nations where Internet poker is completely lawful and the U.S. government has no jurisdiction. Given that the seized poker websites are housed and regulated by foreign nations—Poker Stars is registered in the Isle of Man, Full Tilt in Ireland, and Absolute Poker in Antigua—how could the U.S. government unilaterally seize their domain names? The short answer is that all of the sites end in ".com." All such domains are registered in the U.S. and, hence, are subject to U.S. civil forfeiture laws. Author and legal scholar Larry Downes has critiqued civil asset forfeiture laws on the Technology Liberation Front blog. He argues that the laws are actually intended to punish suspects before they are convicted. "The purpose of forfeiture laws," Downes laments, "is to help prosecutors fit the punishment to the crime, especially when restitution of the victims or of the cost of prosecution is otherwise unlikely to have a deterrent effect." Domain name seizures often occur without a trial and often without any warning to the owners, as was the case in Black Friday's seizure of poker domains. The government's move has reignited the controversy over U.S. federal agencies using domain seizures to punish foreign entities allegedly in violation of U.S. laws. While the DOJ did not technically "take down" the poker websites, federal agents obtained a court order that compelled Verisign, the global operator of the .com registry, to reroute the poker sites' domain names to a government page featuring intimidating federal logos notifying users of the seizure. As a result of the seizure, no computer in the world—even those in countries where poker is explicitly legal—could access the poker sites via their domain names. This latest round of seizures follows a series of similar actions taken in recent months by Immigration and Customs Enforcement (ICE), which has seized the domain names of dozens of websites alleged to be engaged in copyright infringement. One such site, the Spain-based Rojadirecta.com, had actually been deemed legal by Spanish courts. Perhaps in an effort to stem discussion of seizures' legality, the DOJ agreed to unfreeze the .com domains for Poker Stars and Full Tilt to allow players to cash out their accounts and allow foreign gamblers to continue playing on the sites. In return, the websites were required to promise to prevent American-based customers from playing poker games for money on their websites. The third major site, Antigua-based Absolute Poker, has reportedly been offered the same "privilege" in exchange for agreeing to bar U.S. customers from playing for money. However, Antigua's finance minister issued a statement last week accusing the U.S. of shutting the sites down in order to stamp out competition. Online gambling is Antigua's second largest employer after the tourism industry, so it comes as little surprise that Antigua is considering rejecting DOJ's "compromise" and instead challenging the U.S. government's action before the World Trade Organization (WTO). It is deeply troubling that the United States, a country that purports to value individual freedom, has so miserably failed to protect it when it comes to politically incorrect pursuits like online gambling. In effect, our government is bullying its own citizens and holding innocent foreign companies hostage. Hopefully, the events

of Black Friday will focus public attention on the flaws of civil asset forfeiture laws and encourage foreign nations to stand up to U.S. authorities. The DOJ's war of intimidation may have put a temporary hold on Internet poker in the United States, but its heavy-handed tactics should outrage anybody who values freedom and individual rights.

--xt: solves internet freedom

Legalizing online gambling key to internet freedom – it's a Trojan horse for widespread regulation
Telford 10/20/14

Erik Telford is senior vice president at the Franklin Center for Government & Public Integrity, The Hill, October 20, 2014, "Ending the cycle of casino cronyism", http://thehill.com/blogs/congress-blog/politics/221124-ending-the-cycle-of-casino-cronyism

When powerful gaming interest are spearheading **the fight to ban online gambling**, it should give you pause. Their main policy objective **is** focused on federal legislation to ban online gambling outright – **stifling** their **competition** before it ever reaches the market. **It** is a glimpse of crony capitalism in its most naked form, and **represents a very troubling assault on Internet freedom**, **giving government a foot in the door for a broader regulatory regime** and usurping our federalist system. The 2011, the Department of Justice's position interpretation on Internet gambling threw the issue to state legislatures--where it should be. Almost immediately, Nevada, Delaware, and New Jersey passed legalizing legislation. The Restoration of America's Wire Act, sponsored by Sen. Lindsey Graham (R-S.C.) and Rep. Jason Chaffetz (R-Utah) would prohibit interstate sports betting using wire services, effectively killing online gambling across the states where it's legal. While their pretense is to advance a moral good, this policy would undermine the free market, encourage crime, and erodes the constitutional concept of states' rights. Proponents of the regulation have brought in political heavyweights to undermine legalized online gambling, including former Arkansas Sen. Blanche Lincoln (D), who represents the Coalition to Stop Internet Gambling, claiming that legalizing online gambling would promote fraud, addiction, and money laundering. "I think it's going to be very difficult to work something out," Lincoln said, "I think it's important to put a time-out on this and to stop and think about what it's going to mean to us as a nation in our economy, to our children and to our society." However, these **problems already exist with black market gambling** mostly **run from overseas with profits** funding shady and potentially dangerous operations outside the jurisdiction of state regulation and consumer protections. Alan Feldman, an executive vice president of MGM notes that online gambling "is here, and **it's been here for a very long time.**" **Legalizing online gambling would** likely **see more** of **a shift from illegal to legal play** instead of funneling customers away from traditional casinos and their trappings. Free market advocates agree that consumers would enjoy more security were this pursuit made legal. "In this black market, where virtually all sites are operated from abroad, consumers have little to no protection from predatory behavior." wrote officials of the Institute For Policy Innovation to several congressmen. They then shared wider concern that "Perhaps **even more concerning is the fact** that this bill **allows the federal government to take a heavy hand in regulating the Internet, opening the door for increased Internet regulation in the future."** Just like Prohibition in the 1920's, **banning this vice** would **actually incentivize criminal behavior.** Those fearful of fraud, child participation, and profits diverted to gangs or terrorists **should push for legalization in every state to make the industry as transparent as possible.** Legalizing this long-established, multibillion dollar business gets the profits out of the shadows, expands market opportunities, and puts revenue into the coffers of both legitimate business and state governments that will benefit.

The US has set a double-standard on internet freedom—only repealing UIGEA allows for it on a massive scale
Gardner 2010 (April; Gambling regulations will help Obama's world internet freedom mandate; Sep 23; www.casinogamblingweb.com/gambling-news/gambling-law/gambling_regulations_will_help_obama_s_world_internet_freedom_mandate_55752.html; kdf)

President Obama gave a speech today in front of the United Nations General Assembly, and his message was largely one of individual freedom. During the speech, Obama touched on many issues, perhaps the most aggressive of which was having a Palestinian state separate from Israel. Obama spoke of allowing the Palestinians their own state with the hope that Israelis and Palestinians could live side by side in peace. Obama acknowledged that this could take a long time, but that the goal could become a reality. During the speech, Obama spoke about how the Internet should remain free from government interference everywhere in the world. The freedom to surf the Internet would allow people all across the globe to research issues and learn from the wide array of news that is currently found on the Internet. "We will support a free and open Internet,

so individuals have the information to make up their own minds," said Obama. "And it is time to embrace and effectively monitor norms that advance the rights of civil society and guarantee its expansion within and across borders." That statement may have been much better received had the US not had their own blocks on Internet freedom. The Internet gambling industry currently is operating as a black market in the US due to the 2006 Unlawful Internet Gambling Enforcement Act. The law is a form of Internet censorship that Representative Barney Frank and other lawmakers have been trying to repeal. In the quest for Internet freedom, the US proclaims themselves as leaders, however, the country must be careful with their plea. If the US can place Internet bans on certain industries, then little could be done to stop other countries from banning different industries or websites because of their beliefs. For instance, in countries where religion is unified, there could be bans on any material that the country finds outside the rules of their particular religion. In other countries, bans could be placed on industries that are run largely by foreign operators. President Obama took a strong first step today by promoting Internet freedom. The next step will be making sure the US leads by example, and one area to start would be by lifting the ban on Internet gambling. The president has laid down the gauntlet, and now it is time for him to follow his own lead.

--xt: internet on brink

Legalization signals return to internet freedom
Legal Casino 14 Portal for gambling news and articles http://legalcasinous.com/

The United States must **change their online gambling laws** to **show** to the other nations that the time of the **disrespect for the international agreements** is ended. One of these agreements is with the European Union. The European Commission has warned USA a long time ago that their online casino laws violates the economic agreements with the European union. The actual Obama administration has shown, finally, the good wish to conform with such agreements. The Representative Barney Frank has been a proponent for years of the online games legalization. He has tried to oppose to the UIGEA (Unlawful Internet Gambling Enforcement Act) last year, but not in vain. The Republicans had the control, but now, with the democrats, in the US there is the hope for a new law Internet Gambling Law. Frank believes that all the citizens of the United States have the right to play for money at the online casino, in the privacy of their houses. Even some Republicans in past had fought for **the Internet freedom.**

**internet federalism

The fifty states of the United States should legalize nearly all online gambling in the United States.

State level regulation allows internet federalism

King, 10 [J.D. candidate 2010, Northwestern University School of Law, B.A. Middlebury College 2002, ARTICLE: GEOLOCATION AND FEDERALISM ON THE INTERNET: CUTTING INTERNET GAMBLING'S GORDIAN KNOT, Lexis]

V. CONCLUSION Gambling, like most divisive social issues, is best regulated **at the state level**. n190 Yet migration of gambling to the Internet has complicated matters greatly, giving rise to difficult questions as to which governmental entities are best suited to regulate and what the proper substantive regulatory regime ought to be. The failure of energetic federal and state efforts to prohibit Internet gambling over the past decade suggests that the issue may present a nearly impregnable problem, or as this Article terms the matter, an Internet gambling Gordian knot. The rise of geolocation technologies in recent years offers a new opportunity to cut through that Gordian knot via a jurisdictionally differentiated regulatory framework for Internet gambling. Geolocation technologies are not perfect. However, when they are integrated into a federal-state framework in which **states choose their** own substantive policies from a limited "menu" of options, these technologies can **dramatically improve the democratic responsiveness of Internet gambling laws, increase compliance with the rule of law, and internalize the large and increasing costs associated with prohibition of Internet gambling.** Such an approach is not immune to criticism, particularly in terms of its potential impact on the fundamental openness of the Internet in the long-term. In light of the market advantages associated with jurisdictional differentiation and the need for law to be supreme over code in divisive areas such as Internet gambling, those drawbacks [*75] fail to outweigh the potential benefits offered by aggressive use of geolocation technologies. These conclusions **carry implications that go well beyond the Internet gambling debate**. If jurisdictional differentiation is a **normatively superior approach** with respect to Internet gambling, then it **may be in other market sectors as well**. This consequence, along with the degree to which technological advances have undermined previous court decisions on electronic commerce issues, suggests that geolocation technologies may **play a role in enabling federalism on the Internet for years to** come.

**Freedom Online Coalition

Text: The United States federal government should submit a review to [the plan] to the Freedom Online Coalition to insure international standards of internet freedom are being met.

CP solves 100% of case – creates an internationally modeled form of internet freedom, checks the circumvention disad

Kehl et al. 14 [Danielle, Kevin Bankston, Robyn Greene, Rober Morgus July, 2014. Kehl is a Senior policy analyst at New America's Open Technology Institute. Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity. Pdf. 7/13]//kmc

The United States must act immediately to restore the credibility of the Internet Freedom agenda, lest it become another casualty of the NSA's surveillance programs. As described in Part IV, various agencies within **the U.S. government have taken initial steps** to demonstrate goodwill in this area, particularly through the NTIA's announcement that it intends to transition stewardship of the IANA functions to a global multistakeholder organization and the State Department's speech outlining six principles to guide signals intelligence collection grounded in international human rights norms. However, it will take a broader effort from across the gov- ernment to demonstrate that the United States is fully committed to Internet Freedom, includ- ing firmly establishing the nature of its support for the evolving multistakeholder system of Internet governance and directly engaging with issues raised by the NSA surveillance programs in international conversations. **Supporting international norms that in- crease confidence in the security of online communications and respect for the rights of Internet users all around the world is integral to restoring U.S. credibility in this area**. "We have surveillance programmes that abuse human rights and lack in transparency and ac- countability precisely because we do not have sufficiently robust, open, and inclusive debates around surveillance and national security pol- icy," writes Matthew Shears of the Center for Democracy & Technology.339 It is time to begin having those conversations on both a national and an international level, particularly at key upcoming Internet governance convenings including the 2014 Internet Governance Forum, the International Telecommunications Union's plenipotentiary meeting, and the upcoming WSIS+10 review process.340 Certainly, the United States will not be able to continue promoting the Internet Freedom agenda at these meetings without addressing its national security appa- ratus and the impact of NSA surveillance on individuals around the world. Rather than being a problem, this **presents an opportunity for the U.S. to assume a leadership role in the promo- tion of better international standards around surveillance practices.** Moreover, the U.S. should take steps to further internationalize its Internet Freedom efforts writ large and work with foreign governments to broadly promote democracy and human rights online. In 2011, Richard Fontaine and Will Rogers of the Center for a New American Security wrote that **"the United States should counter the view that Internet Freedom is merely an American project cooked up in Washington, rather than a notion rooted in universal human rights**… The response to [concerns about the Internet Freedom agenda's ties to U.S. foreign policy should be] to internationalize the effort."341 Today, more than ever, **it is critical that the United States heed this advice and take steps to broaden the base of support for the Internet Freedom agenda. Future meetings and activities of the Freedom Online Coalition,** which the State Department played a key role in convening**, will serve as one test of these efforts as the group attempts to transition from a discussion forum for like-minded governments into a more ac- tion-oriented coalition.**342 The United States has the opportunity to urge other member countries to live up to the commitments they made at the 2014 meeting in Tallinn with respect to account- ability, transparency, and other policies ground- ed in human rights. As Toomas Hendrik Ilves, the President of Estonia, articulated in his remarks at the 2014 meeting, "We must be honest with ourselves and admit that recent developments regarding purported surveillance by the NSA and similar organisations in different countries make the defense of an open Internet more difficult. That, too, is a challenge that Freedom Online Coalition must face."343 Outside of the Freedom Online Coalition, but consistent with its

goals, the U.S. can urge both companies and foreign governments to join organizations like the Global Network Initiative or commit to other voluntary processes that promote the centrality of human rights in the policymaking process.344

They say yes

DDP 15 [Digital Defenders Partnership, a subset of Freedom Online Coalition. *WG 3 – Privacy and Transparency Online* . https://www.freedomonlinecoalition.com/how-we-work/working-groups/working-group-3/ 7/14]//kmc

FOC working group (WG) "Privacy and Transparency Online" focuses on the relationship between governments and information & communications technology (ICT) **companies, with a particular emphasis on respecting human rights online, including freedom of expression and privacy**. In furtherance of that objective, this group intends to explore the privacy and transparency practices of governments and companies, including through requests for user data, content restriction, and network shutdown. This group will remain mindful of the applicability of key principles from the Tallinn Agreement, such as the rule of law, collection for a legitimate purpose, non-arbitrariness, and effective oversight, which should guide the interaction between ICT companies and governments.ð **The discussion on transparency in the ICT sector has largely focused on major Internet companies in the United States, Canada, and Europe. With the proliferation of new laws and regulations in this area, and the growing range of companies handling user data and content, this conversation should have a global framework, applying to governments from all regions and companies from all parts of the ICT sector.**ð By bringing together governments, companies, civil society experts, and academics, this WG aims to contribute to the global discussion on transparency and accountability with respect to ICT relationships by seeking to provide clarity to the following areas:ð General understandings of the laws, policies, and processes through which governments make requests to ICT companies that may impact privacy.ð How ICT companies in such countries receive and process government requests.ð The implications of these practices for the privacy and freedom of expression of users, as well as broader considerations related to law enforcement and national security.ð Opportunities for and challenges to greater transparency, including legitimate law enforcement, national security, and other considerations.ð The WG will focus, at least initially, on the practices of ICT companies and governments in areas that could implicate privacy and free expression as described above, and may also include broader multi-stakeholder discussions on how ICT companies can respect human rights, and how governments can help or hinder company efforts to do so.

at: perm

perm doesn't solve FOC credibility – causes international backlash

IFEX 14 [4-22. In letter to Freedom Online Coalition, NGOs speak out on surveillance of rights organisations. https://www.ifex.org/international/2014/05/01/surveillance_rights_organisations/ 7/14]//kmc

In response to Edward Snowden's testimony before the Council of Europe that the NSA and GCHQ monitored the confidential communications of human rights and civil society organisations, PEN International as part of a coalition human rights organisations sent a letter to members of the Freedom Online Coalition (FOC) on April 22, 2014 before its upcoming annual meeting in Tallinn, Estonia on April 28-29. The FOC is a leading intergovernmental coalition, currently with 22 members, established in 2011 with the express purpose of advancing Internet freedom (in particular, free expression, assembly, association and privacy online). Both the US and UK are members of the coalition. ∂ The April 22, 2014 letter follows. ∂ Dear Minister, ∂ On April 8, 2014, former US National Security Agency (NSA) contractor Edward Snowden testified before the Parliamentary Assembly of the Council of Europe (PACE) via video-conference that the NSA and the United Kingdom Government Communications Headquarters (GCHQ) have used their surveillance capabilities to spy on the communications of human rights organizations and civil society groups, both domestically and internationally. Snowden did not reveal which groups the NSA or GCHQ have spied upon, but indicated that the types of organizations whose communications had been compromised included major global organizations similar to Amnesty International and Human Rights Watch, and other NGOs. ∂ Snowden explicitly told PACE members that the NSA had "specifically targeted the communications of either leaders or staff members in a number of purely civil or human rights organizations … including domestically, within the borders of the United States." ∂ If Snowden's assertion is accurate, such facts would not only point to fresh dimensions of the overreach of NSA surveillance, but also would constitute an outrageous breach of the US government's stated commitment to human rights and freedom online. It also raises the very real possibility that these organizations' communications with confidential sources have been intercepted. Sharing this information with other governments could put victims and human rights defenders the world over in imminent danger. ∂ The US frequently criticizes repressive states for unjustified government spying on human rights organizations, media organizations, and civil society because such surveillance has a chilling effect on freedom of expression and association and constitutes a clear form of harassment and intimidation. ∂ Furthermore, as you are well aware, the US and the UK have taken leadership roles in the Freedom Online Coalition (FOC), the leading intergovernmental coalition, established in The Hague on December 8, 2011, for the purpose of "advancing Internet freedom - free expression, association, assembly, and privacy online - worldwide." **FOC members have joined in a shared commitment to work together to voice concern over measures that restrict Internet freedom and to support individuals whose human rights online are curtailed.** ∂ **FOC members also have undertaken obligations to adopt and encourage policies and practices, domestically and internationally, which ensure the protection of human rights and fundamental freedoms online, in particular freedom of expression, the right to privacy, freedom of assembly and access to information.** ∂ If the allegations about US and UK surveillance of human rights and civil society organizations are true, such practices would contradict the express commitments made by the US and the UK to the FOC. ∂ We, the undersigned civil society and human rights organizations, seek clarification as to the allegations that the NSA and GCHQ monitored or are monitoring the communications of our organizations, or of other civil society organizations, media organizations, and human rights groups. Where the facts support these claims, we ask the US and UK governments to explain the reasons why this is occurring or has occurred in the past, and the extent of such monitoring, its continuance, and its justification. ∂ We call upon members of the FOC to live up to their stated commitment to support civil society members or journalists whose human rights online may have been violated. We seek FOC member assistance in ascertaining the underlying factual basis for the Snowden allegations with respect to NSA and/or GCHQ spying on civil society and human rights groups, and in ensuring a halt to any violations of our privacy, freedom of expression and other human rights

online. ∂ Sincerely, ∂ Access ∂ Advocacy for Principled Action in Government ∂ AGEIA DENSI ∂ Alternative Informatics Association ∂ Amnesty International ∂ ARTICLE 19 ∂ Asociación de Internautas ∂ Association for Progressive Communications (APC) ∂ Benetech ∂ Big Brother Watch ∂ Bits of Freedom ∂ Breadboard Society ∂ Bytes for All, Pakistan ∂ Center for Constitutional Rights ∂ Center for Democracy & Technology ∂ Center for Freedom of Expression and Freedom of Information (CELE), Palermo University School of Law ∂ Centre for Internet and Society, Bangalore, India ∂ Charity & Security Network ∂ Committee to Protect Journalists ∂ The Constitution Project ∂ ContingenteMX ∂ Council on American-Islamic Relations (CAIR) ∂ Digital Rights Foundation ∂ Digital Rights Ireland ∂ Electronic Frontier Foundation ∂ Electronic Privacy Information Center (EPIC) ∂ Foundation for Information Policy Research ∂ Free Press ∂ Freedom House ∂ Freedom of the Press Foundation ∂ Global Voices Advocacy ∂ Hiperderecho ∂ Human Rights in China ∂ Human Rights Watch ∂ Institute for Reporters' Freedom and Safety ∂ International Federation for Human Rights (FIDH) ∂ La Quadrature du Net ∂ Movimento MEGA ∂ New America Foundation's Open Technology Institute ∂ Online Policy Group ∂ Open Net Korea ∂ OpenMedia.org ∂ OpenTheGovernment.org ∂ Panoptykon Foundation ∂ PEN American Center ∂ PEN International ∂ Privacy International ∂ Project On Government Oversight (POGO) ∂ Reporters sans frontières ∂ Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) ∂ Son Tus Datos ∂ Thai Netizen Network ∂ World Press Freedom Committee ∂ World Privacy Forum

Minimum Wage CP

**1nc

Text: The United States federal government should establish a Federal Minimum Wage Advisory Board.

The Counterplan boosts the economy and provides lawmakers with political cover

Reeves 2015 (Richard V [is a senior fellow in Economic Studies @ Brookings]; Can we take the politics out of the federal minimum wage?; Apr 15; www.brookings.edu/blogs/fixgov/posts/2015/04/15-politics-of-minimum-wage-reeves; kdf)

Two options for taking the political heat out of the U.S. minimum wage Can the U.S. follow suit? And if it can, what might the new system look like? Two options at least are worth considering. 1. A Federal Minimum Wage Advisory Board. This could be made up (like the U.K. version) of nine members: three representatives of employer organizations, three from labor organizations, and three independent labor economists. The Board would recommend a rate for the national minimum wage each year, which would then be enacted by Congress in the usual manner. The Board would have a strong incentive to set a rate likely to be adopted by Congress, in order to establish and maintain its reputation: there is, after all, little point in sitting on a Board that is ignored. The Board's recommendation would not be binding and would not become the legal 'default' level. But because the advice is likely to be sensible, Congress would likely be inclined to follow it. 2. Wage Indexation. An alternative—favored by my Brookings colleague Gary Burtless—would be to simultaneously raise the minimum wage and introduce automatic indexing, lifting the minimum wage at the same rate as either consumer prices or the median wage—preferably the latter. In effect, this would do for the minimum wage what President Nixon did for Social Security. Congress would have the power to suspend a rise—perhaps if unemployment reached a certain threshold—but the default position would be to link changes in the minimum wage to changes in the median wage or in the broader consumer economy. Policy commitment devices in action These are both examples of what I have called policy commitment devices—in a new paper, Ulysses Goes to Washington—that help to overcome political myopia in order to support longer-term policy objectives. In the first case, taking advice from an independent commission, the commitment is somewhat less binding, although as James Madison knew, 'the counsels and checks of friends' can carry plenty of weight. Indexation would be a tighter form of binding, since inaction on the part of politicians would lead to an uprating of minimum wage, rather than the current stasis. For both sides, there are political attractions to sub-contracting some decision-making power over the minimum wage. By accepting the advice of an independent body or allowing indexation to do its silent work, Republicans can keep their business donors and right-wing critics at bay; Democrats can do the same for unions and the political left. Sometimes the most powerful thing politicians can do is give some power away. The minimum wage is now perhaps a case in point.

--xt Solves Econ

Raising the minimum wage stabilizes jobs for low skill workers- that's the internal link to the economy

Patton 14 (Mike Patton. Certified Financial Planner, Accredited Estate Planne, Board Certified in Estate Planning; Certified Tax Specialist (CTS); and Chartered Mutual Fund Counselor (CMFC). "The Facts on Increasing the Minimum Wage." November 26, 2014. http://www.forbes.com/sites/mikepatton/2014/11/26/the-facts-on-the-minimum-wage-increase/)//EMerz

Is the minimum wage a good thing? It depends on who you ask. For example, famed economist Milton Friedman was opposed to a minimum wage stating that, "…people whose skills are not sufficient to justify that kind of a wage will be unemployed." He further conveyed that it was no coincidence that the unemployment rate for teens at the time was twice that of adults. Of course this was taken from an interview conducted several decades ago. More recently, **Nobel Prize winning economist Paul Krugman debunked this argument by suggesting that raising the minimum wage to $15 per hour would not cause big companies like McDonald's to cut jobs because these jobs cannot be moved overseas or replaced by machines.** He's probably correct about a large company like McDonald's. However, many smaller companies might disagree. As I've stated, the merits of raising it depends on who you ask. Personally, I have no dog in the hunt. Although I do have an opinion after examining the facts, I have no bias on the matter. Another proponent is the U.S. Department of Labor which suggests that raising the minimum wage would help the economy in a number of ways. For example, it would increase consumer purchasing power and reduce employee turnover. I'll address that in a moment. Would raising the minimum wage to $15 per hour help our economy? Follow along as I provide some facts (data is from 2012-13). The total U.S. labor force was roughly 158.7 million. About 47%, or 75.3 million workers, were paid an hourly wage. Of all hourly workers about 4.7%, or 3.54 million, earned a wage equal to or below the minimum wage. For our discussion, let's assume the entire group earned the minimum wage. If you multiply the number of workers who earned the minimum wage by the current minimum wage, you'd get the total wages earned by this group (3.54 million X $7.25 = $26.1 million). If every one of these workers received an increase to $15 per hour, the total wage earned by this group would be $54.0 million. This represents an increase of $27.9 million. If 100% of this income was spent on products and services, it would only equate to 1.25% of total U.S. GDP. Here's my point. This increase, even if completely spent (which is doubtful), would not be very significant. Therefore, in my view, the economic benefit "argument" is a red herring. What should a worker be paid?

Raising the minimum wage improves the economy and creates more jobs- empirics from other states prove

Reich 15 (Robert Reich. Former U.S. Secretary of Labor, American political economist, professor, author, and political commentator. "Why We Should Raise the Minimum Wage." April 27, 2015. http://www.cnbc.com/2015/04/27/why-we-should-raise-the-minimum-wage-commentary.html)//EMerz

Across America, the ranks of the working poor are growing. While low-paying industries such as retail and food preparation accounted for 22 percent of the jobs lost in the Great Recession, they've generated 44 percent of the jobs added since then, according to a report from the National Employment Law Project. Last February, the Congressional Budget Office estimated that raising the national minimum wage to $10.10 an hour from $7.25 would lift 900,000 people out of poverty. Seattle estimates that, before its historic decision, almost a fourth of its workers earned below $15 an hour. That translates into about $31,000 a year for a full-time worker. In a high-cost city like Seattle, that's barely enough to support a family. Most minimum-wage workers aren't teenagers these days. They're major breadwinners who need a higher minimum wage in order to keep their families out of poverty. The gains from a higher minimum wage extend beyond those who receive it. More money in the pockets of low-wage workers means more sales, especially in the locales they live in — which, in turn, creates faster growth and more jobs. A major reason the current economic recovery is anemic is that so many Americans lack the purchasing power to get the economy moving again. With a higher minimum wage, moreover, we'd all end up paying less for

Medicaid, food stamps and other assistance the working poor now need in order to have a minimally decent standard of living. Some worry about job losses accompanying a higher minimum wage. I wouldn't advise any place to raise its minimum wage immediately to $15 an hour from the current federal minimum of $7.25. That would be too big a leap all at once. Employers — especially small ones — need time to adapt. But this isn't what Seattle is doing. It's raising its minimum to $15 incrementally over several years from $9.32 (Washington State's current statewide minimum). Large employers (with over 500 workers) that don't offer employer-sponsored health insurance have three years to comply; those that offer health insurance have four; smaller employers, up to seven. (That may be too long a phase-in.) My guess is Seattle's businesses will adapt without any net loss of employment. Seattle's employers will also have more employees to choose from – as the $15 an hour minimum attracts into the labor force some people who otherwise haven't been interested. That means they'll end up with workers who are highly reliable and likely to stay longer, resulting in real savings. Research by Michael Reich (no relation) and Arindrajit Dube confirms these results. They examined employment in several hundred pairs of adjacent counties lying on opposite sides of state borders, each with different minimum wages, and found no statistically significant increase in unemployment in the higher-minimum counties, even after four years. (Other researchers who found contrary results failed to control for counties where unemployment was already growing before the minimum wage was increased.) They also found that employee turnover was lower where the minimum was higher. Not every city or state can meet the bar Seattle has just set. But many can — and should.

at: Hurts job growth

Empirically wrong

Neuman 2014 (Scott; States That Raised Minimum Wage See Faster Job Growth, Report Says; Jul 19; www.npr.org/sections/thetwo-way/2014/07/19/332879409/states-that-raised-minimum-wage-see-faster-job-growth-report-says; kdf)

New data released by the Department of Labor shows that raising the minimum wage in some states does not appear to have had a negative impact on job growth, contrary to what critics said would happen. In a report on Friday, the 13 states that raised their minimum wages on Jan. 1 have added jobs at a faster pace than those that did not. The data run counter to a Congressional Budget Office report in February that said raising the minimum wage to $10.10 an hour, as the White House supports, could cost as many as 500,000 jobs. The Associated Press writes: "In the 13 states that boosted their minimums at the beginning of the year, the number of jobs grew an average of 0.85 percent from January through June. The average for the other 37 states was 0.61 percent. "Nine of the 13 states increased their minimum wages automatically in line with inflation: Arizona, Colorado, Florida, Missouri, Montana, Ohio, Oregon, Vermont and Washington. Four more states — Connecticut, New Jersey, New York and Rhode Island — approved legislation mandating the increases."

at: Not enough people on minimum wage

The ripple effect of the CP lifts wages of 35 million people

Harris and Kearny 2014 (Benjamin H [was the Policy Director of The Hamilton Project; a Fellow in Economic Studies at Brookings] and Melissa S [Director of the Hamilton Project; a Senior Fellow at the Brookings Institution];The "Ripple Effect" of a Minimum Wage Increase on American Workers; www.brookings.edu/blogs/up-front/posts/2014/01/10-ripple-effect-of-increasing-the-minimum-wage-kearney-harris; kdf)

The Ripple Effects of Minimum Wage Policy Although relatively few workers report wages exactly equal to (or below) the minimum wage, a much larger share of workers in the United States earns wages near the minimum wage. This holds true in the states that comply with the federal minimum wage, in addition to those states that have instituted their own higher minimum wage levels. An increase in the minimum wage tends to have a "ripple effect" on other workers earning wages near that threshold. This ripple effect occurs when a raise in the minimum wage increases the wage received by workers earning slightly above the minimum wage. This effect of the statutory minimum wage on wages paid at the low end of the wage distribution more generally is well recognized in the academic literature. Based on this recognition, we quantify the number of workers potentially affected by minimum wage policy using the assumption that workers earning up to 150 percent of the minimum wage would see a wage increase from a higher minimum wage. We hasten to note that a complete analysis of the net effects of a minimum wage increase would also have to account for potential negative employment effects. Our main goal of this empirical exercise is to dispel the notion that the minimum wage is not a relevant policy lever, which is based on the faulty premise that only a small number of workers would be affected. Using data from the Bureau of Labor Statistics, combined with information on the binding minimum wage in each state, we are able to calculate these shares. Just 2.6 percent of workers are paid exactly the minimum wage, but 29.4 percent of workers are paid wages that are below or equal to 150 percent of the minimum wage in their state. Furthermore, the hours worked by this group represent nearly one-quarter—24.7 percent—of hours worked, which indicates that a large share of the impacted group is working close to full time hours. In 2012, 32 states complied with the federally set minimum wage of $7.25 per hour. In these states adhering to the federal floor, 3.7 million workers earn the minimum wage or less. An additional 15.2 million are near minimum wage, earning more than $7.25 per hour but less than $10.88 per hour. Therefore, 18.9 million workers in these states would likely benefit from an increase in the federal minimum wage. The Ripple Effect by State States have the opportunity to set a minimum wage above the federal floor. Eighteen states, plus the District of Columbia, had minimum wages that exceeded the federal wage floor in 2012, ranging from $7.40 in Michigan and Rhode Island to $9.04 in Washington. In these states, 3.9 million workers earn their state's minimum wage and an additional 12.1 million workers earn between the mandated floor but less than 150 percent of the minimum level. Overall, up to 16.0 million workers would likely see a raise in their wages if the minimum wage were increased in these states. Indeed, every state in the country has a substantial share of workers who would be impacted by an increase in the minimum wage in that state, as seen in figure 1 below. In 2012, Montana had the highest share of workers—37.2 percent—with wages equal to or less than 150 percent of the minimum wage. Even in Alaska, which boasts higher wages compared to the rest of the country, 16.9 percent of workers had wages equal to or lower than 150 percent of the minimum. In the high-population state of California, 4.6 million workers would likely see a wage increase if the minimum wage were raised in that state. Not surprisingly, the eighteen states with a higher minimum wage level than the federal benchmark tended to have higher shares of workers with wages within 150 percent of the minimum wage. However, in every state in the country, at least one in six workers had wages that were equal to 150 percent of the minimum wage or lower. Figure 1 To see the new state-by-state interactive chart, click here. The December Jobs Gap As of December, our nation faces a jobs gap of 7.8 million jobs. The chart below shows how the jobs gap has evolved since the start of the Great Recession in December 2007, and how long it will take to close under different assumptions of job growth. The solid line shows the net number of jobs lost since the Great Recession began. The broken lines track how long it will take to close the jobs gap under alternative assumptions about the rate of job creation going forward. Figure 2 If the economy adds about 208,000 jobs per month, which was the average monthly rate for the best year of job creation in the 2000s, then it will take until September 2018 to close the jobs gap. Given a more optimistic rate of 321,000 jobs per month, which was the average monthly rate of the best year of job creation in the 1990s, the economy will reach pre-recession employment levels by August 2016. To explore the outcomes under various job creation scenarios, you can try out our interactive jobs gap calculator by clicking here. You can also see the jobs gap in each state by clicking here. Conclusion The minimum wage debate currently underway tends to narrowly focus on those workers making exactly the minimum wage. This approach misses a large number of low-wage workers whose wages would likely be raised through a ripple effect resulting from an increase in the minimum wage. As our economy continues to recover, a minimum wage increase could provide a much-needed boost to the earnings of low-wage workers. A significant 35 million workers from across the country could see their wages rise if the minimum wage were increased, allowing them to earn a better livelihood and lead more economically secure lives. When discussing the minimum wage, this is the magnitude of the impact that policymakers should consider

Nuclear Power CP

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Text (WIP): The United States federal government should provide incentives for the construction of nuclear power plants and increase funding for research into power plant improvement and efficiency.

The counterplan is key to nuclear energy

NEDEC 11 Nuclear Engineering Division and Energy Committee, January 2011, “EXPANDING NUCLEAR POWER IN THE UNITED STATES”, https://www.asme.org/getmedia/9c644347-2222-4d2b-a96a-a5cf028a9a9d/PS1104.aspx, 7/14/2015, \\BD

XI. CONCLUSIONSð The Energy Committee of the ASME’s Knowledge & Community Sector and ASME’s ð Nuclear Engineering Division strongly support increased use of nuclear power in the ð United States as a way to ensure a continued diversity of power supplies, ease increasing ð reliance on natural gas to fuel power plants, and decrease overall emissions. ð The stakes are too high to simply allow the status quo with the myriad of correctable ð problems to remain unchanged. Likewise, the road to success is so complex that it ð demands a comprehensive strategy.12ð ð Nuclear power has been proven safe, efβicient, and reliable. The Energy Committee of the ð ASME’s Knowledge & Community Sector and ASME’s Nuclear Engineering Division ð recommends that the federal government, in cooperation with the private sector, should ð do what is necessary to preserve and increase nuclear energy’s share of the power mix in ð the United States by providing tax incentives for construction of new plants, providing ð funds for research into power plant improvement and efβiciency, and encouraging the ð education and training of the next generation of nuclear scientists and engineers. ▪

Nuclear energy is key to solve biodiversity

Science Daily 14 Science Daily, 12/15/2014, University of Adelaide, “Nuclear should be in the energy mix for biodiversity”, http://www.sciencedaily.com/releases/2014/12/141215094155.htm, 7/14/2015, \\BD

Leading conservation scientists from around the world have called for a substantial role for nuclear power in future energy-generating scenarios in order to mitigate climate change and protect biodiversity.ð In an open letter to environmentalists with more than 60 signatories, the scientists ask the environmental community to "weigh up the pros and cons of different energy sources using objective evidence and pragmatic trade-offs, rather than simply relying on idealistic perceptions of what is 'green' ."ð Organized by ecologists Professor Barry Brook and Professor Corey Bradshaw from the University of Adelaide's Environment Institute, the letter supports their recent article 'Key role for nuclear energy in global biodiversity conservation', published in the journal Conservation Biology.ð "Full decarbonization of the global electricity-generation sector is required soon to avoid the worst ravages of climate change," says Professor Bradshaw, Director, Ecological Modelling at the Environment Institute and recently appointed Sir Hubert Wilkins Chair of Climate Change.ð "Biodiversity is not only threatened by climate disruption arising largely from fossil-fuel derived emissions, it is also threatened by land transformation resulting from renewable energy sources, such as flooded areas for hydro-electricity, agricultural areas needed for biofuels and large spaces needed for wind and solar farms."ð In the article, the researchers evaluated land use, emissions, climate and cost implications of three different energy scenarios: 'business as usual' fossil-fuel dominated; a high renewable-energy mix excluding nuclear; and an energy mix with a large nuclear contribution plus some renewable and fossil-fuel sources.ð They also used "multi-criteria decision-making analysis" to rank seven major energy types based on costs and benefits, testing the sensitivity of their rankings to bias stemming from philosophical ideals.ð "When compared objectively with renewables, nuclear power performs **as well or better** in terms of safety, cost, scaleability, land transformation and emissions," says Professor Barry

Brook, Chair of Climate Change at the Environment Institute for this study, and now Professor of Environmental Sustainability at the University of Tasmania.ð "Not only does next-generation nuclear power provide emissions-free electricity, it is a highly concentrated energy source that consumes legacy waste and minimises impacts to biodiversity compared to all other energy sources."ð They argue that there is strong evidence for supporting advanced nuclear power systems with complete fuel recycling as part of a portfolio of sustainable energy technologies that also includes appropriate use of renewables, energy storage and energy efficiency.ð "Idealized mixes of nuclear and renewables are regionally dependent, and should be compared objectively without prejudice or preconceived notions of what is 'green'," says Professor Bradshaw.

--xt Subsidies Solvency

Increasing subsidies is key – even if nuclear energy is economical now, new power plants are not

Cochran 4 - director of NRDC's nuclear programThomas B. Cochran, 4/15/2004, Natural Resources Defense Council, "The Future Role of Nuclear Power in the United States", http://www.nrdc.org/nuclear/pnucpwr.asp, 7/14/2015, \\BD

On the other hand, the last unit to enter commercial operation was TVA's Watts Bar Unit 1 in June 1996, and the last successful order for a U.S. commercial nuclear power plant was in 1973. No energy generation company in the Unites States has been willing to order and construct a new nuclear plant in more than thirty years, and none have taken anything more than preliminary steps towards purchasing and constructing a new nuclear plant today in the absence of a **promise of huge Federal subsidies**. This is not because of public opposition; not for want of a licensed geologic repository for the disposal of spent fuel; and not because of the proliferation risks associated with commercial nuclear power. Rather, it is because **new** commercial nuclear power plants are **uneconomical** in the United States.

The government has already instituted incentives for other renewables – nuclear power incentives are key

REI 10 – Renewable Energy Insights 6/1/2010, "Proposed New Tax Incentives for Nuclear Energy", http://www.renewableinsights.com/2010/06/proposed-new-tax-incentives-for-nuclear-energy/, 7/14/2015, \\BD

Senators John Kerry and Joe Lieberman have sponsored "The American Power Act" ("APA"), a comprehensive energy and climate change bill. For a summary of the bill, please visit this alert. Among other things, the APA includes significant incentives for the nuclear power industry, including several tax provisions intended to encourage construction of new nuclear power plants. The APA would also establish an expedited procedure for issuing construction and operating licenses for new nuclear reactors, expand the federal loan guarantee program for nuclear energy development, and fund spent fuel recycling research.ð Investments in wind, solar and other renewable energy projects currently benefit from a 30% federal investment tax credit and an election to convert the credit into a cash grant from the Treasury Department. Nuclear power plants **do not benefit** from these incentives and the APA would address this deficiency for new nuclear power plants. The following tax provisions would be effective for property placed in service on or after the date of enactment.

--xt Research Solvency

New research in nuclear power is key to being economically viable

Magill 6/16 – writer for Climate Centra Bobby Magill, 6/16/2015, Climate Central, "New Research Projects Could Revitalize Nuclear Power", http://www.climatecentral.org/news/nuclear-research-targets-emissions-19113, 7/14/2015, \\BD

Nuclear power, a low-carbon but expensive source of electricity, isn't likely to grow much in the United States, even as President Obama pushes to slash greenhouse gas emissions from electric power plants.∂ But the U.S. Department of Energy is betting that $60 million in new research and development could eventually breathe some new life into nuclear power in the U.S., helping to reduce greenhouse gas emissions under the Obama administration's Clean Power Plan. Nuclear power accounts for about 20 percent of all electricity generated in the U.S. The U.S. Energy Information Administration expects that number to fall to 16 percent by 2040 with or without the Clean Power Plan. If finalized in August, the plan will slash emissions from existing power plants.∂ The $60 million the Department of Energy is dedicating to nuclear research will go to more than 40 different projects at universities across the U.S. focusing on nuclear energy modeling, nuclear security and safety and new reactor concepts and fuels.∂ U.S. Energy Secretary Ernest Moniz, speaking Monday at the Energy Information Administration's annual energy conference in Washington, said he is bullish on nuclear power as a clean energy source. However, the high costs of developing nuclear energy have to come down, he said.

--xt Nuke Power Solves BioD

Nuclear energy solves the environment – we have strong academic support

Brown 14 – writer for Climate News Network Paul Brown, 12/26/2014, Climate News Network, "Professors tell greens to accept nuclear power", http://www.climatenewsnetwork.net/professors-plead-greens-accept-nuclear-power/, 7/14/2015, \\BD

LONDON, 26 December, 2014 – Seventy-five professors from the world's leading universities have signed a letter urging environmentalists to re-think their attitude to nuclear power as a way to save the planet from climate change and preserve its animals, plants and fish.ð Ironically, it is two Australian academics who came up with the research. They come from a country whose government has repudiated the Kyoto Protocol, reversed measures to cut climate change, is one of the world's biggest coal exporters, and has no nuclear power. Australia has just recorded the hottest spring since records began 100 years ago.ð The two professors are Barry W. Brook, Chair of Environmental Sustainability at the University of Tasmania, and Corey J.A. Bradshaw, Sir Hubert Wilkins Chair of Climate Change at the University of Adelaide's Environment Institute. Their backers include many leading experts on ecology, biodiversity, evolution and geography from the US, UK, China and India.ð The letter is significant because previous pleas for a role for nuclear power have mostly come from physics professors, who could reasonably be said to love the technology for its own sake.ð But this group has no stake in nuclear power, and their argument is based purely on the need to save the planet and its species from overheating and excess use of valuable land for renewables. Professors Brook and Bradshaw have had a paper published in the magazine Conservation Biology, in which they evaluated all possible forms of energy generation. Wind and nuclear power had the highest "benefit-to-cost ratio".ð "…we entreat the conservation and environmental community to weigh up the pros and cons of different energy sources…"ð The letter urges environmentalists to read the paper, and says the two professors "provide strong evidence for the need to accept a substantial role for advanced nuclear power systems with complete fuel recycling − as part of a range of sustainable energy technologies that also includes appropriate use of renewables, energy storage and energy efficiency.ð "This multi-pronged strategy for sustainable energy could also be more cost-effective and spare more land for biodiversity, as well as reduce non-carbon pollution (aerosols, heavy metals).ð "Given the historical antagonism towards nuclear energy amongst the environmental community, we accept that this stands as a controversial position.ð "However, much as leading climate scientists have recently advocated the development of safe, next-generation nuclear energy systems to combat global climate change, we entreat the conservation and environmental community to weigh up the pros and cons of different energy sources, using objective evidence and pragmatic trade-offs, rather than simply relying on idealistic perceptions of what is 'green'.ð "Although renewable energy sources like wind and solar will likely make increasing contributions to future energy production, these technology options face real-world problems of scalability, cost, material and land use, meaning that it is too risky to rely on them as the only alternatives to fossil fuels.

Even if we don't access the aff's internal links, nuclear energy is a necessary prerequisite to solving biodiversity – means if the counterplan doesn't solve, it's a terminal solvency deficit for the aff

Connor 1/4 - writer for The IndependentSteve Connor, 1/4/2015, The Independent, "Nuclear power is the greenest option, say top scientists", http://www.independent.co.uk/news/science/nuclear-power-is-the-greenest-option-say-top-scientists-9955997.html, 7/14/2015, \\BD

Nuclear power is one of the least damaging sources of energy for the environment, and the green movement **must accept** its expansion if the world is to avoid dangerous climate change, some of the world's leading conservation biologists have warned.ð Rising demand for energy will place ever greater burdens on the natural world, threatening its rich biodiversity, unless societies accept nuclear power as a key part of the "energy mix", they said. And so the environmental movement and pressure groups such as Friends of the Earth and Greenpeace should drop their opposition to the building of nuclear power stations.ð In an open letter published on the Brave New Climate blog, more than 65 biologists, including a former UK government chief scientist, support the call to build

more nuclear power plants as a central part of a global strategy to protect wildlife and the environment.ð The full gamut of electricity-generation sources, including nuclear power, must be used to replace the burning of fossil fuels such as oil, coal and gas if the world is to have any chance of mitigating severe climate change, their letter says. The letter is signed by several leading British academics including Lord May of Oxford, a theoretical biologist at Oxford University and former chief scientific adviser; Professor Andrew Balmford, a conservation biologist at Cambridge; and Professor Tim Blackburn, an expert in biodiversity at University College London.ð As well as reducing the sources of carbon dioxide, the chief man-made greenhouse gas implicated in climate change, the expansion of nuclear power will leave more land to support biodiversity and so curb the extinction of species, they say.

--xt Popular GOP

The GOP loves nuclear energy

Cama 14 – energy and environment reporter for The Hill Timothy Cama, 12/6/2014, The Hill, "GOP gains put nuclear power back on the table", http://thehill.com/policy/energy-environment/226209-gop-gains-put-nuclear-power-back-on-the-table, 7/14/2015, \\BD

Republicans and the nuclear power sector are hopeful that GOP control of the Senate will improve the political landscape for an industry that hasn't opened a new generator in nearly two decades.ð As Senate Democrats this week held their tenth hearing on nuclear safety since Japan's Fukushima Daichii meltdown three years ago, Republicans and observers looked forward to a future with a more business-friendly approach to the industry.ð Sen. Jim Inhofe (R-Okla.), long a champion of nuclear power and a critic of environmental rules, is set to become chairman of the Environment and Public Works Committee, which oversees nuclear safety. The committee is also likely to retain nuclear fans like Sens. Jeff Sessions (R-Ala.), John Barrasso (R-Wyo.) and Deb Fischer (R-Neb.).ð "It'll be clearly a more favorable committee, and there may be some things that we can do" to help the industry," Sessions said.ð An Inhofe aide said the Obama administration and the Nuclear Regulatory Commission (NRC) have been far too adversarial to nuclear energy, hurting the industry and making it difficult to justify investments in new plants.ð "When you think about federal regulations on the nuclear industry, they've certainly had a chilling effect lately," the staffer said. "The NRC has been very aggressive in their regulatory agenda, proposing a number of regulations that aren't justified from a cost-benefit standpoint and are duplicative of other regulations that are already in place."ð The aide drew a contrast between Inhofe, who wants to set a high bar for new regulations to prove they are beneficial and Sen. Barbara Boxer (D-Calif.), the current chairwoman of the environment panel. Sens. Ed Markey (D-Mass.) and Bernie Sanders (I-Vt.) have also made names for themselves as diligent advocates for nuclear safety.ð Boxer has pushed for years for NRC to improve its rules on storing spent nuclear fuel, emergency response procedures for plants and seismic requirements, among other protections. Republicans and the industry have characterized her response to the Fukushima earthquake, tsunami and meltdown as an overreaction.ð Sen. Lamar Alexander (R-Tenn.) will also be in a powerful position chairing the appropriations panel responsible for the Energy Department. He's known to advocate for nuclear research, which keeps his state's Oak Ridge National Laboratory busy.ð "I look forward to exploring ways our new Republican majority can **clear the way** for nuclear energy to power our 21st-century economy," he said in a statement.ð To the industry, a Republican Senate majority increases the odds that Congress will pass a comprehensive energy bill for the first time in seven years. That could deliver a lot of the nuclear power industry's priorities, said a lobbyist for an energy company.ð Plant owners are also looking for Congress to rein in the NRC's rules.ð "We would expect some more aggressive oversight of the NRC certainly," the lobbyist said. "You've seen that in the House already, and I would imagine that Sen. Inhofe would follow that line of reasoning."ð The lobbyist predicted that senators, especially Democrats, wouldn't stop pressing NRC and the industry to improve rules after Fukushima.ð "But there will be a recognition that while there are a lot of things to do in response to that, you need to prioritize them, put them in order and work through it in a deliberative manner," he said.ð Nuclear waste rules could get new life in the Senate as well. Republicans and businesses want the Energy Department to finally build a permanent nuclear waste storage facility at Yucca Mountain in Nevada.

March Senate bill proves

AP 3/6 – Associated Press Associated Press, 3/6/2015, Komo News, "Senate OK bills to promote nuclear energy in Washington", http://www.komonews.com/news/local/Senate-OK-bills-to-promote-nuclear-energy-in-Washington-295413471.html, 7/14/2015, \\BD

OLYMPIA, Wash. (AP) - The Senate has approved a measure to **advance nuclear power** as part of Washington's future energy mix.ð Senate Bill 5113, which passed on a 27-21 vote Friday, requires the Commerce Department to coordinate and advance the sitting and manufacturing of small-scale reactors. Small nuclear reactors are about one-third the size of traditional nuclear plants, producing less than 300 megawatts.ð The Senate also passed a measure, on a **44-5 vote**, that would create a nuclear-education program to award grants for science

teachers to attend workshops on nuclear energy and to bring in nuclear ambassadors" to introduce nuclear science and technology to students in grades 8-12.ð Both measures now head to the House for consideration.

Even if the GOP normally hates renewable energy, nuclear energy is key – cost effective

Fisher 13 - former Republican science-policy staffer and legislative director in the House of Representatives Mischa Fischer, 12/11/2013, The Atlantic, "The Republican Party Isn't Really the Anti-Science Party", http://www.theatlantic.com/politics/archive/2013/11/the-republican-party-isnt-really-the-anti-science-party/281219/, 7/14/2015, \\BD

The catch: Conservatives believe many of the policies put forward to address the problem will lead to unacceptable levels of economic hardship. It's not inherently anti-scientific to oppose cap and trade or carbon taxes. What most Republicans object to are policies that unilaterally make it more expensive in the United States to produce energy, grow food, and transport people and goods but are unlikely to make much long-term difference in the world's climate, given that other major world economies emit more carbon than the United States or have much faster growth rates of carbon emissions (China, India, Russia, and Brazil all come to mind).ð The more important question on climate change is not "how do we eliminate carbon immediately?" but "how best do we secure a cleaner environment and more prosperous world for future generations?"ð It is on this subject that many on the political left deeply hold some serious anti-scientific beliefs. Set aside the fact that twice as many Democrats as Republicans believe in astrology, a pseudoscientific medieval farce. Left-wing ideologues also frequently espouse an irrational fear of nuclear power, genetic modification, and industrial and agricultural chemistry—even though all of these scientific breakthroughs have enriched lives, lengthened lifespans, and produced substantial economic growth over the last century. ð Examining greenhouse-gas emissions in exact terms, three of our biggest sources of emissions are electricity generation, transportation, and agriculture. With widespread adoption of nuclear technology, we could conceivably cut out more than 70 percent of our total emissions by eliminating the pollution from burning petroleum for transportation and coal for electricity generation (Nobel Prize-winning physicist Burton Richter explains this in his slightly technical but readable Beyond Smoke and Mirrors).ð Nuclear power is the **only energy source** that can actually meet base-load power requirements for a cost competitive KW/h price with almost zero carbon emissions. One of the largest hurdles to nuclear energy is storage of byproduct waste, something Obama dealt a huge blow when he halted the development of Yucca Mountain for what the Government Accountability Office called strictly political reasons. Republicans in Congress have **repeatedly supported** moving forward with Yucca Mountain.

--xt Popular Dems

Even Democrats like nuclear energy

Garber 9 – writer for US News Kent Garber, 11/30/2009, US News, “Democrats Change Tune on Nuclear Energy”, http://www.usnews.com/news/energy/articles/2009/11/30/democrats-change-tune-on-nuclear-energy, 7/14/2015, \\BD

During the 2008 presidential campaign, it was Sen. John McCain, not then Sen. Barack Obama, who touted nuclear power. Obama, for the most part, was noncommittal on the subject. But in the year since being elected, President Obama and congressional Democrats increasingly appear to be **embracing** nuclear power.ð Democrats' support has not been entirely rock solid. Obama's decision, last spring, to scrap a decades-old plan to store nuclear waste at Yucca Mountain in Nevada was interpreted by some critics as an early sign of an antinuke stance within the administration. But many less high-profile moves, especially in recent weeks, suggest that Democrats in the White House and on Capitol Hill, far from turning their backs on nuclear power, now see it as a way of **advancing their goals** on energy and climate policy.ð Perhaps the most telling sign is that representatives of the nuclear industry are giving the administration relatively high marks for its nuclear policies thus far.ð "This administration has been very seriously engaged on nuclear issues," says Alex Flint, the Nuclear Energy Institute's top lobbyist. "There is no longer a political stigma associated with it.""We are pleased with the of support the administration has expressed," says Buzz Miller, who heads up nuclear development for Southern Nuclear, which operates three nuclear plants in the Southeast and is starting to work on building two more reactors near Augusta, Ga.ð New reactors, according to industry estimates, will probably cost at least $6 billion each. Like several other nuclear companies, Southern has applied for financial help from the Department of Energy. It's also still waiting for final approval from the Nuclear Regulatory Commission. But it's on **funding** and **policy** issues that Democrats are proving surprisingly supportive.ð Sen. Barbara Boxer, a liberal California Democrat, has included a whole set of goodies for nuclear energy in her climate bill in an effort to win Republicans' and moderate Democrats'support. Democratic Sen. John Kerry of Massachusetts, the bill's cosponsor, recently penned an op-ed with South Carolina Republican Sen. Lindsey Graham calling for expanding the industry.ð And earlier this month, Democratic Sen. Jim Webb of Virginia and Republican Sen. Lamar Alexander of Tennessee proposed legislation to double the U.S. production of nuclear power in the next 20 years.ð All these proposals are notable for the emerging political reality they represent. Nuclear power is low in carbon emissions, domestically generated, and it's particularly popular in the Southeast and some Midwestern states.That means liberal Democrats, who have often railed against nuclear energy because of the radioactive waste it produces, will almost certainly have to fork over money for nuclear to win the votes for their climate bill.

Prison CPs

**Prison Healthcare

Text: The fifty states of the United States should pass geriatric release legislation.

The counterplan reduces prison populations and balances state budgets

Chokshi 2013 (Niraj; State spending on prison health care is exploding. Here's why.; Oct 30; www.washingtonpost.com/blogs/govbeat/wp/2013/10/30/state-spending-on-prison-health-care-is-exploding-heres-why/; kdf)

Health care and prisons are two of the biggest drivers of state spending. So, when you throw them together you get… a whole lot of state spending. The median growth on prison health care among states was slightly more than 50 percent from 2001 to 2008, according to official data from 44 states analyzed as part of a joint initiative of the Pew Charitable Trusts and the John D. and Catherine T. MacArthur Foundation. **Those 44 states spent $36.8 billion on prisons in 2008**, and health care accounted for more than one-sixth of that spending. (2008 was the last year covered in the study by the Bureau of Justice Statistics, which Pew used for its analysis.) Three factors in particular are driving up state prison health-care costs, according to Pew: aging inmates, a prevalence of physical and mental illness and the costly nature of delivering health care to a prison's inmates. The nation's elderly prison population is still relatively small, but it's taken up an increasingly larger share of the total population. In 1999, about 3.4 percent of the prison population was 55 and over. By 2011, it was 8.6 percent. And an older population means more expensive health care. In Michigan, a state study found that in a single year (2009) health care for inmates ages 55 to 59 cost more than four times more than for those aged 20 to 24. In Georgia, caring for prisoners ages 65 or older costs about $8,565 per inmate each year. The average annual health-care cost for Georgian prisoners under 65? $961 per inmate. So, what's a state to do? According to experts interviewed by Pew, states are trying to rein in costs by providing remote health care, outsourcing it altogether, enrolling prisoners in Medicaid and paroling elderly or sick inmates. Mississippi's three-year-old program to enroll prisoners in Medicaid generates about $6 million annually in federal reimbursements. Louisiana saved $2.6 million over fiscal years 2009 and 2010 through federal Medicaid reimbursements. And New York's comptroller estimates that the state could save up to $20 million annually through such reimbursements. Under the new federal health-care law, eligibility for Medicaid will be expanded in 25 states, meaning more inmates will be able to qualify, offsetting state prison health-care costs. Releasing low-risk older prisoners could help drive down costs and prison size, too. Ohio expects to save more than $46 million and slash the prison population by 7 percent over three years by granting parole to more of its elderly prison population. New York, Illinois, California and Connecticut have also pursued similar policies for low-risk elderly and/or sick inmates.

--xt: Prisons are main reason for deficits

Geriatric release is the best way to balance state budgets

Cray 2012 (David; Elderly inmates: Aging prison population strains tight state budges; Jan 27; www.huffingtonpost.com/2012/01/27/elderly-inmates_n_1236028.html; kdf)

NEW YORK — In corrections systems nationwide, officials are grappling with decisions about geriatric units, hospices and medical parole as elderly inmates – with their high rates of illness and infirmity – make up an ever increasing share of the prison population. At a time of tight state budgets, it's a trend posing difficult dilemmas for policymakers. They **must address soaring medical costs** for these older inmates and ponder whether some can be safely released before their sentences expire. The latest available figures from 2010 show that 8 percent of the prison population – 124,400 inmates – was 55 or older, compared to 3 percent in 1995, according to a report being released Friday by Human Rights Watch. This oldest segment grew at six times the rate of the overall prison population between 1995 and 2010, the report says. "Prisons were never designed to be geriatric facilities," said Jamie Fellner, a Human Rights Watch special adviser who wrote the report. "Yet U.S. corrections officials now operate old age homes behind bars." The main reasons for the trend, Fellner said, are the long sentences, including life without parole, that have become more common in recent decades, boosting the percentage of inmates unlikely to leave prison before reaching old age, if they leave at all. About one in 10 state inmates is serving a life sentence; an additional 11 percent have sentences longer than 20 years. The report also notes an increase in the number of offenders entering prison for crimes committed when they were over 50. In Ohio, for example, the number of new prisoners in that age group jumped from 743 in 2000 to 1,815 in 2010, according to the report. Fellner cited the case of Leonard Hudson, who entered a New York prison at age 68 in 2002 on a murder conviction and will be eligible for parole when he's 88. He's housed in a special unit for men with dementia and other cognitive impairments, Fellner said. A.T. Wall, director of the Rhode Island Department of Corrections and president of the Association of State Correctional Administrators, said he and his colleagues regularly exchange ideas on how to cope with the surging numbers of older prisoners. "We are accustomed to managing large numbers of inmates, and it's a challenge to identify particular practices that need to be put into place for a subset," he said. "There are no easy solutions." Wall said prison officials confront such questions as whether to retrofit some cells with grab bars and handicap toilets, how to accommodate inmates' wheelchairs, and how to deal with inmates who no longer understand instructions. "Dementia can set in, and an inmate who was formerly easy to manage becomes very difficult to manage," he said. States are trying to meet the needs. Some examples: _Washington state opened an assisted living facility at its Coyote Ridge prison complex in 2010, with a capacity of 74 inmates. It's reserved for inmates with a disability who are deemed to pose little security risk. _The Louisiana State Penitentiary has had a hospice program for more than a decade, staffed by fellow prisoners who provide dying inmates with care ranging from changing diapers to saying prayers. _In Massachusetts, a new corrections master plan proposes one or more new facilities to house aging inmates who need significant help with daily living. Some critics object, saying inmates shouldn't get specialized care that might not be available or affordable for members of the public. _Montana's corrections department is seeking bids for a 120-bed prison that would include assisted-living facilities for some elderly inmates and others who need special care. In Texas, legislators have been considering several options for addressing the needs of infirm, elderly inmates. State Rep. Jerry Madden, chairman of the House Corrections Committee, said no decisions have been made as the experts try to balance cost factors and public safety. "You can't just generalize about these prisoners," he said. "Some are still extremely dangerous, some may not be.... Some you wouldn't want in the same assisted living facility with your parents or grandparents." Fellner, who visited nine states and 20 prisons during her research, said corrections officials often were constrained by tight budgets, lack of support from elected officials, and prison architecture not designed to accommodate the elderly. She noted that prison policies traditionally were geared to treat all inmates on an equal basis. So it may not be easy for prison officials to consider special accommodations for aging inmates, whether it be extra blankets, shortcuts to reduce walking distance, or sparing them from assignments to upper bunks. The report said the number of aging prisoners will continue to grow unless there are changes to tough-on-crime policies such as long mandatory sentences and reduced opportunities for parole. "How are justice and public safety served by the continued incarceration of men and women whose bodies and minds have been whittled away by age?" Fellner asked. One of the problems facing prisons is that many of their health care staff lack expertise in caring for the elderly, according to Linda Redford, director of the geriatric education center at the University of Kansas Medical Center. "It's a big struggle for them to keep up," said Redford, who has helped train prison staff and inmates in geriatric care. "They're used to having to deal with issues of younger prisoners, such as HIV and substance abuse," she said. Under a Supreme Court ruling, inmates are guaranteed decent medical care, but they lack their own insurance and states must pay the full cost. In Georgia, according to Fellner's report, inmates 65 and older had an average yearly medical cost of $8,565, compared with $961 for those under 65.

Prison growth is the cause of budget overstretch

Skolnick 2011 (Adam; Runaway prison costs thrash state budgets; Feb 9; www.thefiscaltimes.com/Articles/2011/02/09/Runaway-Prison-Costs-Thrash-State-Budgets; kdf)

The prison system in the U.S. is in crisis mode. States across the country are grappling with massive budget shortfalls, much of which can be credited to the runaway growth of prison budgets over the past 25 years. At $50 billion spent on corrections a year nationwide, it's the second-largest state expenditure behind Medicaid. To put it another way, one out of every 15 state dollars is spent on corrections in this country. Not coincidentally, one in 31 American adults are adrift in this bloated corrections matrix, stretching resources razor thin. Now swing the recession sledgehammer, and you have a nationwide crisis requiring states to come up with creative solutions to meet enormous budget deficits. California's prison system, the second largest in the country, has had its budget slashed for two years running, and its prisons filled to over 160 percent capacity. Thirty-three of them are operating at double capacity. Temporary beds, half of which are filled by probation or parole violators, are triple stacked in gyms and classrooms and crowding out sound rehabilitation programs. Sometimes two and three inmates share a cell designed for one man. Recent court rulings have mandated the California Department of Corrections and Rehabilitation (CDCR) reduce the prison population to 137.5 percent capacity by 2012. All of which has forced the state to fashion solutions that look, at first blush, like a gamble. It costs $44,563 to incarcerate a prisoner for a year in California — nearly the same price as a year at Harvard University with room and board. According to state projections nearly 23,000 prisoners in California have been released on what has been called Non-Revocable Parole (NRP) over the past year. These prisoners, all of whom are non-violent and deemed to be low risk re-offenders, will not be released early, but once they are they will be on their own to sink or swim in the community, with no oversight from parole officers. The idea is to ease the case burden on the parole system, reduce the Department of Corrections budget and perhaps most importantly, reduce overcrowding in prisons. There is certain to be some budgetary benefit. It costs $44,563 (the average for the U.S. is $28,817) to incarcerate a prisoner for a year in California — nearly the same price as a year at Harvard University with room and board. And nationally half of all state prisoners are incarcerated for probation or parole violations. However, there is no conclusive research to suggest how these ex-cons will function in society with no oversight from a parole officer. Unemployment among ex-offenders is common, and many will likely end up on state welfare. The first 14 months are critical for an ex-con's transition back into the community, and having no state help with job placement or continued rehabilitation could put them right back behind bars. "Think of this economy we're in. We have people with master's degrees applying for entry-level jobs. How is a prisoner going to compete?" asks Terry Thornton of the California Department of Corrections and Rehabilitation. Which begs the question, would leaving them out to dry actually cut state spending, or simply transfer it? California is not alone in the wilderness. South Carolina's prison population tripled between 1983 and 2009. Over that same period of time, spending increased by 500 percent to $394 million, and not only did recidivism actually increase, the FBI ranked South Carolina at the top of per capita violent crime rate. With 3,200 additional inmates projected by 2014, an additional $458 million in spending would be required. The good news is that all this pressure has produced some policy gems that may just reform the American prison system forever. "Think of this economy we're in. We have people with Masters degrees applying for entry-level jobs. How is a prisoner going to compete?" Enter Pew Center on the States. "What we do is a year-long process," says Pew's Adam Gelb. In a bipartisan working group, legislators from both sides of the aisle, corrections officials and Pew analysts look at the data, formulate new policy and get it to the governor's desk. The result in South Carolina was the Omnibus Crime Reduction and Sentencing Reform Act of 2010. It included sentencing reform, and a risk-and-needs assessment tool that determines the likelihood of an inmate to re-offend prior to parole. It strengthened parole supervision to set up newly released inmates for success in the community, and make it more difficult for non-violent parolees to be sent back to prison. The law is projected to save the state up to $175 million in construction costs and avoid more than $66 million in operating costs during the next five years. Another historically conservative state is hoping to follow suit. "Louisiana is the poster child for criminal justice improvement," says Louisiana State Secretary of Public Safety and Corrections, Jimmy Le Blanc. "We lock up more than any other state per 100,000 and our rate of violent crime is higher than most, so this hard on crime sell just isn't working." Put it all together and you have a state with overcrowded prisons and parish jails. Part of the problem is mandatory minimum sentencing for non-violent drug offenses, a nationwide scourge. "The longer you've been in prison, the quicker you go back," says Le Blanc. "That's a proven fact." Alison Shames, from the VERA Center for Justice, agrees. "If I'm a drug offender, I'll be a better drug offender with more criminal friends, less family ties, less options, and I'll be a greater risk to society if go to prison for three years instead of one." Recidivism is a vicious cycle for taxpayers as well as prisoners, but it's not completely unavoidable. When Le Blanc served as warden at Dixon State Prison, he brought the recidivism rate down to 38 percent from 47 percent on the strength of progressive re-entry initiatives. "Most of it is common sense stuff," he says. "We make sure our inmates have a residence plan, a job or a potential job, and a continuum of care for substance abuse and mental health." Before release, inmates also go through a basic risk-and-needs assessment, like the one implemented in South Carolina, to determine what kind of education or vocational training they want or need and there's a community care component too. Le Blanc is even working to get some parole and probation cases into the hands of community social workers rather than law enforcement officers. It's all very warm and fuzzy, yet such policies have been championed by the likes of Newt Gingrich and Louisiana governor Bobby Jindal. "It's conservative states with conservative leaders that are out front tackling this issue," says Gelb. The trend started in Texas, when in 2007 the state scuttled a plan to build eight new prisons at a cost of $2 billion and replaced it with beefed up community treatment and supervision that cost $241 million. The reason is clear, according to Le Blanc. "If we get these things accomplished, it's going to bring down recidivism." Which in turn will ease the state's financial burden. Typically parole programs cost taxpayers $7.47 per day per parolee, while prisons cost $78.95 per day per inmate nationwide. Getting it accomplished won't be easy. Le Blanc points to a statewide $1.6 billion budget shortfall, which translates as a 35 percent cut, or $151 million, from the corrections budget. Thankfully, hard times have ushered what Le Blanc sees as a new era of political collaboration in Baton Rouge, and he promises to maintain his re-entry initiatives. "If we want to reduce the prison population we have to maintain our parole and probation divisions," he says. "Seventy percent of parole or probation revocations happen within the first 14 months. That's for violent and non-violent offenders. They need to be connected, followed up with. You can't just let them cold turkey out of prison." Yet that's what California continues to do. There's no argument that California is a state with its back against the

wall. The budget for the Department of Corrections and Rehabilitation was slashed by $1 billion in 2010, and under Governor Brown's new budget the hope is $1.4 billion more can be saved in 2011, but that includes a $150 million reduction in rehabilitation programs at a time when recidivism is at an alarming rate — 67 percent and 55 percent of California's inmates are locked up for parole or probation violations rather than a new crime. Organizations like Pew and VERA and a growing chorus of conservative politicians argue that it is much smarter to couple non-revocable parole with an investment in beefed up parole programs that include pillars like substance abuse, job placement and cutting edge cognitive behavioral therapy programs that according to Gelb, "help identify triggers that spur criminal behavior and train parolees how to avoid them and maximize positive influences in their lives." Typically parole programs like these cost taxpayers $7.47 per day per parolee, while prisons cost $78.95 per day per inmate nationwide. Trouble is those budget cuts are coming. "And what could be easier than cutting programs that help convicted felons?" Asks Gelb. "But that could be pennywise and pound foolish. Especially if your goal is to get taxpayers a better return on their security and law enforcement investment." - See more at: http://www.thefiscaltimes.com/Articles/2011/02/09/Runaway-Prison-Costs-Thrash-State-Budgets?page=0%2C2#sthash.sDlXYMmU.dpuf

at: States have already done this

States that have already done geriatric release have too much red tape—cp fixes that McGarry 2010 (Peggy [Director, Center on Sentencing and Corrections @ Vera]; It's about time; Apr; www.vera.org/sites/default/files/resources/downloads/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf; kdf)

Throughout the United States, state corrections systems face significant challenges: many prisons are operating over capacity, budgets have been cut, and decisions about who goes to prison and for how long are made by policymakers who often lack good information about the impact of their actions. State legislatures and corrections departments are tackling these challenges by looking for new ways to reduce their prison populations without jeopardizing public safety. Some states, like Colorado, are considering evidence-based riskassessment tools to help paroling authorities make better-informed decisions about safe releases, while others, like New York, are using such tools to inform supervision and violation decisions. This report examines an underused strategy that is increasingly attracting attention as a way to reduce the prison population, save costs, and maintain public safety. Geriatric and medical release policies target inmates whose advanced age or waning health limit the risk they pose to the community. Because the cost of maintaining these individuals in state prisons is significantly higher than that for younger inmates, releasing older inmates has the potential to save corrections departments substantial amounts of money. Nevertheless, many states that have enacted such policies have not realized a decrease in their prison populations or the savings they may have anticipated. The lessons from this analysis of mostly ineffectual geriatric release provisions can also be applied to other areas of criminal justice policy. Perhaps the most important lesson is that intent is not enough to achieve a legislative or agency policy's desired impact. Policymakers must use available data to understand their corrections population and not be overly restrictive in defining the subset eligible for early release. Instead, they must craft policies and legislation to ensure that exceptions and procedural requirements do not overwhelm a provision's intent. To achieve their maximum impact, policies must be based on evidence and proven outcomes. Finally, legislation and policy change alone are usually not sufficient: attention and resources must also be directed toward careful implementation.

at: Why 55?

55 is the best age to start- multiple warrants

Vera Institute 2010 (It's about time; Apr; www.vera.org/sites/default/files/resources/downloads/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf; kdf)

There is no national consensus about the age at which an inmate qualifies as "old" or "elderly." The U.S. Census Bureau defines the general "elderly" population as those 65 and older, but the National Commission on Correctional Health Care uses 55 as its threshold for "elderly" inmates.7 At least 27 states have a definition for who is an "older prisoner," according to a recent survey: 15 states used 50 years as the cutoff, five states used 55, four states used 60, two states used 65, and one used age 70.8 Although most 50-year-olds are not considered elderly, the aging process appears to accelerate for people who are incarcerated.9 Some contributing elements include a person's poor physical or mental health prior to incarceration— often the result of factors such as substance abuse, lack of access to health care or inadequate care, poverty, and lack of education—as well as the physical and psychological stresses associated with prison life itself. Specific stressors include separation from family and friends; the prospect of living a large portion of one's life in confinement; and the threat of victimization, which disproportionately affects older inmates.10 For these reasons, correctional administrators, health practitioners, and academics agree that an incarcerated person's physiological age may exceed his or her chronological age.11

at: Release violent criminals

Violent criminals won't be released

Vera Institute 2010 (It's about time; Apr; www.vera.org/sites/default/files/resources/downloads/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf; kdf)

In developing geriatric release statutes and **procedures**, policymakers often exclude individuals convicted of violent offenses or sex offenses and those sentenced to life imprisonment. For these populations, punishment as a goal of incarceration may outweigh considerations of correctional cost savings or the prospect that age has rendered a person less dangerous. Although this rationale is understandable, the result is that geriatric release policies may apply to only a small subset of older inmates. In **2008**, one in 11 U.S. prisoners—more than 140,000 individuals—were serving a life sentence; 29 percent of them (roughly 41,000 people) have no possibility of parole.29 In Pennsylvania, a 2003 study of inmates 50 and older found that older prisoners were more likely to have been incarcerated for serious offenses, including rape, murder, robbery, aggravated assault, and burglary; 66 percent were serving maximum sentences of 10 years or more, with 21 percent serving life sentences.30 A 2006 report on North Carolina prisoners showed that almost 60 percent of inmates ages 50 and older were serving sentences for violent or sex crimes, including sexual assault, habitual felonies, and murder in the first or second degree. Most were serving a sentence of life or of 10 years to life.31 As larger numbers of people convicted of serious and violent crimes grow old in prison, categorically excluding them from consideration may result in fewer releases and less potential cost savings.

at: Not Effective

States will quickly learn how to make the CP effective

Vera Institute 2010 (It's about time; Apr; www.vera.org/sites/default/files/resources/downloads/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf; kdf)

The need to reduce corrections costs without jeopardizing public safety provides states with an opportunity to introduce or refine geriatric release policies. The challenge is to make existing policies more effective and to identify and assess new approaches to managing an aging population that is expected to grow. States with provisions for geriatric release can lead the way by making greater use of them and evaluating the outcomes. States that have not created such policies can test innovative strategies and help the criminal justice field learn more about what works, particularly with regard to reentry and community supervision for an elderly population that is ill, infirm, or both.

**Mandatory Sentencing 1NC

The United States federal government should eliminate mandatory sentencing and repeat offender laws. The states of the United States should revise their truth-in-sentencing laws in order to grant increased decision-making to the criminal justice system.

Raphael and Stoll 2014 (Steven [Goldman School of Public Policy, UC Berkeley] and Michael [Luskin School of Public Affiars, UCLA]; A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime; May; www.hamiltonproject.org/files/downloads_and_links/v5_THP_RaphaelStoll_DiscPaper.pdf; kdf)

We propose that states take a hard look at their truth-in-sentencing laws and either modify the parameters to reduce scope and severity or abandon the practice entirely. To be specific, states could alter the minimum percent of sentences to be served, reduce the scope of the set of crimes subject to truth-in-sentencing constraints, reduce the scope of truth-insentencing constraints by applying them to repeat offenders only, or abandon the practice altogether. These changes would permit parole review for greater proportions of inmates in indeterminate sentencing states while increasing the proportion of inmates able to earn good time credits in states with more-structured sentencing practices. Making these changes would necessarily increase the discretion of parole boards in the decision-making process and allow criminal justice professionals to have a greater role in deciding who is and who is not ready for release. Such a change would free the hands of corrections authorities to release those inmates who, through objective risk assessment, are deemed low risk. The potential benefits from such a change are illustrated by a recent provocative analysis of prison release decisions in Georgia conducted by Ilyana Kuziemko (2013). Using administrative data on prison releases and recidivism, Kuziemko documents the following: First, recidivism risk declines with time in prison, likely due to the aging of the inmate and the well-documented fact that the propensity to offend declines sharply with age. Second, parole boards are quite good at distinguishing high-risk from low-risk inmates based on observation during the inmate's incarceration, and on information that extend beyond the inmate's age, demographics, and criminal history on entering prison. Third, when discretion is wrested from parole boards via truth-in-sentencing type practices, inmates engage in more institutional misconduct, are less likely to participate in rehabilitative programming, and are more likely to recidivate after release. Through a series of back-of-the-envelope calculations, Kuziemko concludes that restricting the discretion of parole boards both increases the incarceration rate through longer sentences and increases crime through higher recidivism rates among those with little incentive to rehabilitate while incarcerated. Truth-in-sentencing not only creates allocative inefficiency, but may also increase the postrelease offending of some inmates beyond what it otherwise would be. The first factor occurs due to the one-size-fits-all nature of this sentencing practice. Namely, regardless of one's behavior, efforts made toward rehabilitation, and objective signals of low recidivism risk, the practice ties the hands of parole authorities, leading to incarceration spells that are unjustifiably long for some inmates. The second factor occurs through the elimination of the incentive to behave and conform.3 Precluding the possibility of early release through parole eliminates incentives to not engage in misconduct and to participate in programming, increasing the likelihood that the individual will be returned to custody soon after release. Of course, one could increase the role of parole boards in release decisions in a more-structured manner while creating incentives for inmates to engage in rehabilitated programming and to behave in a positive manner while incarcerated. Moreover, such an effort could be targeted at offenders who commit relatively less-serious crimes rather than those who come under the purview of truth-in-sentencing laws. For example, Pennsylvania's Recidivism Reduction Incentive (RRI) legislation passed in 2008 creates a parallel sentencing structure for relatively low-risk inmates whereby in addition to the specified minimum and maximum sentences handed down at sentencing, offenders are given an alternative RRI minimum sentence below the standard minimum. For the lower minimum to apply, the inmate must refrain from institutional misconduct and must participate in several predetermined rehabilitative programs to be deemed RRI certified. Through 2013 the Pennsylvania Department of Corrections estimates that roughly 9,000 inmates have served approximately five months less on average due to the RRI program, saving the state roughly $14,000 per inmate (Bucklen, Bell, and Russell 2014). In a nonexperimental evaluation of the program, RRIcertified inmates are found to be rearrested over the threeyear period following their release at a rate that is 8 percentage points lower than that for a matched comparison group. There is no statistically measurable effect on reincarceration, however. Moreover, because the program is targeted toward relatively low-risk inmates with short sentences, a sizable minority are released prior to participating in the prescribed programming. Take inventory of and reevaluate legislatively mandated minimum sentences. Mandatory sentencing laws specify minimum prison sentences for specific offenses or offenses with aggravating

circumstances that are targeted by specific legislation. Stemen, Rengifo, and Wilson (2006) note that mandatory minimum sentences usually constrain both the decision regarding whether an offender should be sentenced to prison and the minimum amount of time that an inmate must serve. Between 1975 and 2002 every state, the District of Columbia, and the federal government adopted some form of mandatory minimum sentencing targeted at a specific offense. Nearly three quarters of all states and the federal government enacted mandatory minimum sentences for possession or trafficking of illegal drugs. Mandatory minimum penalties are also often encountered for violent offenses, offenses involving weapons, carjackings, offenses victimizing minors, and offenses committed in close proximity to schools. Federal law is riddled with mandatory minimum sentences, with disproportionate mandatory minimums for drug offenses involving crack cocaine receiving perhaps the greatest scrutiny. Closely related to mandatory minimum sentences are state laws mandating specific sentencing for repeat offenders. Repeat-offender laws refer to sentence enhancements for criminal offenders who repeatedly commit crimes. The laws are often described using the baseball metaphor "three strikes and you're out," conveying the idea that those who serially offend may ultimately face life terms. Repeat-offender laws first appeared in most states during the early- to mid-1990s under the label of "three strikes," with the first in Washington state in 1993. By the close of the twentieth century, roughly half of all states had such provisions in their sentencing systems. The provisions of actual repeat-offender laws vary considerably across states. For example, in California a "second striker" (someone with a prior conviction for a violent offense convicted of a second felony) receives a sentence equal to twice the sentence normally handed down for the specific second offense. Until recently, all "third strikers" (someone with two prior violent felony convictions) were given an indeterminate sentence of twenty-five years to life for any additional felony offenses.4 In contrast, Pennsylvania's "three strikes" law is triggered only when an offender who has already been convicted of two prior felonies is subsequently convicted of one of eight specified offenses. Moreover, the law gives the sentencing court discretion to increase the sentence for the underlying offense by up to twenty-five years. Similar to truth-in-sentencing provisions, mandatory minimum sentences and repeat-offender laws often tie the hands of criminal justice actors (judges and parole boards, in particular) and greatly increase the bargaining power of prosecutors in criminal proceedings. In addition to increasing the likelihood of a prison term and sentence length for convicted offenders, research has shown that these practices often result in stiffer penalties for those convicted of lesser yet related offenses than those covered directly by the statute, which likely reflects a net-widening with regard to the range of offenses experiencing enhanced penalties under the law (Owens 2011).

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The counterplan reduces the socially harmful components of prison sentencing

Raphael and Stoll 2014 (Steven [Goldman School of Public Policy, UC Berkeley] and Michael [Luskin School of Public Affiars, UCLA]; A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime; May; www.hamiltonproject.org/files/downloads_and_links/v5_THP_RaphaelStoll_DiscPaper.pdf; kdf)

The explosive growth in the U.S. incarceration rate, coupled with crime-fighting benefits that rapidly diminish with the scale of incarceration, implies that there is currently substantial room to reduce incarceration rates without impacting crime. Even absent a compensating social investment, a selective scaling back of the use of incarceration as punishment would likely have relatively small effects on crime rates. However, such a scaling back would reduce corrections costs and generate budgetary savings that could be diverted to other, more-cost-effective, and less-socially harmful interventions. While there are multiple reasons why we use prison to punish felony offenders, crime control is clearly high on the list of objectives and motivations. That being said, the policy options that we outline below are intended to increase the general allocative efficiency of the use of prison beds—that is, to increase the degree to which prison is reserved for those who pose the greatest risk to society. Hence, we propose two broad policy strategies: introduce a greater degree of discretion into U.S. sentencing and parole practices, and incentivize local authorities to reserve prison for those who pose the greatest risk.

--xt Solves Racism

Mandatory minimums are the largest form of structural racism in the prison system

McCurdy 2006 (Jesselyn [ACLU Legislative counsel]; Testimony of Jesselyn McCurdy, ACLU Legislative Counsel, At A United States Sentencing Commission Hearing On Cocaine and Sentencing Policy; Nov 14; https://www.aclu.org/racial-justice_prisoners-rights_drug-law-reform_immigrants-rights/testimony-jesselyn-mccurdy-aclu-le; kdf)

The 100 to 1 Disparity in Federal Cocaine Sentencing Has a Racially Discriminatory Impact and has had a Devastating Impact on Communities of Color Data on the racial disparity in the application of mandatory minimum sentences for crack cocaine is particularly disturbing. African Americans comprise the vast majority of those convicted of crack cocaine offenses, while the majority of those convicted for powder cocaine offenses are white. This is true, despite the fact that whites and Hispanics form the majority of crack users. For example, in 2003, whites constituted 7.8% and African Americans constituted more than 80% of the defendants sentenced under the harsh federal crack cocaine laws, while more than 66% of crack cocaine users in the United States are white or Hispanic. Due in large part to the sentencing disparity based on the form of the drug, African Americans serve substantially more time in prison for drug offenses than do whites. The average sentence for a crack cocaine offense in 2003, which was 123 months, was 3.5 years longer than the average sentence of 81 months for an offense involving the powder form of the drug. Also due in large part to mandatory minimum sentences for drug offenses, from 1994 to 2003, the difference between the average time African American offenders served in prison increased by 77%, compared to an increase of 28% for white drug offenders. African Americans now serve virtually as much time in prison for a drug offense at 58.7 months, as whites do for a violent offense at 61.7 months. The fact that African American defendants received the mandatory sentences more often than white defendants who were eligible for a mandatory minimum sentence, further supports **the racially discriminatory impact of mandatory minimum penalties.** Over the last 20 years, federal and state drug laws and policies have also had a devastating impact on women. In 2003, 58% of all women in federal prison were convicted of drug offenses, compared to 48% of men. The growing number of women who are incarcerated disproportionately impacts African American and Hispanic women. African American women's incarceration rates for all crimes, largely driven by drug convictions, increased by 800% from 1986, compared to an increase of 400% for women of all races for the same period. Sentencing policies, particularly the mandatory minimum for low-level crack offenses, subject women who are low-level participants to the same or harsher sentences as the major dealers in a drug organization. The collateral consequences of the nation's drug policies, racially targeted prosecutions, mandatory minimums, and crack sentencing disparities have had a devastating effect on African American men, women, and families. Recent data indicates that African Americans make up only 15% of the country's drug users, yet they comprise 37% of those arrested for drug violations, 59% of those convicted, and 74% of those sentenced to prison for a drug offense. In 1986, before the enactment of federal mandatory minimum sentencing for crack cocaine offenses, the average federal drug sentence for African Americans was 11% higher than for whites. Four years later, the average federal drug sentence for African Americans was 49% higher. As law enforcement focused its efforts on crack offenses, especially those committed by African Americans, a dramatic shift occurred in the overall incarceration trends for African Americans, relative to the rest of the nation, transforming federal prisons into institutions increasingly dedicated to the African American community. The effects of mandatory minimums not only contribute to these disproportionately high incarceration rates, but also separate fathers from families, separate mothers with sentences for minor possession crimes from their children, leave children behind in the child welfare system, create massive disfranchisement of those with felony convictions, and prohibit previously incarcerated people from receiving social services such as welfare, food stamps, and access to public housing. For example, in 2000 there were approximately 791,600 African American men in prisons and jails. That same year, there were only 603,032 African American men enrolled in higher education. The fact that there are more African American men under the jurisdiction of the penal system than in college has led scholars to conclude that our crime policies are a major contributor to the disruption of the African American family. One of every 14 African American children has a parent locked up in prison or jail today, and African American children are 9 times more likely to have a parent incarcerated than white children. Moreover, approximately 1.4 million African American males – 13% of all adult African American men – are disfranchised because of felony convictions. This represents 33% of the total disfranchised population and a rate of disfranchisement that is 7 times the national average. In addition, as a result of federal welfare legislation in 1996, there is a lifetime prohibition on the receipt of welfare for anyone convicted of a drug felony, unless a state chooses to opt out of this provision. The effect of mandatory minimums for a felony conviction, especially in the instance of simple possession or for very low-level involvement with crack cocaine, can be devastating, not just for the accused, but also for their entire family.

at: CP links to politics

The counterplan is bipartisan

Gingrich and Nolan 2014 (Newt and Pat; An opening for bipartisanship on prison refom; Jul 14; online.wsj.com/articles/newt-gingrich-and-pat-nolan-an-opening-for-bipartisanship-on-prison-reform-1405380090; kdf)

The reforms have developed in the states, as conservatives tend to prefer. But now that there is proof that prison reform can work, the debate has gone from an ideological discussion to evidence-based changes that can be applied to the federal system. Republican Sens. John Cornyn and Ted Cruz, who have seen the benefits firsthand in Texas, have been joined by Republican Senate colleagues such as Rob Portman, Marco Rubio, Mike Lee, Jeff Flake and Ron Johnson in backing one or more prison-reform bills. Two bills, the Recidivism Reduction and Public Safety Act (S. 1675) and the Smarter Sentencing Act (S. 1410) have already passed the Senate Judiciary Committee and await action by the full Senate. In the House, Republican Reps. Jason Chaffetz, Raúl Labrador, Trey Gowdy and others are backing similar legislation. This push for reforming the federal prison system has support on the other side of the aisle as well. Such liberal stalwarts as Sens. Dick Durbin, Patrick Leahy and Sheldon Whitehouse, and Reps. John Conyers, Bobby Scott and Jerrold Nadler have signaled their backing. On Tuesday, the House Subcommittee on Crime, Terrorism and Homeland Security HOMS -5.88% will hear from witnesses who are experts on state reforms. With luck, their testimony will provide even more impetus for Congress to take advantage of the unusually strong bipartisanship in the air on Capitol Hill and fix a criminal-justice system badly in need of repair.

**Prison Labor CP

Text: The USFG should increase the minimum wage for prisoners doing prison labor. (still working on this)

Cheap prison labor is uniquely rooted in institutionalized racism

Browne 7 [Jaron Browne. Organizer with People Organized to Win Employment Rights (POWER). "Rooted in Slavery: Prison Labor Exploitation." 2007. http://reimaginerpe.org/node/856]//EMerz

It may surprise some people that as the number of people without jobs increases, the number of working people actually increases—they become prison laborers. **Everyone inside has a job**. There are currently over 70 factories in California's 33 prisons alone. Prisoners do everything from textile work and construction, to manufacturing and service work. Prisoners make shoes, clothing, and detergent; they do dental lab work, recycling, metal production, and wood production; they operate dairies, farms, and slaughterhouses. United States Prisons mirror Free Enterprise Zones in Africa, Asia, and Latin America; the prison is a reflection of the Third World within the United States. Prisoners are not protected by minimum wage laws or overtime, and are explicitly barred from the right to organize and collectively bargain. In fact, the conditions for the overwhelmingly Black and Latino men and women inside the United States prison system are so similar to that of workers in the maquiladoras and sweatshops of the global South that in 1995, Oregon politicians were even courting Nike to move their production from Indonesia into Oregon prisons. "We propose that (Nike) take a look at their transportation costs and their labor costs," Oregon State Representative Kevin Mannix explained in an interview with researcher Reese Erlich, "We could offer [competitive] prison inmate labor" in Oregon.2 To understand the conditions that have allowed such an exploitative industry to develop, we have to look at the origin of the United States prison system itself. Before the abolition of slavery there was no real prison system in the United States. Punishment for crime consisted of physical torture, referred to as corporal or capital punishment. While the model prison in the United States was built in Auburn, New York in 1817, it wasn't until the end of the Civil War, with the official abolition of slavery, that the prison system took hold. In 1865, the 13th Amendment officially abolished slavery for all people except those convicted of a crime and opened the door for mass criminalization. Prisons were built in the South as part of the backlash to Black Reconstruction and as a mechanism to re-enslave Black workers. In the late 19th-century South, an extensive prison system was developed in the interest of maintaining the racial and economic relationship of slavery. Louisiana's famous Angola Prison illustrates this history best. In 1880, this 8000-acre family plantation was purchased by the state of Louisiana and converted into a prison. Slave quarters became cell units. Now expanded to 18,000 acres, the Angola plantation is tilled by prisoners working the land—a chilling picture of modern day chattel slavery. Black Codes and Convict Leasing When slavery was legally abolished, a new set of laws called the Black Codes emerged to criminalize legal activity for African Americans. Through the enforcement of these laws, acts such as standing in one area of town or walking at night, for example, became the criminal acts of "loitering" or "breaking curfew," for which African Americans were imprisoned. As a result of Black Codes, the percentage of African Americans in prison grew exponentially, surpassing whites for the first time.3 A system of convict leasing was developed to allow white slave plantation owners in the South to literally purchase prisoners to live on their property and work under their control. Through this system, bidders paid an average $25,000 a year to the state, in exchange for control over the lives of all of the prisoners. The system provided revenue for the state and profits for plantation owners. In 1878, Georgia leased out 1,239 prisoners, and all but 115 were African American.4 Much like the system of slavery from which it emerged, convict leasing was a violent and abusive system. The death rate of prisoners leased to railroad companies between 1877 and 1879 was 16 percent in Mississippi, 25 percent in Arkansas, and 45 percent in South Carolina.5 The stories of violence and torture eventually led to massive reform and abolition movements involving alliances between prisoner organizations, labor unions, and community groups. By the 1930s, every state had abolished convict leasing.6 As the southern states began to phase out convict leasing, prisoners were increasingly made to work in the most brutal form of forced labor, the chain gang. The chain gangs originated as a part of a massive road development project in the 1890s. Georgia was the first state to begin using chain gangs to work male felony convicts outside of the prison walls. Chains were wrapped around the ankles of prisoners, shackling five together while they worked, ate, and slept. Following Georgia's example, the use of chain gangs spread rapidly throughout the South.7 For over 30 years, African-American prisoners (and some white prisoners) in the chain gangs were worked at gunpoint under whips and chains in a public spectacle of chattel slavery and torture. Eventually, the brutality and violence associated with chain gang labor in the United States gained worldwide attention. The chain gang was abolished in every state by the l950s, almost 100 years after the end of the Civil War.8 Prison Labor Exploitation in the 21st Century Just a few decades later, we are witnessing the return of all of these systems of prison labor exploitation. Private

corporations are able to lease factories in prisons, as well as lease prisoners out to their factories. Private corporations are running prisons-for-profit. Government-run prison factories operate as multibillion dollar industries in every state, and throughout the federal prison system. In the most punitive and racist prison systems, we are even witnessing the return of the chain gang. Prisoner resistance and community organizing has been able to defeat some of these initiatives, but in Arizona, Maricopa County continues to operate the first women's chain gang in the history of the United States.9 **Shifts in the United States economy and growing crises of underemployment and poverty in communities of color have created the conditions for the current wave of mass incarceration and the boom in prison labor exploitation.** In the Bayview Hunters Point neighborhood of San Francisco, a historically Black community with an estimated 50 percent unemployment rate, the community is facing criminalization, incarceration and mass displacement as a result of gentrification. San Francisco, along with eight other counties in California, is implementing gang injunctions—curfews, anti-loitering, and anti-association laws that function very similar to Black Codes for Black, Latino, and Asian youth—using the pretext of gang prevention to track young men into the prison system to become prison labor, while preparing the community for redevelopment and gentrification. People Organized to Win Employment Rights (POWER) is building power among Bayview residents and fighting for economic development that addresses the interests of the Black community, which will create alternatives to prison labor exploitation.10 Struggles like this are being waged all across the country and provide an opening to link the demands for worker rights, community rights, and prisoner rights. The fight against the exploitation of prison labor is at once a fight against racial profiling and mass incarceration, and also for genuine economic development in Black, Latino, Asian, and Pacific Islander communities. The labor movement in the United States has a responsibility to support prisoner unions such as the Missouri Prison Labor Union (MPLU), which is fighting for higher wages and collective bargaining, and to challenge labor unions who dismiss prisoners as stealing jobs from the "good law-abiding workers" on the outside. As Sidney Williams of the MLPU states, "In this struggle we seek to regain our human dignity." That is the demand of the slavery abolition movement of the 21st century.

--xt: solvency

The USFG has the jurisdiction to increase prison wages- the counterplan decreases recidivism which drives racism

Decker 13 (Charles Decker. Political Science graduate from Yale and contributor to the peer reviewed Yale Institution for Social and Policy Studies. October 2013. http://isps.yale.edu/team/charles-decker#.VaQm4_lViko)//EMerz

These challenges alone clearly make the case for expanded work opportunities in prison. Of course, prison labor is alive and well. According to the Federal Bureau of Prisons, federal inmates earn 12 cents to 40 cents per hour for jobs serving the prison, and 23 cents to $1.15 per hour in Federal Prison Industries factories. Prisoners are increasingly working for private companies as well. A significant cut of even these token wages goes to criminal justice system fees. **Offenders thus have little hope of saving money while in prison, and this lack of money combined with fragile post-release support systems is an explosive formula for recidivism and reincarceration**. As such, the time has come to institute a living wage for prison labor. This wage need not be at the same level in prison as it would be outside. But prison wages must be high enough to cover the fees imposed by the criminal justice system while allowing offenders to reserve enough money to have a fair start upon release. **Such a policy could make a big difference in reducing recidivism and bringing down the incarceration rate even further.** While much prison policy is determined at the state level, the Federal Government does have power over prison labor policy, even for non-federal inmates. In 1979, Congress created the Prison Industries Enhancement Certification Program (PIECP). Under PIECP, goods made by prisoners are banned from interstate transport unless inmates are paid "prevailing wages," or wages comparable to those in the private sector. These criteria, however, are routinely circumvented. PIECP has laid the groundwork for government regulation of prison labor—what is needed now is better enforcement. Two major objections to these proposals may arise. The first is concrete: free workers will cry foul over competition from prison labor. The second is philosophical: nobody is forced to work, but prison labor is at its heart coercive. Both concerns are accurate and complex, but the answer to each stems from the same fact: prison labor is not going anywhere. It has existed for as long as the American criminal justice system, and ignoring its problems serves the interests of no worker, free or incarcerated. Bringing these realities out into the open is the first step toward bringing the issue of prison labor into the movement to reform the carceral state.

Racial Profiling CP

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Text: The states of the United States should prohibit racial profiling.

States need to have comprehensive racial profiling laws – solves the aff

Eversley 14 – writer for USA Today Melanie Eversley, 9/26/2014, USA Today, "NAACP finds many states lack laws barring profiling", http://www.usatoday.com/story/news/nation/2014/09/25/naacp-racial-profililng-report/16229867/, 7/12/2015, \\BD

Just after a heated summer that included a handful of fatalities at the hands of police that raised questions of racism, the NAACP has released a report that says many states do not have laws that explicitly prohibit racial profiling.ə The civil rights organization on Thursday released the 68-page report, Born Suspect: Stop and Frisk and the Continued Fight to End Racial Profiling in America. The group launched the study after the Feb. 26, 2012, death of Florida teen Trayvon Martin, shot by neighborhood watch volunteer George Zimmerman, said lead author Niaz Kasravi, the NAACP's director of criminal justice.ə Kasravi told USA TODAY that what stood out most for her was that the findings were similar to another study she did after the 2001 terror attacks while working for Amnesty International. Back then, the focus was on alleged racial profiling against Muslims.ə "Not much has changed. The numbers are pretty stagnant," Kasravi said.ə She said "probably a couple of states" passed laws prohibiting racial profiling -- stopping and questioning people based on racial stereotypes -- over the past decade. She said the NAACP has a litmus test -- things such as data collection and enhanced police training -- to measure the effectiveness of racial profiling laws. "**It's sad that not one state has all those components."**ə The report found that:ə 20 state racial profiling laws are not clear and specific in prohibiting racial profiling.ə33 states do not require mandatory data on stops and searches.ə33 states do not require establishment of racial profiling commissions to review complaints.əThe release of the report comes as tension still brews in Ferguson, Mo., where 18-year-old Michael Brown was shot and killed by police officer Darren Wilson on Aug. 9, and in New York City, where Eric Garner died in a chokehold by police on July 17.ə On Thursday, national activists and family members of Brown and Garner were in Washington to ask the Justice Department to investigate the two deaths.ə NAACP President Cornel Brooks, among those at a press conference, said African American communities are "in the midst of a pandemic of police misconduct."ə Benjamin Crump, the lawyer for the Brown family, said of predominantly black neighborhoods, "Probable cause happens in our community with no evidence at all."ə Alleged racial profiling and police misconduct are the main reasons members and leaders of NAACP chapters contact the organization's Baltimore headquarters, Kasravi said.

--xt Solvency

The counterplan is key – not one state has adequate racial profiling laws

Clark 14 – writer for MSNBC Meredith Clark, 9/25/2014, MSNBC, "Racial profiling report finds 'not one state' with acceptable protections", http://www.msnbc.com/msnbc/racial-profiling-report-finds-not-one-state-acceptable-protections, 7/12/2015, \\BD

Racial profiling is still a major part of life for communities of color across the country, and a new report has found that legal protections from such profiling **vary wildly** from state to state. The NAACP report came the same day the families of three black men killed by police officers in recent months called for justice for their loved ones.ð After several noteworthy killings of black men by white police officers, the NAACP on Thursday released Born Suspect: Stop-and-Frisk Abuses and the Continued Fight to End Racial Profiling in America, which looked at racial profile laws in all 50 states. It also examined how activists and civil liberties advocates in New York City successfully fought the NYPD's discriminatory "stop and frisk" police search policy, which disproportionately targeted black and Hispanic residents.ð "In 2014 there is **not one state** that has a statute that can stand up against this pandemic of police misconduct," NAACP President Cornell Brooks said of the report. According the NAACP's review, 20 states don't have a ban on racial profiling, and **only 17** states with anti-profiling laws make violations a crime.ð The kind of data collected by law enforcement varies from state to state, the report found, making it difficult to compare communities and strategies effectively.ð Connecticut and Rhode Island were both singled out for having the most protections for their citizens against racial profiling, but neither state met every one of the NAACP's criteria for constitutional safeguards. And Kentucky, "which basically lacks all of the necessary components for a good law," landed at the bottom of the list.

at: Fed Profiling

The federal government is already banning racial profiling – it's just a question of states and localities

Horwitz 14 – writer for The Washington Post Sari Horwitz, 12/8/2014, The Washington Post, "Justice Dept. announces new rules to curb racial profiling by federal law enforcement", https://www.washingtonpost.com/world/national-security/justice-dept-to-announce-new-rules-to-curb-racial-profiling-by-federal-law-enforcement/2014/12/07/e00eca18-7e79-11e4-9f38-95a187e4c1f7_story.html, 7/12/2015, \\BD

The Obama administration on Monday formally announced long-awaited curbs on racial profiling by federal law enforcement, but the new rules will **not cover** local police departments, which have come under criticism in recent months over allegations that their officers profile suspects.ð Attorney General Eric H. Holder Jr. expanded Justice Department rules for racial profiling to prevent FBI agents from considering gender, national origin, religion, sexual orientation and gender identity, in addition to race and ethnicity, when opening cases. The department also is banning racial profiling from national security cases for the first time.ð Holder's revised policy covers state and local law enforcement officers while they participate in federal law enforcement task forces. But it is considered **only guidance** for police officers in state and local departments.ð The profiling rules come at a time of racial tension around the country after the recent deaths of three African Americans at the hands of police in Ferguson, Mo., New York and Cleveland, and the absence of criminal charges against the white police officers who were involved.ð "As attorney general, I have repeatedly made clear that profiling by law enforcement is not only wrong, it is profoundly misguided and ineffective," Holder said. "Particularly in light of certain recent incidents we've seen at the **local** level, and the widespread concerns about trust in the criminal justice process, it's imperative that we take every possible action to institute strong and sound policing practices."

Federal action is irrelevant – state and local actions are key

Natarajan 14 – clinical professor and director of the Civil Rights Clinic at The University of Texas School of Law Ranjana Natarajan, 12/15/2014, The Washington Post, "Racial profiling has destroyed public trust in police. Cops are exploiting our weak laws against it.", http://www.washingtonpost.com/posteverything/wp/2014/12/15/racial-profiling-has-destroyed-public-trust-in-police-cops-are-exploiting-our-weak-laws-against-it/, 7/12/2015, \\BD

The #BlackLivesMatter movement has sparked nationwide protests and has raised awareness worldwide about the unequal treatment of black people by police in the United States.ð Listening to the voices from the movement — and learning from the death of Eric Garner and the series of other deaths of unarmed black men — it's clear that two issues need to be addressed: racial profiling and police use of excessive force. Both run afoul of the U.S. Constitution, but remain common practices in law enforcement, too often with tragic results.ð In Garner's case, for example, police targeted him for the petty crime of selling loose cigarettes — the types of crimes black people are targeted for at higher rates — and then attempted to arrest him with a chokehold, banned by the department. Whatever else we have learned from the recent tragedies of police violence, it is clear that we need comprehensive federal, **state and local policies** that outlaw racial profiling and rein in police excessive force.ð Racial profiling — as well as profiling based on religion, ethnicity and national origin — continues to plague our nation despite the constitutional guarantee of equal treatment under the law. In a 2011 report, the Leadership Conference on Civil Rights found evidence of widespread racial profiling, showing that African Americans and Hispanics are disproportionately likely to be stopped and searched by police, even though they're less likely to be found possessing contraband or committing a criminal act. In Illinois, for example, black and Hispanic drivers were twice as likely to be searched after a traffic stop compared to white drivers, but white drivers were twice as likely to have contraband. The NYPD's controversial stop-and-frisk program shows similar evidence of racial profiling, with police targeting blacks and Latinos about 85 percent of the time. In nearly nine out of 10 searches, police find nothing.ð Likewise, excessive force by police persists despite the Constitution's prohibition on unreasonable searches and seizures. In lawsuits and investigations, the U.S. Department of Justice has concluded that a number of major police departments have engaged in a pattern or practice of excessive force. The Cleveland Police Department was most recently found to be an offender, but it follows a long line of other wayward law

enforcement agencies: Seattle, New Orleans, Portland, Newark and Albuquerque among them. Clearly, cases like Eric Garner's are not isolated — police use of excessive force is a systemic, national problem. The DOJ has recommended revising and clarifying local policies regarding appropriate uses of force, improving officer training and supervision, and implementing rigorous internal accountability systems, among other things. But recommendations are not enough. Conquering this systemic issue demands a national mandate.∂ Profiling undermines public safety and strains police-community trust. When law enforcement officers target residents based on race, religion or national origin rather than behavior, crime-fighting is **less effective** and community distrust of police grows. A study of the Los Angeles Police Department showed that minority communities that had been unfairly targeted in the past continue to experience greater mistrust and fear of police officers. To root out this ineffective tactic that undermines public confidence, we need stronger policies against racial profiling at all levels — from **local** to federal — as well as more effective training and oversight of police officers, and systems of accountability.∂ Twenty states have no laws prohibiting racial profiling by law enforcement, according to an NAACP report released in September. Among states that do, the policies vary widely in implementation and effectiveness. Only 17 of those states require data collection on all police stops and searches, and only 15 require analysis and publication of other racial profiling data. Limited and inconsistent data collection makes it impossible to devise effective remedies for racial profiling.

Relations—Asia

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Counterplan: The United States federal government should substantially increase its engagement with ASEAN.

Solves the advantage

Task Force on Multilateral Engagement in U.S.-East Asia Relations 11, (“U.S.–East Asia Relations: A Strategy for Multilateral Engagement”)

ASEAN can serve as a foundation. ASEAN’s role in building a more integrated regional society based on shared norms and values should be fully recognized and supported. Asia currently faces tensions between two competing trends: Asia as a community of norms and values, and Asia as a region shaped by power relations, given the presence of the United States and China. Although ASEAN is not considered an emerging power, the group of ten medium and smaller-sized countries has promoted modes of cooperation through its own example of developing a community. In the ASEAN Treaty of Amity and Cooperation and other efforts and practices in regional diplomacy, ASEAN’s role in engaging the emerging powers of Asia deserves recognition and support. Deeper ASEAN engagement with the United States can reinforce ASEAN’s role in promoting values and building norms. This may be a more productive focus for U.S.–ASEAN relations, rather than simply seeking to use U.S.–ASEAN ties as a means of balancing rising regional actors such as China. 6. Recognize that integration on different economic and security issues will continue at different speeds in the region. Each side has a different tenor that should be noted. With economic ties, many in Asia seek to become closer to China, though there is some wariness over issues such as cheap goods. On security ties, however, there are questions about China and its future intentions. Many recognize the need for a future place to integrate. With the East Asian Summit, some are leaning toward one place to integrate, while others are talking about network diplomacy. Integration on different issues will continue at separate speeds, and this may signal a need for more network diplomacy. 7. A new U.S. diplomacy with ASEAN is needed. There is a need and an opportunity for the United States to engage with ASEAN more closely as a hub for a wider Asia. Building on the newly established U.S.–ASEAN Summit and the appointment of Ambassador David Carden as the first U.S. resident representative to ASEAN in March 2011, the United States should continue to deepen its understanding of ASEAN and seek out like-minded countries in the grouping. This should not be limited to its allies—the Philippines and Thailand—but also should include ties with Indonesia, Singapore, Vietnam, and Malaysia and cross-border projects such as the Greater Mekong Subregion. In this context, challenges in relations with Myanmar have to be addressed.

Relations—EU

**Death Penalty 1NC

Text: The United States Federal Government should abolish the death penalty.

The CP solves relations with the EU—the EU has been putting restrictions on the US

Ford 14—Matt is an associate editor at The Atlantic, where he covers law and the courts. ("Can Europe End the Death Penalty in America? An EU export ban on lethal-injection drugs is making U.S. executions more difficult to perform." February 18, 2014 http://www.theatlantic.com/international/archive/2014/02/can-europe-end-the-death-penalty-in-america/283790/)//JLee

Why did Ohio, which has used lethal injection since it resumed executions in 1999, suddenly try an unproven chemical mixture on McGuire? The answer lies in a growing shortage of standard lethal-injection drugs brought about primarily by a 2011 export ban by the European Union, the effects of which are starting to be felt in death-row chambers across America. The ban severed U.S. prisons from the last large-scale manufacturers of sodium thiopental, a key anesthetic in lethal injections. In recent years, some smaller drugmakers elsewhere in the world have also declined to sell sodium thiopental and other lethal-injection drugs to U.S. states, citing activist pressure, the fear of lawsuits, and their ethical obligations. "The EU embargo has slowed down, but not stopped executions," Richard Dieter, executive director of the Death Penalty Information Center in Washington, D.C, told me. "It has made the states seem somewhat desperate and not in control, putting the death penalty in a negative light, with an uncertain future." Lethal injection is by far the predominant method of execution in the United States. Before the drug shortage, virtually every lethal-injection protocol used the same three-drug method. A first drug, sodium thiopental, anesthetized the prisoner. Then a second drug, pancuronium bromide, paralyzed the inmate and halted his or her breathing. Finally, an injection of potassium chloride stopped the heart. Jay Chapman, an Oklahoma medical examiner with little pharmacology experience, first proposed the three-drug protocol in 1977. Asked about his qualifications by a New York Times reporter 30 years later, Chapman described himself as "an expert in matters after death but not in getting people that way." Texas became the first state to use lethal injection when it executed Charles Brooks, Jr. on December 7, 1982. Since then, U.S. states have executed over 1,000 death-row inmates by lethal injection. By the time the three-drug cocktail's constitutionality came before the U.S. Supreme Court in 2008 in Baze v. Rees, lethal injection had become the preferred method of execution for 36 states and the federal government. Thirty of those states used Chapman's method. The U.S. Supreme Court upheld the three-drug protocol in a 7-2 decision. The European Union, for its part, makes no secret of its death-penalty stance. EU guidelines call for its **"universal abolition"** and declare that doing so would "[contribute] to the enhancement of human dignity and the progressive development of human rights." EU diplomats and leaders **frequently** petition U.S. governors and state parole boards to halt forthcoming executions. Sometimes, the supranational organization even works in more subtle ways: EU agencies contributed over $4.8 million in donations to U.S. anti-death-penalty organizations between 2009 and 2013. Kennedy wrote that world opinion, "while not controlling our outcome, does provide ... confirmation for our own conclusions." The EU's influence extends to the U.S. Supreme Court, where justices have drawn upon the organization's amicus curiae briefs from time to time in death penalty cases. Justice John Paul Stevens' majority opinion in 2002's Atkins v. Virginia cited the EU's brief on worldwide opposition to executing the mentally disabled as a factor in the Court's decision to forbid the practice in the United States. During oral arguments for Roper v. Simmons in 2005, Justice Anthony Kennedy pondered whether European views should be considered when assessing the "unusual" aspect of the Eighth Amendment's prohibition of "cruel or unusual punishment." The EU had already told the Court in an amicus brief that imposing the death penalty on persons who were minors at the time of the crime "violates widely accepted human rights norms and the minimum standards of human rights set forth by the United Nations." Writing for the Court's majority in Roper, Kennedy agreed with the EU's assessment and wrote that world opinion, "while not controlling our outcome, does provide respected and significant confirmation for our own conclusions." Not all of the justices were as appreciative. "Though the views of our own citizens are essentially irrelevant to the Court's decision today," said Justice Antonin Scalia in his Roper dissent, "the views of other countries and the so-called international community take center stage." "I think the constant reminder that our closest allies are opposed on fundamental human-rights grounds to the death penalty goes a long way in our gradual re-evaluation of this issue," Dieter told me. And that moral and ethical case, enforced by export bans on the materials necessary to perform lethal injections, is changing how America executes the men and women it sentences to death. Of the three drugs used in standard lethal injections, potassium chloride and pancuronium bromide are widely available. But sodium thiopental has been superseded by newer anesthetics. Few U.S. hospitals, if any, still use it, and even fewer manufacturers produce it worldwide. Most importantly, sodium thiopental only has a shelf life of about four years, making stockpiling the drug difficult given the lengthy and arduous appeals process for death-penalty cases. As a result of this vulnerable supply line, sodium thiopental has become a pressure point for activists in the U.S. and Europe. Initially, individual European countries moved to cut off supply of the drug. British officials at first refused to restrict it, arguing that the anesthetic had legitimate medical uses, until activists provided data showing that Europe's customers for the drug included U.S. prisons. Business Secretary Vince Cable then reversed course and imposed an export ban in November 2010, citing **Britain's** longstanding support of the death penalty's worldwide abolition. Hospira, the last U.S. company to market sodium thiopental, stopped production of the drug in January 2011 under intense pressure from

authorities in **Italy**, where their pharmaceutical plant is located. As sources began to dry up, some states banded together to find new suppliers. South Dakota and Nebraska approached Kayem Pharmaceuticals in India, which sold each state sodium thiopental before halting U.S. sales in April 2011. In Arkansas, corrections officials obtained sodium thiopental from British distributors and then shared it for free with Mississippi, Oklahoma, and Tennessee. But the states soon ran afoul of federal regulators for violating trade restrictions. The Drug Enforcement Agency seized Georgia's supply of sodium thiopental in 2011 after records suggested that state officials might have broken the law by purchasing and importing the drug from Dream Pharma, a British distributor operating out of the back of a driving school in London. Kentucky handed over its sodium thiopental to the DEA that same year. Georgia purchased sodium thiopental from Dream Pharma, a British distributor operating out of the back of a driving school in London. By June 2011, the sodium thiopental supply had run so low that U.S. Secretary of Commerce Gary Locke asked his German counterpart, Economics Minister Philipp Rösler, for assistance in alleviating the shortage. "I noted the request and declined," Rösler publicly declared, citing his Catholic faith, and then announced plans to forbid German pharmaceutical companies from selling sodium thiopental to the United States. Around the same time, in neighboring Denmark, Lundbeck, the sole pharmaceutical company licensed to manufacture pentobarbital in the United States, announced it would stop selling the medicine, another commonly used execution drug, to U.S. prisons. Sarah Ludford, a British member of the European Parliament and vice chair of its delegation to the U.S., helped lead the fight for a Europe-wide export ban. "I am proud to have helped lead the campaign to stop EU-produced medicines being hijacked for such appalling uses, in line with the UK and EU commitment to abolish the death penalty around the world," she told me in a statement. "I am determined to continue ensuring that Europe is not complicit in the deaths of American citizens." Then, in December 2011, the hammer fell. The European Commission, the EU's executive body, expanded its Regulation on Products used for Capital Punishment and Torture to include "products which could be used for the execution of human beings by means of lethal injection," including "short and intermediate acting barbiturate anaesthetic agents" like pentobarbital and sodium thiopental, among others. The U.S. government's current position on the export ban or on state efforts to circumvent is unclear. Federal agencies and departments contacted on the matter either did not respond to requests for comment or deferred to the Food and Drug Administration, the federal agency charged with regulating the manufacture, importation, and sale of pharmaceutical drugs in the U.S. Some have raised concerns about the ways in which the FDA regulates imports of drugs used in lethal injections. A group of inmates recently mounted a successful legal challenge to the FDA's refusal to block sodium thiopental imports to Arizona, California, and Tennessee, arguing that the agency had improperly allowed drugs from unregistered distributors into the United States. In his March 2012 ruling, the federal judge Richard Leon agreed, and castigated FDA regulators for acting "arbitrarily and capriciously" and abusing their discretion by not blocking unregulated sodium thiopental imports themselves. When asked for its position on the EU export ban and whether the agency had taken steps to alleviate shortages of lethal-injection drugs, an FDA spokesman replied with a statement: "The FDA does not approve drugs for use in lethal injection settings. Our work on drug shortages focuses on ensuring the continued availability of medically necessary drugs. We cannot comment on this issue further."

--xt: solvency

CP solves—only way to get be a part of the EU is to abolish the Death Penalty

Stone 15—Jon is a reporter for independent.co.uk mainly covering politics. He has previously worked for PoliticsHome, BuzzFeed, and others. ("America is running out of lethal injection drugs because of a European embargo to end the death penalty" March 13, 2015 http://www.independent.co.uk/news/world/americas/america-is-running-out-of-lethal-injection-drugs-because-of-a-european-embargo-to-end-the-death-penalty-10106933.html)//JLee

Prison authorities in Texas are one lethal injection away from running out of executioners' drugs, the state's justice department has confirmed. The near-exhaustion of supplies in Texas comes amid a shortage of lethal injection drugs across the United States, prompted by European efforts to keep the poisons out of American hands. In recent years European countries have imposed export controls on a range of execution drugs in a bid to force American states to stop killing prisoners. Two of the drugs, pentobarbital and sodium thiopental, are used in the vast majority of executions in the United States, where the death penalty is still commonplace for serious crimes. The UK unilaterally restricted the export of death penalty drugs to the United States in 2010 under the direction of the Business Secretary Vince Cable. Abolishing the death penalty across the world is a European Union foreign policy objective The European Union followed suit at the end of 2011, putting the poisons on a list of controlled exports that could be used as part of "capital punishment, torture or other cruel, inhuman or degrading treatment or punishment". "The decision today contributes to the wider EU efforts to abolish the death penalty worldwide," Catherine Ashton, the vice president of the Commission at the time, said. While the ban appears to have had an effect, a spokesperson Texas's justice department told the Independent that the state was looking at alternative drugs to use in its executions. "The Texas Department of Criminal Justice is actively exploring all options at this point including the continued use of pentobarbital or an alternate drug or drugs to use in lethal injections," he explained. Other states have taken more drastic measures to circumvent the controls. On Tuesday this week Utah's state legislature approved proposals to carry out executions by firing square in the event of a drug shortage. State-level representatives in Oklahoma are even considering a proposal to kill prisoners in gas chambers if supplies of anaesthetics run out. Some states have had to delay executions because of shortages. Authorities in Ohio delayed at least one killing after an attempt to use an alternative drug was branded "a failed, agonising experiment" because of its slow and distressing effect on its target. 32 US states still practice the death penalty, with the practice abolished in only 18. Partly owing to its size and population, Texas carries out far more executions than any other state. Abolition of the death penalty is mandatory for countries wanting to join the European Union, and the European Commission describes the practices worldwide abolition as **"a key objective for the Union's human rights policy"**.

**LNG CP

Text: The United States Federal Government should substantially increase its liquefied natural gas exports.

CP solves—creates US-EU relations and prevents Russia Rise

Goldwyn 14—David L. is a nonresident senior fellow in the Energy Security and Climate Initiative at Brookings and president of Goldwyn Global Strategies, LLC, an international energy advisory consultancy. He served as the U.S. State Department's special envoy and coordinator for international energy affairs from 2009 to 2011, reporting directly to Secretary of State Hillary ("Refreshing European Energy Security Policy: How the U.S. Can Help" March 18, 2014 http://www.brookings.edu/research/articles/2014/03/18-european-energy-security-policy-goldwyn)//JLee

The U.S. can help Central and Eastern Europe and Ukraine by refreshing its European energy security policy. The current crisis validates America's long-term policy goal of diversifying Europe's energy supply to diminish Russia's ability to use energy as a coercive tool against its neighbors. While much progress has been made, with bipartisan support, Russia still dominates Central and Eastern European (CEE) natural gas supply, and recent events call for refocusing our efforts. Stiffening the EU's spine to create a truly competitive internal energy market, promoting the efforts of the International Monetary Fund (IMF) on internal market reform in CEE countries, supporting indigenous gas production and taking steps to building a reliable energy bridge to Europe through U.S. exports should be the cornerstones of U.S. policy. While no panacea, respected U.S. energy experts have been too quick to dismiss a linkage between Europe (and Ukraine's) energy insecurity and the utility of expediting U.S. hydrocarbon exports. Indeed, a clear signal that liquefied natural gas (LNG) exports to European allies are "deemed to be in the national interest"[1] would indeed have an immediate impact on Russia's market power and help accelerate the build out of gas transportation infrastructure in Europe. The U.S. has already caused Russia to renegotiate current gas contracts and discount renewed contacts due to the displacement of LNG flows once meant for our markets. An immediate signal that future U.S. LNG exports will be available to Europe will send a message to Russia that within a few years, despite its current ability to pressure Ukraine and other nations once part of the USSR, this will no longer be possible. Expectations of future supply will impact price expectations and infrastructure investment decisions made today. Ukraine's future energy security lies in greater reverse flows of gas from Europe and well managed gas storage in Ukraine. To the extent that the firm promise of U.S. LNG exports in the 2017-2022 period sustain lower LNG prices and help finance new interconnections from LNG import terminals on the continent, Ukraine will benefit indirectly as well. Success in Ensuring European Energy Security Since 2009 U.S. policy has promoted redundant infrastructure as a cornerstone of energy security policy since the 1990s. Long gestating projects like the Baku-Tbilisi-Ceyhan (BTC) pipeline and the Southern Corridor were fundamental goals. Enhancing pipeline interconnections to move gas freely across the continent, internal pricing and efficiency reform and development of clean energy alternatives were the additional core elements. Much progress has been made over two decades. BTC is operational, Azeri gas flows to Turkey and there will be a Southern Gas Corridor (although not as ambitious as the Nabucco project), which will bring gas to Turkey, Italy, Greece and Albania. Norway is providing competitively priced gas to the continent. The European Union's Third Energy Package[2] has eliminated destination clauses (allowing free sale of gas) and should advance internal reforms. EU competition policy should restrict Russia's ability to monopolize midstream and downstream energy infrastructure as well as gas supply, including barring Russia from completing the South Stream pipeline intended to allow Russia's gas flows to bypass Ukraine. The U.S. shale gas boom, as noted above, has had the greatest impact on the competitiveness of the European gas market by creating a glut of LNG supply that has opened a spot market and driven down long-term contract prices.

Exports key to prevent Russia Expansion in the Crimea

Emmott 14—Robin is a senior correspondent for Reuters in Brussels ("Ukraine crisis gives new impetus to EU-U.S. trade talks, U.S. says" March 22, 2014 http://www.reuters.com/article/2014/03/22/ukraine-crisis-usa-trade-idUSL6N0MJ08520140322)//JLee

BRUSSELS, March 22 (Reuters) - Russia's annexation of Crimea underlines the need for the United States and the European Union to substantially deepen their economic ties, Washington's top trade official said on Saturday, opening the door to U.S. exports of natural gas to Europe. Days before U.S. President Barack Obama and EU officials hold a summit in Brussels, U.S. Trade Representative Michael Froman said the rationale "could never be stronger" for a U.S.-EU free-trade pact, despite growing public hostility to it. "Right now as we look around the world, **there is a powerful reason for Europe and the United States to come together to demonstrate that they can take their relationship to a new level**," Froman told reporters. "Recent developments just underscore the importance of the transatlantic relationship. "From both a strategic and economic perspective, the rationale for the T-TIP could never be stronger," he said, referring to the proposed accord's official name, the Transatlantic Trade and Investment Partnership. Brussels and Washington say a trade pact encompassing almost half the world's economy could generate $100 billion in additional economic output a year on both sides of the Atlantic, as well as creating a market of 800 million consumers. But since talks were launched eight months ago, reports of U.S. spying in Europe and accusations that an accord would pander to big companies have combined to erode public support. **Moscow's seizure of the Crimea region from Ukraine and Europe's reliance on Russian energy**, have focused minds across Europe about the need for stronger ties with the United States. EU leaders dedicated a summit in Brussels on Thursday and Friday to rethinking relations with Moscow and accelerating their quest to reduce the bloc's reliance on Russian oil and gas, an area where the United States can play a role. Froman laid out how European companies could export U.S. liquefied natural gas in tankers to Europe via the proposed trade accord, or possibly even before then, as France, Germany and Britain would like. Under U.S. rules, the department of energy must issue licenses to exporting companies, but license approval becomes automatic under a free-trade agreement, or FTA. "Clearly, when the T-TIP is done, assuming it is done, there will be an FTA relationship with the European Union," he said. TENSIONS OVER TARIFFS Asia is for now a more lucrative export market for U.S. liquefied natural gas, but Froman said it was also up to European companies to decide where gas goes and that exports did not depend on a transatlantic trade deal. "Even right now there have been four or five licenses approved for export to non-FTA countries. There are several European companies who are the contractors," he said, naming France's Total and GDF Suez. "Where that gas goes is up to them. Conceivably European governments have an interest in them bringing that gas to Europe," Froman said. The European Union's top two officials, Herman Van Rompuy and Jose Manuel Barroso, are expected to press Obama on the issue of energy on Wednesday when they meet in Brussels. Beyond Ukraine, other difficult issues include how to open up to each other's markets, removing barriers to business and customs duties that cost companies billions of dollars each year, particularly automakers such as Ford, General Motors and Volkswagen. Washington and Brussels are at odds over an initial exchange of offers to open up markets and cut tariffs, with both sides saying the other has not been ambitious enough. "We reaffirm that the goal of negotiations should be elimination of all tariffs. We would welcome Europe reaffirming that goal," Froman said.

Russia Expansionism leads to nuclear war

Blank 10 – Stephen Blank is a US Army War College and Strategic Studies Institute Russia Expert. ("Beyond the Reset Policy: Current Dilemmas of US-Russia Relations", Survival, October, 2010)

Here **Shvaichenko went beyond the previous line that nuclear weapons may be used to defend Russia's vital interests in a first-strike mode if the vital interests of the country are at risk or deemed to be at risk**, as stated in the 2000 military doctrine. 103 That posture translated into a peacetime strategy of using Russia's nuclear forces as a deterrent against any aggression launched against either Russia or its CIS neighbors or against Russia if it made war upon those states, as in Georgia's case in 2008. 104 In other words, the nuclear warning's strategic political purpose is to demarcate a theater of both military and peacetime operations wherein Russia would have relative if not full freedom of action to operate as it saw fit, free from foreign interference. In political terms it not only represents a "no go" sign for potential enemies, it also is an attempt to intimidate NATO allies, indicating that they will be targets of Russian nuclear strikes if they try to invoke Article V of the Washington Treaty should Russia move on the Baltic States. Given Russia's emphasis on securing a sphere of influence in the CIS, the centrality of nuclear weapons in assuring that objective works to

preclude significant reductions in that force's capability or number. Consequently in these remarks we also see a hidden or at least unnoticed mission of **nuclear weapons** for Russia. They serve to **demarcate its sphere of influence, by setting up a no-go zone for foreign military entities, for as we said the Russian elite almost unanimously believes that without such weapons the whole of the CIS would be open to NATO intervention in a crisis**. Thus **if Russia is to have a sphere of influence there it must extend its deterrence umbrella throughout it to make its claim credible and with that its claim to great or even superpower status**. Neither is Russia's professed **readiness to use nuclear weapons** confined to land-based systems. Burtsev's remarks above confirm that. This is clearly something that is clearly unacceptable as a threat to European security. Certainly **we cannot assume this to be mere rhetoric**, for as Swedish Foreign Minister Carl Bildt has long since stated regarding Russian threats in the Baltic, "according to the information to which we have access, **there are already tactical nuclear weapons in the Kaliningrad area. They are located both at and in the vicinity of units belonging to the Russia fleet." This means that Russia effectively violated the Bush-Yeltsin** Presidential Nuclear **Initiatives** of 1991–92 barring TNW from naval vessels. **Key officials confirmed this interpretation, conceding limited nuclear war as Russia's officially acknowledged strategy against many different kinds of contingencies**. 107 In September 2008, at a roundtable on nuclear deterrence, Solovtsov noted that Russia was giving explicit consideration to the concept of "special actions" or "deterring actions of the RVSN aimed at the prevention of escalation of a non-nuclear military conflict of high intensity against Russia." Solovtsov further stated that, These actions may be taken with a view to convincingly demonstrating to the aggressor [the] high combat potential of Rusian nuclear missile weapons, [the] determination of the military-political leadership of Russia to apply them in order to make the aggressor stop combat actions . . . In view of its unique properties, the striking power of the Strategic Missile Forces is most efficient and convincing in the deescalation actions. 108 This strategy also openly reflects Moscow's bizarre, unsettling, and unprecedented belief that Russia can control escalation and nuclear war by initiating it, despite forty years of Soviet argument that no such control was feasible. Meanwhile current procurements display a reliance on new, mobile, survivable, and allegedly indefensible nuclear weapons even as numbers fall. For example, Russia seeks to keep its mobile missile systems of the nuclear forces invisible to foreign reconnaissance systems while also developing means to suppress such reconnaissance and surveillance systems. 109 Accordingly, as Russian officials regularly proclaim, nuclear procurements are intended to develop missiles against which America has no defense, e.g. mobile missiles, MIRVs, and fusion, low-yield nuclear weapons that can also be used on the battlefield. Thus **nuclear weapons are warfighting weapons. Moscow's threats** from October 2009 not only follow previous doctrine, **they expand on it to openly admit that limited nuclear war is its** option or **hole card. If Russia should decide to invade or seize one or more Baltic states, then that would mean it is prepared to wage nuclear war against NATO and the U.S. to hold onto that acquisition although it would prefer not to or thinks it could get away with it without having to do so**. The idea behind such a "limited nuclear war" is that Russia would seize control of the intrawar esclation process by detonating a first strike even in a preventive or preemtpive mode and this would supposedly force NATO (or China) to negotiate a political solution that allows it to hold onto at least some of its gains. Apart from the immensity of Moscow's gamble that NATO or China will not have the stomach to retaliate for nuclar strikes, which for Moscow will be carried out to inflict a "preset" amount of damage that it believes will signal its "limited" intent, **Moscow is** essentialy **engaging in a game of nuclear chicken** or blackmail. In fact **the real risk here is that the West** will not acquiesce but rather that it **will retaliate or even escalate, further adding to the inherent unpredictability of any conceivable nuclear war scenario**.

--xt: Solvency

EU needs the US to combat energy insecurity—Russia is expanding and the only place they can get natural gas without Russia blocking it

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Tensions between the EU and Russia have also refocused attention on the issue of European energy security. Europe is a major importer of natural gas, and over the past decade energy security has become a major European concern in the context of rising global energy demand. The EU as a whole is dependent on Russia for about one-third of its gas imports and one-quarter of its total gas and oil supplies. These percentages are expected to grow substantially over the next 20 years. For some individual countries, dependence on Russian gas is already much greater. In recent years, Moscow has increasingly sought to use energy supplies as an instrument of foreign policy leverage. Russia has actively sought bilateral energy deals with a number of European countries and acquired large-scale ownership of European energy infrastructure. At the same time, analysts assert that Russia has not applied Western standards of transparency and market reciprocity regarding business practices and investment policy. In addition, the possibility of upstream gas cutoffs, as occurred in disputes between Russia and Ukraine in 2006 and 2009, has posed a concern for many of the countries dependent on Russian natural gas supplies, especially given tensions between Russia and Ukraine over the past year. Many U.S. officials and Members of Congress have regarded European energy security **as a U.S. interest.** In particular, there has been concern in the United States over the influence that Russian energy dominance could have on the ability to present a united transatlantic position when it comes to other issues related to Russia. Successive U.S. Administrations have encouraged EU member states to reduce energy dependence on Russia through diversification of supply and supported European steps to develop alternative sources and increase energy efficiency. However, Europe faces numerous challenges in its attempts to diversify its energy supply. North Africa is often viewed as the most likely alternate supplier of natural gas, but political and economic instability in the region have thus far hindered the expansion of its role. Increased supply from Central Asia has been largely dependent on the construction of new pipelines, but among other complications, Russia has worked to prevent the development of alternative pipelines outside its control that would link Europe directly to Central Asian suppliers. Many European countries have also emphasized the development of renewable energy, but there are questions about how much of a contribution these sources will ultimately provide. European leaders have sought, with mixed success, to develop a stronger common European energy strategy that coordinates member states' energy policies. The EU has pursued initiatives to liberalize and integrate the internal European energy market, including by expanding the interconnection of grids and pipelines. Recent events in Ukraine and Crimea have created a renewed sense of urgency in relation to such efforts. Several European countries have built liquefied natural gas (LNG) terminals, expanded pipeline interconnectivity with neighbors, and developed the ability to reverse the flow of gas in pipelines in order to mitigate the consequences of a crisis, such as a cut-off of Russian gas. In April 2014, then-Prime Minister Tusk of Poland suggested the formation of an EU "energy union" in which a single European agency would purchase natural gas for all 28 members, rather than the current system of bilateral negotiations and contracts. Such an energy union would also include "solidarity mechanisms" for member states to aid one another in cases of supply disruption. Before recent events in Ukraine, the EU had already adopted legislation seeking to introduce more competition and transparency in the energy sector by "unbundling" the ownership of gas production from distribution, and requiring an independent operator of transit and transmission systems. This legislation, combined with a European Commission investigation against the business practices of Gazprom, has been sharply criticized by Russia. In December 2014, Russia announced the cancellation of the South Stream project, a pipeline that would have run from Russia under the Black Sea to Bulgaria and then onto other European countries, bypassing Ukraine. Some analysts interpreted the cancellation as a product of Russian frustration, both with EU bureaucratic obstacles to the pipeline's construction and European criticism of Russia's actions in Ukraine. Other observers suggest that these reasons provided a cover to abandon a project that had become politically and financially burdensome for Russia. Although Europe is likely to remain Russia's main gas buyer

for some years, Russia is also seeking to diversify its markets by concluding pipeline construction deals with China and Turkey.

The EU wants US LNG—the US has enough to export to the EU and prevent Ukraine Crisis

DePillis 14—Lydia is a reporter for the Washington Post ("A leaked document shows just how much the EU wants a piece of America's fracking boom" July 8, 2014 http://www.washingtonpost.com/blogs/wonkblog/wp/2014/07/08/could-a-trade-deal-lift-the-u-s-longstanding-ban-on-crude-oil-exports-europe-thinks-so/)//JLee

The European Union is pressing the United States to lift its longstanding ban on crude oil exports through a sweeping trade and investment deal, according to a secret document from the negotiations obtained by The Washington Post. It's not entirely surprising. The EU has made its desire for the right to import U.S. oil known since the U.S. started producing large amounts of it in the mid-2000s. It signaled again at the outset of trade negotiations, and its intentions have become even more clear since. This time, though, the EU is adding another argument: Instability on its Eastern flank threatens to cut off the supply of oil and natural gas from Russia. "**The current crisis in Ukraine** confirms the delicate situation faced by the EU with regard to energy dependence," reads the document, which is dated May 27. The leak comes in advance of another round of discussions on the Transatlantic Trade and Investment Partnership, which kicked off last fall and is expected to encompass $4.7 trillion in trade between the U.S. and the European Union when it's finished (here's an explainer on the deal). That won't happen for several years — if ever — but knowledge of the E.U.'s position has inflamed the already-hot debate over whether to allow the U.S.' newfound bounty of crude oil to be exported overseas. Particularly irksome to environmentalists is the EU's request that the U.S. make a "legally binding commitment" to export its oil and gas, which U.S. negotiators have so far resisted, according to the correspondence. (The U.S. Trade Representative declined to comment on a leaked document, except to say that it's too early to characterize its position on any matter). "We find it particularly outrageous that a trade agreement negotiated behind closed doors is being used as a means to secure automatic access to both crude oil and natural gas," said Ilana Solomon, director of the responsible trade program at the Sierra Club. "By lifting the ban, you're creating a whole new market for the oil industry to export to, and windfall profits for oil companies, which means more money to frack more, to produce more, to burn more." The issues of natural gas and oil are closely related, but distinct. The U.S. already allows more natural gas to be exported, especially to countries with which it already has trade agreements. Crude oil is the one thing that's remained at essentially zero exports since 1975, when Congress banned its sale to preserve access if something like the Arab oil embargo were to occur again. The U.S. has been exporting more refined petroleum products in recent years. (EIA) Now, Europe feels that it's in a similar situation. Although fossil fuel use has been declining, it's still not ready to transition to renewable energy sources, and remains heavily dependent on imported oil — 39 percent of which comes from the tumultuous Middle East and Africa, and 42 percent from the former Soviet Union. The U.S. is a huge potential source of supply, having recently overtaken Saudi Arabia as the world's largest producer of oil and gas. Also, while U.S. refiners had retrofitted their operations to process heavier oil imported from the Canadian tar sands before the fracking boom delivered a flood of new supply, Europe's refineries are well-equipped to handle it. But who, exactly, is pushing for more U.S. crude behind the EU's unified veneer? The Council of the European Union did not respond to a request for comment. Industry watchers, though, point out that Germany still depends on oil as its primary source of energy — as opposed to, say, France, which gets 75 percent of its electricity from nuclear plants (though oil still supplies about a third of its energy needs*). Half of Germany's oil comes from former Soviet Union nations, and some of it used to come from Libya before rebels shut down export terminals there (the supply only just started flowing again). Germany is very influential within the EU, and may have pushed the trading bloc to raise its voice on measures that would help it diversify its supply over the long term; the letter itself admits that there's no way to stabilize Ukraine with U.S. oil imports soon enough to make a

difference. Plus, Europe's protest isn't just about oil. It's also about messaging. The first message is external. The letter emphasizes that both parties give lip service to the idea of free trade, and America lifting its own giant violation of that principle — the crude oil export ban — would demonstrate to countries like China that the two economic superpowers are serious about tearing down barriers. "Combatting resource nationalism, together vis-à-vis third countries, while at the same time allowing for export restrictions to exist between us sends the wrong message to our partners," the letter reads, "and offers some of these resource-rich countries a great opportunity to interpret trade rules in a way which is detrimental to our economies." The second message, though, is internal: Securing additional energy supplies may help the EU negotiators to sell the agreement to their member states, especially when they might also have to give up some of their protectionist sacred cows, like the agricultural subsidies that have propped up European farmers for decades. "The Europeans really want to set a precedent, to make a point, that they want free trade and a more liquid market," says Iana Dreyer, who edits the EU trade analysis service Borderlex, where she wrote about a previous leak on the treaty's energy chapter. "After the oil shock in the 1970s, energy has been so securitized, that the mindset has really changed — now we need a big flexible global market so that nobody can control it." For its part, the White House has made some moves in recent weeks to free up some subcategories of oil for export, which excited the industry and alarmed environmentalists. And in its letter, the EU expresses confidence that automatically granting export licenses to treaty parties would "not require that the U.S. amend its existing legislation on oil and gas." It's unclear how that would happen. Senator Ed Markey (D.-Mass) — who thinks Ukraine should kick its Russian fossil fuel habit through better energy efficiency — has outlined the legal reasons why the White House couldn't just lift the ban outright through executive action. Meanwhile, however, the ban itself may be illegal under international trade law. Although no one has ever challenged the U.S. at the World Trade Organization, the American Petroleum Institute — composed of oil majors like Exxon, ConocoPhillips, and BP — intimated late last year that it might do so if the restriction isn't lifted through other means. And while the U.S. and European governments may not be on the same page on this issue, very large corporate interests on both sides of the pond see it as a top priority. "Because U.S. and European companies, including energy companies, have invested heavily on both sides of the Atlantic, U.S. and EU negotiators are essentially representing the same company interests," the U.S. Chamber of Commerce's vice president for Europe Peter Chase told Bloomberg. That legal challenge has a non-zero chance of success, says Jim Bacchus, a former chair of the WTO's appellate body who argued for the National Association of Manufacturers that natural gas export restrictions would run afoul of international trade rules as well. "Generally speaking, WTO rules prohibit restrictions on exports of any kind, unless they take the form of taxes," Bacchus says. "There has always been this notion that somehow energy products are not products that follow the scope of the WTO treaty. There's no legal basis for that view." If the ban stayed in place, however, there's no guarantee the oil would stay in the ground, as environmentalists would prefer. Rather, U.S. refineries would likely just reconfigure themselves again to process the stuff, and import less heavy oil from Canada. That's already started, and will likely move even faster if it becomes apparent that the U.S. isn't going to do what Europe wants. Overall, the effects of lifting or weakening the ban might not be as large as either proponents or opponents say — especially compared to measures like fuel efficiency standards, which have already driven down demand on both sides of the Atlantic.

--xt: NB: Russia Expanding Now

Putin is using Gazprom as an aggressive political tool to decrease democracy in the Baltics

Valkov 14—Volodymyr is a human rights activist, researcher, and political analyst, as well as a project manager at the American Jewish Ukrainian Bureau for Human Rights "UCSJ" in Lviv, Ukraine. He holds an MA in International Affairs from the Graduate Institute of International and Development Studies in Geneva. ("Expansionism: The Core of Russia's Foreign Policy" August 12, 2014 http://www.neweasterneurope.eu/articles-and-commentary/1292-expansionism-the-core-of-russia-s-foreign-policy)//JLee

Vladimir Putin's **Russia is becoming increasingly expansionist** on the international arena. **The annexation of Crimea, the naming of Ukraine's eastern regions as Novorossiya (New Russia)** using tsarist terminology, **revival of Soviet symbolism** and mythology, **the sponsorship of** terrorism and **separatism in Ukraine**, the organisation of frozen conflicts in Moldova, Georgia, Armenia **and** Azerbaijan, coercive creation of the Eurasian Union, **aggressive use of Gazprom as a political tool**, and the formulation of a right to protect Russian speakers abroad – **it is not hard to find examples of Russia's aggressive expansionism**. Russian expansionist foreign policy is clearly marked by anti-Americanism. **Russia seems to be** particularly **interested in issues that have a high potential of breaking coalitions between the United States and its European partners**. One of them is Russian facilitation of activities that expose American intelligence practices. Perhaps symbolically, Russia is reviving the direct geographical rivalry with the US as might be seen from the cancellation of Cuba's Soviet era debt, Putin's Latin American tour and the creation of the BRICS development bank, opposition to the US on Syria and repeated attempts at intensifying Russian-Chinese relations. Russia is still a backward country in the political, social and economic aspects. **Russian politics is run mostly by a network of former communists and ex-KGB officers**. Russia continues to dwell on the glory of the Soviet Union, uncertain as it may be, and victory in the Second World War. Human capital is underestimated and human life in general is one of the cheapest, most undervalued resources in Russia. Human rights do not exist in Russia and Russia's budget and export consists mainly of oil and gas revenues. Most of the budget is spent on arms acquisition. The list of Russian backwardness continues, but at this point from **what we have seen happening in Ukraine due to Russian actions compellingly indicates that Russian expansionism is a very dangerous development in the international system**. The downing of Malaysian flight MH17 also demonstrates Russia's extremely poor judgment in creating, equipping and using terrorist groups for achieving dubious foreign policy objectives. **Russian expansionism is directly opposed to the spread of democracy, especially in the former Soviet republics and even more so in Ukraine. Russian current leadership** views Ukraine as part of its own "original" territory and **considers Ukrainians as part of the same Russian people**. This position was presented clearly by Putin during a state-organised live TV call-in show in April 2014 as well as on many other occasions. The EuroMaidan is now being vilified by the Russian puppet media as a fascist coup d'état. **The Russian government is using every available opportunity to smear Ukraine's growing commitment to democracy**. One of the most disturbing examples of such government-sponsored Ukraine bashing was performed at the open-air show in Crimea on August 9th, where Ukraine was theatrically portrayed to the audience as a having been overrun by fascist forces and later gloriously liberated by Russian troops. Until the Maidan protest that united most Ukrainians in their choice for a democratic future, Russian expansionism was not clearly visible. Now, **as Ukraine is making another attempt to leave Moscow's authoritarian geopolitical orbit, overcome Soviet-era corruption and build democracy, Russia is desperate to use force in order to prevent a successful democratic transformation of Ukraine**. Ukraine's resistance to Russia has led to the greatest conflict in the post-Soviet area, surpassing the fighting during the Russo-Georgian War of 2008 in terms of infrastructure damage and casualties. Today Russia's militarism has reached its highest level. **Putin's territorial claims, distortion of history, incitement of inter-ethnic hatred, provocative preludes to war, invasive military and foreign policy doctrines, anti-democratic, anti-European and anti-American rhetoric all suggest** the following: **Putin's dictatorship is Europe's greatest threat. Ukraine's resistance to Russia's unprovoked aggression demonstrates that the dissemination and spread of democratic values works. Democracy has succeeded in Poland and it is now changing Ukraine**. Democratic and European aspirations are transforming **Georgia**

and Moldova. They will eventually work in Russia, but never under Putin's regime and only if Ukraine does not fail as a democracy. After the economic misery of the 1990s, the Russian people are distrustful of democracy. That is the fear that Putin has exploited so far to steal their liberties in return for his "effective management". Putin offers a minimum standard of living and "stability" in exchange for the curtailment of individual freedoms. **Another national fear that the Russian government is manufacturing to intimidate the society is that of democracy itself. The Kremlin seeks to show that democracy is incompatible with the Russian tradition of government, incapable to meet the needs of the Russian people, and – citing the Ukrainian example – that democracy in a weak state can bring fascists to power. Without a successful example of democracy in a country that most Russians can most easily relate to, the corrupt Russian ruling elite will continue to promote xenophobic and anti-democratic fears in the Russian society, enticing the people to accept dictatorship** as a preferred model. **The democratisation of Ukraine is the most pragmatic, realistic and affordable long-term strategy against Russia's expansionism** and authoritarian values. **The West must double its support for the democratisation of the former Soviet countries** that are showing their interest in such values. Almost 70 years of Soviet communism and 44 years of Cold War did not suddenly end in 1991. It must be clearly understood by the western countries, many of whom have little or no experience of the Soviet system, that some parts of the population in the former Soviet republics, including Ukraine, still feverishly hope for the restoration of some semblance of the Soviet Union. This is the section of population that is being used by Putin in eastern Ukraine in order to sustain his expansion. While the core of Russia's foreign policy is expansionism, the essence of its internal policy is isolation. The most recent example of the disappearing freedom of expression in Russia is the law adopted in April 2014 that requires a registration of bloggers who have more than 3000 subscribers. Another law adopted by the Russian parliament in May 2014 prescribes criminal responsibility for saying that Crimea is a part of Ukraine. Clearly, Putin's regime is intent on blocking ideas and shutting down criticism not only from outside but also from its own people. The internal restriction of political and civil rights provides an important insight. It illustrates that Russia is not only at war with the West, but also at war with itself. And it also means that the Russian-Ukrainian War is not simply a war of military muscle, but a war of values. The toughest European and American sanctions are absolutely justified and necessary to stop Russia from acquiring control over Ukraine, or parts of Ukraine, including the illegal annexation of Crimea, which must be reversed. **The occupation of eastern parts of the Ukrainian territory is evidently on the Kremlin's immediate agenda, as seen from the Russian earlier unaccomplished efforts on August 9th to send "humanitarian aid" escorted by Russian troops to the areas controlled by the Russia-sponsored** terrorists and **separatists. The repeated attempt on August 12th to deliver humanitarian aid from Russia**, which is said to consist of a convoy of 280 trucks, this time presumably cleared of any Russian military supervision and the process of its distribution **is also highly likely to become a source of provocation with the potential to create a pretext for the deployment of Russian military forces in Ukraine. If Russia succeeds in swallowing Ukraine**, or any of its parts, **by imposing its own vision of order, it will subsequently enable Russia to impose its decision-making authority over other post-Soviet states, continuing to change the map of Europe, inflaming conflict areas** in other parts of the world and professionalising terrorism.

Relations—France

**Counter-Terrorism Cooperation 1NC

Text: The United States Federal Government should substantially increase its counter-terrorism programs with the French Republic.

Terror coop solves relations

Tinti 14—Peter is an independent journalist who has written for Foreign Policy, the New York Times, the Wall Street Journal, and many other publications. ("The US and France Are Teaming Up to Fight A Sprawling War on Terror in Africa" September 15, 2014 https://news.vice.com/article/the-us-and-france-are-teaming-up-to-fight-a-sprawling-war-on-terror-in-africa)//JLee

In July of this year, France launched Operation Barkhane, an ambitious counterterrorism initiative spread across five countries in Africa's Sahel and Sahara regions. The mission seeks to build upon the success of the French military intervention that drove al Qaeda-linked jihadi militants from northern Mali in 2013, and comes at a time when the US is expanding its own counterterrorism operations on the continent, setting the stage for what some analysts consider a burgeoning Franco-American alliance in Africa. "**This is a new chapter in French-American relations**," Michael Shurkin, a former CIA analyst who is now a political scientist at the RAND Corporation, told VICE News. "**There is an unprecedented level of cooperation going on."** In an August 11 memo to US Secretary of State John Kerry and US Secretary of Defense Chuck Hagel, President Barack Obama, citing an "unforeseen emergency," authorized the transfer of up to **$10 million** "to assist France in its efforts to secure Mali, Niger, and Chad from terrorists and violent extremism." The move hints at a division of labor in which the US foots the bill for a cash-strapped French military that is both logistically and politically better placed than the US to engage in combat operations in the Sahel. An even more striking example of US-French counterterror cooperation in Africa may have taken place earlier this month, when US airstrikes in Somalia killed Ahmed Godane, co-founder of the al Shabaab Islamist group. Subsequent reporting by French magazine Le Point suggests that the actionable intelligence leading to Godane's death came from the **French**, an indication that the two nations already have mechanisms in place for tight cooperation at a highly sensitive level.

**Space Cooperation 1NC

Text: The United States Federal Government should increase its cooperation with the French Republic on Science and Technology.

CP solves—the US and France collaboration solves relations

White House 14—The White House is the house where President Barack Obama lives in. ("FACT SHEET: U.S.-France Cooperation on Science and Technology" February 11, 2014 https://www.whitehouse.gov/the-press-office/2014/02/11/fact-sheet-us-france-cooperation-science-and-technology)//JLee

The United States and France have long collaborated on science and technology, which enhances the well-being of our citizens, promotes commercial innovation and economic growth, and advances the human condition not just for our citizens, but for people across the globe. In 2008, the United States and France signed agreements on science and technology, including in the area of homeland security. Significant work has been carried out under these agreements, and the United States remains firmly committed to collaborating with France over a wide range of disciplines – including civil space, global health, innovation and research exchanges, the environment, and protecting our citizens. Hallmarks of our bilateral cooperation include: Civil Space The United States and France have a strong partnership in civil space activities, including human space flight, space science, and Earth observation. In human space flight, the French Space Agency (CNES) has been indispensable to Europe's partnership on the International Space Station, and the Government of France was a key participant in the recent International Space Exploration Forum, where spacefaring nations renewed their commitment to cooperative exploration of the solar system. CNES has been a key partner with the National Aeronautics and Space Administration (NASA) in Mars exploration over the past 20 years and continuing into the future with the MAVEN mission that will arrive at Mars later this year. The United States and France are signing an agreement for the Mars Insight mission planned for launch in 2016 and are continuing to negotiate an agreement on solar activity and space weather, both of which will push the boundaries of scientific exploration. Earth Science collaboration with France on a series of currently operating missions is improving life on Earth by enhancing our ability to observe changes in the Earth's systems, which provides such benefits as more accurate weather forecasting and increased understanding of global climate change. Global Health In 2014 and 2015, the United States and France will both host events building on the G8 Summit on Dementia, hosted by the United Kingdom in 2013. The United States and France partner on HIV/AIDS research, as well as on neurological aspects of substance abuse. The United States also continues to work jointly with France on computational neuroscience, which is part of President Obama's Brain Research through Advancing Innovative Neurotechnologies (BRAIN) Initiative. Cooperation between the U.S. government and French and American NGOs includes work to prevent meningococcal meningitis in Africa. Nearly 300 French researchers were involved in National Institutes of Health (NIH) supported grants in FY 2013. Innovation and Research Exchanges The U.S. National Science Foundation (NSF) currently supports several hundred research projects involving U.S. and French investigators. This includes 13 bilateral research projects in the areas of nanomaterials, nanochemistry, and joint multi-million dollar investments on supercomputing research infrastructure. France hosts 16 NSF Graduate Research Opportunities Worldwide (GROW) graduate research fellows, the largest number in GROW's first year, which expands international research opportunities and furthers collaborative research between our two countries. The U.S. National Institute of Standards and Technology (NIST) has worked with French partner institutions on nanometrology, metals speciation, fire research, information technology, optical lattices, and muonic hydrogen with visiting researchers from each country working in the other. Environment The U.S. Environmental Protection Agency (EPA)'s Office of Research and Development and a French cosmetics firm are investigating new screening methods that

are faster, cheaper, and reduce the use of laboratory animals and, if successful, could be used to evaluate thousands of chemicals found in commonly used products. EPA collaborated with another French firm to evaluate nitrogen and ozone air sensor performance, which contributes to efforts to advance low-cost sensor technology for monitoring air quality. Additionally, work between NIST and the University of Pau has advanced understanding of measurement of metal species, particularly in situations associated with environmental contamination.

Relations—Germany

**1nc

Text (WIP): The United States federal government should end foreign surveillance of Germany.

The counterplan solves German relations – they're down now due to the Snowden revelations

Chollet 4/6 – writer for Politico

Derek Chollet, 4/6/2015, Politico, "US-German relations need a reboot", http://www.politico.eu/article/us-german-relations-reboot/, 7/12/2015, \\BD

The Snowden revelations were the spark that ignited the current firestorm. Germans remain apoplectic over reports about US intelligence operations on German soil, especially the monitoring of Merkel's cell phone, as well as the German intelligence services' close cooperation with the NSA. This lit a large stack of kindling, with many Germans already anxious about the dominance of US technology companies like Google, the implications of American-promoted trade deals, and the sense that they are on the short-end of the US strategic shift to Asia.ð Germans discuss these concerns with an abundance of emotion, complaining of betrayal and a lack of trust. Seven years ago, more than 200,000 Germans swooned at Obama's appearance in Berlin's Tiergarten, but recent polls show that Obama's German approval ratings on foreign policy and overall favorability are plummeting.

--xt Solvency

German surveillance collapses US-German relations – the counterplan solves

Faiola 5/1 - Berlin Bureau Chief for The Washington Post Anthony Faiola, 5/1/2015, The Washington Post, "Germans, still outraged by NSA spying, learn their country may have helped", https://www.washingtonpost.com/world/europe/nsa-scandal-rekindles-in-germany-with-an-ironic-twist/2015/04/30/030ec9e0-ee7e-11e4-8050-839e9234b303_story.html, 7/12/2015, \\BD

BERLIN — The uproar shaking the halls of power here could aptly be titled, "NSA Scandal II: The Sequel." But in this latest spy drama, the nefarious Americans have a co-conspirator: the recalcitrant German intelligence service.ð Outrage in Germany over American snooping erupted in 2013, after data released by whistleblower Edward Snowden disclosed U.S. surveillance of friendly European targets up to and including Chancellor Angela Merkel. But fresh revelations suggest that the Bundesnachrichtendienst — Berlin's foreign intelligence arm, also known as the BND — may have separately aided U.S. agents with snooping on hundreds of European companies, regional entities and politicians. The targets, according to a report in the German newspaper Süddeutsche Zeitung on Thursday, included French and European Commission officials.ð The new disclosures center on a list of 2,000 suspicious "selectors" — including phone numbers, IP addresses and e-mails — provided by the United States and plugged into German intelligence data systems that the Germans later determined exceeded the operation's mandate. The German government has privately acknowledged the existence of the list to select lawmakers but has not clarified the targets, according to one of the parliamentarians briefed on the issue but who spoke on the condition of anonymity because the briefing was classified.ð After the Snowden disclosures, Merkel berated Washington by saying that spying on friends is "a no-go." The new revelations are now rocking the government to its core. A bevy of German lawmakers is demanding answers to highly uncomfortable questions, some aimed at top figures in Merkel's cabinet. Next week, they will summon intelligence officials before two parliamentary committees to testify; some are even threatening to call Merkel.

It's comparatively the largest internal link – surveillance is pushing Germany to Russia

Smith 14 – writer for NBC News Alexander Smith, 8/2/2014, NBC News, "U.S. Spy Scandal Triggers Outrage, Paranoia in Germany", http://www.nbcnews.com/storyline/nsa-snooping/u-s-spy-scandal-triggers-outrage-paranoia-germany-n170366, 7/12/2015, \\BD

A slew of allegations that Washington has been spying on longtime ally Germany has plunged Berlin's corridors of power into a state of paranoia reminiscent of the Cold War era.ð Some analysts even suggest the crisis could even end with the "nightmare scenario" of Germany being pushed away from the West and embracing Russia.ð The relationship has been rocky since NSA files leaked by Edward Snowden last year alleged that U.S. intelligence officials bugged the cellphone of Germany's leader, Chancellor Angela Merkel. Bitter memories of the Nazi Gestapo and East Germany's Stasi mean spying isn't as accepted by the public as in the U.S.ð The crisis exploded last month when two German government staffers were accused of spying for the U.S. This led to the top CIA official stationed in Germany being asked to leave the country – an **unprecedented** move between friendly nations.ð It has left sections of the German parliament, the Bundestag, taking counter-measures to make sure sensitive discussions remain private. The parliamentary committee set up to investigate NSA-type surveillance has resorted to using soundproof rooms, playing loud classical music during briefings, and even considering ditching email in favor of typewriters in a bid to protect against further breaches, its chair Patrick Sensburg told NBC News.ð Merkel's public statements on the topic have been terse and she is said to be **furious** about the breach of trust.ð "We have questions to the U.S. government and these questions are not answered yet, and maybe that's why the chief of intelligence had to leave the country?" said Sensburg, a lawmaker in Merkel's Christian Democratic Union party. "To bring back trust I think the U.S. government needs to start providing **answers**."ð According to the German newspaper Sueddeutsche Zeitung, Germany's own spies have even shifted some of their focus from old antagonists

like China and Iran to watching the clandestine activities of American operatives on their own soil.ð "The situation has become extremely bad and it is seriously regrettable it has gotten to this stage," said Professor Anthony Glees, director of the Centre for Security and Intelligence Studies at England's University of Buckingham. "With the Middle East in turmoil it is not a good time for a country that is democratic and Western to be at loggerheads with the U.S. It's not yet at the nightmare scenario - one in which Germany gets closer to Russia - but it's **heading toward that**."

Relations—Russia

**1nc

Text: The United States federal government should repeal its sanctions on the Russian Federation.

Repealing sanctions solves US-Russia relations – current sanctions fail – EU models

Wang 3/26 – School of Government, Beijing Normal University, China Wan Wang, 3/26/2015, Journal of Politics and Law, "Impact of Western Sanctions on Russia in the Ukraine Crisis", http://www.ccsenet.org/journal/index.php/jpl/article/viewFile/45567/25287, 7/12/2015, \\BD

Russia will not change its targets related to its core interests. Russia cannot lose influence in Ukraine, at least notð in letting Ukraine be a one-sided ally to the west. Therefore, on the Crimea and Ukraine issues, Russia will notð give up its position, which is bound to prompt the US and Europe to continue to impose sanctions against Russiað and to intensify the **antagonism** between Russia and the West. As stated by President Barack Obama at theð quarterly Business Roundtable meeting on December 3, 2014, "But if you ask me if I'm optimistic that Putinð suddenly changes his mindset, I don't think that will happen until the politics inside Russian catch up withð what's happening in the economy, which is why we are going to continue to maintain that pressure." "Theð challenge is [that] this is working for him politically inside of Russia, even though it is isolating Russiað completely internationally" (Expert Online, 2014, December 3). Thus, Western sanctions against Russia will notð end any time soon, which will continue to undermine **US-Russian relations**, which were uncertain even beforeð the Ukraine crisis. Currently, the EU stands in a united front with the US to impose sanctions against Russia.ð However, as the negative consequences of Russia's retaliatory measures against the EU become increasinglyð serious, the outcries to end the sanctions within the EU will get louder, and the EU may lose interest in theð sanctions against Russia along with the US. Ultimately, on the Ukraine and Crimea issues, certain compromisesð between Russia and the US-Europe must be reached; nevertheless, the US's containment of Russia will not endð soon.

--xt Solvency

Russian sanctions are the largest internal link to relations

Ibragimova 1/7 – writer for Russia direct, citing the director of the Russian International Affairs Council Galiya Ibragimova, 1/7/2015, Russia Direct, "What's next for US-Russia relations in 2015?", http://www.russia-direct.org/debates/whats-next-us-russia-relations-2015, 7/12/2015, \\BD

As the year draws to a close, it is customary for Russia Direct to poll experts about the prospects for U.S.-Russian relations in the coming year. In 2014, the military confrontation in the southeast of Ukraine and Crimea's incorporation into Russia prompted the West to impose sanctions against Russia and sharply aggravated U.S.-Russian relations. There was even talk of a new Cold War.ð Not surprisingly, when it comes to relations between the two countries in 2015, expert forecasts are not overly optimistic. However, all recognize the importance of maintaining at least a minimum level of dialogue between Moscow and Washington.ð Andrei Kortunov, general director of the Russian International Affairs Council (RIAC)ð I see no grounds to be optimistic about U.S.-Russian relations in 2015. The **main problem** will be the impact of **anti-Russian sanctions** on relations between Moscow and Washington. It is not a question of whether relations between the Kremlin and the White House will be neutral or bad, but of how bad.ð The main thing is to avert a worsening of the crisis and to try to maintain a dialogue. Issues such as combating terrorism, preventing the proliferation of weapons of mass destruction, Iran's nuclear program and Syria could provide a way to extend opportunities for dialogue.ð Environmental issues and climate change could also be points of tentative contact between Russia and the West next year. But under U.S. President Barack Obama's present administration, no one should expect U.S.-Russian relations to stabilize.

Even Putin admits the counterplan is the best way to solve Russian relations

Anishchuk 14 – writer for Reuters, citing Putin Alexei Anishchuk, 7/14/2014, Reuters, "U.S. sanctions will take Russia relations to a dead end: Putin", http://www.reuters.com/article/2014/07/17/us-ukraine-crisis-usa-putin-idUSKBN0FL2VA20140717, 7/12/2015, \\BD

Russian President Vladimir Putin warned on Wednesday that U.S. sanctions will **take relations with Russia to a "dead end"** and damage U.S. business interests in his country.ð "Sanctions have a boomerang effect and without any doubt they will push U.S.-Russian relations into a dead end, and cause **very serious damage**," he said to reporters on a visit to Brazil.ð The U.S. government on Wednesday, because of what it views as Russia's interference in Ukraine, imposed its most wide-ranging sanctions yet, on key players in the country's economy, including Gazprombank and Rosneft Oil Co, and other major banks and energy and defense companies.ð Putin said he needed to see the details of the sanctions to understand their full scope. But he added that he was sure the sanctions would damage the **national interests** of the United States in the long run.ð "This means that U.S. companies willing to work in Russia will lose their competitiveness next to other global energy companies," he said.ð Putin said the sanctions will hurt Exxon Mobil Corp which has been given the opportunity to operate in Russia.ð "So, do they not want it to work there? They are causing damage to their major energy companies," he said.ð The new sanctions also target senior Russian officials, including the deputy head of the State Duma, or parliament, the minister of the Crimea, a commander of the Russian intelligence agency FSB, and a Ukrainian separatist leader, several of whom had already been targeted by the European Union.

Russian sanctions only embolden Putin – the counterplan solves

Charap 15 - Senior Fellow for Russia and Eurasia at the International Institute for Strategic Studies based in the IISS–US in Washington, DC Samuel Charap, March 2015, Carnegie Corporation of New York, "Why Sanctions on Russia Will Backfire", http://perspectives.carnegie.org/us-russia/sanctions-russia-will-backfire/, 7/12/2015, \\BD

Fourth, by imposing sanctions on Russia when it was already falling into a downward economic spiral, Washington has given Mr. Putin a powerful political instrument to deflect blame for the consequences of his own baleful decisions in Ukraine. The Kremlin's model of "state capitalism" was already struggling and its performance would have been poor without the geopolitical upheaval that Mr. Putin has created. American sanctions arrived with perfect timing, providing him an **alibi** that he has skillfully used to confuse the Russian people about the cause of their economic woes.∂ Fifth, even if sanctions are carefully crafted to punish specific actors, ordinary Russians perceive the West's sanctions to be directed against them and it is they who are being forced to bear the real costs of soaring inflation, the ruble's collapse and slowing growth. Russians' sense that they are under attack has generated an understandable "**rallying around the flag**" phenomenon. Mr. Putin's **all-time-high** approval ratings are one result; the other is the near-complete marginalization of dissenting voices. Sadly, Sunday's march to memorialize the slain opposition leader, Boris Nemtsov, will not change this.∂ If Russia faces greater economic turbulence in the coming months and years, America could face far more intractable problems than those that exist today. Russia is likely to become more belligerent if externally inflicted economic blows deepen the country's crisis. Moreover, a deeper downturn in Russia would worsen the economic woes of the European Union, with potential knock-on effects globally.

Russian Econ Mod

Russian sanctions are collapsing Russia's economy – the counterplan is key

Wang 3/26 – School of Government, Beijing Normal University, China Wan Wang, 3/26/2015, Journal of Politics and Law, "Impact of Western Sanctions on Russia in the Ukraine Crisis", http://www.ccsenet.org/journal/index.php/jpl/article/viewFile/45567/25287, 7/12/2015, \\BD

4.1.1 The Sanctions against Russia Have Caused a **Significant Impact** on Russia's Economyð Under the sanctions, from early 2014 to the present, the ruble-dollar exchange rate has fallen by nearly 50 %; onð December 16, the rate plummeted 20 % in just one day. Russia's domestic inflation rate has been as high asð 11.4 %. Devaluation of the ruble against the dollar has been largely caused by falling oil prices. Russia's oil andð gas-related revenue accounts for approximately 50 % of revenues. The US and European countries specificallyð targeted Russia's heavy revenue dependence on oil and gas exports and focused their sanctions on the oilð industry. The international price of oil price has dropped from to $ 115/barrel in 2014 to the current price ofð approximately $ 50/barrel; oil prices plunged precipitously this past December, **severely impacting** Russia'sð heavy reliance on oil exports. Russia's foreign exchange reserves have decreased to $ 416 billion. In 2014,ð Russia's capital outflow reached nearly $ 130 billion; the Bank of Russia predicted that the capital outflow inð 2015 would be approximately $ 120 billion (Expert Onlin, 2014 December 11). Because the sanctions againstð Russia's energy, finance and defence sectors have caused tremendous capital outflows and plummeting foreignð exchange reserves, the Russian economy has been **gravely affected**; in October 2014, the international creditð rating agency Moody lowered Russia's sovereign credit rating from Baa1 to Baa2. Since 2011, Russia's annualð gross domestic product (GDP) growth rate has shown a downturn. Under the impact of the sanctions, Russia'sð GDP growth in 2014 was not very optimistic at all, being merely 0.2 % according to the estimate by theð International Monetary Fund (IMF), 0.5 % according to the Organisation for Economic Co-operation andð Development (OECD) and 0 according to the European Bank for Reconstruction and Development (EBRD).ð Russian experts have estimated the losses caused by the sanctions at approximately $4-5 billion per yearð (Inozemtsev, 2014, December 1). Economic officials believe that the long-term severe sanctions may shake theð financial system and limit scientific and technological modernization due to the restrictions in technologyð introduction, investment and application (Yurgens, 2014, October 9).

at: Sanctions Solve Russian Aggression

No risk of offense – sanctions have no effect on Russia's policies

Wang 3/26 – School of Government, Beijing Normal University, China Wan Wang, 3/26/2015, Journal of Politics and Law, "Impact of Western Sanctions on Russia in the Ukraine Crisis", http://www.ccsenet.org/journal/index.php/jpl/article/viewFile/45567/25287, 7/12/2015, \\BD

4.1.3 The Sanctions Have Not Led Russia to Change Its Position on the Issues of Ukraine and Crimeað Vladislav Inozemtsev, the director of the Russian think-tank the Post-Industrial Research Center, believes thatð the sanctions have not changed the status quo: Crimea is still under Russian control, while Russia's actions inð eastern Ukraine are mostly in response to internal factors in Ukraine rather than as a reaction to the behavior ofð the West (Inozemtsev, 2014, November 15). A senior administration official in the White House admitted that,ð despite economic indicators showing that the sanctions have crippled the Russian economy, they have notð changed the situation in Ukraine and Crimea to date. At a meeting with high-ranking military leaders onð December 19, Putin **vowed** that Russia would never abandon the patriots who supported the Crimean peninsulað (Boxun, 2014, December 21).ð Some people have thought that Russia respected the election results in Ukraine by not responding to the requestð of Donetsk in eastern Ukraine for the reunification of Oblast to the Russian Federation that was proposed afterð the referendum, indicating that the US and European sanctions have played a certain deterrent role in Russia'sð attitudes and behaviors towards Ukraine (Jian Jisong &Wang Hongxin, 2014). It is undoubtable that sanctionsð have had an impact to a certain extent. However, it should be noted that Russia might never intend to allow theð pro-Russian cities in eastern Ukraine to duplicate the Crimean annexation and eventually join the Russianð Federation. What Russia wanted probably was to maintain its influential power in the eastern region of Ukraine.ð The international sanctions led by the US and Europe have hindered the development of the Russian economy.ð However, Russia still maintains political stability domestically, and Putin's support rate has been at all-time highð levels; thus, Russia still adheres to its original positions on the Crimea and Ukraine issues.

State Budgets

**1nc

The United States federal government should pass the Marketplace Fairness Act.

The CP solves state budget shortfalls, generates economic growth, and saves the economy

Lawson 2014 (Sherry [general manager of Westlake Center]; Guest: Tax online and in-store sales equally with Marketplace Fairness Act; Jun 6; seattletimes.com/html/opinion/2023787731_sherrylawsonopedonlinesalestaxxxxml.html; kdf)

Congress needs to pass the Marketplace Fairness Act so there is real and fair competition reflecting 21st century commerce. America was built on promoting economic growth and business in a fashion that ensures fair competition for all. Today, online-only retailers are not required to charge and collect sales tax while local businesses must. However, the sales tax (in all but five states) is still owed. The collection of these taxes is difficult to enforce unless online sellers have either a physical store or a warehouse within the state. When sales tax is not collected at the time of purchase, the burden falls on the consumer to report and pay. Compliance is virtually nonexistent. Based on a recent Ohio State University study, states are estimated **to lose $23 billion a year from uncollected sales taxes on online goods**. The current sales-tax code is confusing for consumers and companies. For example, Amazon.com is now legally required to collect sales tax in 21 states, including the four most populous: California, New York, Florida and Texas. The Marketplace Fairness Act is not an additive tax. It's about ensuring all companies, regardless of the type of business, pay the same taxes. The tax disparity puts local businesses at a significant economic disadvantage **and stifles the overall economy**. According to a July 2013 study conducted by Arthur B. Laffer and Donna Arduin, federal legislation that would allow states to close the online sales-tax loopholes would result in a more efficient tax system, a larger tax base and lower tax rates for all taxpayers. This would increase states' prosperity and employment, increasing gross domestic product by more than $563 billion and adding more than 1.5 million jobs in the next 10 years. It is time for Congress to grant states the ability to correct the unfair application of sales-tax laws. How would the Marketplace Fairness Act impact our community? Westlake Center is one of the top shopping and tourist attractions in Seattle. The center contributes more than $7.1 million annually in property and sales taxes that pay for public services such as law enforcement, fire department, education and other services. Passage of the Marketplace Fairness Act would allow Westlake Center and other brick-and-mortar retailers to compete fairly with online retailers. Brick-and-mortar retailers are the economic engine that drives the local economy. The Marketplace Fairness Act passed the U.S. Senate in early May 2013 and is currently under consideration in the House. U.S. Sens. Patty Murray, D-Wash., and Maria Cantwell, D-Wash., both supported the bill in the Senate. Passing the act is simply about enforcement of current tax law. Whether you shop at a store or online, taxation should be fair.

Federal Action Key

Federal action is key to growth and jobs—ensures e-fairness

Laffler and Arduin 2013 (Arthur B [best known for the Laffler curve-- Co-Chairman of the Free-Enterprise Fund] and Donna [balanced budgets in a bunch of states]; Pro-growth tax reform and e-fairness; Jul; standwithmainstreet.com/ArtLafferStudy.pdf; kdf)

Federal legislation can also empower states to implement pro-growth tax reform. States that rely on a low rate, broad-based consumption tax have been struggling with the problem of a declining sales tax base for many years. For states like Texas, Florida and Tennessee that have eschewed an income tax, this declining base is particularly troubling. There are several drivers behind this trend including inequities in the application of state sales taxes (e-fairness); certain states offering special exemptions to certain goods; and the bias toward taxing goods and not services, despite the service sector's growing share of the national economy. E-fairness legislation addresses the inequitable treatment of different types of retailers based on whether the retailer is a.) located in the state (either a traditional brick and mortar store or an Internet/ remote retailer with a physical presence in the state) or b.) an Internet retailer/remote seller that is solely located in another state. In-state retailers collect the sales tax that is owed at the time of purchase. Out-ofstate retailers without in-state nexus are not obliged to collect the sales tax. When in-state residents purchase from out-of-state retailers, they are legally required to report these purchases and pay the sales taxes owed—typically referred to as a use tax. As you can imagine, few people do. And just so you don't go away surprised, there are some in-state retailers who also evade their collection obligations and some out-of-state retailers that do collect taxes. You may recall the story of former Tyco International Chairman Dennis Kozlowski, who, among other things, evaded $2+ million in state and local sales taxes owed to New York by having over $10 million of paintings shipped to New Hampshire instead of to his home in Manhattan.3 This narrowing of the sales tax base has led to several inefficiencies that, on balance, diminish potential job growth and growth in gross state product (GSP). This Internet exemption creates a tax-based price advantage that encourages consumers to make purchases from out-of-state retailers. Worse, the tax distortion incentivizes consumers to use in-state retailers as a showroom to evaluate purchases prior to ultimately buying the product from out-of-state Internet retailers. Such a practice reduces the need and costs for Internet sellers to put forth the effort to display products. Thus, states are incentivizing residents to burden in-state businesses with retailing costs, but ultimately purchase their goods from out-of-state businesses. Such incentives increase overall in-state retail costs and reduce overall in-state sales. It's a lose/lose situation for in-state retailers. The practice of treating in-state and Internet retailers differently has also accelerated the decline in states' sales tax bases, particularly in light of the explosive growth of Internet-based sales. As opposed to effectively controlling government spending, however, the narrowing of the state sales tax base (as a result of Internet sales estimated to be in the hundreds of billions of dollars**), has led to higher tax rates** in some instances. As with any pro-growth tax reform, the effective sales tax base should be broadened by treating out-of-state retailers on the same level playing field as in-state retailers, and the marginal tax rate should be reduced such that the total static revenues for the government are held constant or reduced. If done properly, expanding the state sales tax base by including Internet sales could reinvigorate economic growth. Addressing the e-fairness problem from a pro-growth perspective creates several benefits for the economy. An inequity is addressed—all retailers would be treated equally under state law.4 It also provides states with the opportunity to make their tax systems more efficient and to increase competition amongst all retailers. May the best business plan win, without government picking winners and losers. As a consequence of more state by state efficiencies, the overall economic growth incentives of the U.S. economy will be improved.

Solves Economy

Leading economists find that the cp leads to economic growth and jobs

Laffler and Arduin 2013 (Arthur B [best known for the Laffler curve-- Co-Chairman of the Free-Enterprise Fund] and Donna [balanced budgets in a bunch of states]; Pro-growth tax reform and e-fairness; Jul; standwithmainstreet.com/ArtLafferStudy.pdf; kdf)

Summary and Conclusion The principles behind addressing the online sales tax loophole and enacting policies that will jumpstart economic growth are straightforward: ``While online and other remote sales are subject to state and local sales and use taxes, they are often inaccurately perceived as "tax free" because the taxes legally owed on these purchases go largely uncollected by remote sellers due to a Supreme Court ruling that pre-dates the Internet. ``Sales taxes and other broad-based tax regimes with fewer loopholes and lower rates are the least damaging taxes to state economies and state employment. ``The 45 states with sales taxes could use the additional revenues from the collection of taxes on remote sales already in the sales tax base to lower other tax rates and reduce far more burdensome taxes. This more efficient system and lower taxes would, in turn: Increase state prosperity and employment on a dollar-for-dollar basis resulting in the following increases in gross state product (GSP) and state employment over a decade based upon Internet sales as a percent of projected state retail sales in 2022.

Solves state budgets

The counterplan generates upwards of $45 billion in state sales taxes

Laffler and Arduin 2013 (Arthur B [best known for the Laffler curve-- Co-Chairman of the Free-Enterprise Fund] and Donna [balanced budgets in a bunch of states]; Pro-growth tax reform and e-fairness; Jul; standwithmainstreet.com/ArtLafferStudy.pdf; kdf)

The state sales tax burden, i.e. sales tax revenues as a share of GDP (see Figure 3), has been concentrated on a declining sales tax base—retail sales as a percentage of GDP (see Figure 3). Current purchasing trends (e.g. the growing market share of Internet sales versus brick and mortar retail sales) will for sure continue if Internet sales remain effectively tax exempt. Figure 4 shows the growth in e-commerce's share of the retail trade as estimated by the U.S. Census. Over the past 13 years, while the sales tax base has been shrinking, e-commerce has been steadily growing. But clearly, factors other than e-commerce sales are at work as well. E-commerce sales account for only a portion of the loss of taxable retail sales. Linearly projecting out the current growth path of e-commerce, by 2022, 8.6% of all retail trade sales will be conducted via e-commerce, which is almost 60% larger than total sales a decade prior. Bruce et al. have produced a series of papers that estimate state and local sales tax losses arising from e-commerce for the District of Columbia and 45 states (remember there are five states without general state sales tax: Alaska—which does have local sales taxes—Oregon, Delaware, New Hampshire and Montana).ii Bruce et al. use both a baseline forecast and an optimistic forecast for e-commerce growth. In the baseline case, they estimate that annual national, state, and local sales tax losses on e-commerce would grow to $11.4 billion by 2012 for a six-year cumulative loss of $52 billion.iii According to Forrester Research, U.S. online retail sales grew 12.6% in 2010, reaching $176.2 billion. With an expected 9.6% compound annual growth rate from 2010 to 2022, U.S. e-commerce is expected to reach $530 billion in 2022.iv Second, our analysis of trends in online retailing confirms the Bruce et al. and Forrester Research assessments, albeit at a lower 2012 estimate than the Bruce 2012 estimate. Retail sales over the Internet represent a growing erosion of states' sales tax base projected out through 2022 (see Figure 4). The basis for our estimate is the U.S. Census E-Stats, which the U.S. Census uses to measure the electronic economy.v According to the U.S. Census, back in 1998, Internet retail sales held a trivial share of total retail sales in the U.S. (around 0.2%). However, as Figure 4 illustrated, this share has been growing rapidly. Furthermore, the growth in market share over time has thus far very closely followed a linear growth pattern of around 0.35 percentage points per year.vi While a constant percentage linear growth can't last forever, it sure fits well over the recent past. Some estimates are predicting faster growth. The aforementioned Forrester Research estimates predict a faster 9.6% compound annual growth rate, yet this is still not as fast as the growth in online sales may actually turn out to be. There is also another estimate that we feel is both important and realistic. Since 2000, the U.S. has gone through a period of decidedly bad economics—tax increases, out-of-control government spending, regulatory overreach, damaged trade relations and wildly expansive money creation. The consequence of these policy aberrations has been the decade plus-long underperformance of the U.S. economy. With the political changes reflected in the states and critical elections in 2014 and, of course, in 2016 as well, there is a significant possibility that the U.S. will return to sound economic policies, and, as a result, economic growth will return to its pre-2000 rate. We will use a growth rate of 3.5%, which reflects the growth between 1960 and 1999 (see Figure 1) as an alternative projection of retail sales over the coming years. Total state taxable sales are estimated to be $4.3 trillion in 2012, based on quarterly data from the U.S. Census.vii Of these total sales, 5.2% (see Figure 4), or $224.4 billion were categorized as e-commerce. In order to determine the lost state sales tax revenues through 2022 due to Internet taxable sales not being taxed, we need to estimate the total Internet retail sales through 2022. We estimated the total U.S. Internet sales tax base between 2013 and 2022 using three different methods that are summarized in Figure 5: `` The average growth rate in total taxable retail sales ($4.3 trillion) between 2001 and 2010 (2.2% per year) coupled with the growth in the retail Internet market share of 0.35 percentage points per year (2022 number is 8.6%) yields taxable Internet retail sales in 2022 of $460 billion, `` Forrester Research estimated 9.6% average growth in Internet sales applied to estimated Internet retail sales through 2022, yielding additional taxable retail sales in 2022 of $560 billion, and `` An additional estimate based on a return to prosperity being achieved in the U.S. economy over the period 2013 to 2022 (3.5% growth) yielding $520 billion in additional retail sales in 2022. Based on current market trends and forecasts, we estimate that total Internet retail sales will grow from $224.4 billion to a range of $460 billion to $560 billion by 2022. While these sales are potentially subject to the state sales tax, the questions are (a) how many of these sales are intended to be part of the sales tax base, i.e. do they or do they not fit into categories that are exempted even for in-state sales?; (b) how many of these sales that are intended to be part of the sales tax base are not currently paying sales tax to the government; and, (c) what proportion of these non-tax submitting taxable sales can be captured. There is also the question of how these sales would change if their tax status changes. Third, according to a National Conference of State Legislatures analysis, total uncollected taxes on goods and services sold via the Internet were $8.6 billion in 2010.ix Based on an average state sales tax rate (state sales tax revenues ÷ retail sales) of 5.81%, this equates to a national non-taxed Internet sales tax base of $150 billion.x The $150 billion represents close to 100% of the total estimated 2010 Internet retail sales base of $166 billion, based on the U.S. Census 2010 estimated Internet retail sales base. As an aside, it should be noted that Internet sales are not the only category of remote sales leading to the gap between theoretically taxable sales and actual sales taxes paid. It is often the case that non-electronic sales between states also go untaxed—remember our Dennis Kozlowski story on page four. In a study by Fox et al.,xi estimated uncollected taxes on non-electronic sales add up to $11.9 billion for 2012 alone. Apportioning total e-

commerce sales to each state by its share of national retail sales, the estimated Internet sales tax base multiplied by the appropriate state sales tax rate provides an estimate of revenues that each state can capture (see Figure 6.) To state the obvious, the actual implementation of taxing Internet sales is far more complicated and less certain than our estimates imply. Overall, in 2012 our estimates show that states are currently losing $13 billion in potential sales tax revenues due to Internet retailers not collecting sales taxes on taxable sales. We estimate that these losses will grow to between $27 billion and $33 billion by 2022 without corrective action. As mentioned, there is an also enormous amount of taxes due, but not paid, on non-electronic remote sales. By our estimates of U.S. retail sales growth, according to the 2001 to 2010 average growth and the 1960 to 1999 return to prosperity projections, we are currently losing a total of $25 billion in potential sales tax revenue due to both Internet retail sales taxes going uncollected and unpaid use taxes on non-electronic remote sales. Without changes being made, we estimate total uncollected sales taxes on e-commerce sales and non-electronic remote sales to grow to between $41 and $47 billion by 2022 (Figure 7.)

Solves FISM

The counterplan solves the biggest internal link to federalism—economic cooperation

Laffler and Arduin 2013 (Arthur B [best known for the Laffler curve-- Co-Chairman of the Free-Enterprise Fund] and Donna [balanced budgets in a bunch of states]; Pro-growth tax reform and e-fairness; Jul; standwithmainstreet.com/ArtLafferStudy.pdf; kdf)

Many of our closest friends believe that treating all retail sales within a state—whether in-state or out-of-state, such as Internet based—as part of the appropriate sales tax base constitutes an overall tax increase. It is clear from the data that the declining state sales tax base, some of which comes from Internet sales, has not been a means to control government spending or taxes (Figure 2). The chart below shows that states have increased taxes during the very time periods when non-taxed Internet sales were expanding. Declining sales tax bases have been exerting constant pressure to raise marginal tax rates (see Figure 3). As Figure 3 illustrates, the total state sales tax base has been in decline for many years. However, the declining sales tax base has been more than offset by rising sales tax rates (e.g. higher marginal tax rates), which have had the effect of increasing sales tax revenues as a share of gross state product. In fact, based on our estimates of the states' sales tax bases (retail sales as a percent of GDP), the total state sales tax base is down 19.4% from 1970 to the present, while the average state sales tax rate (state sales tax revenue as a percent of retail sales) has increased 40.7% over the same time period. In other words, states have been increasing the marginal sales tax rate to offset the declining sales tax base and to increase total sales tax revenues to around 1.5% of gross state product. Rising tax rates, whether at the federal or state level, are detrimental to national economic growth. With respect to the economic impact of the e-fairness proposal, states should not use an expansion of the total sales tax base as an excuse to raise the overall tax burden. In fact, as Figure 3 illustrates, the declining sales tax base has already encouraged larger percentage rises in the state sales tax rates; consequently, the correct economic policy would be to expand the states' sales tax bases, but reduce marginal tax rates elsewhere to keep total state government revenues flat as a share of GSP. Simply put, fixing inequities in the tax system, through such measures as broadening the tax base, should not be used to justify an expansion of the size of government. Opposition to addressing the inequities inherent in Internet taxes has arisen because some states may use the problem of e-fairness as an excuse to raise their state's overall tax burden. However, the states do not need Washington D.C.'s permission to change their tax rates. Just look at recent tax increases in Illinois (an increase of the state's income tax rate from 3% to 5% and an increase in the state's corporate income tax rate as well), Minnesota (new personal income tax bracket above $150,000 with a rate of 9.85% starting in 2014), California (Governor Jerry Brown's new 13.3% top personal income tax rate retroactive to Jan 1, 2012 from Proposition 30), New York (raised top income tax rates), Maryland (raised top income tax rates), Vermont, Massachusetts (Governor Deval Patrick has proposed higher tax rates on high income earners) or Connecticut (raised top income tax rates) if you don't believe us. These states know how to raise taxes, believe you me. Some states—such as North Carolina, Kansas (cut the top state income tax rate from 6.45% to 4.9%), Oklahoma (will cut the top personal income tax rate from 5.25% to 5% effective 2015), and Ohio (which recently repealed its estate tax),—have been proposing pro-growth tax reforms. More importantly, governors in Wisconsin and Ohio recently signed into law budgets that earmark all revenue from e-fairness legislation towards reducing income taxes in their state, a win-win scenario. Implementing different tax policies in different states is the essence of fiscal federalism—states should have the power to experiment with alternative approaches to fiscal policy. In other words, states should have the right to be wrong. The value of fiscal federalism does not diminish simply because some states may implement policies that are detrimental to economic growth, or in this case, use the need to address an inequity in the application of the sales tax as an excuse to expand the size and scope of government. Additionally, **mistakes at the federal level should not be justified because states might exercise the freedom of fiscal federalism and,** in so doing, implement the right policy in the wrong way. As we describe below, states are already using Internet sellers to collect sales taxes where the retailers have a nexus in the state. Furthermore, costs have been an important justification for exempting out-of-state retailers. These costs have declined significantly due to advances in technology. Legislation under consideration in Congress would lower the compliance costs further due to the requirement that states provide the necessary tax compliance software for Internet retailers. Due to the declining costs of compliance coupled with the large economic consequences created by the current Internet tax exemption, there is a strong case for out-of-state retailers to collect the state sales taxes that are owed on purchases in the same manner as local retailers.

at: Links to politics

The counterplan has bi-partisan support

Harrison 14 (JD; Online sales tax is back — and this time, it might actually have a shot at passing; Jul 21; www.washingtonpost.com/business/on-small-business/online-sales-tax-is-back--and-this-time-it-might-actually-have-a-shot-at-passing/2014/07/17/ed056016-0dd0-11e4-8c9a-923ecc0c7d23_story.html; kdf)

when the Senate passed legislation last year allowing states broader latitude to collect sales on online purchases, the proposal was immediately cast aside in the House — and there is has remained, stuck on a shelf. Until now. Suddenly, even with the midterm elections nearing, the bill's supporters believe they have found the perfect opportunity to try to push it through the lower chamber. The House last week easily approved a bill dubbed the Permanent Internet Tax Freedom Act that would renew a longstanding ban on taxing access to the Internet. Considered a must-pass proposal, the legislation would prohibit state and local governments from charging residents fees to browse the Web. So far, the bill has faced virtually no opposition. But that could soon change. A bipartisan group of senators last week introduced what they're calling the Marketplace and Internet Tax Fairness Act, which couples an extension of the ban on access taxes with their online sales tax proposal. In short, that second portion would grant states the authority to collect sales taxes from out-of-state retailers who sell and ship products to consumers within their borders. Currently, officials can only levy sales taxes on retailers who have a physical presence, be it a store or warehouse, in their states. It's an issue that has divided retailers based on how they sell their goods. Most of those who sell via brick-and-mortar stores are lobbying hard for the bill, which they say would level the playing field for all retailers. Those who sell their goods online, on the other hand, say they would struggle to monitor and collect any number of the hundreds of local and state sales tax rates that exist across the country. House Judiciary Committee Chairman Bob Goodlatte (R-Va.) has expressed the same concerns as that second camp, warning that the Senate proposal would swing the advantage in the opposite direction by confront ing online retailers with tax compliance nightmares not suffered by their brick-and-mortar counterparts. He has thus far refused to take the bill up for consideration in the House. So, in what appears to be a last-ditch effort to at least force a vote in the opposite chamber, the senators behind the sales-tax legislation will be urging their colleagues not to send the access-tax bill back without the sales-tax portion attached. Question is, will it work? Standing in their way will likely be Senate Finance Committee Chairman Ron Wyden (D-Ore.), who authored the original Internet access legislation and has called that ban and online sales tax "separate issues." Short of a change of heart from him, the Senate Democratic leadership would have to be convinced to go against the wishes of the committee in charge of online tax issues and move forward on the combined package — not impossible, but a tough sell. Should the Senate link the two measures, though, lawmakers could be headed for yet another standoff, as the current access-tax ban is scheduled to expire in November. That could force the House to decide between allowing states to suddenly start taxing Web access and swallowing the pill on the online sale tax legislation.

at: Common Objections

Common objections are hyperbolic—leading expert

Wood 2013 (Robert W [practices law with Wood LLP, in San Francisco]; Online Sales Tax Inevitable, Senate Passes Marketplace Fairness Act; Mar 23; www.forbes.com/sites/robertwood/2013/03/23/online-sales-tax-inevitable-senate-passes-marketplace-fairness-act/; kdf)

They must collect sales tax from out-of-state customers only if they have a physical presence (store, warehouse or office) in the customer's state. Since then, a growing number of states are extending sales taxes to online retailers with in-state sales affiliates. Amazon recently started collecting tax in Pennsylvania, Texas, California and Connecticut and according to the Marketplace Fairness Act website, is now allied with supporters of the bill. eBay opposes it. Some of the claims about the law are hyperbolic. Opponents say it would obliterate the physical presence standard, something they assert is a baseline protection shielding taxpayers from harassment by out-of-state collectors. It's hard to support that claim, although there's no question the law would help harmonize brick-and-mortar and online sales. Another claim is that the law would force remote retailers to interrogate their customers about where they live, look up regulations in thousands of taxing jurisdictions across the country, and then collect and remit taxes for distant authorities. See Letter to Congress: Oppose the Marketplace Fairness Act! Of course, customers already must state a delivery address, and credit card companies verify them too. Opponents also invoke ultra-complexity, claim interstate commerce will be harmed, and say online sellers will be burdened with 9,600 separate taxing jurisdictions, each with its own unique definitions, holidays, and rates. They claim the law triggers a massive expansion in state tax collection authority, dismantling a vital taxpayer protection upon which virtually all tax systems are based. Most of this is at least overstated.

States Islamaphobia CP

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The fifty state governments of the United States should end surveillance of the Muslim body.

States are currently implementing anti-Muslim policies

Khan and Beutel 14 - Co- Principal Investigator, ISPU Fellow and Lecturer in the Department of Near Eastern and Asian Studies at Wayne State University, Co-Principal Investigator and Project Manager for Islamophobia: A Threat to All Study, ISPU Policy and Research Engagement Fellow Saeed Khan and Alejandro Beutel, 2014, "Manufacturing Bigotry: A State-by-State Legislative Effort to Pushback Against 2050 by Targeting Muslims and Other Minorities", 7/15/2015, \\BD

With regard to anti-sharia specifically, iv. 630 of the total 3813 (16.5%) Republican state legislators have sponsored or co-sponsored an anti- sharia/anti-"foreign law" bill. v. And 80% of the 102 anti-sharia bills were sponsored or co-sponsored by an overlap legislator, or legislator who sponsored or co-sponsored a restrictive law in another of the six issue areas. vi. It is critical to note that the greatest overlap with anti-sharia/anti-"foreign law" legislation is not with anti-immigration laws as might be thought but with strict Voter ID laws and Right-to-Work laws. Both of these types of laws negatively and disproportionately impact African-Americans, women and Latinos. Thus, if a lawmaker wants to support legislation marginalizing the most people at one time, anti- sharia along with Voter ID and/or Right-to-Work would help to achieve that end. vii. Although the linkage between anti-immigrant and anti-Muslim advocacy is very strong, research indicates that anti-immigration law proposals are limited in number because of the high political and financial costs of implementing legislation that faces widespread opposition from religious groups and business interests alike5.

--xt: Solvency

State actions are creating a discursive policy of Islamophobia

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The fact that anti-sharia/anti-"foreign law" bills, the legislative vehicle for anti-Muslim sentiment, track more closely to Voter ID and Right-to-Work related bills than anti-immigration bills lends credence to the idea that the current legislative agenda is about preserving power. It also indicates that, despite the rhetoric around sharia, these legislative efforts targeting "foreign laws" are actually branches of a wider domestic policy initiative targeting the changing nature of America. Ultimately, the data supports the fact that there is deep anxiety around the changing demographic nature of American society and the approaching demographic tipping point. This is the wider domestic context in which of anti- Muslim prejudice and animus operate. In the years since 9/11, anti-Muslim sentiment has been considered more socially acceptable6 than animus directed at other racial, ethnic, or religious groups.7 Notwithstanding that American Muslims are increas- ingly working in partnership with various communities on a growing array of public policy issues,8 the narratives to counter Islamophobia have often been narrow, largely treat- ing the issue as its own isolated phenomenon—whether in- tentional or not. While not seeking to downplay the unique challenges anti-Muslim bigotry poses to American pluralism, the findings clearly suggest Islamophobia is part of a broader trend of exclusion that various minority communities have experienced, and continue to experience.

State action is key

Khan and Beutel 14 - Co- Principal Investigator, ISPU Fellow and Lecturer in the Department of Near Eastern and Asian Studies at Wayne State University, Co-Principal Investigator and Project Manager for Islamophobia: A Threat to All Study, ISPU Policy and Research Engagement Fellow Saeed Khan and Alejandro Beutel, 2014, "Manufacturing Bigotry: A State-by-State Legislative Effort to Pushback Against 2050 by Targeting Muslims and Other Minorities", 7/15/2015, \\BD

This brief summarizes ISPU research that identifies anti- 2050 resistance trends, and documents the link between anti-Muslim activism and support for other forms of bigotry by analyzing state-level laws passed and bills proposed on a number of key public policy issues. ISPU's research offers docu- mented evidence, across all 50 state legislatures, of the current lawmaking efforts, successful and unsuccess- ful to restrict or reverse the rights of various groups his- torically marginalized for their race, ethnicity, national origin, gender, sexual orientation, or religious affiliation. This report also places Islamophobia within a broader context of overlapping legislative cam- paigns that target or dispro- portionately impact the above- mentioned communities.

at: Only Fed Does Surveillance

States surveil Muslims – New York proves

Apuzzo 14 – writer for the New York Times Matt Apuzzo, 4/15/2014, The New York Times, "New York Drops Unit That Spied on Muslims", http://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html, 7/15/2015, \\BD

The New York Police Department has abandoned a secretive program that dispatched plainclothes detectives into Muslim neighborhoods to eavesdrop on conversations and built detailed files on where people ate, prayed and shopped, the department said.ð The decision by the nation's largest police force to shutter the controversial surveillance program represents the first sign that William J. Bratton, the department's new commissioner, is backing away from some of the post-9/11 intelligence-gathering practices of his predecessor. The Police Department's tactics, which are the subject of two federal lawsuits, drew criticism from civil rights groups and a senior official with the Federal Bureau of Investigation who said they harmed national security by sowing mistrust for law enforcement in Muslim communities.ð To many Muslims, the squad, known as the Demographics Unit, was a sign that the police viewed their every action with suspicion. The police mapped communities inside and outside the city, logging where customers in traditional Islamic clothes ate meals and documenting their lunch-counter conversations. "The Demographics Unit created psychological warfare in our community," said Linda Sarsour, of the Arab American Association of New York. "Those documents, they showed where we live. That's the cafe where I eat. That's where I pray. That's where I buy my groceries. They were able to see their entire lives on those maps. And it completely messed with the psyche of the community."ð Ms. Sarsour was one of several advocates who met last Wednesday with Mr. Bratton and some of his senior staff members at Police Headquarters. She and others in attendance said the department's new intelligence chief, John Miller, told them that the police did not need to work covertly to find out where Muslims gather and indicated the department was shutting the unit down.ð The Demographics Unit, which was renamed the Zone Assessment Unit in recent years, has been largely inactive since Mr. Bratton took over in January, the department's chief spokesman, Stephen Davis, said. The unit's detectives were recently reassigned, he said.ð "Understanding certain local demographics can be a useful factor when assessing the threat information that comes into New York City virtually on a daily basis," Mr. Davis said. "In the future, we will gather that information, if necessary, through direct contact between the police precincts and the representatives of the communities they serve."

Space Debris CP

**EUSO CP

The United States federal government should provide funding for the Extreme Universe Space Observatory.

EUSO is the most feasible way to eliminate space debris

The Economist 2015 (Char wars; Apr 25; www.economist.com/news/science-and-technology/21649443-how-clean-up-space-shooting-down-bits-junk-char-wars; kdf)

SPACE, as the late Douglas Adams pointed out, is very big. But the bit near Earth is also very crowded. Half a century of rocket launches has turned the high frontier into a junkyard. Around 3,000 tonnes of empty rocket stages, defunct satellites, astronauts' toothbrushes and flecks of paint are thought to be in orbit. Besides being messy, such debris can be dangerous. Anything circling Earth is moving pretty quickly, so collisions between space junk and satellites can happen at closing velocities of 10km a second or more. Large bits of junk are routinely tracked by radar. The International Space Station (ISS), for instance, regularly tweaks its orbit to avoid a particularly menacing piece of litter. But at such high speeds, even a small, hard-to-follow object can do tremendous damage. Rocket scientists have been pondering how to deal with this problem for years. But a paper just published in Acta Astronautica by Toshikazu Ebisuzaki and his colleagues at RIKEN, a big Japanese research institute, has gone further and proposed actually building a test device. Like all the best ideas, Dr Ebisuzaki's plan involves zapping things with lasers. He proposes to point these lasers in the right direction using a telescope intended for a different job entirely. This is the Extreme Universe Space Observatory (EUSO). It is designed to be bolted on to the ISS. From that vantage point it will monitor Earth's atmosphere, looking for showers of radiation caused by cosmic rays hitting air molecules. Dr Ebisuzaki, however, realised that the characteristics of a telescope designed for this job—namely a wide field of view and the ability to register even fleeting flashes of light—would also be well-suited for spotting small bits of debris as they whizz past the ISS. Having identified something, the next step is to get it out of orbit—and that is where the zapping comes in. Shining a sufficiently powerful laser at something will boil away its surface. The resulting jet of vapour will, as Newton's third law of motion requires, cause an equal and opposite reaction on the object it came from, pushing that object away. Fire a laser head-on at a piece of space debris for long enough, then, and you can slow it down to the point where its orbit will decay and it will burn up in Earth's atmosphere. This idea is not new. But putting lasers into orbit is tricky. Those powerful enough to do the job need lots of electricity and this is hard to deliver with the solar panels from which satellites typically draw their power. Dr Ebisuzaki proposes instead to employ a new, more efficient laser called a coherent-amplification network device, which was developed for use in high-energy physics. He and his colleagues suggest a three-stage test. The first, with a smaller version of the EUSO and a fairly weedy laser, would serve as a proof of concept. The second would use the actual EUSO telescope and a much more potent laser. Finally, he says, the equipment could be mounted on a purpose-built satellite, from which it would be able to shoot down tens of thousands of bits of space junk every year, thus gradually sweeping the skies clean.

--xt CP Solves

Funding is the critical internal link to EUSO success – CP resolves this

Lant 2015 (Karla; How the ISS Plan s of getting rid of space debris-plans to vaporize comets in space; May 19; www.sciencetimes.com/articles/6481/20150519/how-the-iss-plans-on-getting-rid-of-space-debris-plans-to-vaporize-comets-in-space.htm; kdf)

The new Riken proposal, however, focuses on the Extreme Universe Space Observatory (EUSO). Although it was not designed for the purpose of obliterating space junk, the system, created for monitoring ultraviolet emissions caused by cosmic rays, may solve this problem. Astrophysicist Toshikazu Ebisuzaki says that use of the EUSO, which will be used on Japan's 2017 ISS module, is a good strategy. The laser system uses a Coherent Amplification Network (CAN) laser, now under development for use in atom smashers, to blast pieces of junk by vaporizing its surface. The CAN laser generates a single, powerful beam by combining many small lasers together. This in turn pushes the debris into the atmosphere with the plume of plasma created by the blast. The junk would then burn up in the atmosphere. A 100,000-watt ultraviolet CAN laser, the full-scale version of this system, would have a range of about 60 miles. It would be able to fire about 10,000 pulses per second, each pulse of a one-tenth of one-billionth of a second duration. This set of capabilities should be adequate to secure the ISS. The system's laser would need lithium-ion batteries weighing about 17 pounds. "The EUSO telescope, which was originally designed to detect cosmic rays, could also be put to use for this useful project," Ebisuzaki says. If the proof-of-concept and full-scale prototypes work, the researchers propose that a satellite version of the system be produced solely for the purpose of blasting space junk. The satellite would then orbit over both poles of the Earth. They believe it could zap about 100,000 pieces of space junk annually, one piece of junk every five minutes. Most space junk is at an altitude of about 500 miles. The satellite would start its orbit at about 620 miles and over time drift downward at about 6 miles per month until most troublesome junk was gone-in about 50 months' time. **"The biggest obstacle is funding,"** says Ebisuzaki. "There are some technical challenges, of course, but the main issue is getting funding for development and launch."

**Space Elevator CP

Counterplan: The United States federal government should build a space elevator.

Solves Debris

Edwards and Ragan 6, (Bradley Edwards, Ph.D. in Physics from the University of Wisconsin – Madison, Leaving the Planet by Space Elevator)

One strategy is to avoid the areas of space with the highest density of debris. This is not as hard as it sounds. Each of the main spaceports on Earth tends to launch rockets into the same orbits, so their debris follows that orbit too. We can track great circles of debris in space that originate from Cape Canaveral, Baikonur, etc. Much debris follows the Equator, noting the number of satellites that are lifted into geostationary orbit above the Equator. Therefore, by selecting an anchor point for the Earth Port away from the Equator and common rocket orbits we will reduce the potential amount of debris that our ribbon encounters. (Also, in the event that anyone still launches rockets anymore, we really don't want our ribbon cutting through the likely trajectory!) A more proactive strategy is to clean up the mess. With our Elevator having reduced the cost of deploying into space, maybe we could deploy a catcher-satellite, equivalent to a gigantic carbon nanotube garbage bag, to orbit the Earth and gradually collect the debris.

Solves Asteroids/communication/weather/spacecol

Edwards and Raitt 4, Bradley Edwards, Ph.D. in Physics from the University of Wisconsin – Madison, David Raitt, Senior Technology Transfer Officer, Technology Transfer & Promotion Office, European Space Agency, "THE SPACE ELEVATOR: ECONOMICS AND APPLICATIONS", "http://images.spaceref.com/docs/spaceelevator/iac-2004/iac-04-iaa.3.8.3.09.raitt.pdf")

The Space Elevator will be capable of placing into various orbits, including LEO and GEO and beyond, large payloads such as very long optical booms, huge radio dishes, complex planetary probes, and manned modules including hotels and penal colonies. It will be particularly suited to oversized, awkwardly-shaped and/or fragile structures and components since there will be no restrictions on size (up to a point, of course), nor will the payloads be subject to launch forces. This in turn implies that spacecraft can be constructed more cheaply since delicate components will not need to be protected against vibration to the same degree. Examples of payloads and applications include telescopes, interplanetary spacecraft and probes, Moon and Mars access, space tourism, power beaming, asteroid mining, telecommunications, weather stations, and asteroid detection to mention but a few. And no doubt the military will also be interested for its own activities.

Solves Warming

Edwards and Raitt 4, Bradley Edwards, Ph.D. in Physics from the University of Wisconsin – Madison, David Raitt, Senior Technology Transfer Officer, Technology Transfer & Promotion Office, European Space Agency, "THE SPACE ELEVATOR: ECONOMICS AND APPLICATIONS", "http://images.spaceref.com/docs/spaceelevator/iac-2004/iac-04-iaa.3.8.3.09.raitt.pdf")

One major use envisioned at the outset is that of launching solar energy platforms which will collect the limitless energy of the sun and beam it down to Earth for a constant source of clean, renewable power. This would have enormous implications for the environment and sustainable development by cutting fossil fuel consumption and thus eliminating harmful greenhouse gases. It would also avoid the necessity of constructing tall solar towers which, of necessity, have huge ground footprints. The solar tower under development in Australia, for instance, will have a collector nearly 6km in diameter and require over 50 square kilometers for the construction.

Solves Disease and Famine

Edwards and Raitt 4, Bradley Edwards, Ph.D. in Physics from the University of Wisconsin – Madison, David Raitt, Senior Technology Transfer Officer, Technology Transfer & Promotion Office, European Space Agency, "THE SPACE ELEVATOR: ECONOMICS AND APPLICATIONS", " http://images.spaceref.com/docs/spaceelevator/iac-2004/iac-04-iaa.3.8.3.09.raitt.pdf")

In a period when the days of the ISS seem numbered, the Space Elevator could step in to fulfill the promise of providing facilities to test and develop new drugs and materials in microgravity. Specialist automated labs could be placed at various locations adjoining the ribbon to create and manufacture components for the pharmaceutical and electronics industries. Other labs could house space gardens to grow plants and crops – not only to develop improved varieties for terrestrial use, but also to provide food for people living and working in space.

TTIP

**Econ

Test: The United States Congress should pass the Transatlantic Trade Investment Partnership.

The CP Solves the global economy—doesn't link to politics

Lejour, Mustili, Pelkmans, and Timini **14**- (Arjan Lejour is Programme Leader in Public Finance at CPB Netherlands; Federica Mustilli is Researcher at CEPS; Jacques Pelkmans is Senior Fellow at CEPS and Professor at the College of Europe; and Jacopo Timini is Researcher at CEPS. The views expressed in this report are those of the authors only and do not necessarily represent those of CEPS or CPB Netherlands.) "Economic Incentives for Indirect TTIP Spillovers", No. 94 / October 2014 [TTIP Series No. 2], Center for European Policy Studies, 2014, pdf,//droneofark

The Transatlantic Trade and Investment Partnership (TTIP) negotiations take place between two of the three biggest economies in the world and over a very wide spectrum of regulatory and trade policy domains. They cannot therefore be seen in isolation. One major issue is whether TTIP engenders spillovers to third countries. This CEPS Special Report represents a first attempt to understand the underlying economics of such spillovers. The idea is that TTIP, in setting regulatory practices for the North Atlantic, which reduce costly regulatory divergence, may apply on a MFN (most-favoured-nation) basis, or even that new TTIP regulatory 'standards' might be adopted by third countries, which thereby can reduce the nontariff barriers (NTBs) for their exports to TTIP economies. Both imply positive spillovers. Whilst there is some talk about spillovers from the regulatory accomplishments of TTIP to third countries, there seems to be no economic theory or analysis helping negotiators or observers to appreciate the drivers behind such spillovers. The only simulation of the impact of TTIP that has incorporated positive spillovers (Francois et al. 2013) does not offer any further insight in this respect; all it does is to stipulate an arbitrary 'size' of spillovers without any further explanation. Therefore, the present authors seek to provide some simple empirical economics to appreciate the incentives for spillovers. Even if the relative economic significance of the EU and the US together in the world economy is shrinking steadily, in many respects they undoubtedly remain preponderant economic powers: their joint size of world goods trade is impressive (in 2013, the EU imported €196 billion in goods from the US and exported €288 billion to the US), similarly in services trade (in 2012, the EU imported €149 billion and exported €160 billion) and their dominance in foreign direct investment (FDI) stocks is overwhelming (in 2012, EU inward stocks from the US amounted to €1.53 trillion while outward stocks to the US amounted to €1.65 trillion).1 This preponderance and their former leadership in the World Trade Organization (WTO) bring with it a special responsibility when embarking upon TTIP. A deep, comprehensive and ambitious FTA-plus over the North Atlantic should not undermine or otherwise negatively affect the WTO and its signatories. This is not so much a question of violating the rules (as the EU and the US can be expected to stick to WTO rules) but rather of the 'regionalisation' of new, especially regulatory, frameworks and the risks of generating new forms of trade diversion that disadvantages third countries. Beyond a general but vague awareness, expressed in trade diplomacy, the debate on the possible economic impact on third countries has hardly taken off. In particular, positive spillovers remain at best speculative. Countries such as Turkey and Mexico have understood the danger and both the US and the EU have opened or intensified their bilateral trade policy channels to keep these governments posted and reflect on further initiatives. Given the preponderance of the US and the EU together, it is therefore crucial that efforts are undertaken to reduce or pre-empt any such negative effects and stimulate positive spillovers. This report has a modest purpose. It seeks to complement the empirical economic study underlying the Commission's Impact Assessment of TTIP (Francois et al., 2013), which – rightly – introduces the possibility of TTIP generating (positive) spillovers for third countries, both direct and indirect. The simulation by Francois et al. (op. cit.) without these spillovers results in small but non-trivial negative effects on trade and GDP for the third countries included. These negative effects disappear or become positive once the spillovers are included. However, Francois et al. (2013) do not explain or model these spillovers; their size is merely (and arbitrarily) postulated as respectively 20% of the NTB reduction for direct spillovers and 10% for indirect ones. In our report on the Francois et al. (2013) study for the European Parliament Committee on International Trade (INTA) (Pelkmans et al., 2014),2 we have already pointed out that spillovers should be far better understood and that the incentives for third countries to align with TTIP and hence enjoy indirect spillovers ought to be analysed. The present Special Report provides some elementary quantification, which helps understand the incentives for third countries to seek either individual or (perhaps) plurilateral alignment with TTIP's regulatory aspects where relevant, and for which TTIP should be 'open'. The regulatory options and mechanisms which would facilitate both direct and indirect spillovers

to third countries have to be treated in another study. The following focuses merely on rather aggregate economic incentives, not on the various modalities of regulatory cooperation in TTIP. The structure of the present report is as follows: Section 2 defines spillovers more precisely and sets out how spillovers have been quantified in Francois et al. (2013). Sections 3 and 4 propose a possible way to identify potential spillovers for a specific country. In particular, Section 3 analyses which countries, divided into three distinct groups, are most likely to be influenced by the negotiations according to the geographical trade pattern. Section 4 sheds light on which are the most sensitive sectors in each country to this influence. Both sections take advantage of the adoption of the global value chain approach. Section 5 concludes.

**Relations

Test: The United States Congress should pass the Transatlantic Trade Investment Partnership.

The CP boosts US relations and soft power—Solves the aff

Hamilton and Quinlan, 15- (Daniel S. Hamilton and Joseph P. Quinlan are Director and Senior Fellow, respectively, at the Johns Hopkins University Center for Transatlantic Relations, and co-authors of The Transatlantic Economy 2015 (Washington, DC: Center for Transatlantic Relations, 2007)) "More than trade, TTIP leads to confident Atlanticism" Euractiv.com, March 18, 2015 http://www.euractiv.com/sections/trade-society/more-trade-ttip-leads-confident-atlanticism-313006 //droneofark

The US-EU Transatlantic Trade and Investment Partnership (TTIP) is generating more heat than light when it comes to most European debates, which tend to cast TTIP as yet another free trade agreement. Yet TTIP is about more than trade. It is about creating a more strategic, dynamic and holistic US-EU relationship that is more confident, more effective at engaging third countries and addressing regional and global challenges, and better able to strengthen the ground rules of the international order. To the extent that TTIP can help generate jobs, spark growth and reinvigorate the US and European economies, it promises to renew confidence among publics and elites and ameliorate some of the political dysfunction afflicting many Western societies. Greater confidence and economic vigor at home, in turn, has the potential to increase the magnetic pull of Western values elsewhere, underwrites US and EU diplomatic capacity, and enhances possibilities for strategic outreach. TTIP can also reassure each side of the Atlantic about each other. Europeans are more likely to have greater faith in America's security commitments if they are anchored by strong trade and investment links. TTIP would be an important US validation of EU legitimacy, while reassuring Americans that the EU is looking outward rather than inward. TTIP can be an assertive, yet not aggressive, means to defend and advance basic values shared across the Atlantic. TTIP's fundaments are those of democratic societies rooted in respect for human rights and the rule of law. The US and the EU are among the few entities that include basic labor, environmental and consumer protections in their trade agreements. They boast the two most sophisticated regulatory systems anywhere. An agreement that commits both parties to sustain and uphold such principles and protections, not only vis-a-vis each other but together around the world, would be a strong affirmation of common values and a powerful instrument to ensure that such standards advance globally. Second, TTIP is important in terms of how the transatlantic partners together might best relate to rising powers. Whether those powers choose to challenge the current international order and its rules or promote themselves within it depends significantly on how the US and Europe engage, not only with them but also with each other. The stronger the bonds among core democratic market economies, the better their chances of being able to engage rising partners as responsible stakeholders in the international system. The looser or weaker those bonds are, the greater the likelihood that rising powers will challenge this order. TTIP has particular meaning for US and EU relations with China. TTIP is lazily portrayed as an effort to confront and isolate China. Yet is less about containing China than about the terms and principles guiding China's integration and participation in the global order. China's burgeoning trade with both the United States and Europe attests to US and EU interest in engaging China, not isolating it. Yet Beijing has yet to embrace some basic tenets of the international rules-based order. TTIP, TPP and related initiatives are important instruments to help frame Beijing's choices -- by underscoring China's own interests in an open, stable international system as well as the types of norms and standards necessary for such a system to be sustained. TTIP is also important with regard to US and EU relations with Russia and Eurasia. TTIP is a values-based, rules-based initiative that is likely to strengthen Western economic and social cohesion, reinforce US commitment to Europe, strengthen transatlantic energy ties, and

contribute to greater attractiveness of the Western model. TTIP would also bolster the resilience of central and east European economies, stimulate US investment and enable such countries to more easily resist Russian encroachment. These changes are likely to resonate across Wider Europe, especially Ukraine, Moldova, Georgia and even Belarus. This is anathema to the current leadership in the Kremlin. TTIP presents a huge challenge to the Kremlin's efforts to divide Europeans from Americans. It offers something that the Kremlin cannot match: a transparent, mutually beneficial agreement that creates a rules-based framework for international cooperation. A reinvigorated transatlantic marketplace among highly-connected, highly-competitive democracies, whose people enjoy greater economic growth and rising standards of living, would challenge the Kremlin's version of ''managed democracy'' and render Russia's own one-dimensional natural-resource-based economic model unattractive. Greater US-EU energy cooperation would blunt Russia's monopolistic approach to European energy markets. And if such benefits extended to non-EU neighbors, particularly Ukraine, Russians themselves are likely to ask why their own country can't be better run. Third, TTIP can help strengthen the international rules-based order. Europeans and Americans share an interest in extending prosperity through multilateral trade liberalization. But the Doha Round is stuck and the WTO system is under challenge. EU and US officials are using TTIP to unblock the WTO Doha negotiations, jumpstart multilateral negotiations, and extend the multilateral system it to new areas. TTIP could result in clearer, transparent rules of origin that could facilitate global trade and serve as a common public good. It could pioneer new ways to ensure high standards for consumers, workers, companies and the environment while sustaining the benefits of an open global economy. Without TTIP, Americans and Europeans could become standard-takers rather than standard-makers. Getting a TTIP deal will be tough. Yet if we grasp the moment, America's first 'Pacific President' and his EU partners may well become best known for having re-founded the Atlantic Partnership. If we do not, then issues of failing trust and confidence, so visible today, will continue to eat at the relationship like termites in the woodwork.

--XT Solves Rx/at: Links to Politics

The CP solves relations better than the aff- doesn't link to politics

Lejour, Mustili, Pelkmans, and Timini **14**- (Arjan Lejour is Programme Leader in Public Finance at CPB Netherlands; Federica Mustilli is Researcher at CEPS; Jacques Pelkmans is Senior Fellow at CEPS and Professor at the College of Europe; and Jacopo Timini is Researcher at CEPS. The views expressed in this report are those of the authors only and do not necessarily represent those of CEPS or CPB Netherlands.) "Economic Incentives for Indirect TTIP Spillovers", No. 94 / October 2014 [TTIP Series No. 2], Center for European Policy Studies, 2014, pdf,//droneofark

For present purposes, we focus solely on a more aggregate approach for trade policy-makers and regulators of any country X having important economic intercourse with the TTIP twins. The most obvious and important incentive is found in mutual trade relations, possibly in combination with FDI stocks both ways. In the following, we assume that the relative importance of aggregate goods trade with the TTIP partners is a reasonable first proxy of a third country's incentive to consider 'alignment' of its rules and regulatory practices on goods with TTIP. We focus on goods trade, not services, because much of the regulatory cooperation in the High Level Group Report5 is about goods trade. Before moving to the analysis of each sector, we first provide a general picture where we select candidates potentially interested in joining TTIP at a later stage or that can be influenced by its outcome. The main variable underlying trade incentives is the "domestic value added embodied in the foreign final demand" as a percentage of the total value added produced by the exporting country. The reason why we prefer this variable to the classical gross exports figures is explained in Box 1. Countries have been clustered in three groups: first, we considered the so-called 'closest neighbours', including those countries already linked to the TTIP twin through legal and deep commercial trade relations, namely NAFTA for the US, and Switzerland, Iceland, Norway and Turkey for the EU. Before inspecting the data, we expect a strong interest from those countries in the negotiations induced by the existing deep trade relations. A second group includes important commercial players according to their relative contribution to global trade, namely: Brazil, China, India, Indonesia, Japan, Republic of Korea, South Africa (defined as the seven 'biggest traders', other than TTIP itself).7 A third group consists of 'other developed open economies', namely, Australia, New Zealand, Singapore, Hong Kong, Israel and Chile, which, in the WTO, can never hope to be 'principal traders' that assume leadership on regulatory regimes, but are keen to benefit from effective market access to TTIP.8 The following simple exercise shows that spillovers – quite apart from their specific regulatory substance – are incentivised far more in NAFTA and in Europe with the EU's closest economic neighbours (Switzerland, Iceland, Norway and Turkey) than in the second and third groups of world traders. Specifically, with Turkey, Switzerland, Iceland and Norway the EU already has credible channels for regulatory convergence and a lot of harmonisation and standardisation has already taken place.9 In NAFTA, regulatory convergence used to be no more than marginal, but both Mexico and Canada now have active Regulatory Councils with the US. Table 1 shows that 'closest neighbours' have export shares in terms of domestic value added embodied in the foreign final demand for TTIP (in their world goods exports) ranging from 56% to 74%, which would seem to reflect powerful incentives to seek effective forms of regulatory accommodation with TTIP. There is no obvious basis to define a critical aggregate threshold beyond which a third country would be incentivised or not; it is probably not a binary issue anyway. Indeed, an aggregate threshold might be inappropriate as the practical approach for alignment will likely be sectoral, in combination with some broader regulatory cooperation principles and some institutional arrangements. But 56% to 74% shares are so high that one may speak of TTIP dominance in trade relations. If these trade shares are combined with the overall merchandise trade openness of countries, the TTIP openness share is about 37%; only for Turkey is it much lower (22%).10 The latter result is not surprising, because Turkey is also orientating itself towards the Middle East and former Soviet Union countries. Often, trade openness is combined with strong relations in markets via FDI stocks that further strengthen the impetus. This TTIP 'dominance' is, in part, the result of accomplished, 'deep' market integration, underpinned by strong obligations of 'negative integration' and, depending on the case, some or even far-reaching agreements on positive integration, especially regulatory ones (more in Europe than in North America). In other words, regulatory and institutional relations inside NAFTA are developing and,

inside Europe, are already advanced, which should make it feasible to find acceptable accommodation sooner or later, or even renders it conceivable that TTIP would be extended in some chapters to the 'closest neighbours'. The global debate on spillovers might well be more focused on the second and third groups, which do not have anywhere near the same depth in regulatory convergence in goods trade. Table 1 shows that the 'other developed countries' score TTIP shares of between 24% (Australia) and 57% (Israel). The overall TTIP openness varies from 8% (for Australia) to 138% (for Hong Kong). Concerning the group of the seven biggest commercial partners, TTIP shares vary from 31% (Indonesia) to 49% (China), while the TTIP openness of Korea and South Africa more or less matches that of Turkey. In particular for Brazil, India, Indonesia and Japan, it does not seem likely that their shares would give enough incentive to initiate a process of domestic re-regulation for the purpose of effective market access only to TTIP. This is also the case for Australia and New Zealand.

Warming (Carbon Taxes)

**Shadow Taxes CP

The United States federal government should establish a committee to explore the feasibility of carbon shadow pricing by the federal government.

The CP is the first step to solve warming

Morris 2015 (Adele [a senior fellow and the policy director for the Climate and Energy Economics Project]; Why the federal government should shadow price carbon; Jul 13; www.brookings.edu/blogs/planetpolicy/posts/2015/07/13-carbon-footprint-governement-shadow-prive-morris?rssid=LatestFromBrookings; kdf)

A First Step One potential first step would be to establish an expert committee and/or interagency process to explore the feasibility of carbon shadow pricing by the federal government. The committee could examine which kinds of federal expenditures and operations are best suited to shadow pricing, and which sources of emissions (direct and indirect) could be reasonably priced. The committee could review methods used by the private sector for possible application in the federal government and consider which federal agencies, such as DOE, OMB, CBO, and GSA, are in the best position to provide leadership for the endeavor. It would also think through potential budget implications and how shadow pricing could be piloted or phased-in across the government. The committee could also analyze options for how to set an appropriate shadow price trajectory, such as whether the price should be tied to the social cost of carbon the government uses for regulatory analysis or a path that minimizes the cost of achieving a long term cumulative emissions goal. The committee could also propose metrics for monitoring the emissions performance of the policy and, potentially, identify more costly abatement measures the federal government could consider phasing out. Finally, the committee could suggest ways to engage contractors, companies with carbon shadow pricing experience, and other stakeholders in the process to amplify the broader benefits.

--xt Solves Warming

Federal government leadership is sufficient to spark large scale carbon shadowing

Morris 2015 (Adele [a senior fellow and the policy director for the Climate and Energy Economics Project]; Why the federal government should shadow price carbon; Jul 13; www.brookings.edu/blogs/planetpolicy/posts/2015/07/13-carbon-footprint-governement-shadow-prive-morris?rssid=LatestFromBrookings; kdf)

The Role for the Federal Government The U.S. federal government has two key leadership opportunities here. First, the government could shadow price its own emissions in ways analogous to those used by companies but customized to the particular needs of federal agencies. For example, in analyzing energy efficiency retrofits to federal facilities, agencies could use energy prices that take into account the carbon intensity of the fuels and electricity involved, thus economizing on energy where the emissions benefits are highest. This would help manage the federal government's fiscal risk as a major energy user, harmonize abatement incentives across agencies, and rationalize federal investments across competing objectives.[1] Second, the government could use the process by which it develops its shadow pricing policy to catalyze an even broader public discussion. Although hard to quantify, the spillover potential of the federal government's leadership could be substantial as it would raise the profile of shadow pricing, provide practical approaches that other entities can adopt, and further prove the principle that carbon pricing can cost effectively reduce emissions. At the very least, the policy would draw the attention of the firms that receive the over $500 billion in federal contracts annually. With thoughtful stakeholder outreach, the impact could be even broader.

This solves warming

Morris 2015 (Adele [a senior fellow and the policy director for the Climate and Energy Economics Project]; Why the federal government should shadow price carbon; Jul 13; www.brookings.edu/blogs/planetpolicy/posts/2015/07/13-carbon-footprint-governement-shadow-prive-morris?rssid=LatestFromBrookings; kdf)

A growing number of companies are putting a shadow price on carbon to reduce their carbon footprint cost effectively. Shadow pricing is method of investment or decision analysis that adds a hypothetical surcharge to market prices for goods or services that involve significant carbon emissions in their supply chain. For example, if a firm is analyzing acquisitions of new energy-using equipment, it would use expected energy costs of expected market prices plus a charge associated with the carbon dioxide that would be released when the fuel is combusted. Shadow prices can apply in all sorts of analyses of investments, procurements, and other strategic decisions to give an edge to options that are more emissions-efficient, other things equal. These decisions then allow firms to reduce their emissions gradually up to the incremental cost reflected in the carbon price they apply. Why would companies do this? Economists widely argue that imposing a price on greenhouse gas emissions, such as through a tax on the carbon content of fossil fuels, is a crucial measure to control the growing risk of global climatic disruption. Carbon shadow pricing is an explicit way to anticipate such future policies and avoid stranded or inefficiently allocated capital. By analyzing capital expenditures and other important corporate plans with an eye to future regulatory or tax conditions, firms can manage the economic risk of a carbon-constrained future and assure shareholders and the SEC they are appropriately forward-thinking. This is particularly important for companies that invest in energy-intensive long-lived facilities such as power plants and oil refineries. Second, shadow pricing is a concrete way to signal to investors and the public that a firm takes its commitment to climate change mitigation seriously. It can also induce more consistently cost-effective abatement than alternative approaches such as targets for renewable energy procurement or internal energy efficiency standards. A 2013 report by CDP (formerly the Carbon Disclosure Project) identified over thirty companies —including large electric utilities, major integrated energy companies, technology companies, airlines, and more— that set an internal price on greenhouse gas emissions associated with their activities. Gradually, standard approaches for

carbon shadow pricing are emerging, but methodologies are not nearly as developed for shadow pricing as they are for greenhouse gas emissions inventories. The price per metric ton of carbon dioxide emissions that firms apply ranges between about $6 to $60, and their approaches vary by year, scope of coverage, and pricing methodology. **Companies that wish to adopt shadow pricing have few public examples of how to do it.**

**Carbon Taxes –Revenue Neutral

Counterplan: The United States Federal Government should institute a revenue-neutral tax on the carbon dioxide content of fossil fuels, at a rising statutory rate based on the social cost of carbon dioxide emissions.

A carbon tax is fair and guarantees a transition into a sustainable economy

Reitze 2009 (Arnold W [Prof of Law @ U of Utah, prof emeritus of law @ George Washington]; Federal Control of Carbon Dioxide Emissions: What are the Options; kdf)

Coal is a mixture of various chemicals. A typical coal molecule is C[13]H[10]O. Gasoline also is a mixture of hydrocarbons. Indoline is a common fuel and is expressed as C[7]H[13]. Natural gas is a mixture that may contain ethane (CH[3]CH[3]), propane (CH[3] CH[2] CH[3]), butane (CH[3] CH[2] CH[2] CH[3]) or other similar gases. The ratio of carbon to hydrogen bonds is about thirteen to ten for coal, seven to thirteen for gasoline, and two to five for butane. Because coal has fewer hydrogen atoms per carbon atom than oil or natural gas, it produces more carbon dioxide per Btu than the other fossil fuels. Because the carbon to hydrogen ratio varies among fuels, a carbon tax should be imposed on natural gas, petroleum and coal in a ratio of approximately 0.6, 0.8 and 1 per Btu respectively. This means that a carbon tax would impact those who use coal far more than users of petroleum or natural gas. To produce a kilowatt hour of electricity results, on average, in emission of 0.57 lbs of carbon from coal, 0.54 lbs of carbon from petroleum, and 0.36 pounds of carbon from natural gas. n129 The carbon from any fuel reacts with [*21] oxygen in the air in a three to eight ratio by weight. n130 Thus, for example, burning a gallon of gasoline weighing 6.32 pounds will release 5.47 pounds of carbon, which will combine with oxygen to create a little over twenty pounds of CO[2].¶ In the United States we tax labor and savings, which are activities that we should seek to encourage. Taxes should be imposed on activities we wish to discourage, such as pollution and fossil energy use. The impact that carbon taxes would have on the national economy depends primarily on how the revenues from the tax are used, and what other taxes are affected. Taxes on GHGs could be developed that are revenue neutral. The best approach would be to return the money collected equally to every citizen. Those who purchased less than the average amount of energy would benefit financially. Ultimately, the economic and environmental benefits of a pollution tax are determined by how it is designed and implemented. n131 An ideal tax would be set at the lowest amount that modifies behavior but that does not have an unacceptable adverse impact on those subject to the tax. n132 This may not be possible to accomplish.¶ A carbon tax has advantages and disadvantages, but its advantages make this approach a useful policy choice. n133 It would promote fuel efficiency, provide a wide variety of opportunities for energy conservation, and be "resilient and equitable" because its impacts would be diffuse, thus easing the burdens on sensitive sectors of the economy such as the automobile and farming industries. n134 A carbon tax would be less regressive than other energy taxes, such as a gasoline tax, because the "wealthy consume a greater share of electricity and 'intermediate energy' from manufactured goods than gasoline." n135 A tax on coal, petroleum and natural gas would be shared more equally and generate the same revenue as a much larger gasoline tax. The disadvantage of a carbon tax would be its disproportionate effect on the coal industry and [*22] their customers because coal contains more carbon than other fossil fuels of equal heat values. n136 Coal is produced domestically, and reducing its use would adversely impact the U.S. economy.

--xt Commitment Solves

The counterplan demonstrates maximum commitment – only solution to warming
Reeves 2015 (Richard [Senior fellow of Economic Studies @ Brookings]; Carbon taxes as commitment devices; Apr 14; www.brookings.edu/research/opinions/2015/04/14-carbon-taxes-commitment-devices-reeves?rssid=LatestFromBrookings; kdf)

The economic and environmental cases for a carbon tax are very strong. A carbon tax could help to raise productivity in key sectors, as well as helping to reduce emissions, as William Gale has pointed out on these pages and Adele Morris has argued in a series of papers.ð Carbon taxes attract proponents from commentators on the political left and political right, but few expect to see a national carbon tax anytime soon (indeed, the best hope may now be at the state or metro level). This is because the short-term politics are difficult. Climate change is an example of a myopic policy area, requiring long-term decisions but vulnerable to short-term political pressures.ð Since the costs of heating the planet will be incurred at some uncertain point in the future, the temptation to delay any action is strong: especially when it involves short-term political pain. So the gas can gets kicked down the road.ð As economist Alan Blinder puts it in Foreign Affairs:ð "Myopia is a serious practical problem for democratic governments because politics tends to produce short time horizons -- often extending only until the next election, if not just the next public opinion poll. Politicians asked to weigh short-run costs against long-run benefits may systematically shortchange the future."ð Energy and climate change policy is such a practical problem. It is also an area where consistency and reliability in policy is substantively important, most obviously in terms of capital allocation. As I argue in a new paper, Ulysses goes to Washington, one solution to the problem of myopia is a policy commitment device, that binds policy-makers to a long-term path. These devices include institutions (eg. the Fed, or the Base Closure and Realignment Commissions) and the setting of goals (eg. withdrawing from Afghanistan by 2014).ð A key feature of a policy commitment device is exit pain. Byran, Karlan and Nelson define a commitment device as, "An arrangement entered into by an agent which restricts his or her future choice set by making certain choices more expensive." ð What kind of policy commitment device could be deployed to reduce carbon emissions? International agreements have been shown to be weak. There are a range of other contenders, ranging from a "carbon central bank," with power to set carbon emission levels; the passing of "carbon budgets"; carbon bonds; cap and trade systems; targets for reduction of carbon emissions; or the establishment of independent agencies to provide public advice to governments. Each implies a different degree of commitment; each also has their advantages and disadvantages. The tighter commitment devices are beyond the wildest dreams of the greenest U.S. campaigner; on the other hand, the weaker ones have little traction.ð A carbon tax, in addition to its other attractions, could bring commitment benefits. While politicians love to position themselves as anti-tax, history shows that once a tax is established, it is highly unlikely to be abolished. The only way to get rid of a tax, and thereby lose the associated revenue, is to cut spending or raise taxes elsewhere—either of which carries some political cost.ð There are two ways to further increase the commitment value of a carbon tax. First, all revenues could be used to cut income tax—shifting towards taxing "what we burn, not what we earn." If abolishing the tax meant increasing income tax, it would be more likely to remain in place. ð Second, as Adele Morris and Aparna Mathur suggest, firms could be encouraged to pay their carbon tax bills in advance, perhaps through the use of tradable tax compliance credits. This would create a constituency with a vested interest in the maintenance of the tax.ð In an ideal world, legislators and executives would work together to consistently address long-term problems with sustainable policy solutions—and voters would reward them for doing so. But like the rest of us politicians often discount tomorrow too heavily. On an issue as important as the future of the planet, perhaps we can hope that they might see the wisdom of greater commitment, and the deployment of a commitment device.

--xt-> Clean Tech

Price guarantees from the CP causes renewable innovation

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 70; kdf)

First, a carbon tax introduces a steadier price signal that would generally not be present in a cap-and-trade program. Tax levels and cap levels can both change, but both can be too lenient or too stringent. But all other things being equal, a cap-and-trade program presents one extra source of price volatility: the fact that it is regulating a quantity, and not a price. Innovation in new alternative technologies will generally require as stable a price as possible on carbon dioxide emissions. At least for risk-averse firms thinking of investing in innovations in, say, renewable energy, they will only do so if the payback, or recoupment of the investment from savings from not paying for carbon dioxide emissions (through either carbon taxes or for emission allowances), is sufficiently quick and secure. All other things being equal, the shorter the payback period and the more certain the payback, the more attractive is the investment. Risk-loving investors may be willing to invest when the paybacks are volatile, but in general, investment dollars are more abundant for projects that yield a steadier stream of benefits.

Carbon taxes lead to innovation

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 72-3; kdf)

A second reason that a carbon tax stimulates more innovation than a cap-and-trade program is that, over time, innovation will reduce the price of allowances, and if innovation is successful enough it will cheapen the price of allowances so that innovation will no longer be worthwhile. Firms innovate to reduce compliance costs, and they will not do so if the marginal compliance cost savings are too small to pay for the innovation. Since innovation will reduce the cost of emissions allowances, there comes a point eventually at which the marginal compliance cost savings— the cost of allowances— are outweighed by costs of innovation. For carbon taxes, the marginal compliance costs savings does not change unless the tax rate changes. In this way, a steady tax rate produces a steadier price signal than a cap-and-trade program. Of course, both cap-and-trade programs and carbon tax programs contemplate increasing stringency over time. The 2009 Waxman-Markey bill specified a declining cap on emissions. Carbon tax programs would contemplate an increasing price over time, to adjust for inflation and to track marginal damages from carbon dioxide emissions, which are expected to increase over time. While both programs contemplate a price that increases with time, only cap-and-trade programs have to fight the price-deflating effects of innovation. There is a third and final reason, related to the second, that a carbon tax stimulates more innovation than a cap-and-trade program, which is only true if a cap-and-trade program gives away allowances instead of auctioning them. In a cap-and-trade program in which some entities are given allowances— either on the basis of historical emissions, or simply as a product of political horse-trading, as was the case under the Waxman-Markey bill— the incentives to innovate will be diluted because innovation reduces the value of those allowances. The free allocation of allowances creates an asset in the hands of emit ters, something that does not happen under a tax regime. The fact that innovation could reduce the value of that asset is a disincentive for cost-saving innovation. 113 It could still be, of course, that few innovations are truly great enough to significantly change the market for compliance. In such cases, the private benefits of innovation— from either technological invention or process changes— are probably still great enough to outweigh whatever diluting effects the innovation might have on the value of allowances. However, some technological innovations could be so monumental that the way that an industry thinks about compliance could fundamentally change, such that allowance prices could plummet. Imagine a breakthrough for carbon emissions: for example, a technological breakthrough in battery technology that could dramatically increase energy storage capabilities, making all kinds of renewable technologies feasible, since location and intermittency would no longer pose logistical obstacles to adoption. It seems safe to say that the coal-fired utilities, which received 35 percent of the initial allocation of allowances (worth about $100 billion) under Waxman-Markey, may not be quite as engaged in the development of such technology as it would be if, under a carbon tax regime, it truly had to pay for every ton of CO 2 it emitted.

--xt Solves Volatility

A carbon tax solves volatility

Kerr 2010 (Alex Rice [Alex holds a J.D. from the University of Colorado School of Law (2009) and a B.A. from Amherst College (2003) where he graduated magna cum laude]; Why we need a carbon tax; 34 Environs Envtl. L. & Pol'y J. 69; kdf)

A carbon tax can maximize the objectives discussed above because it fosters experimentation and rewards numerous solutions simultaneously. The exact method of implementing a carbon tax is the subject of a different article. n123 There are many possibilities, such as an add-on tax or a revenue neutral tax. One important idea in any approach is the imposition of a variable tax rate that fluctuates to keep the price of oil stable. The tax should be higher when oil prices drop and lower when prices rise. n124 Keeping the price of oil at a stable, high price creates a consistent benchmark that new energy sources can aim for in achieving price parity. n125 Such a system would dampen the boom and bust volatility of innovation that drives investors away. n126 For example, renewable energy exploded in the 1970s when oil prices skyrocketed. n127 Much of the solar and wind technology being pursued today originated from the "70s energy crisis. That technology, however, was largely shelved until recent record oil prices of $ 150 per barrel rekindled interest. n128 As if to prove the point, a 2008 plunge in oil prices swiftly dampened the prospects of many renewable energy businesses. n129

The predictability of a carbon tax solves volatility

Hamilton 2011 (Sophia [Symposium Editor for Pepperdine's Journal for Business, Entrepreneurship & the Law]; WHEN SCIENTIFIC PALMERS n1 MAKE POLICY: THE IMPACT AND FUTURE OF CAP-AND-TRADE IN THE UNITED STATES; 4 J. Bus. Entrepreneurship & L. 269; kdf)

Early in 2009, ExxonMobil's chief executive, Rex Tillerson ("Tillerson"), announced his support of a carbon tax system that would aim to reduce carbon emissions as an alternative to a cap-and-trade system. n401 ""A carbon tax would be a more direct and transparent approach,'" Tillerson said. n402 This is because the cost imposed on companies by the tax would be predictable. n403 Another notable supporter of a carbon tax, and one of the most "high-profile spokesmen for the [*310] virtues of a carbon tax over a cap-and-trade program," n404 has been Peter Orszag ("Orszag"), the current Director of the Office of Management and Budget. n405 In a 2007 report to the U.S. House of Representatives discussing both the cap-and-trade system and a carbon tax, Orszag stated that "a tax is generally the more efficient approach." n406 He based this conclusion on several factors. First, Orszag noted that studies indicated that over the next few decades "a well-designed tax would yield higher net benefits than a cap-and-trade approach." n407 This is partly because "[a] tax creates relative certainty about the cost of emission reductions each year, because firms will undertake such reductions until the cost of decreasing emissions by another ton just equals the tax on an additional ton of emissions." n408 A cap-and-trade program, by contrast, reliably limits the quantity of carbon regardless of cost. n409 However, Orszag points out that, in terms of the impact emission reductions have on the climate, "it does not matter greatly whether a given cut in emissions occurs in one year or in the next." n410 Taking this into account, he points out that a tax would have an "important advantage: it [would] allow[] emission reductions to take place in years when they are relatively cheap." n411 Numerous factors, such as weather, level of economic activity, and availability of low-carbon technologies, can affect the cost of reducing emissions from year to year. n412 "By shifting emission-reduction efforts into years when they are relatively less expensive, a tax can allow the same cumulative reduction to occur over many years at lower cost than can a cap-and-trade program with specified annual emission levels." n413 Also, because a tax would avoid potential volatility of allowance prices, a tax "could be less disruptive for affected companies." n414 It seems that even a small amount of savings and stability would appeal to businesses and industries in the United States.

at: Renewables

Renewable energies are a trap within the cheap electricity rationale—empirically ineffective

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 23-5; kdf)

The trouble with so many plans to reduce greenhouse gas emissions is that they fall into this trap again: that capital is needed to spur growth in some way that is desirable, such as by supporting the development of "clean coal technology." As noted above, "refined coal" even qualifies for the renewable energy production tax credit, giving the phrase "renewable energy" an adventurous interpretation only lawyers could find sensible. 36 Government subsidization of renewable energy technologies may seem more desirable on the grounds that the few environmental costs are more than outweighed by the prospects of reducing carbon dioxide emissions. This, however, is dangerously close to the "cheap electricity" rationale that sustained coal development for such a long time. In Spain, where the government embraced solar energy as an end in and of itself, extremely generous government incentives created not only a national glut, but a worldwide glut for solar panels. The New York Times reported that solar panel manufacturing plants in Spain began producing too many solar panels and of poor quality, only to have the Spanish government belatedly learn that it could not afford to sustain this subsidy. Spanish cities, towns, and local economies that sprouted up around the solar panel manufacturing industry dried up overnight, leaving behind new forms of economic dislocation and hardship. 37 And in the rush to boost renewable energy, not much has been said about the potential environmental harms of these technologies. Not very much has been said about the ecological side effects of wind energy, such as its effects on wildlife that may be harmed by turbines, or the effects of solar photovoltaic energy (such as its effects on the desert biota or the toxic materials generated by the semiconductor fabrication process), but these effects should have a fair hearing over the course of time.

at: Renewables/Future Tech

The counterplan is comparatively better- only a risk the aff locks in a bad tech

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 43-; kdf)

The overlooked danger is that by supporting specific renewable energy technologies now, we run the risk of effectively locking them in for decades, and perhaps missing the chance to find renewable technologies with even smaller carbon or environmental footprints. Wind turbines have an expected lifespan of twenty to twenty-five years, 38 solar photovoltaic panels about the same. 39 Although these seem like environmentally and economically sensible renewable energy technologies, what will be learned in the next twenty or thirty years? Already, concentrated solar power has emerged as a possibly cheaper and simpler alternative to the previously dominant solar technology, photovoltaic solar energy. 40 Environmental organizations, oriented by their missions to "get things done," have again fallen into the trap of wedding themselves to certain technologies. Today's environmental savior may be tomorrow's environmental pariah, and the problem with mandating an expensive environmental technology is the economic irreversibility of capital expenditures. A recent technological mandate sought by some environmental groups was Integrated Gasification Combined Cycle technology, a technology that gasifies coal so as to be able to separate out the carbon for later capture and sequestration underground. The Natural Resource Defense Council and other organizations sued the EPA to force it to require IGCC as part of any new coal-fired power plant as part of its "New Source Review" program. 41 Failing to learn the past lessons of the New Source Review program, the NRDC seemed to have overlooked the possibility that if coal-fired power plants with IGCC were actually built, carbon dioxide emissions might be abated but better and environmentally cleaner opportunities to reduce emissions would be lost for generations. Presuming that somehow we have identified the "best" greenhouse gas reduction ideas is dangerous because we live with these decisions for the next twenty, thirty, or fifty years. It is far less dangerous to spur growth by taxing that which is undesirable, than encouraging capital formation around that which we think, at this time, is desirable. First, as argued above, some measures to reduce greenhouse gases do not involve capital at all, but are simple measures to conserve energy and use it more efficiently. No capital formation is necessary for people to figure out how to drive less by bundling tasks, carpooling, riding the bus, bicycling, or embracing any number of other ways to reduce their transportation emissions. Second, if incentives are required to form capital around a meritorious capital project that reduces greenhouse gas emissions, a carbon tax, if it presents a stable enough of a price signal, provides the economic stimulus for private capital to flow into those supposedly desirable areas. Underlying this argument is the belief that private capital is at least as able to discern the value of investment as government. Admittedly, at recent times private capital has been spectacularly and widely mistaken. But it is hard to believe that government can actually do better than private capital over the long run in picking clean technologies. And finally, as the climate change problem is one that will play itself out over the better part of a century, it is essential to maintain an open economy for innovation and for new technologies. To the greatest extent possible, greenhouse gas policy should not encourage the formation of expensive capital. To the extent that it does, it guarantees some "stickiness" and some longevity that is in part born of the difficulty of changing course.

at: Subsidies

Carbon taxes are comparatively better than subsidies

-high energy costs->conservation

-subsidies take tax payer money, sends it to industry; cp recycles money

-aff -> rebound effect

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 35-7; kdf)

The case for government subsidization is, as a theoretical matter, straightforward. An unpriced externality like carbon dioxide emissions can be remedied by either a positive price imposed by carbon taxes or by a negative price created by subsidization. If we know, for example, that lowering the carbon dioxide emissions from the energy sector will require the development and deployment of renewable energy technologies, then it would seem to make sense to provide government funding for wind, solar, and other renewable energy technologies. This would be true whether the subsidy takes the form of a per-unit production subsidy, or direct funding for research and development: either way, the goal is to lower costs and concomitantly lower prices. Compare, then, the effects of taxing carbon and of subsidizing renewable energy. At the margins, raising the price of carbon-emitting energy has the same competitive effect of lowering the price (through subsidies) of renewable energy. The net effect of subsidizing renewable energy instead of pricing carbon is a transfer of money from taxpayers to the entire energy industry— to the renewable energy industry through subsidies, and to the carbon-emitting energy industries by not taxing them. Since pricing carbon would raise energy prices, the net effect on the average person, who is both a taxpayer and an energy consumer, would appear to be roughly a wash. There are three core problems with this argument. First, and most simply**, higher energy prices are needed to spur energy conservation**. Low energy costs undermine incentives to make industrial processes more energy-efficient, drive less, better insulate homes and construct more energy-efficient buildings, and to develop and sell (and buy) energy-efficient appliances. Energy conservation measures may in fact turn out to be the greatest source of greenhouse gas reductions. A recent report by the consulting firm McKinsey found that some fairly routine and well-known energy conservation measures could produce a whopping $680 billion dollars worth of net energy savings, and reduce projected energy demand by the year 2020 by 23 percent. 20 Many energy conservation measures actually have a negative abatement cost— that is, their energy savings exceeded the amortized cost of the upfront investments. These included insulation retrofits for residential and commercial buildings (especially the latter), switching residential lighting from incandescent bulbs to LEDs (light-emitting diodes), and capturing methane escaping from landfills to generate electricity. 21 As Dieter Helm has observed, a problem with climate policy is that it has by and large focused on reducing greenhouse gases from production, and not consumption. 22 Reducing consumption does not sound like a good thing for love-starved politicians who have no stomach to curb energy consumption through taxation, even as we waste energy in mind-boggling ways. But the simple truth is that efforts to combat climate change will be unsuccessful without steps to reduce consumption. And there is nothing as effective as higher prices if the goal is to reduce consumption. Second, there is a limit on how low energy prices can be made through subsidization. Lowering the price of renewable energy lowers the demand for fossil fuels. But lowering demand for fossil fuels means that it will lower the price of fossil fuels. A lower price for fossil fuels encourages its use, exactly what we don't want. This "rebound" effect of lowering fossil fuel prices by subsidizing its alternatives dampens the effectiveness of subsidies in altering consumption choices. Rebound effects for various renewable fuel standards policies in the United States are estimated to be on the order of a quarter to a third of reduced emissions. 23 Moreover, at a certain point, energy prices become so low that they become irrelevant. If, hypothetically, you had a choice between buying electricity from a coal-fired plant for 3.7 cents per kilowatt-hour or buying electricity from a wind farm for 3.4 cents per kilowatt-hour, which would you chose? The answer could well be, "who cares?" For many energy consumers, the savings does not justify the time needed to investigate. Such is the pushing-on-a-string effect of trying to lower prices for everyone instead of raising them. So while¶ higher taxes and lower energy costs may seem to be a wash, they are not. Third, the effectiveness of government subsidies assumes without justification— in fact, in the face of a mountain of evidence to the contrary— that it is possible to identify the "best" renewable energy technologies, or in general the "best" ideas to reduce greenhouse gas emissions. Too often, legislators think they catch wind of a great idea— such a revolutionary way of doing something that they can hardly resist the temptation to lend some assistance (all the better if the idea comes from a

constituent or potential donor). It requires a bit of gullibility to ignore the failure of these supposedly great ideas to attract sufficient private financing. The danger is not so much in the waste of taxpayer dollars— this is addressed in another part of this chapter— but that emissions reductions will be both smaller and costlier than if a better instrument was used. worth noting a few instances in which subsidization may be option. Some greenhouse gas problems are genuinely difficult address without a carrot (subsidy), rather than a stick (tax). For example, it is hard to imagine a regulatory scheme dealing comprehensively and effectively with the prevention of deforestation, which accounted for 12 percent of greenhouse gas emissions in 2005. 24 How, for example, is anybody to stop the deforestation of the Amazon rainforest by those that either legally or illegally have the ability to cut down trees? Where state enforcement of illegal logging has been poor, the offer of periodic cash payments to private individuals to keep trees standing may be more effective. In situations involving poor enforcement mechanisms— most prominently in developing countries— the infusion of money may be required. In some developing countries, there is insufficient economic wealth for markets to actually exist, so that market mechanisms do not create markets at all. Generally, however, subsidization as a governmental policy on reducing greenhouse gases has not been targeted at developing countries, or other situations in which subsidies genuinely work better. Government subsidization has been mere political grease, an overused salve for the perceived pain from the prospect of economic restructuring. Rather than actually minimize the pain, however, it merely shifts it into onto unwitting taxpayers, current and future. Government subsidization should be viewed with skepticism, rather than being the presumptive first option.

Subsidies are a waste of money- nearly anything can be considered a "renewable energy"

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 23-5; kdf)

Finally, there is never any shortage of proposals that involve, to varying degrees of chutzpah, government subsidies for various programs or projects that may or may not lower greenhouse gas emissions, but at least purport to do so. In theory, government subsidies could accomplish the exact same things as carbon taxes or cap-and-trade programs. While carbon taxes and cap-and-trade programs seek to raise the price of all things carbon, subsidies seek to lower the price of things noncarbon or lower-carbon. All of these programs seek to address externalities— costs that result from an action that are not fully taken into account. Pollution externalities are thus the costs of pollution that the polluter does not fully consider when deciding how much and how to produce. By raising the price of carbon emissions, carbon taxes and cap-and-trade programs seek to internalize the externality of carbon dioxide emissions— the contribution to climate change made by the emitter, be it a large industrial emitter as it makes decisions about production, or by an individual as she decides whether to drive or take the bus to work. A carbon tax or a cap-and-trade program would raise the cost of emitting, inducing the industrial emitter to produce less or emit less, and making driving more costly for the commuter. A subsidy might internalize the externality by rewarding the emitter for emitting less, or rewarding the commuter for taking the bus by reducing her fare. On the blackboard, then, one might see taxes and subsidies as mirror images of the same price-oriented approach. In practice, subsidies raise a number of issues that make them much less effective and much more costly than either carbon taxes or cap-and-trade programs. is worth distinguishing between two kinds of government subsidies in the climate change context: price-oriented subsidies and research and development funding. Price-oriented subsidies are commonly awarded to some renewable energy sources. Certain specific renewable energies enjoy the benefit of a payment for every kilowatthour of electricity generated. 17 Utilized in this way, subsidies really do internalize an externality generated by greenhouse gas emission. Burning fossil fuels and emitting carbon dioxide is forgoing a marginal benefit in the form of the per-unit subsidy. Two things are worth noticing about this kind of subsidy, however. First, offering a subsidy for renewable energy requires a definition of "renewable energy." In the Internal Revenue Code, the production tax credit applies to "certain renewable resources," (emphasis added) which includes "refined coal," which must be certified by the emitter as producing a "qualified emission reduction." 18 It excludes many other renewable energy technologies that have not yet been discovered or been recognized by lawmakers as having economic or environmental potential. Second, the subsidy does not necessarily scale with the environmental harm prevented, like a carbon tax does. A renewable energy subsidy helps all renewable energy sources as against any energy source not on the list of recognized "renewable resources." Thus, it provides a comparative advantage as against all fossil fuel sources, without discriminating— carbon-intensive coal and much less carbon-intensive natural gas are disadvantaged equally. In fact, depending on how "refined coal" is treated, an electricity producer could receive a subsidy for burning coal instead of natural gas. A second kind of subsidy in the climate change context is direct government support of research and development, including the funding of pilot projects and prototypes. The subsidized projects are believed, in the long run, to help lower emissions. For example, a great deal of attention

and government support is currently offered for development of “carbon capture and sequestration” technology, which seeks to suck out the carbon dioxide from fossil fuel combustion (mostly coal) at some stage, and store it in leakproof containers or underground caverns, where it will not affect the Earth’s climate. This type of subsidy seeks to address the public benefits of research and development, boosting activity because it may produce knowledge and discoveries in a market that does not fully reward such pursuits. It also recognizes that research and development with respect to low-carbon technologies is doubly under-supplied since, in the absence of a carbon price, markets do not yet fully reward the development of lowcarbon technologies. An almost uncountable number of other seemingly greenhouse gas-reducing programs, initiatives, projects, and research ideas also vie for public monies. Subsidies take on a very wide variety of forms, and are difficult to define. Even the US federal home mortgage interest deduction is a subsidy. In this book, however, a government subsidy is defined as a policy with two characteristics: an explicit reference to carbon dioxide or another greenhouse gas, and an explicit reference to government funds. In other words, the definition of subsidies is limited to those with relatively direct price tags.

at: CCS

The plan is a last-ditch effort to save the coal industry, the counterplan is comparatively better

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 56-; kdf)

Both the United States and Canada appear headed down this treacherous path again. Another impending and potentially misguided government initiative is the subsidization of "carbon capture and storage" technology. "Carbon capture" refers to the capture of carbon dioxide emitted as a result of any combustion process, while "storage" refers to the permanent containment of the carbon dioxide, so that it does not enter the atmosphere and contribute to climate change. Carbon dioxide would typically be injected into underground "pore spaces" where it would be stored for, it is hoped, eternity. While the carbon capture and storage concept may be applied to all industrial combustion processes (and even for some noncombustion carbonemitting processes), most of the discussion and technological development has been for coal-fired power plants. The technology seems attractive, salvaging trillions of dollars of capital worldwide wrapped up in fuel combustion, and what enthusiastic policy wonks would call a potential "game-changer." Some have likened the urgency of developing carbon capture and storage to the development of the atomic bomb. In a 2009 floor speech, US Senator Lamar Alexander said "we should launch another mini-Manhattan Project and reserve a Nobel Prize for the scientist who can get rid of the carbon from existing coal plants, because coal provides half our energy." 63 But the lofty rhetoric seems misplaced for a technology that remains prohibitively expensive. As recently as 2008, demonstration costs remained in the range of 60 to 90 Euros per ton of CO 2 stored (approximately 88 to 131 US dollars per ton 64), but were expected to "come down to" about 30 to 45 Euros per ton by 2030 (approximately $45 to $62 per ton, using a 2010 currency conversion). 65 Even if this bears out, this would still be much more expensive than many dozens of other emissions abatement and reduction strategies, even notoriously expensive nuclear power. 66 Moreover, the physical challenge of capturing and storing even a modest amount of American carbon emissions is staggering. The United States currently emits around 1.5 billion tons per year of carbon from coal-fired power plants, 67 and the world's largest sequestration project, at the Sleipner gas field in the North Sea, is sequestering 1 million tons a year of carbon dioxide, or about 0.06 percent of United States emissions. 68 If carbon capture and storage were to capture all of the carbon dioxide from US coal-fired power plants, the total weight that would need to be transported would equal three times the annual volume of natural gas transported in the United States by pipeline. Dr. Joan Brennecke, director of the Notre Dame Energy Center where researchers have been working on carbon capture and storage technology for years under DOE grants, laments that despite recent advances, economical carbon capture technology is still at least a decade away from commercial application, remarking that "no matter what, it is going to be painful to do CO capture." 69 2 It is surely telling that an industry consortium formed to pursue and support a pilot carbon capture and storage project, FutureGen, lost two of its biggest industry backers, the two largest electricity providers in the United States: the American Electric Power Company and the Southern Company, in the face of the high costs of development. 70 Given these challenges and setbacks, it seems slightly overenthusiastic to call for another Manhattan project for such an expensive technique, and one that has been studied for decades with disappointing results. Once again, an expensive idea has emerged from the convergence of politics, rent-seeking, and the convenient illusion that government can provide (i.e., fund) a solution. Not all of the motivation is scandalous: the temptation for such an important problem is to see the greenhouse gas reduction effort as a "war," in which carbon capture and sequestration can be a "game-changer" in much the same way that the atomic bomb was perceived to be the game-changer needed to stop the Axis powers. Wishful thinking creates a desire to find "gamechangers." Recent technologies labeled as game-changers include: electric vehicle batteries, 71 electricity storage technology generally, 72 shale gas, 73 small nuclear reactors, 74 nuclear reactors that burn spent fuel, 75 underground coal combustion, 76 ocean thermal power, 77 a transmission line linkage, 78 and General Motors' plug-in hybrid vehicle. 79 Some of these could actually be significant breakthroughs. But most often, **politicians proposing technology subsidies for speculative technologies seems more like the behavior of the destitute and desperate, sadly spending their last dollars on lottery tickets instead of undertaking the hard work of change.** Nothing insulates a polity from its government's appetite for waste and profligacy, not even carbon taxes. But at least spending money is not the point of a carbon tax, as it is with a government subsidy. Indeed, if the goal is to reduce greenhouse gas emissions, then a policy instrument should draw on what government does well— tax— rather than on what it does poorly— make strategic market decisions. With a worrying problem such as climate change, it is too easy and too dangerous to fall into the trap of thinking that governments can "fix" the problem directly, funding a potential "home run" or

"gamechanger." 80 It is harder to create the markets that will spur development of a solution, harder to trust markets, and hardest still to tell voters that they have to help pay for the solution through higher prices.

The plan is a move by politicians to take advantage of the cognitive dissonance of the public

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 179; kdf)

People are conflicted about what to do about climate change. On the one hand, a solid majority of people, even Canadians and Americans, favor action on climate change. 61 Even though the public continues to trail scientists and probably even politicians in their understanding of climate change, they seem to have an intuitive understanding that catastrophic things could happen if greenhouse gases continue to increase, and that avoiding this risk would be good policy. 62 On the other hand, climate change is usually trumped by other issues, most prominently economic ones, when people are asked to rank them in importance. 63 So how does one reconcile these two somewhat contradictory public positions? The path of least cognitive dissonance is to be in favor of some grand-sounding, and yet not obviously painful measures to address climate change. Hence, there is appeal to "launching a Manhattan Project" to perfect carbon capture and storage, or the government launch of a hydrogen fuel cell automobile project, or a supposedly "economy-wide" cap-and-trade program that covers all polluters. These all sound grand enough to match the size of the climate change problem, and yet do not obviously cost the taxpayer, the consumer, or the voter anything. Politicians that stand to gain political support from proposing climate policy are happy to nurture these misperceptions, and public opinion polls unwittingly assist them by supplying survey results that perpetuate these misperceptions.

at: Geoengineering

Geoengineering fails- only a carbon tax solves

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p14-15; kdf)

Finally, excluded from consideration in this book are adaptation and geo-engineering measures. Adaptation is the general term for a wide range of things that can be done by a country to prepare for and adjust to life in a climate-changed world, at least as it can best be foreseen. Adaptation could include, for example, relocation of populations away from areas vulnerable to tropical storms, or the genetic modification of seeds to yield more drought-resistant crops, or the construction of sea walls to protect a city from the intruding sea. Geo-engineering measures aim to directly reduce the heat-increasing effects of greenhouse gases, by either reducing atmospheric concentration of greenhouse gases or by reducing the amount of solar radiation that is absorbed. Like adaptation, **geo-engineering consciously does not address the sources of the greenhouse gases. Proposed geo-engineering measures have included the promotion of ocean algal growth** (which would in theory capture carbon dioxide from the atmosphere), the launching of tiny particlesized mirrors into the upper stratosphere so as to reflect sunlight and prevent it from reaching the Earth, and simply painting roofs white so as to reflect sunlight more effectively and increase the amount of heat that is radiated back out into space. As I have noted in my other work, adaptation and geo-engineering, despite their own significant risks, begin to look like more palatable options as international climate negotiations continue to founder. 2 The problem of international coordination among countries (which I argue in this book is best addressed by a carbon tax) currently seems challenging enough to warrant some diversification of approaches to climate change. While the international legal community balks at the unilateralism inherent in adaptation and geo-engineering as a climate strategy, options that do not require global and crosscultural politicking begin to look attractive. Moreover, the potentially catastrophic effects of climate change are such that a portfolio of policies is likely required. 3 All that said, it is most sensible from the perspective of greenhouse gas mitigation to cabin off these kinds of strategies from the question of how to reduce emissions. It is complicated enough to consider what mitigation policies should be pursued, without complicating the question by adding in analysis of adaptation and geo-engineering measures. To reduce greenhouse gas emissions, I consider four main options: (1) a carbon tax (2) traditional environmental regulation, sometimes referred to as “command-and-control” regulation, (3) “cap-andtrade” programs in which allowances to emit are allocated and freely traded, and (4) government subsidies targeted at low-carbon technologies and processes. Again, many other ideas and combinations of ideas are a part of the wide climate change discourse, but in order to focus in on the advantages and disadvantages of the carbon tax as a fundamental approach, this book frames the discussion in the context of the main alternative policy approaches.

at: Australia Failed

The Australian carbon tax was effective – statistics prove -

McDonnell 15, (Tim, associate producer for "Climate Desk", "Even climate villain Australia might be thinking about cleaning up its act", http://grist.org/climate-energy/even-climate-villain-australia-might-be-thinking-about-cleaning-up-its-act/)

Almost a year ago, Australia made a very different kind of climate announcement: It became the world's first country to repeal a price on carbon. Back in 2012, after several years of heated political debate, Australia's parliament had voted to impose a fixed tax on carbon pollution for the country's several hundred worst polluters. The basic idea — as with all carbon-pricing systems, from California to the European Union — is that putting a price on carbon emissions encourages power plants, factories, and other major sources to clean up. Most environmental economists agree that a carbon price would be the fastest way to dramatically slash emissions, and that hypothesis is supported by a number of case studies from around the world — British Columbia is a classic success story. (President Obama backed a national carbon price for the U.S. — in the form of a cap-and-trade system — in 2009, but it was quashed in the Senate.) In Australia, the carbon tax quickly became unpopular with most voters, who blamed it for high energy prices and the country's sluggish recovery from the 2008 global recession. Abbott rose to power in part based on his pledge to get rid of the law. In July 2014, he succeeded in repealing it. Now, new data from the Australian Department of the Environment reveal that whether or not you liked the carbon tax, it absolutely worked to slash carbon emissions. And in the first quarter without the tax, emissions jumped for the first time since prior to the global financial crisis. The new data quantified greenhouse gas emissions from the electricity sector (which accounts for about a third of total emissions, the largest single share) in the quarter from July to September 2014. As the chart below shows, emissions in that same quarter dropped by about 7.5 percent after the carbon tax was imposed, and jumped 4.7 percent after it was repealed: oz-carbon-emissions4. It's especially important to note that the jump came in the context of an overall decline in electricity consumption, as Australian climate economist Frank Jotzo explained to the Sydney Morning Herald: Frank Jotzo, an associate professor at the Australian National University's Crawford School, said electricity demand was falling in the economy, so any rise in emissions from the sector showed how supply was reverting to dirtier energy sources. "You had a step down in the emission intensity in power stations from the carbon price — and now you have a step back up," Professor Jotzo said. … [Jotzo] estimated fossil fuel power plants with 4.4 gigawatts of capacity were taken offline during the carbon tax years. About one-third of that total, or 1.5 gigawatts, had since been switched back on.

British Columbia proves carbon taxes are effective

Roberts 15, (David, What we can learn from British Columbia's carbon tax", http://grist.org/climate-energy/what-we-can-learn-from-british-columbias-carbon-tax/)

For seven years, the Canadian province of British Columbia has had a carbon tax. It is, on its own terms, a resounding success – carbon emissions are falling even as the economy continues to grow. Not only is it effective, but it is, from a policy standpoint, incredibly elegant: It is predictable, rising according to a set schedule (though it topped out in 2012 — more on that later). It is broad, covering 70 percent of the province's emissions. It is simple, levied on a relatively small number of fossil fuel extractors and importers, piggybacking on an existing tax, thus requiring almost no additional administration or enforcement resources. It is revenue-neutral, offset entirely by cuts to other taxes, mainly corporate and personal income. (In fact, each year the B.C. government publishes a table showing what tax cuts were enabled by the carbon tax.)

at: International Trade

Carbon taxes wont cause a trade dispute—EVEN IF it does, it's worth the costs

Meltzer 2014 (Joshua [Fellow in Global Economy and Development, Brookings Institution, and adjunct professor at the Johns Hopkins School for Advanced International Studies]; A CARBON TAX AS A DRIVER OF GREEN TECHNOLOGY INNOVATION AND THE IMPLICATIONS FOR INTERNATIONAL TRADE; ENERGY LAW JOURNAL [Vol. 35:45]; kdf)

The United States should introduce a carbon tax. This would be a means to raise revenues to address the fiscal deficit and **complement bipartisan efforts** to incentivize innovation in the green technology sector in an effort to reduce CO2 emissions. In fact, U.S. capacity on the innovation front could end up being the greatest contribution the United States makes to reducing global CO2 emissions. Should the United States succeed in pricing carbon, a range of international trade issues will arise. Some of these are positive as they reinforce the need for liberalized trade as a driver of innovation and the production of cheap green technology. 178 For instance, a carbon price in the United States would send a strong market signal that there are commercial opportunities in finding cost-effective ways to reducing CO2 emissions, whether through incremental improvements in energy efficiency or the development of breakthrough technologies which change the energy paradigm. Maximizing this signal will require an international system that promotes international scientific collaboration but also facilitates the free flow of people, ideas, and capital to countries where they can be best used. In this world, the United States could expect to be a significant beneficiary, not only from reduced CO2 emissions but also as the world's talent migrates to places like Silicon Valley to produce another high-tech sector in clean energy technologies. Currently, there is also significant government involvement in the clean energy space, and this is likely to continue for some time. This involvement has raised a range of trade concerns and in a number of instances has been challenged at the WTO.179 Balancing efforts to stimulate green technologies with the gains from an open trading system based on WTO rules is an ongoing challenge. There is no reason climate change needs to be tackled at the expense of liberalized trade, an outcome which would make developed countries and in particular developing countries significantly worse off. This is particularly true in the Asia-Pacific region that is deeply enmeshed in global supply chains.180 Ensuring that government support is developed in ways that are WTO consistent will leave governments with plenty of room to promote ambitious climate change action but in ways that do not discriminate against goods and services based on their country of origin. Moreover, as outlined above, climate change policies that are also WTO consistent will lead to the production of green technologies at lower costs. That said, the global impact of climate change suggests that there is need for negotiation to ensure that the WTO rules do not raise unnecessary legal risks for government when considering how best to act. A carbon tax in the United States will also inevitably raise domestic concerns about carbon leakage and the impact on the competitiveness of U.S. industry.181 These concerns were prominent during the debate in 2009 and 2010 over a cap and trade system, and there is no reason to think that similar concerns would not be raised by a carbon tax.182 Addressing these concerns will likely lead to some form of border tax adjustment. This will raise trade tensions that will need to be navigated. And resolving these issues through negotiation rather than WTO dispute settlement is the preferred path. In many respects, what the United States does will be central to how the development of green technologies and trade proceeds. As the world's largest economy with an unrivalled capacity for innovation and R&D, should the United States price carbon, how this incentivizes clean technology R&D and manages the implications for international trade will largely define whether the climate change and trade regimes are mutually supportive or are developed at the expense of each other.

at: Other countries

The inaction other countries does not justify inaction by the U.S.

Carbon Tax Center 2012 (Jun 29; http://www.carbontax.org/introduction/; kdf) China's leap-frogging the U.S. as the World's #1 annual carbon emitter is being cited to defend American inaction on carbon reductions. This stance ignores several central points.

For one thing, the U.S. will continue to be the world's biggest contributor to global climate change long after China, or even India, surpasses us in annual emissions. That's because carbon dioxide molecules, once emitted, remain "resident" in the atmosphere for approximately a century. Considering the many decades in which America's carbon emissions dwarfed everyone else's, of the CO2 now warming Earth, more than three times as much is the product of American emissions as Chinese emissions. Based on present trends, the earliest that China will surpass the United States as the leading source of CO2 is mid-century, i.e., around 2050. (See Slideshow, slide #8.)¶ Second, the United States will continue to dump the most CO2 into the atmosphere on a per capita basis for years to come. The average American is responsible for creating as much CO2 in a day as do people in developing countries in a week.¶ Third, just as corporations here use China's inaction on carbon to justify U.S. inaction, so too are industry and government in China using our temporizing on carbon to rationalize theirs. The way out of this "alliance of denial," as The New York Times terms it, is to stop delaying and start acting. Breaking this cycle should be easier for the United States, insofar as our per capita use of energy (and emissions of carbon) is many times greater than China's, and given our well-developed political and administrative institutions.¶ Last, while it is true that only concerted action by all the world's nations and peoples can meet the climate crisis head-on, it is equally true that every action that reduces carbon emissions helps protect and stabilize climate. The injunction that the perfect must not become the enemy of the good has never been so apt as it is here and now, in Earth's climate emergency.

If the US doesn't take the lead no one else will

Pascual and Zambetakis 2010 (Carlos [US Ambassador to Mexico, Served as VP of foreign policy @ Brookings] and Evie [Brookings]; The Geopolitics of Energy: From Security to Survival; Energy Security; 26-27; kdf)

Among these groups, the United States has the capacity to play a pivotal¶ role. China and India will not move toward more proactive domestic¶ policies if the United States does not set the example. Along with Europe¶ and Japan, the United States has the capacity to demonstrate that green¶ technology and conservation can be compatible with growth and a foreign¶ policy that is more independent of energy suppliers. The United States also stands to benefit from accelerated commercialization of green technologies¶ and the development of global markets in energy-efficient and¶ clean energy technologies. The ability of the United States to lead, however,¶ will depend on domestic action-on whether it will undertake on a¶ national basis a systematic strategy to price carbon and curb emissions. If¶ it does the scale and importance of the U.S. market can be a driver for¶ global change. If it fails to act, then the United States will find that over¶ time the opportunity for leadership to curb climate change will be replaced¶ by the need for crisis management as localized wars, migration, poverty,¶ and humanitarian catastrophes increasingly absorb international attention¶ and resources. Eventually, its failure to act will come back to U.S.¶ borders in a way that will make the Katrina disaster seem relatively tame.

at: Leakage/Cp->Intl coop

Only carbon taxes create international coordination

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 93-4; kdf)

In terms of international coordination, carbon taxes provide an advantage over cap-and-trade in three subtle ways. First, if a country legislates a cap-and-trade program expecting it to be incorporated into an international cap-and-trade program such as that contemplated by the Kyoto Protocol, it cannot realistically expect developing countries, most notably China and India, to join such an international cap-andtrade program. China and India have thus far signaled an utter refusal to consider quantitative limits on emissions. China and India are likely to be more open to a carbon tax that does not smack of a mandate externally imposed by wealthy countries. Moreover, for a carbon tax, governments get to keep the proceeds. Second, along similar lines, cap-and-trade programs that have been implemented thus far have included offsets, which have the perverse incentive of discouraging international participation in greenhouse gas reduction. Since offsets provide a means for capital flow from developed countries to developing countries, joining an international accord would carry with it the added disadvantage (in addition to the costs) of giving up this source of foreign capital. Finally, under international trade law, a carbon tax will provide a stronger basis for levying import and export adjustments when a country that reduces carbon dioxide emissions trades with a country that doesn't. I expand on these reasons below. First, cap-and-trade has simply not been an acceptable concept to developing countries. China, in particular, has been very specific about what it will not agree to. It has agreed to "voluntarily" reduce its greenhouse gas "intensity"—its greenhouse gas emissions per GDP— which will not reduce actual greenhouse gas emissions. 149 But at the time of writing of this book, China had steadfastly refused to accept a binding numerical limit on emissions, or any sort of "cap." 150 For those familiar with Chinese foreign relations, it should come as no surprise that China is reluctant to be part of an accord in which international negotiators come up with a worldwide cap on emissions and dole them out to the different countries. For one thing, any cap-and-trade allocation is likely to be anchored to some degree in historical emissions, even if subconsciously, which would heavily favor developed countries. Developing countries can and should argue that a time dimension should be introduced, and some per capita dimension should be introduced, so that developing countries have a chance to catch up, so to speak, to developed countries that have already emitted so much carbon dioxide (and for the benefit of relatively small populations). While this has an obvious deontological appeal, there is no indication at all that this would be an efficient path of emissions reduction. It is difficult, moreover, to imagine that the huge emissions reduction necessary in developed countries in order to create room for emissions growth in developing countries— on the order of 90 percent in short order— would be possible at any reasonable cost. It follows, parenthetically, that this has little chance of political acceptance among the developed countries. Also, cap-and-trade would have poor optics of having mostly Caucasian bureaucrats from Europe and North America decide how much China should get in terms of its "cap." This is likely to always be an irritant for countries like China and India, even it is left unspoken.

Carbon taxes lead to international accords—solves warming

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 94-5; kdf)

But if one reads between the lines of the steadfast opposition by China, India, and other developing countries, one sees room for a carbon tax. An international accord based on a carbon tax scheme would avoid the unfortunate appearance of China being allocated some cap amount by an external bureaucracy, and most important, would not represent, at least in their eyes, a binding limit to economic growth. Moreover, China and the developing countries that sign on get to keep the carbon tax proceeds. These proceeds could be redistributed in whatever way they deemed fit, even to industries that emit greenhouse gases. Of course, distributions should be decoupled from consumption, in order to preserve the marginal emissions reduction incentives created by a carbon tax. There is no point in collecting a carbon tax only to have the proceeds given back to emitters in proportion to their payments— that would obviously negate any marginal incentives to reduce emissions. So would distributions be, in fact, decoupled from emissions? There is no reason to believe that, for example, a central government such as that in China would be particularly keen to simply rebate carbon tax proceeds. Carbon tax proceeds represent an opportunity for central governments to use however they wish— redistributing money to poor households, improving health care, or even subsidizing clean energy technologies. **With Chinese leadership so concerned about**

wealth inequalities, it seems unlikely that carbon tax proceeds would be used to undo the marginal incentives to reduce emissions. A carbon tax, if it could be scaled up to an international accord, represents a better chance of engaging China, India, and developing countries and providing their governments with the incentives to put in place and keep in place policies to reduce emissions. Cap-and-trade programs currently have little chance of accomplishing this on either of these objectives.

International businesses get on board

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 95-6; kdf)

Finally, a third reason that carbon taxes will better encourage international coordination has to do with its subtle legal superiority in terms of justifying relief for domestic industries that might suffer a competitive disadvantage from domestic carbon pricing. International competition has remained a widespread and powerful political concern with greenhouse gas regulation. Addressing this concern has sometimes involved relief in the form of import or export adjustments, essentially rebating domestic industries that have to pay a carbon tax or are subjected to other costly greenhouse gas regulation. Even though this competitive disadvantage of paying a carbon tax is probably overblown, the possibility of relief goes a long way toward overcoming opposition to greenhouse gas regulation. 152 The problem is that this kind of relief may be inconsistent with international trade rules.

Even if other countries don't use carbon taxes, the cp still causes them to conform

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 96; kdf)

There is a way, however, to not unilaterally disarm, and a carbon tax offers the best chance to regulate domestically without doing so. If a country regulated greenhouse gas emissions and could, via border tax adjustments, equalize the international playing field, then greenhouse gas regulation would not necessarily put domestic industries at a competitive disadvantage. A border tax adjustment could take many forms, but most commonly would be the levy of an import tax on products imported from countries that did not regulate greenhouse gas emissions. So products made in countries that do not regulate greenhouse gas emissions would face a tax when they seek to export to countries that have domestic greenhouse gas regulations (with a border tax adjustment) in place, eliminating any cost disparities. Similarly, if a regulating country could subsidize the export of a product to a country that did not regulate greenhouse gases, then its exporters would be on the same footing as domestic manufacturers in that nonregulating country. Without casting any normative judgments, the countries that clearly fit the roles of this drama are the United States and China. Equal access to the huge markets in the United States for all sorts of products is a big deal, and whether a border tax adjustment could be levied on products from prolific producers such as those in China is a question of enormous importance. In the United States, this has the potential to swing legislators around to supporting regulation of greenhouse gases. Also, rising consumption levels in China suggest that the ability of American exporters to send goods to Chinese markets could be of great importance as well. The stakes of the legality of border tax adjustments at least appear to be large.

at: Feasibility

Carbon taxes will be politically feasible- cap-and-trade proves

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 121-2; kdf)

Moreover, what seems "politically infeasible" at one time, over time, can change. For decades, economists argued that cap-and-trade programs represented a paradigm-shifting approach to environmental law, one that could vastly improve not only the efficiency of pollution abatement, but also produce better environmental outcomes. For decades, this instrument languished, as did the economists that advocated it. For decades, cap-and-trade faced seemingly insurmountable political economies that favored the status-quo command-and-control style of regulation. Industries were comfortable with having certainty in their compliance— buy a piece of equipment, and be confident of compliance. Regulators were comfortable with regulating that which they could actually see and confirm: the installation of a piece of equipment. Environmental lawyers and environmental organizations were comfortable and very much invested in a tangled legal system with the ambiguities that command-and-control produces, and with the possibilities for litigation that these ambiguities produce. There was a time in which this iron triangle of vested interests would have seemed difficult to dislodge. And it was not as if command-andcontrol regulation accomplished nothing; on the contrary, a costbenefit analysis of the first twenty years of the Clean Air Act— a command-and-control-only era— found that the benefits outweighed the costs by an order of magnitude. 7 But cap-and-trade could promise more. Over time, the constant haranguing of economists and other academics found more and more audiences, and over time, new political actors emerged, and others began to pick up on the benefits of capand-trade as representing a substantial improvement over commandand-control. Some environmental organizations, infused with economic literacy for the first time, came to appreciate the benefits of cap-and-trade. Some conservative politicians, traditionally hostile to government regulation, came to appreciate the libertarian streak in cap-and-trade. It was President George H. W. Bush, and his combatively conservative chief counsel, C. Boyden Gray, who helped push the sulfur dioxide emissions trading program through Congress in 1990. And with the growth of environmental economics as an academic field of study, a new breed of policy analysts were produced from colleges and universities that began to populate government agencies and think tanks and gradually transform the conventional wisdom of environmental regulation. The coalitions that formed to support the sulfur dioxide cap-and-trade— small government advocates and environmental advocates— seemed like strange bedfellows at first but, over time, became viewed as being, if not normal, at least unsuspicious.

at: Regressive

Revenue recycling guarantees that carbon taxes aren't regressive

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 131-3; kdf)

All that said, calls for redistributions as part of greenhouse gas policy should not be ignored. Even most advocates for a carbon tax would concede that if the revenues from a carbon tax were simply absorbed into the governmental treasury, then the carbon tax would indeed be regressive, as several studies seem to indicate. 21 The question is, however, how to address these effects. In part this is such a compelling question because the revenues from a carbon tax can be used to address the regressiveness. This problem is solvable. The key to addressing the regressiveness problem of carbon taxes is to return, or "recycle," at least a large portion of the carbon tax revenues. A number of schemes have been proposed or implemented to recycle the tax revenues back to taxpayers in a way that blunts or even reverses the economic pain suffered by poor households. Provided that the recycling or return of revenues to taxpayers is decoupled from consumption decisions, the revenue "recycling" schemes can preserve the incentive for people to consume less while serving as a wealth redistributive scheme. Revenue recycling has a very limited history, with only a few examples. Sweden instituted a per-kilogram tax on NO x emissions which, as noted above, has been highly successful, which refunded the proceeds back to the taxpaying NO x emitters. This revenue recycling scheme, covering only electricity generating plants with more than 25 GWh of production per year, refunded the proceeds back in proportion to energy production. The Swedish NO x charge thus provides a reward in the form of a net subsidy to those electricity-generation plants that are able to produce electricity more efficiently— those that produce more electricity per unit of emitted NO x . It is an interesting experiment, and one that may have a tangential effect on regressiveness, by keeping electricity rates down while offering a positive incentive to innovate. But it does not substantially address concerns with regressiveness, since ratepayers of the firms that lose out under such a scheme— the electricity generating firms that are less clever and do not find a way to emit less NO x —could themselves be paying more for electricity. The British Columbia carbon tax is thus the most prominent experiment to date with revenue recycling to reduce regressiveness. Political economy considerations played prominently in the design and implementation of the BC carbon tax. Because the only serious rival in British Columbia to the governing Liberal Party was the politically more liberal New Democratic Party, it was important for the carbon tax to address concerns with regressiveness. It was, in fact, a very interesting political move to split the NDP's traditional base of environmentalists and those concerned with economic inequality. This was done by a promise to recycle revenues. So seriously did the governing British Columbia Liberal Party take this bit of political strategizing that, as noted above, the carbon tax legislation includes a provision that penalizes the minister of finance personally to the tune of a 15 percent salary cut if somehow the proceeds from the carbon tax were not fully returned in the form of revenue give-backs to taxpayers. 22 Included in the revenue give-backs are: (i) a low-income refundable credit (the "Climate Action Tax Credit") of $100 per adult and $30 per child, (ii) a reduction in personal income taxes by 5 percent on the first $70,000 of income, and (iii) reductions for corporate income taxes 23 In addition, along with the rollout of the provincial budget that detailed the carbon tax and the revenue recycling schemes, the province issued a one-time Climate Action Dividend of $100 per person for every resident of British Columbia as of December 31, 2007. 24 It is easy to claim that the revenue recycling solves the regressiveness problem of the BC carbon tax— as the governing Liberal Party emphatically did— but it is not entirely clear that it was successful, nor what exactly what that would mean. It is an almost impossible claim to falsify, as it impossible to know exactly how much each household paid in carbon taxes. Clearly, it would be impossible to make determinations on a household-by-household basis, but besides that, there are direct carbon emissions— driving a car and burning gasoline— and indirect emissions— buying goods that were made from greenhouse gasemitting processes, those embedded emissions of products consumed by each household. Determining direct emissions in disaggregated income classes would be challenging, and determining indirect emissions impossible. Even gasoline has an uncertain carbon footprint, some of it being produced by traditional methods, and some of it being produced in Canada's oil sands region by extremely energyintensive refining methods. And aside from fossil fuel consumption, what about the carbon footprint of produce (locally grown producers paying the carbon tax, importers not), or a myriad of electronic components in a myriad of consumer products? Almost every single good consumed has a carbon footprint, and few of them are measurable. Finally, there is adjustment and substitution: even poor households are apt to be willing and able to change some things to economize if there is a price on carbon dioxide. But as the West and Williams study illustrates, it requires some econometric estimations.

Studies claiming carbon taxes appeal to emotions, not economic logic

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 137-8; kdf)

Regressiveness is an important consideration when weighing changes to tax policy, but the obstacles to designing a progressive carbon tax seem to be solvable. Because economic expenditures are uncertain and because regressiveness itself is susceptible to many definitions, it is probably impossible to prove that revenue recycling reverses the regressive effects of carbon pricing. But it is simple enough to formulate a package of tax policies that utilize carbon tax proceeds (or auctioned allowance proceeds under cap-and-trade) to subsidize lowincome households and lessen, if not entirely eliminate, any regressive impacts. **Those who oppose carbon taxes on grounds of regressiveness often ignore these possibilities, relying on emotion rather than economic facts.** At the same time, policy makers have been incredibly timid in shying away from carbon pricing, and allowing the shrill to steer the debate away from carbon taxation. So, we are left with the self-reinforcing notion that even mentioning carbon taxes is political suicide. Moreover, of all of the types of government policies that are held hostage to income inequality issues, carbon pricing is quite possibly the most important policy, and the one with the smallest regressive effect. In the past several years, the US government has spent tens of billions of dollars saving from bankruptcy two of the most stubbornly inefficient firms in the history of human industry: automakers General Motors and Chrysler. In addition, the United States government has spent billions more on bailouts of financial firms that made unwise strategic investments that they did not even understand. Acknowledging that there were macroeconomic benefits to these bailouts, most of the net winners of this generosity have been shareholders, which are by and large the affluent half of the US population (and of foreign shareholders of these corporations, which are likely to be even more affluent). The effects of spending these billions of dollars will not be obvious to most Americans for a long time, but cannot portend well for taxpayers of modest means. For all of the great many reasons for the unacceptable present and future levels of economic inequality in the developed countries of the world, especially in North America, carbon pricing leading to higher energy prices would be a long, long way from being the most egregious one.

at: Ineffectiveness

Short-term reductions matter less than long-term reductions in the aggregate

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 140-1; kdf)

Most energy analysis is conducted on own-price elasticities, although income also figures very prominently in energy consumption. There are short-term and long-term elasticities— adjustments that are made in the relatively short term— on the order of a few months— and those that are made for the longer term. Long-term elasticities are invariably greater, since at any given time, the timing may or many not be right for any individual household to make an adjustment. Over a longer period of time, there arise more and more times during which an adjustment— some decision that might be affected by a price— seems appropriate. For example, a family that has just purchased a new sport-utility vehicle would not contemplate replacing it even if gasoline prices rose sharply. One would expect very few adjustments of that sort. However, over a fiveor ten-year period, as the sport-utility vehicle starts to age and incur more maintenance costs, and as it nears the end of its useful life, a replacement decision is more likely to take into account gasoline prices. As the same family contemplates what they will buy to replace that sport-utility vehicle, the family has a wider array of options available than it does when it has a brand-new shiny SUV. And in the aggregate, over a longer period, more and more households are likely to arrive at that decision point at which they contemplate replacing an aging vehicle, and more adjustments are likely to be made. As long-term elasticity takes into account this greater number of adjustments, it would naturally be larger than short-term elasticities. Among commodities, fossil fuel usage is one of the more studied phenomena, and the likelihood that people adjust to even small price changes in fossil fuel price is so well-established that it almost rises to the level of an economic maxim. While one might ask oneself whether a family might change their mind about anything if the carbon price is as small as $9 per ton of CO 2 (translating into 2.4 cents per liter at the gas pump), there are a myriad of other decision makers that could well change their behavior. As argued above, the University of British Columbia is just such an entity. Facing a tax liability that would be considered small by industrial standards, but significant to an academic institution or a medium-sized business or industry, it set about finding ways to reduce its reliance on fossil fuels for powering the campus. For decades, economists have been studying the aggregate responses to change in energy prices. The range of estimates can be quite large, as some studies are limited to certain regions or countries, and some are limited in time, so the economic environment in which price changes are studied can be quite varied. As an empirical matter, it is safe to say that long-term elasticities are indeed greater than shortterm elasticities. It is also likely that industrial and commercial consumers have larger long-term elasticities than residential consumers. 43 So it might be misleading for individuals to examine their own personal situation and ask themselves, "would I turn down my thermostat if the price of natural gas went up by 5 percent?" The point is how much, in the aggregate, all consumers of energy change their behavior, and on this score, industrial and commercial consumers, which accounted for half of all energy consumption in the United States in 2008 (with residential accounting for 22 percent), 44 would provide a different answer.

Even if the cp isn't 100 percent effective, it is still beneficial

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 142-3; kdf)

But none of this is an argument against carbon taxes. It may be true that there are barriers to energy efficiency that carbon pricing cannot solve by itself. That does not mean that there should be no carbon price at all. To return to a theme in this book, a carbon tax could well complement other policies designed to bring about behavioral and structural change to reduce energy usage and carbon dioxide emissions. The mistake with arguing that a carbon tax is ineffective is that it confuses individual instances of ineffectiveness with predictions about behavior in the aggregate. For small carbon taxes, there is indeed no guarantee that even a significant portion of energy consumers would change their behavior at all, let alone turn down their thermostats. A carbon tax would have to be significant, and would have to increase over time to keep pace with inflation, and with what economists believe is an increasing urgency over time to reduce emissions. If a reasonably large carbon tax can be implemented, there would be a myriad of opportunities to reduce emissions that, in the aggregate, could make a difference. From the Dogfish Head Craft Brewery in Delaware to the University of British Columbia to restaurants and universities buying James Peret's Vegawatt generator, changes

large and small are made to reduce carbon dioxide emissions. It could even be unimportant if the vast majority of households in British Columbia simply ignored the BC carbon tax. The BC carbon tax would serve a valuable purpose if, in aggregate, other carbon dioxide-reducing changes throughout the provincial economy add up to something substantial. The vast amounts of economic research on energy usage strongly suggests that this will be the case.

at: CCPA Study

The CCPA study is flawed- 2 reasons

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 133-4; kdf)

There are at least two significant flaws in the CCPA analysis, however. First, as the CCPA report explains, "household size increases with income." 26 This is an acknowledgment that individuals and households move up income strata over time. Over time, singleperson households marry and have children, and over time, incomes tend to increase. There is thus an ignored time dimension to the CCPA analysis that was studied by Hassett and his coauthors. Making sure that poorest British Columbians benefit more than others is in part helping people at a certain stage of their lives. It is thus an oversimplification to characterize the British Columbia tax as choosing the rich over the poor, as if everyone in the poor category were chronically poor. This also undermines the notion that individuals in higher-income households have larger carbon footprints. Larger households do, but because there are more members of larger households. The second flaw in the CCPA analysis is its admission that it does not take into account any substitution effects. 27 It asserts that a "dynamic analysis would not change the results in a meaningful way in the short term. Because of the small size of the tax, it will have little impact on consumer behaviour." 28 Knowing from the West and Williams study that the lowest quintiles often make the most substitutions, this is a significant leap. Because the carbon tax is quite small, the differences in incidence of the carbon tax are quite small, so even a little bit of substitution has the potential to change the results. It could be that after substitution, CCPA's conclusions do not hold. The West and Williams study used consumer expenditure data to calculate price elasticities of households broken down into five quintiles by income. 29 Incorporating this extra important step would seem to be a reasonable refinement of the CCPA study.

at: Policy Crowd out

Policy crowd out arguments only feed climate skepticism—not a reason to vote aff

Hsu 2011(Shi-Ling [Larson Professor Florida State University College of Law] The case for a carbon tax: Getting past our hang-up to effective climate policy; p 145; kdf)

Another response to the serial-policy problem is simply that climate policy cannot be a one-and-done proposition. This unhappy truth is typical of the difficult things that need to be effectively communicated about climate change to a general public still lagging in understanding of the climate problem and the feasible solutions. That a general public would like some finality to climate policy and carbon prices has not stopped economists from prescribing a carbon tax that rises over time, matching the increasing marginal social damages of carbon dioxide emissions. Nor should it. Emitting greenhouse gases will become more costly as the world approaches a likely future with increasingly severe climatic changes. Abating greenhouse gases too much at any given time detracts from efforts to abate at other times. Along similar lines, while people may balk at taking a costly first step that will not necessarily provide a complete solution, the iterative nature of climate science and climate policy is such that this is likely inevitable. This disquieting indeterminacy is fodder for climate skeptics, who have tapped into the uncertainty to sow doubt about the risk of climate change. But honest, forthright policy is not playing into the hands of climate skeptics. Attempting to evade or obfuscate the inconveniences and costs of climate policy is playing into the hands of climate skeptics. Further, it has to be courageously said there is uncertainty about climate science, and that a current policy may be too much or may be too little. Again, policy making under extreme uncertainty is not really new; it is just that the analogies to familiar policies need to be made. Very little is known about when the next major earthquake will strike California or the Pacific Northwest. That does not render the policy of seismic upgrading of public schools and nuclear reactors irrational.

at: Competitiveness

A carbon tax would have no impact on competitiveness

Mann 2002 (Roberta [Associate Professor of Law, Widener University School of Law, Wilmington, Delaware; J.D., Arizona State University School of Law; LLM, Georgetown University Law Center]; 51 Am. U.L. Rev. 1135; kdf)

The United States has the lowest environmental taxes of all OECD countries. n607 Imposing a carbon tax would provide revenue for increased reductions in other forms of taxes, while providing collateral benefits. The collateral benefits would include decreased health risks, lowered chance of catastrophic flooding, and preservation of climate dependent ecosystems. A carbon tax would not necessarily reduce American industry's competitiveness. The OECD notes that competitive concerns are lessened when **substitutes are available** (such as fuel cell technology) **and when the carbon tax revenues are recycled back into the business sector**. n608 A carbon tax would provide the "stick" to go along with the "carrot" of tax incentives for alternative energy sources and carbon sequestration. Furthermore, pollution taxes avoid some of the pitfalls of other market-based instruments. n609 The Bush Administration appears to favor voluntary emission reductions over mandatory caps. n610 While a carbon tax is theoretically a voluntary measure because industry can choose to reduce emissions to avoid the tax, it seems unlikely that this Congress would impose another tax on business, even if it planned to recycle the revenues from that tax to reduce other tax burdens. n611

at: Politics Links- Popular

A carbon tax would be popular- three reasons

Rausch and Reilly 2012 (Sebastian and John [John M. Reilly is co-director for the Joint Program on the Science and Policy of Global Change at the Massachusetts Institute of Technology and a senior lecturer at MIT's Sloan School of Management. Sebastian Rausch is an assistant professor of energy economics at ETH Zurich and contributes to research at the Joint Program on the Science and Policy of Global Change at MIT]; Carbon Tax Revenue and the Budget Deficit: A Win-Win-Win Solution?; MIT Joint Program on the science and policy of global change; Rep No. 228; Aug; kdf)

While raising taxes is never popular, a carbon tax is potentially a win-win-win solution. First, ¶ carbon tax revenue can allow revenue-neutral relief on personal income taxes, corporate income ¶ tax, or payroll taxes, or could be used to avoid or limit cuts to social programs (Medicare, ¶ Medicaid, Social Security, Food Assistance) or Defense spending. Among the revenue raising ¶ options evaluated by the CBO was a carbon tax that would start at $20 in 2012 and rise at a ¶ nominal rate of 5.8% per year, approximately 4% in real terms given the underlying inflation rate ¶ they projected. By their estimate it would raise on the order of $1.25 trillion over a 10-year ¶ period. Second, economic analysis has demonstrated the potential for a tax interaction effect ¶ whereby recycling of revenue from a carbon tax to offset other taxes could reduce the cost of a ¶ carbon policy or even under some circumstances boost economic welfare (Bovenberg and ¶ Goulder, 1996). The Bush tax cuts and other temporary tax relief measures are due to expire at ¶ the end of 2012. A carbon tax could allow their further extension. And, third, a carbon tax would ¶ lower fossil fuel use, reducing carbon dioxide emissions; and lowering oil imports.

A carbon tax is politically feasible

Colman 2012 (Zack; Study: Carbon tax could raise $1.5 trillion; Aug 27; http://thehill.com/blogs/e2-wire/e2-wire/245587-study-carbon-tax-could-raise-15-trillion; kdf)

Taxing carbon would generate $1.5 trillion, potentially giving politicians cover from making politically difficult decisions on taxes and social spending cuts, according to a study by the Massachusetts Institute of Technology (MIT) released Monday.¶ A carbon tax would take pressure off Congress to find "tradeoffs" between closing the deficit gap and reviving the economy, according to John Reilly, an author of the study. ¶ "Congress will face many difficult tradeoffs in stimulating the economy and job growth while reducing the deficit," Reilly, the co-director of MIT's Joint Program on the Science and Policy of Global Change, said in a statement. ¶ "But with the carbon tax there are virtually no serious tradeoffs. Our analysis shows the overall economy improves, taxes are lower and pollution emissions are reduced."

at: Politics- Unpopular

Not politically feasible

Spence 2011 (David [Assoc prof of Law @ U of TX]; Regulation, "Republican Moments," and Energy Policy Reform; 2011 B.Y.U.L. Rev. 1561; kdf)

Oil refineries would face similar costs. Many of these costs would be passed on to consumers. Expensive electricity or gasoline not only upsets consumers (read: voters), but also poses a risk to the already struggling American auto industry whose congressional representatives come from political swing states in the Midwest. Some fossil fuel companies have indicated that they would favor a carbon tax over Clean Air Act regulation or a marketable permit system, n185 but they prefer no emissions reductions at all. n186 Of course, [*1604] these interests perceive mandatory greenhouse gas emissions reductions as a threat regardless of the regulatory instrument used to pursue that goal.

Executive CP

1NC - XO

CP Text: The president should issue an executive order [insert plan].

An executive order can stop mass surveillance, the president just doesn't want to

Chambers 5/25 – White House correspondent (Francesca Chambers, May 25, 2015, "'What's he waiting for?': Rand Paul says Obama should end the NSA's mass surveillance program through an executive order - but the White House says that's not possible," http://www.dailymail.co.uk/news/article-3097634/What-s-waiting-Rand-Paul-says-Obama-end-NSA-s-mass-surveillance-program-executive-order-s-against-it.html), acui

But Republican Senator Rand Paul says there's another option: an executive order.¶ 'Here's the thing about the president: He's disingenuous about this. The president started this program through executive order — he could end it anytime,' Paul said during an appearance today on CBS This Morning. ¶ If the president does not believe the NSA's bulk data collection program should continue in its current form, Paul said, according to the Washington Times, 'Why doesn't he stop it? What's he waiting for?'¶ Paul, paraphrasing the president, said that Obama has approached reforms to the program by saying, 'Oh, Congress can stop it.' ¶ 'He started it on his own. He should stop it,' the Republican presidential candidate charged, 'and I've asked the president repeatedly, "Stop the program." '¶ Earnest said this afternoon, however, that Obama does not have the ability to alter the program with a swish of his pen.¶ 'The authorities that are used by our national security professionals to keep us safe are authorities that were given to those national security professionals by the Congress and those authorities can only be renewed by the United States Congress through an act of Congress,' he said. ¶ Earnest said he'd not yet listened to Paul's interview, but disputed his claim that the president could address the surveillance program through an executive order.¶ 'If the Senate doesn't act, then there is no way to prevent those authorities from expiring,' he said.¶ Asked by the Daily Mail to point to the executive order that Senator Paul was referring to during is TV appearance earlier today, which he also mentioned on a separate occasion last week in an overnight Senate speech, his office said that it was secret, just like the program was until Edward Snowden blew the whistle on it two years ago.¶ The program was begun without the knowledge of Congress, his office pointed out, and a court ruled recently that the Patriot Act did not authorize its creation. That is why Paul is under the impression that the president could unilaterally put a stop to it as the highest ranking member of the executive branch. ¶ The White House doesn't want to completely shackle the NSA, however. It wants continue the data collection program - but it wants those records to be stored by phone companies, not the NSA.

1NC – Self-Restraint

CP Text: The executive branch should substantially curtail [insert plan].

Presidential Policy Directive-28 proves executive action solves where the other two branches have failed

Edgar 4/13 -- visiting fellow at the Watson Institute at Brown University, ACLU's national security policy counsel (Timothy H. Edgar, April 13, 2015, "The Good News About Spying," https://www.foreignaffairs.com/articles/united-states/2015-04-13/good-news-about-spying), acui

Although rising public anger is welcome, it is misdirected. A fair examination of the Obama administration's record over the last 18 months shows real accomplishments on surveillance reform. In sharp contrast to the inaction of Congress and U.S. courts, Obama has taken several meaningful steps to limit government surveillance and make surveillance policies more transparent.¶ Despite high hopes for a fresh start on civil liberties, during his first term in office, Obama ratified and even expanded the surveillance programs that began under former President George W. Bush. After NSA contractor Edward Snowden began revealing the agency's spying programs to The Guardian in 2013, however, Obama responded with a clear change of direction. Without great fanfare, his administration has made changes that open up the practices of the United States intelligence community and protect privacy in the United States and beyond. The last year and a half has been the most significant period of reform for national security surveillance since Senator Frank Church led the charge against domestic spying in the late 1970s. ¶ In 2013, at Obama's direction, the Office of the Director of National Intelligence (ODNI) established a website for the intelligence community, IC on the Record, where previously secret documents are posted for all to see. These are not decades-old files about Cold War spying, but recent slides used at recent NSA training sessions, accounts of illegal wiretapping after the 9/11 attacks, and what had been highly classified opinions issued by the Foreign Intelligence Surveillance Court about ongoing surveillance programs.¶ Although many assume that all public knowledge of NSA spying programs came from Snowden's leaks, many of the revelations in fact came from IC on the Record, including mistakes that led to the unconstitutional collection of U.S. citizens' emails. Documents released though this portal total more than 4,500 pages—surpassing even the 3,710 pages collected and leaked by Snowden. The Obama administration has instituted other mechanisms, such as an annual surveillance transparency report, that will continue to provide fodder for journalists, privacy activists, and researchers.¶ The transparency reforms may seem trivial to some. From the perspective of an intelligence community steeped in the need to protect sources and methods, however, they are deeply unsettling. At a Brown University forum, ODNI Civil Liberties Protection Officer Alexander Joel said, "The intelligence community is not designed and built for transparency. Our culture is around finding our adversaries' secrets and keeping our own secrets secret." Accordingly, until only a few years ago, the intelligence community resisted making even the most basic information public. The number of FISA court opinions released to the public between 1978 and 2013 can be counted on one hand.¶ Beyond more transparency, Obama has also changed the rules for surveillance of foreigners. Until last year, privacy rules applied only to "U.S. persons." But in January 2014, Obama issued Presidential Policy Directive 28 (PPD-28), ordering intelligence agencies to write detailed rules assuring that privacy protections would apply regardless of nationality. These rules, which came out in January 2015, mark the first set of guidelines for intelligence agencies ordered by a U.S. president—or any world leader—that explicitly protect foreign citizens' personal information in the course of intelligence operations. Under the directive, the NSA can keep personal information in its databases for no more than five years. It must delete personal information from the intelligence reports it provides its customers unless that person's identity is necessary to understand foreign intelligence—a basic rule once reserved only for Americans.¶ The new rules also include restrictions on bulk collection of signals intelligence worldwide—the practice critics call "mass surveillance." The NSA's bulk collection programs may no longer be used for uncovering all types of diplomatic secrets, but will now be limited to six specific categories of serious national security threats. Finally, agencies are no longer allowed simply to "collect it all." Under PPD-28, the NSA and other

agencies may collect signals intelligence only after weighing the benefits against the risks to privacy or civil liberties, and they must now consider the privacy of everyone, not just U.S. citizens. This is the first time any U.S. government official will be able to cite a written presidential directive to object to an intelligence program on the basis that the intelligence it produces is not worth the costs to privacy of innocent foreign citizens.

Solvency

General – XO

Credibility checks -- executive order is at least as binding as legislation

Posner and Vermeule 11 – Kirkland & Ellis Distinguished Service Professor of Law & Arthur and Esther Kane Research Chair at University of Chicago and John H. Watson Professor of Law at Harvard, respectively (Eric A. Posner and Adrian Vermeule, February 16, 2011, "The Executive Unbound: After the Madisonian Republic," p. 138-9, https://books.google.com/books?id=yaWuHE_PrJ4C&printsec=frontcover&source=gbs_atb#v=onepage&q&f=false), acui

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.59 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is "yes, at least to the same extent that a legislature can." Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.60 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of self-binding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.61 However, there may be political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president's own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.

General – Self Restraint

Only executive self-restraint solves

Will 14 – columnist on politics and domestic and foreign affairs (George F. Will, November 28, 2014, "A case for self-restraint," http://www.washingtonpost.com/opinions/george-will-a-case-for-self-restraint/2014/11/28/f129c8cc-7585-11e4-9d9b-86d397daad27_story.html), acui

Before conservatives had the disorienting delight of Ronald Reagan's presidency, they had a healthy suspicion of executive power and an inclination to favor congressional supremacy. (See "Congress and the American Tradition" by James Burnham, one of William F. Buckley's collaborators in founding National Review.) Congress, however, has long since ceased to be a reliable custodian of its own powers.¶ And now it has permanent and deepening attention deficit disorder: It can neither control nor even maintain meaningful oversight over the sprawling government it has created. According to historian Morton Keller in "America's Three Regimes," members of early Congresses were more numerous than federal bureaucrats. Today there are many more than 535 executive departments, agencies and other entities that Congress funds without effective supervision and to which a harried, distracted Congress delegates discretion tantamount to legislative power. James Buckley, in his forthcoming book "Saving Congress from Itself," reports:¶ "Shortly after my election to the Senate in 1970, I was handed a recently completed study of Congress that had concluded that the workload of the average congressional office had doubled every five years since 1935. . . . I can certify that during my own six years in office, I witnessed a sharp increase in the already frenetic pace of the Senate and an equally sharp decline in its ability to get very much done that could honestly be labeled 'thoughtful.' "¶ There have been 1,950 senators since the Constitution was ratified, and none has done as much damage to the institution's deliberative capacity as Harry Reid has done as majority leader. He has broken its rules in order to rewrite its rules and has bent its procedures, all in the service of presidential preferences. He and his caucus exemplify how progressives, confident that they know history's proper destination, are too results-oriented to be interested in institutional conservation.¶ America's two vainest presidents, Woodrow Wilson and Obama, have been the most dismissive of the federal government's Madisonian architecture. Wilson, the first president to criticize America's Founding, was especially impatient with the separation of powers, which he considered, as Obama does, an affront to his dual grandeur: The president is a plebiscitary tribune of the entire people, monopolizing true democratic dignity that is denied to mere legislators. And progressive presidents have unexcelled insight into history's progressive trajectory, and hence should have untrammeled freedom to act.¶ Courts will not try to put a bridle and snaffle on a rampaging president, and perhaps Congress cannot, even if it summons the will to try. So we are reduced to hoping for something Madison was reluctant to rely on — executive self-restraint in response to a popular demand for it.

Intent to self-restrain and Merkel proves solvency

Gerstein 13 – White House reporter, BA in government from Harvard (Josh Gerstien, December 15, 2013, "Obama plans new limits on NSA surveillance," http://www.politico.com/politico44/2013/12/obama-plans-new-limits-on-nsa-surveillance-178986.html), acui

President Barack Obama said Thursday that he'll be reining in some of the snooping conducted by the National Security Agency, but he did not detail what new limits he plans to impose on the embattled spy organization.¶ "I'll be proposing some self-restraint on the NSA. And...to initiate some reforms that can give people more confidence, " Obama told Chris Matthews in an interview recorded for MSNBC's "Hardball."¶ The president insisted that the NSA's work shows respect for the rights of Americans, but he conceded that its activities are often more intrusive when it comes to foreigners communicating overseas.¶ "The N.S.A. actually does a very good job about not engaging in domestic surveillance, not reading people's emails, not listening to the contents of their phone calls. Outside of our borders, the NSA's more aggressive. It's not constrained by laws," Obama said.¶ The president pointed to an outside panel he set up in August to look into how the government was collecting surveillance data in the era of 'big data.' The five-member group is set to deliver its final report to Obama by Dec. 15.¶ The White House has already acknowledged imposing some limits on overseas surveillance, publicly promising not to intercept phone calls of German Chancellor Angela Merkel and indicating that surveillance on leaders of other allies has also been curtailed. The moves came after Merkel complained following news reports that said her mobile phone had been tapped by the NSA. The reports, like a slew of others published in recent months on NSA surveillance, were drawn from documents leaked by former NSA contractor Edward Snowden.

FISA

Executive actions are secret and only rubber-stamped by FISA Court – means only the executive branch can curtail surveillance

Greenwald 13 -- former columnist on civil liberties and US national security issues and ex-constitutional lawyer (Glenn Greenwald, June 18, 2013, "Fisa court oversight: a look inside a secret and empty process," http://www.theguardian.com/commentisfree/2013/jun/19/fisa-court-oversight-process-secrecy), acui

The way to bring actual transparency to this process it to examine the relevant Top Secret Fisa court documents. Those documents demonstrate that this entire process is a fig leaf, "oversight" in name only. It offers no real safeguards. That's because no court monitors what the NSA is actually doing when it claims to comply with the court-approved procedures. Once the Fisa court puts its approval stamp on the NSA's procedures, there is no external judicial check on which targets end up being selected by the NSA analysts for eavesdropping. The only time individualized warrants are required is when the NSA is specifically targeting a US citizen or the communications are purely domestic.¶ When it is time for the NSA to obtain Fisa court approval, the agency does not tell the court whose calls and emails it intends to intercept. It instead merely provides the general guidelines which it claims are used by its analysts to determine which individuals they can target, and the Fisa court judge then issues a simple order approving those guidelines. The court endorses a one-paragraph form order stating that the NSA's process "'contains all the required elements' and that the revised NSA, FBI and CIA minimization procedures submitted with the amendment 'are consistent with the requirements of [50 U.S.C. §1881a(e)] and with the fourth amendment to the Constitution of the United States'". As but one typical example, the Guardian has obtained an August 19, 2010, Fisa court approval from Judge John Bates which does nothing more than recite the statutory language in approving the NSA's guidelines.¶ Once the NSA has this court approval, it can then target anyone chosen by their analysts, and can even order telecoms and internet companies to turn over to them the emails, chats and calls of those they target. The Fisa court plays no role whatsoever in reviewing whether the procedures it approved are actually complied with when the NSA starts eavesdropping on calls and reading people's emails.¶ The guidelines submitted by the NSA to the Fisa court demonstrate how much discretion the agency has in choosing who will be targeted. Those guidelines also make clear that, contrary to the repeated assurances from government officials and media figures, the communications of American citizens are – without any individualized warrant – included in what is surveilled.¶ The specific guidelines submitted by the NSA to the Fisa court in July 2009 – marked Top Secret and signed by Attorney General Eric Holder – state that "NSA determines whether a person is a non-United States person reasonably believed to be outside the United States in light of the totality of the circumstances based on the information available with respect to that person, including information concerning the communications facility or facilities used by that person." It includes information that the NSA analyst uses to make this determination – including IP addresses, statements made by the potential target, and other information in the NSA databases.¶ The decision to begin listening to someone's phone calls or read their emails is made exclusively by NSA analysts and their "line supervisors". There is no outside scrutiny, and certainly no Fisa court involvement. As the NSA itself explained in its guidelines submitted to the Fisa court:¶ "Analysts who request tasking will document in the tasking database a citation or citations to the information that led them to reasonably believe that a targeted person is located outside the United States. Before tasking is

approved, the database entry for that tasking will be reviewed in order to verify that the database entry contains the necessary citations."¶ **The only oversight for monitoring whether there is abuse comes from the executive branch itself**: from the DOJ and Director of National Intelligence, which conduct "periodic reviews … to evaluate the implementation of the procedure." At a hearing before the House Intelligence Committee Tuesday afternoon, deputy attorney general James Cole testified that every 30 days, the Fisa court is merely given an "aggregate number" of database searches on US domestic phone records.

Only the executive branch knows secret interpretations of the Constitution

Wyden 13 – senator (Ron Wyden, 2013, "Remarks As Prepared for Delivery for the Center for American Progress Event on NSA Surveillance," http://nsarchive.gwu.edu/NSAEBB/NSAEBB436/docs/EBB-104.pdf), acui

When the FISA court was created as part of the 1978 FISA law its work¶ was pretty routine. It was assigned to review government applications for¶ wiretaps and decide whether the government was able to show probable¶ cause. Sounds like the garden variety function of district court judges¶ across America. In fact, their role was so much like a district court that the¶ judges who make up the FISA Court are all current federal district court¶ judges. After 9/11, Congress passed the Patriot Act and the FISA Amendments Act.¶ This gave the government broad new surveillance powers that didn't much¶ resemble anything in either the criminal law enforcement world or the¶ original FISA law. The FISA Court got the job of interpreting these new,¶ unparalleled authorities of the Patriot Act and FISA Amendments Act.¶ They chose to issue binding secret rulings that interpreted the law and the¶ Constitution in the startling way that has come to light in the last six¶ weeks. They were to issue the decision that the Patriot Act could be used¶ for dragnet, bulk surveillance of law-abiding Americans.¶ Outside the names of the FISA court judges, virtually everything else is¶ secret about the court. Their rulings are secret, which makes challenging¶ them in an appeals court almost impossible. Their proceedings are secret¶ too, but I can tell you that they are almost always one-sided. The¶ government lawyers walk in and lay out an argument for why the¶ government should be allowed to do something, and the Court decides¶ based solely on the judge's assessment of the government's arguments. That's not unusual if a court is considering a routine warrant request, but it's very unusual if a court is doing major legal or constitutional analysis. I¶ know of absolutely no other court in this country that strays so far from the¶ adversarial process that has been part of our system for centuries.

Drones

XO for drone transparency solves – far reaching

Whitlock 14 – reporter (Craig Whitlock, Sepetember 26, 2014, "White House plans to require federal agencies to provide details about drones," https://www.washingtonpost.com/world/national-security/white-house-plans-to-require-federal-agencies-to-provide-details-about-drones/2014/09/26/5f55ac24-4581-11e4-b47c-f5889e061e5f_story.html), acui

The White House is preparing a directive that would require federal agencies to publicly disclose for the first time where they fly drones in the United States and what they do with the torrents of data collected from aerial surveillance.¶ The presidential executive order would force the Pentagon, the Justice Department, the Department of Homeland Security and other agencies to reveal more details about the size and surveillance capabilities of their growing drone fleets — information that until now has been largely kept under wraps.¶ The mandate would apply only to federal drone flights in U.S. airspace. Overseas military and intelligence operations would not be covered.¶ President Obama has yet to sign the executive order, but officials said that drafts have been distributed to federal agencies and that the process is in its final stages. "An interagency review of the issue is underway," said Ned Price, a White House spokesman. He declined to comment further.¶ Privacy advocates said the measure was long overdue. Little is known about the scope of the federal government's domestic drone operations and surveillance policies. Much of what¶ has emerged was obtained¶ under court order as a result of public-records lawsuits.¶ "We're undergoing a quiet revolution in aerial surveillance," said Chris Calabrese, legislative counsel for the American Civil Liberties Union. "But we haven't had all in one place a clear picture of how this technology is being used. Nor is it clear that the agencies themselves know how it is being used."¶ Most affected by the executive order would be the Pentagon, which conducts drone training missions in most states, and Homeland Security, which flies surveillance drones along the nation's borders round-the-clock. It would also cover other agencies with little-known drone programs, including NASA, the Interior Department and the Commerce Department. Military and law enforcement agencies would not have to reveal sensitive operations. But they would have to post basic information about their privacy safeguards for the vast amount of full-motion video and other imagery collected by drones.¶ Until now, the armed forces and federal law enforcement agencies have been reflexively secretive about drone flights and even less forthcoming about how often they use the aircraft to conduct domestic surveillance.

Obama key to set international precedent on surveillance policy – soft power

Singer and Wright 13 – Strategist and Senior Fellow at the New America Foundation, former director of the Center for 21st Century Security and Intelligence, senior fellow in Foreign Policy at Brookings and senior fellow at Brookings, respectively (Peter W. Singer and Thomas Wright, February 17, 2013, "Obama, own your secret wars," http://www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620), acui

Obama has a unique opportunity — in fact, an urgent obligation — to create a new doctrine, unveiled in a major presidential speech, for the use and deployment of these new tools of war.¶ While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield.¶ The U.S. military's unmanned systems, popularly known as "drones," now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size.¶ This is not just a military matter. American intelligence agencies are increasingly using these technologies as the tips of the spear in a series of so-called "shadow wars." These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world's first known use of a specially designed

cyber weapon.¶ Throughout this period, the administration has tried to have it both ways — leaking out success stories of our growing use of these new technologies but not tying its hands with official statements and set policies.¶ This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along.¶ But that position has become unsustainable. The less the U.S. government now says about our policies, the more that vacuum is becoming filled by others, in harmful ways.¶ By acting but barely explaining our actions, we're creating precedents for other states to exploit. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps.¶ In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties.¶ Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power. The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims.¶ Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument that we cannot confirm or deny our involvement, which no one believes, either.¶ Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the "not sure" category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists.¶ The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an "Alice in Wonderland" feel.¶ The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. After years of silence, occasional statements by senior aides are acknowledging the use of drones, while lesser-noticed working level documents have been created to formalize strike policies and even to explore what to do about the next, far more autonomous generation of weapons.¶ These efforts have been good starts, but they have been disjointed and partial. Most important, they are missing the much-needed stamp of the President's voice and authority, which is essential to turn tentative first steps into established policy.¶ Much remains to be done — and said — out in the open.¶ This is why it's time for Obama's voice to ring loud and clear. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, Obama should publicly lay out criteria by which the United States will develop, deploy and use these new weapons.¶ The President has a strong case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods.¶ But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond.¶ It's also about finally defining where America truly stands on some of the most controversial questions. These include the tactics of "signature" strikes, where the identity is not firmly identified, and "double tap" strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far.¶ The role of the President is not to conduct some kind of retrospective of what we have done and why, but to lay out a course of the future. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them?¶ There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars.¶ And, finally, the President must help resolve growing tensions between the executive branch and an increasingly restive Congress, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm's way.¶ Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel

Peace Prize winner!¶ The President's voice on these issues won't be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations.

Obama can curtail drone surveillance

EPIC 2/15 – independent non-profit research center (Electronic Privacy Information Center, February 15, 2015, "President Orders Federal Agencies to Adopt Privacy Rules for Drone Use, FAA Proposes Weak Rules for Commercial Users," https://epic.org/2015/02/president-orders-federal-agenc.html), acui

The President has issued a new Executive Order requiring all federal agencies to adopt privacy rules for drone use. The Order is intended to limit the collection and use of personally identifiable information. The rules will also require agencies to adopt transparency and accountability procedures for drone use. The Order incorporates recommendations made by EPIC in testimony to Congress and comments to several federal agencies. The Federal Aviation Administration has also proposed new regulations for commercial drone use in the United States. These rules will establish safety procedures for drone use, including maximum height, weight and line-of-sight operation, but the rules do not address the privacy impact of commercial drone use. EPIC petitioned the FAA to establish clear privacy rules for commercial drone operators.

Dual Use

Obama has used an XO for exports reform

White House 13 – (Office of the Press Secretary, March 8, 2013, "Fact Sheet: Implementation of Export Control Reform," https://www.whitehouse.gov/the-press-office/2013/03/08/fact-sheet-implementation-export-control-reform), acui

Today, the Administration announced two key steps to further the goals of President Obama's Export Control Reform Initiative, which is a common sense approach to overhauling the nation's export control system. President Obama signed an Executive Order today to update delegated presidential authorities over the administration of certain export and import controls under the Arms Export Control Act of 1976, and yesterday the Administration notified Congress of the first in a series of changes to the U.S. Munitions List.¶ Executive Order¶ Executive Order 11958 delegated authority to control exports of defense articles and services to the Secretary of State and delegated the comparable authority to control imports to the Secretary of the Treasury. The Department of State controls the export of defense articles and services on its U.S. Munitions List (USML); the Department of Justice controls their import pursuant to the U.S. Munitions Import List (USMIL) administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The USMIL was previously a subset of State's USML. The most recent comprehensive delegation of these authorities was in Executive Order 11958 of January 18, 1977. The President's new Executive Order updates delegated authorities consistent with the upcoming changes to our export control lists. It supersedes and replaces Executive Order 11958 and amends Executive Order 13222 of August 17, 2001, that pertains to the Department of Commerce-administered controls. The new Executive Order makes the following changes:¶ Consolidation of All Brokering Responsibilities with the Department of State: The Arms Export Control Act requires the registration and licensing of brokering activities for defense articles and services for both exports and imports. A broker is a person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or services. The Executive Order consolidates and delegates to the Secretary of State all statutory responsibility for maintaining registration and licensing requirements for brokering of defense articles and services on either the State or ATF lists which both control defense articles and services under the Arms Export Control Act. This one-stop approach provides better clarity for the defense trade community and makes it easier for industry to comply and for the U.S. Government to enforce.¶ Elimination of Possible "Double Licensing" Requirements: Today the Department of State licenses entire systems, including any accompanying spare parts, accessories, and attachments, yet many of these items will be moved to the Commerce list which may mean that an exporter would need two licenses instead of one. The President's delegation, via an amendment to Executive Order 13222, will allow the Department of State to authorize those accompanying items that may have moved to the Commerce list and prevent any potential double-licensing requirement. This ensures that the prioritization of our controls, in which we facilitate secure trade with Allies and partners, does not add new red tape. Items licensed or otherwise approved by the Secretary of State under this delegation remain subject to the jurisdiction of the Department of Commerce, including for enforcement purposes.¶ Congressional Notification Process: The President has directed that the Department of Commerce establish procedures for notifying Congress of approved export licenses for a certain subset of items that are moved or that may move from the State list to the Commerce list. A key feature of the President's reform initiative is to

enhance transparency with Congress and the public in the administration of our export control system. This Executive Order ensures that, going forward, the Executive Branch will continue this transparency and notify Congress about export licenses for those certain items that, while no longer subject to the statutory notification requirements of the Arms Export Control Act, warrant continued transparency and notification to Congress.¶ Other Administrative Updates: The Executive Order delegates to the Attorney General the functions previously assigned by Executive Order 11958 to the Secretary of the Treasury, reflecting the 2003 move of ATF to the Department of Justice from the Treasury (accommodated by Executive Order 13284). It also makes a number of other necessary updates to ensure that the authorities to administer our export control system are current.¶ Changes to the U.S. Munitions List¶ The cornerstone of the President's Export Control Reform Initiative is the rebuilding of the two primary export controls lists, State's USML and the Department of Commerce's Commerce Control List (CCL) which primarily controls dual-use items, i.e., commercial items with possible military applications, and some military items of lesser sensitivity. By law, everything on the USML is controlled equally, whether an F-18 fighter or a bolt that has been modified for use on that F-18, and each of these items requires an individual license. This system has created significant obstacles and delays in providing equipment to Allies and partners for interoperability with U.S. forces in places like Afghanistan, and harms the health and competitiveness of the U.S. industrial base. Rebuilding our export control lists and moving less sensitive items from the State to the Commerce list will provide us the flexibility to more efficiently equip and maintain our partner's capabilities while allowing us to focus on preventing potential adversaries from acquiring military items that they could use against us.

Obama has authority to direct Department of Commerce with XO

McNeal 14 -- Associate Professor of Law and Public Policy at Pepperdine University, specializes in security, technology and crime (Gregory S. McNeal, November 30, 2014, "Drones Face Critical Moment As White House Prepares To Act," http://www.forbes.com/sites/gregorymcneal/2014/11/30/drones-face-critical-moment-as-white-house-prepares-to-act/), acui

The second part of the executive order will address the privacy concerns associated with private uses of drones. In the order, the President will direct that the Department of Commerce's, National Telecommunications & Information Administration (NTIA) chair a process for creating privacy rules for private drone operators. The NTIA typically creates these rules by convening stakeholder meetings with individuals from industry, consumer groups, and advocacy groups.¶

Gender Aff

Presidents can unilaterally manage agencies

Waterman 9 (Richard Waterman, Professor of political science at the University of Kentucky, March 2009,Presidential Studies Quarterly, The Administrative Presidency, Unilateral Power, and the Unitary Executive Theory)

Presidents have consistently used their unilateral powers to influence the bureaucracy. Presidents can create agencies through executive orders .According to Howell and Lewis (2002) and Lewis (2003), when they do so, they create structures that are more amenable to presidential control. On the other hand, agencies tend to be more insulated from presidential power when they are created by Congress. Presidents also use executive orders to directly influence policy making at the administrative level. Reagan used executive orders to devise a system, managed through the Office of Management and Budget, by which all major rules and regulations had to pass a cost-benefit test before they could be implemented. Not surprisingly, most proposed regulations were rejected because of cost concerns, particularly in policy areas that were not favored by the Reagan administration (e.g., the environment). Reagan also used an administrative order to set up a more efficient central clearance procedure for all new rules and regulations, again monitored by the Office of Management and Budget and again generally stifling new policy initiatives. Reagan's innovations, with some modifications, have been enacted and implemented by his successors, thus establishing clear precedents for presidential action using executive orders to control the bureaucracy.

XO's can fund private sector research

XO 12591 87 (Executive Order 12591, 4/10/87 "Facilitating access to science and technology" http://www.archives.gov/federal-register/codification/executive-order/12591.html)

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Technology Transfer Act of 1986 (Public Law 99-502), the Trademark Clarification Act of 1984 (Public Law 98-620), and the University and Small Business Patent Procedure Act of 1980 (Public Law 96-517), and in order to ensure that Federal agencies and laboratories assist universities and the private sector in broadening our technology base by moving new knowledge from the research laboratory into the development of new products and processes, it is hereby ordered as follows: Section 1. Transfer of Federally Funded Technology. (a) The head of each Executive department and agency, to the extent permitted by law, shall encourage and facilitate collaboration among Federal laboratories, State and local governments, universities, and the private sector, particularly small business, in order to assist in the transfer of technology to the marketplace. (b) **The head of each Executive department and agency shall, within overall funding allocations** and to the extent permitted by law: (1) delegate authority to its government-owned, government-operated Federal laboratories: (A) to enter into cooperative research and development agreements with other Federal laboratories, State and local governments, universities, and the private sector; and (B) to license, assign, or waive rights to

intellectual property developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.

President Can control contracts within the private industry

Hinds 12 (Sarah Hinds, staff writer for the college conservative, March 19, 2012, "Executive Order: National Defense Resources Preparedness," http://thecollegeconservative.com/2012/03/19/executive-order-national-defense-resources-preparedness/

Section 201, if taken out of context, could lead one to assume that this executive order allows for executive control over all US resources, but it actually delegates, "the authority of the President…to require acceptance and priority performance of contracts or orders (other than contracts of employment) to promote the national defense of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the nation defense." The secretaries of Agriculture, Energy, Health and Human Services, Transportation, Defense, and Commerce are delegated this authority to require acceptance and priority performance of contracts and orders involving certain resources. Just as the Defense Production Act gives the President the authorities to "prioritize and force contracts," this executive order gives the secretaries of executive agencies the authorities to prioritize and force contracts involving certain resources that may be necessary, in their judgment, to promote the national defense.

International Perception

Presidential action is perceived globally

Sunstein 95 Arkansas Law Review 1995 48 Ark. L. Rev. 1 ARTICLE: An Eighteenth Century Presidency in a Twenty-First Century World NAME: Cass R. Sunstein * * Karl N. Llewellyn Professor of Jurisprudence, University of Chicago Law School and Department of Political Science. l/n

6. With the emergence of the United States as a world power, the President's foreign affairs authority has become far more capacious than was originally anticipated. For the most part this is because the powers originally conferred on the President have turned out - in light of the unanticipated position of the United States in the world - to mean much more than anyone would have thought. The constitutionally granted authorities have led to a great deal of unilateral authority, simply because the United States is so central an actor on the world scene. The posture of the President means a great deal even if the President acts clearly within the scope of his constitutionally-granted power. Indeed, mere words from the President, at a press conference or during an interview, can have enormous consequences for the international community.

SSRA

PCLOB and independent review group say Obama can end dragnet phone surveillance without Congress

RT 1/30 – (January 30, 2015, "Review group says Obama can stop NSA phone surveillance 'at any time'," http://rt.com/usa/228015-pclob-assessment-telephony-metadata/), acui

A review group assembled by the White House to recommend changes concerning the United States' intelligence gathering operations is calling out the Obama administration for not yet halting the bulk collection of Americans' telephone records.¶ US President Barack Obama could heed a recommendation made one year ago by its own Privacy and Civil Liberties Oversight Board (PCLOB), and end the National Security Agency's dragnet phone surveillance program "at any time," the review group said in an assessment report published this week. But instead, the White House continues to let the NSA routinely sweep up metadata pertaining to millions of calls.¶ The assessment report, released by PCLOB on Thursday, comes one year after the group offered recommendations to the White House concerning Section 215 of the Patriot Act – a provision that compels telecommunication companies to regularly supply the NSA with call records collected in bulk from American customers – and six months after a similar report was published on the Foreign Intelligence Surveillance Act rule, Section 702, that lets the US government conduct electronic eavesdropping on the internet.¶ Yet while PLCOB acknowledges in the assessment that the White House has accepted the bulk of the 22 recommendations made in the two reports, not a single suggestion has been fully implemented – with the exception of one calling on the Foreign Intelligence Surveillance Court, a secretive body that authorizes these types of wiretaps, "to obtain technical assistance and expand opportunities for legal input from outside parties."¶ According to a statement from the review group that accompanies the 29-page report, a key finding made during its assessment of the administration's progress is that the government continues to collect phone data through Sec. 215 – even though it doesn't have to, and, in the board's opinion, shouldn't.¶ "The Administration has not implemented the Board's recommendation to halt the NSA's telephone records program, which it could do at any time without congressional involvement. Instead, the Administration has continued the program, with modifications, while seeking legislation to create a new system for government access to telephone records under Section 215," the statement reads in part.¶ A year ago, PCLOB concluded that the government should end its bulk phone record collection program due to "constitutional concerns under the First and Fourth Amendments," and said the Sec. 215 program "raises serious threats to privacy and civil liberties as a policy matter, and has shown only limited value."¶ "The Administration accepted our recommendation in principle. However, it has not ended the bulk telephone records program on its own, opting instead to seek legislation to create an alternative to the existing program," this week's report reads.¶ A bill that sought to strip from the government its ability to collect that metadata in bulk, the USA Freedom Act, ultimately failed to advance in the Senate when it was up for discussion last November. According to the review group, though, curbing that collection doesn't rely squarely on Congress.¶ "It should be noted that the Administration can end the bulk telephone records program at any time, without congressional involvement," the assessment report reads. "While legislation like the USA FREEDOM Act would be needed to retain the unique capabilities of the program without collecting telephone records in bulk, the Board examined those capabilities and concluded that they have provided only 'limited value' in combatting terrorism."

PCLOB says Obama has authority to end bulk surveillance

Lucas 5/26 -- White House correspondent (Fred Lucas, May 26, 2015, "White House Swipes at Rand Paul's 'Political Ambitions' in Patriot Act Debate," http://www.theblaze.com/stories/2015/05/26/white-house-swipes-at-rand-pauls-political-ambitions-in-patriot-act-debate/), acui

In an interview with CBS News Tuesday, Paul said that Obama could have implemented the USA Freedom Act without Congress.¶ "Here's the thing about the president – he's disingenuous about this. The president started the program through executive order, he can end it at any time," Paul said. "The Second Court of Appeals – the court right below the Supreme Court – said that it's illegal. Why doesn't he stop it? What's he waiting for? He says, 'Oh, Congress can stop it.' He started it on his own, he should stop it. And I've asked the president repeatedly to stop the program."¶ Earnest told reporters that the matter is something Congress would have to act on.¶ However, in January, the bipartisan Privacy and Civil Liberties Oversight Board issued a report saying the president has the authority to end the bulk data collection entirely.

Privacy Bill of Rights solves and XO promotes private-public relations

Obama 2/13 – president (Barack Obama, February 13, 2015, "Remarks by the President at the Cybersecurity and Consumer Protection Summit," https://www.whitehouse.gov/the-press-office/2015/02/13/remarks-president-cybersecurity-and-consumer-protection-summit), acui

In recent years, we've worked to put these principles into practice. And as part of our comprehensive strategy, we've boosted our defenses in government, we're sharing more information with the private sector to help those companies defend themselves, we're working with industry to use what we call a Cybersecurity Framework to prevent, respond to, and recover from attacks when they happen.¶ And, by the way, I recently went to the National Cybersecurity Communications Integration Center, which is part of the Department of Homeland Security, where representatives from government and the private sector monitor cyber threats 24/7. And so defending against cyber threats, just like terrorism or other threats, is one more reason that we are calling on Congress, not to engage in politics -- this is not a Republican or Democratic issue -- but work to make sure that our security is safeguarded and that we fully fund the Department of Homeland Security, because it has great responsibilities in this area.¶ So we're making progress, and I've recently announced new actions to keep up this momentum. We've called for a single national standard so Americans know within 30 days if your information has been stolen. This month, we'll be proposing legislation that we call a Consumer Privacy Bill of Rights to give Americans some baseline protections, like the right to decide what personal data companies collect from you, and the right to know how companies are using that information. We've proposed the Student Digital Privacy Act, which is modeled on the landmark law here in California -- because today's amazing educational technologies should be used to teach our students and not collect data for marketing to students.¶ And we've also taken new steps to strengthen our cybersecurity -- proposing new legislation to promote greater information sharing between government and the private sector, including liability protections for companies that share information about cyber threats. Today, I'm once again calling on Congress to come together and get this done.¶ And this week, we announced the creation of our new Cyber Threat Intelligence Integration Center. Just like we do with terrorist threats, we're going to have a single entity that's analyzing and integrating and quickly sharing intelligence about cyber threats across government so we can act on all those threats even faster.¶ ¶ And today, we're taking an additional step -- which is why there's a desk here. You were wondering, I'm sure. (Laughter.) I'm signing a new executive order to promote even more information sharing about cyber threats, both within the private sector and between government and the private sector. And it will encourage more companies and industries to set up organizations -- hubs -- so you can share information with each other. It will call for a common set of standards, including protections for privacy and civil liberties, so that government can share threat information with these hubs more easily. And it can help make it easier for companies to get the classified cybersecurity threat information that they need to protect their companies

SOX

President can mitigate the worst harms of SOX and keep checks in place for fraud

Bainbridge 14 – William D. Warren Distinguished Professor of Law at the UCLA School of Law (Stephen Bainbridge, November 22, 2014, "As long as Presidents aren't enforcing laws, why not add a few from Dodd-Frank and Sarbanes-Oxley?" http://www.professorbainbridge.com/professorbainbridgecom/2014/11/as-long-as-presidents-arent-enforcing-laws-why-not-add-a-few-from-dodd-frank-and-sarbanes-oxley.html), acui

The President doesn't have the same powers over the Securities and Exchange Commission that he does over the Justice Department, of course, but still the President could do a few things to unilaterally unwind some of the damage that the Sarbanes-Oxley and Dodd-Frank laws have done. First, the Justice Department could be told to exercise prosecutorial discretion not to pursue criminal cases arising out some of the worst provisions of those laws. No more criminal cases under SOX section 906, for example. No more criminal cases to be brought under Section 807 where the defendant did not act with scienter and no more cases in which the alleged fraud was not committed in connection with the purchase or sale of a security.¶ As for Dodd-Frank, it's replete with provisions that are "unworkable." The Bureau of Consumer Financial Protection is a travesty, of course, so stop enforcing the criminal provisions of Dodd-Frank that relate to it.¶ The most important thing the new President could do, of course, would be to install SEC Commissioners--especially a Chairman--who are equally committed to exercising prosecutorial discretion over the agency's civil enforcement program so as to gut the more egregious provision of SOX and Dodd-Frank. Maybe starting with conflict minerals disclosure?

Privacy

Consumer Privacy Bill of Rights solves right to privacy

Hunton Privacy 3/2 – privacy & information security blog of Hunton & Williams, a law firm that specializes in privacy and cybersecurity (Hunton Privacy Blog, Hunton & Williams LLC, March 2, 2015, "White House Releases Discussion Draft for a Consumer Privacy Bill of Rights," https://www.huntonprivacyblog.com/2015/03/02/white-house-releases-discussion-draft-consumer-privacy-bill-rights/), acui

On February 27, 2015, the White House released a highly-anticipated draft of the Consumer Privacy Bill of Rights Act of 2015 (the "Act") that seeks to establish baseline protections for individual privacy in the commercial context and to facilitate the implementation of these protections through enforceable codes of conduct. The Federal Trade Commission is tasked with the primary responsibility for promulgating regulations and enforcing the rights and obligations set forth in the Act.¶ The Act's baseline of consumer protections would apply broadly (with certain stated exceptions) to the privacy practices of covered entities that collect, create, process, retain, use or disclose personal data in or affecting interstate commerce. "Personal data" is broadly defined under the Act as "any data … under the control of a covered entity, not otherwise generally available to the public through lawful means, and … linked, or as a practical matter linkable by the covered entity, to a specific individual, or linked to a device that is associated with or routinely used by an individual." The Act carves out from the definition of personal data several types of information, including de-identified data, cybersecurity data and employee data that is collected or used by an employer in connection with an employee's employment status.¶ The Act sets forth individual rights for consumers and corresponding obligations of covered entities in connection with personal data. Key examples of the proposed privacy protections and obligations include:¶ Transparency. Covered entities shall provide individuals with clear, timely, conspicuous and easily understandable notice about the entity's privacy and security practices. The Act sets forth various content requirements for such notices.¶ Individual Control. Individuals must be provided with reasonable means to control the processing of their personal data that are proportionate to the privacy risk to the individual and are consistent with context, which is defined to mean the circumstances surrounding a covered entity's processing of personal data.¶ Respect for Context. If a covered entity processes personal data in a manner that is not reasonable in light of context, the entity must conduct a privacy risk analysis, and take reasonable steps to mitigate any identified privacy risks. If the privacy risk analysis is conducted under the supervision of an FTC-approved Privacy Review Board, the covered entity may be excused from certain heightened requirements under this section.¶ Focused Collection and Responsible Use. Covered entities may collect, retain and use personal data only in a manner that is reasonable in light of context. This limitation requires businesses to consider ways to minimize privacy risk, as well as to delete, destroy or de-identify personal data within a reasonable time after fulfilling the purposes for which the personal data were first collected.¶ Security. Covered entities are expected to identify reasonably foreseeable internal and external risks to the privacy and security of personal data that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of the information. Based on this analysis, covered entities must establish, implement and maintain safeguards reasonably designed to ensure the security of such personal data, including but not limited to protecting against unauthorized loss, misuse, alteration, destruction, access to, or use of the business' information.¶ Access and Accuracy. Upon request, a covered entity must provide an individual with reasonable access to, or an accurate representation of, personal data that pertains to the individual and is under the control of the covered entity. This obligation entails providing the individual with a means to dispute and resolve the accuracy and completeness of his or her personal data.¶ Accountability. Covered entities must take measures appropriate to the privacy risks associated with its personal data practices, including training employees, conducting internal or independent evaluations, building appropriate consideration for privacy and data protections into the design of systems and business practices, and contractually binding third parties to comply with similar requirements prior to disclosing personal data to them.

The President can authorize billions of dollars for the plan without any Congressional involvement

Mayer 01 (Kenneth R, Professor of Political Science at the University of Wisconsin-Madison. 4/12, http://pup.princeton.edu/chapters/s7095.html)

In response Clinton unilaterally authorized $20 billion in loan guarantees on his own authority, relying on a little-noticed program called the Exchange Stabilization Fund, or ESF. Many members of Congress were outraged, arguing that the ESF, created in 1934 to allow the U.S. government to protect the dollar in international currency markets, was never intended for such a use.3 Yet Congress could not stop the president.4 Clinton, though humiliated by the Republican sweep in the 1994 elections and weakened by mass defections within his own party, was still able to commit to a multibillion dollar program without any meaningful interference.

Congress normally sets the budget and allocates funding for federal programs

Citizen Schools, an organization that partners with middle schools to expand the learning day for low-income children across the country, July 20**09**, "Citizen Schools Legislative Update - Federal Budget and Appropriations", Citizen Schools, http://capwiz.com/citizenschools/issues/alert/?alertid=12897531

What Does all this Mean for Actual Funding of these Programs and What Happens Next? Congress makes the ultimate decisions on spending levels for individual discretionary programs in the federal budget through the annual appropriations process. That process is moving forward, now that Congress has established its overall budget blueprint of spending levels via the budget resolution process. The more than $1 trillion Congressional budget resolution is nonbinding, but sets the general spending ceiling for the coming fiscal year (which begins October 1, 2009). This year, Congress is expected to provide spending levels roughly in line with the President's request. Congressional appropriations committees begin work in earnest on setting spending levels for individual discretionary programs. This process is expected to go on until at least the end of the current fiscal year on September 30th. There is some discussion in Washington that Congress could arrive at spending decisions by the start of FY 2010 on October 1, 2009 - in recent appropriations cycles, this process has lasted far beyond the start of the new fiscal year.

Logistics

Presidential action solves better than Congress – Multiple warrants

Lansford and Pauly 03 Tom Lansford received his Ph.D. from Old Dominion University, Norfolk, Va. Currently he is an assistant professor of political science, University of Southern Mississippi, Gulf Coast Campus. Robert J. Pauly, Jr., holds a Ph.D. from Old Dominion University, He is adjunct professor of history and political Science at Norwich University, Northfield, Vermont, and Midlands Technical College. http://www.unc.edu/depts/diplomat/archives_roll/2003_04-6/lansfordpauly_exec/lansfordpauly_exec.html

France and the United States have presidential systems which give their nations' highest elected official wide powers to conduct foreign and security policy. To different degrees, the division of responsibilities for both nations' highest office reflects Wildavsky's concept of "two-presidencies" in which one facet represents domestic policy and one represents foreign policy.1 In writing about the U.S. chief executive, Wildavsky summarized contemporary scholarship on the foreign policy powers of the presidency and identified five main reasons for the concentration of power: 1) since foreign policy and security issues often need "fast action", the executive rather than the legislative branch of government is the more appropriate decision-making structure; 2) the Constitution grants the president broad formal powers; 3) because of the complexities involved voters tend to delegate to the president their "trust and confidence" to act; 4) the "interest group structure is weak, unstable and thin"; and 5) the legislature follows a "self-denying ordinance" since tradition and practicality reinforce the power of the chief executive.2 Wildavsky's work is echoed by many scholars, including Logan, who contends that in Western democracies, "the mass public consciously or unconsciously cedes influence" to politicians and policy elites.3

Agencies

AT: Solvency Deficits

AT: Illegal

Both interpretations of the Constitution give XOs legality

Westmoreland 10 (Joshua Westmoreland, Boston College Environmental Affairs Law Review, 1/1/10 "Global Warming and Originalism: The Role of the EPA in the Obama Administration:" http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1027&context=ealr&sei-redir=1#search=%22presidential%20power%20global%20warming%20obama%22)

One prominent theory regarding presidential power is the unitary executive theory.60 It is based on the Vesting Clause in Article II, Section 1 of the United States Constitution,61 which states that "[t]he executive power shall be vested in a President of the United States of America."62 The unitary executive theory posits that the President has complete power to execute the law and, consequently, has complete control over the actions of all executive agencies.63 Conversely, the theory states that, since power has not been vested in either of the other two branches of government, the President alone has the power to execute the laws of the land.64

AT: Separation of Powers

1. Turn – Congress has too much power now, unitary executive power is key to restoring SOP

Ginsburg and Menashi 10 (Douglas H Ginsburg, U.S. Court of Appeals for the District of Columbia, and Steven Menashi, Georgetown University Law Center, Kirkland and Ellis LLP, Universtity of Pennsylvania Journal of Constitutional Law, Vol. 12, No. 2, p. 251, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567819)

In fact, the theory of a unitary executive has nothing to do with the extent of presidential power but only with who is to exercise those powers, however broad, allocated to the executive. Its proponents seek not to evade the limitations of separated powers, but rather insist— especially when dealing with the other branches— that the President alone is responsible for the actions of the executive branch. The idea seems ominous today because so many functions have been allocated to the now-fragmented executive branch that reuniting it under presidential leadership seems to the present generation both to enhance presidential authority unimaginably and to create an unmanageable administrative structure. We suggest the "**unitary executive" has fallen into ill repute and apparent obsolescence not because of an executive bent upon autocracy but because of a legislature freed from the constraints of the separation of powers.** In Part I we introduce the nondelegation doctrine as a necessary corollary of the unitary executive and examine the failure of the Supreme Court to enforce that doctrine. In Part II we examine the similar failure of the President to resist encroachments by the Congress. In Part III we explore the implications of these failures.

Turn- Court granted prez more power in order to balance SOP

(**Anne** E. [J.D. Candidate, University of Arizona James E. Rogers College of Law, 20**10**]; From Muddled to Medellin: A Legal History of Sole Executive Agreements; 51 Ariz. L. Rev. 1035; kdf)

Can the President of the United States unilaterally make federal law? For ¶ most students of American Government, the knee-jerk reaction to this question is ¶ an emphatic "no," as they are taught that it is the legislature's role to create laws ¶ and the President's role to see that the laws are faithfully executed.1¶ Indeed, the ¶ United States' political identity depends on a delicate separation of powers that ¶ prevents the President from accumulating too much power.2¶ Over time, however, transformed the delicate separation of powers balance has shifted, and this emphatic "no" has into a more muddled "maybe," with the President's use of sole ¶ executive agreements.¶ the delicate separation of powers balance has shifted, and this emphatic "no" has¶ Sole executive agreements present a unique challenge to traditional ¶ separation of powers principles. These agreements are legal tools the President can ¶ use to unilaterally resolve foreign disputes with other countries. **The Supreme ¶ Court has upheld the President's authority** to enter into sole executive agreements ¶ and has broadly held that these agreements, being analogous to treaties, are fit to ¶ preempt conflicting state law. Thus, sole executive agreements are a means by ¶ which the President can sideline the legislature and unilaterally create federal law. ¶ Sole executive agreements have been used since the early days of the ¶ Republic.3¶ Since the turn of the twentieth century and the rise of the United States ¶ as a global power, Presidents have **aggressively used sole executive agreements** to ¶ resolve significant matters of foreign policy. The

expansive use of sole executive ¶ agreements has attracted debate amongst scholars as to their constitutional validity, ¶ why they have been held to preempt federal law, and, most importantly, how the ¶ preemptive effect of these agreements could be limited to better harmonize with ¶ the Supremacy Clause and traditional separation of powers principles.4¶ Until recently, the Supreme Court has not provided much guidance to this ¶ debate. In a series of decisions,5¶ the Supreme Court has sanctioned the use of sole ¶ executive agreements and concluded that such agreements can be considered "the ¶ supreme Law of the Land."6¶ In doing so, the Court has granted sweeping power to ¶ the President to effectively create federal law through sole executive agreements ¶ without any meaningful limitations.

2. Non Unique – Thousands of XOs have been passed, the CP is no different

3. SOP is a myth – branches should overlap in order to best serve the society and protect democracy

Barnes '04 (Jeb, Assistant Professor of Political Science at the University of Southern California, "Adversarial Legalism, the rise of judicial policy making and the separation of powers doctrine" In M. Miller & J. Barnes (Eds). Making Policy, Making Law, p. 35-37)

This chapter takes a different tack. Instead of challenging heightened judicial policymaking and adversarial legalism on separation-of-powers grounds, it questions the separation-of-powers doctrine as traditionally applied to the policymaking process. Specifically, this chapter argues that the U.S. Constitution does not assign mutually exclusive policymaking roles to each branch of government; instead, it cre- ates overlapping branches of government that are designed to respond to different constituencies and approach policymaking differently. The goals of this system are redundant and diversely representative lawmakers are to (1) hinder any single branch or interest group from dominating the process and (2) encourage broad participation in the making of policy. From this perspective, the crucial issue in evaluating contemporary interbranch relations is not whether Congress, agencies, an courts adhere to neatly defined roles, but whether-and under what conditions interbranch relations promote important democratic outcomes, such as open deliberation and coalition-building among varied interests.

4. All your authors are wrong – unitary executive is key to check the power of Congress and maintain SOP

Ginsburg and Menashi 10 (Douglas H Ginsburg, U.S. Court of Appeals for the District of Columbia, and Steven Menashi, Georgetown University Law Center, Kirkland and Ellis LLP, Universtity of Pennsylvania Journal of Constitutional Law, Vol. 12, No. 2, p. 251, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567819)

No reader of this Journal will be surprised to hear that Dick Cheney did not originate the idea that the executive power should be united under presidential control. That was part of the original constitutional design. In fact, **the provision of a unitary executive was a response to the fear, seldom heard today, that the Congress would become tyrannical**. Indeed, for all the contemporary hysteria over the unitary executive, few seemed to recognize, until Professors Calabresi and Yoo began to publish their research on the subject,11 how important the idea has been in American history. Contentious debate over the separation of powers and over the unitary executive in particular has been a perennial feature of American politics, about which the Founders left warnings worth revisiting today**. In The Federalist No. 51, Madison wrote, "[i]n republican government, the legislative authority necessarily predominates."12 His remedy for this tendency toward domination was to divide the legislature into different chambers, while the executive was to remain unitary so it would not be overmatched in its battles with the legislature.** "As the weight of the legislative authority requires that it should be thus divided," explained Madison, "the weakness of the executive may require, on the other hand, that it should be fortified."13 Today, Madison's warning seems quaint. Having seen the socially transformative power of the courts,14 many scoff at Hamilton's characterization of the judiciary as the "least dangerous" branch.15 Editorialists, as we have seen, conclude the executive is the most powerful branch and the legislature weak by comparison.16 Against this newly received wisdom, we argue that Madison was right, and his modern inversion mistaken. We start with the simple reminder that the Framers of our Constitution did not establish a parliamentary system with a prime minister dependent upon the national legislature. The President is not selected by the Congress; his salary is protected against any congressional diminution; and his term in office is fixed. Thus did our Founders seek to establish a President who was more than an agent of the legislature, as was the prime minister under the British constitution. To quote Madison again**: In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others**.17 The theory of the unitary executive focuses upon the extent to which Article II, Section 1, Clause 1 of the Constitution—"The executive Power shall be vested in a President of the United States of America"— protects the President's authority to appoint, direct, and remove officers within the executive branch.18 Complementing this positive grant of authority to the President is the understanding that the other branches would be confined to their own respective spheres. A necessary corollary of the theory of the unitary executive, then, finds expression in the nondelegation doctrine—the idea that the Congress cannot delegate its lawmaking powers to the executive or the judiciary. It is the demise of that doctrine that has allowed the Congress both to augment and to fragment the executive branch by establishing federal agencies within the executive tasked with making policy pursuant to broad mandates from the Congress, agencies that effectively exercise legislative power through rulemaking**. The nondelegation doctrine was once recognized as a foundational principle of the separation of powers**.19 Its roots go back to John Locke, who put it this way:

5. Traditional views of SOP should be rejected in favor of an inter-branch perspective

Barnes '04 (Jeb, Assistant Professor of Political Science at the University of Southern California, "Adversarial Legalism, the rise of judicial policy making and the separation of powers doctrine" In M. Miller & J. Barnes (Eds). Making Policy, Making Law, p. 47-48)

The gist of the argument thus far is that the standard view of the separation of powers seems a house of cards, resting on a series of shaky formal, functional, and normative foundations. Thus, we should consider toppling the standard view and no longer hold the branches of government to formal categories of legislative, executive, and judicial functions. It should be added that rejecting the standard view of the separation of powers as applied to the policymaking process does not require the wholesale rejection of the separation-of-powers doctrine. As was alluded to above, we can accept the concept of the separation of powers as creating a general arrangement of primary powers that is distinct from other forms of democratic governance, such as parliamentary systems, while we jettison the concept of the separation of powers as creating rigid and static policymaking roles for the branches of government.

Congressional power of the purse that interferes with Presidential powers in foreign policy should be actively defied – this best preserves constitutionality

Brownell 1 (Roy E. Brownell II, attorney at the Washington, D.C. law firm of Muldoon Murphy & Faucette LLP and a member of the Maryland and District of Columbia Bars, Fall 2001 (THE CONSTITUTIONAL STATUS OF THE PRESIDENT'S IMPOUNDMENT OF NATIONAL SECURITY FUNDS, 12 Seton Hall Const. L.J. 1)

It necessarily follows that Congress, under the guise of the spending power, may not interfere with the national security powers assigned exclusively to the President under the Constitution. 469 Justice Kennedy, who was joined by Chief Justice Rehnquist and Justice O'Connor in his concurrence in Public Citizen v. United States Dept. of Justice, 470 noted, "in a line of cases of equal weight and authority ... where the Constitution by explicit text commits the power at issue to the exclusive control of the President, we have refused to tolerate any intrusion by the Legislative Branch." 471 By extension, areas of national security [*86] which fall under the President's exclusive purview, such as diplomatic recognition and negotiation, would be insulated from congressional interference through the spending power (or any other legislative prerogative for that matter). In areas of concurrent authority between the President and Congress, the Court has indicated it would use a balancing test. In Nixon v. Administrator, General Services, the Supreme Court stated that "in determining whether the Act disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions." 472 In essence, **if Congress**, through its spending power, inhibits the Executive from performing his own specific constitutional duties even though Congress may also possess some authority over the matter, the statute would be a nullity. For example, both Congress and the President share authority over the armed forces. The President has strategic and tactical authority over the military, but Congress has the power to declare war and make rules for the armed forces. While the President cannot declare war, by the same token, Congress cannot interfere with tactical decisions. More specifically, a lower court has suggested that the President's national security power cannot be limited by an appropriation bill. In Federal Employees v. United States, 473 a district court, relying upon the "role of the Executive in foreign relations," struck down a statute forbidding the use of appropriated funds to enforce or implement nondisclosure agreements. Thus, judicial precedent specifically limiting Congress' spending power within a national security context does exist. A number of authorities have also pointed out the limits of the spending power with respect to national security affairs. Senator Robert Byrd, no shrinking violet when it comes to asserting Congress' Power of the Purse, has written that Congress may not use its appropriation power to prevent the President from receiving foreign ambassadors. 474 Professor Henkin

has written that "even [*87] when Congress is free not to appropriate, it ought not to be able to regulate Presidential action by conditions on the appropriations of funds to carry it out, if it could not regulate the action directly." 475 Henkin continued that "Congress cannot impose conditions which invade Presidential prerogatives to which the spending is at most incidental, or which violate individual rights ... ." 476 Professor Kate Stith has argued that "Congress cannot ... deny the President sufficient money to carry out his Article II duties (by, for example, stipulating that no money be expended by the Executive on receiving foreign ambassadors, in contravention of section 3), or make treaties." 477 In short, the spending power, similar to the commerce power, may be among the most elastic of legislative powers, may not do indirectly what Congress is forbidden from doing directly. 478 Because of these limits on the spending power, when Congress exceeds these limits, the President must not enforce these laws since they are unconstitutional. These limits are exceeded when Congress either (1) tries to appropriate in too much detail within a national security context, thus brushing up against the President's discretionary power as Chief Executive, or (2) when Congress attempts through the spending power to force the President to perform certain acts the decision of which is the President's alone. Either of these factors may be enhanced by a factor of two if congressional actions take place during wartime and/or involve funds to be expended overseas. When Congress impinges on the [*88] President's constitutional power by mandating that certain specific national security funds be spent, the President may impound the funds. In such situations, Congress has at best concurrent power with the President, with both theoretical and practical considerations seeming to lean in favor of the President.

AT: Imperialism

1.Pres Powers outweigh and Politics outweigh

1. Turn – Congress has too much power now, unitary executive power is key to restoring SOP

Ginsburg and Menashi 10 (Douglas H Ginsburg, U.S. Court of Appeals for the District of Columbia, and Steven Menashi, Georgetown University Law Center, Kirkland and Ellis LLP, Universtity of Pennsylvania Journal of Constitutional Law, Vol. 12, No. 2, p. 251, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567819)

In fact, the theory of a unitary executive has nothing to do with the extent of presidential power but only with who is to exercise those powers, however broad, allocated to the executive. Its proponents seek not to evade the limitations of separated powers, but rather insist— especially when dealing with the other branches— that the President alone is responsible for the actions of the executive branch. The idea seems ominous today because so many functions have been allocated to the now-fragmented executive branch that reuniting it under presidential leadership seems to the present generation both to enhance presidential authority unimaginably and to create an unmanageable administrative structure. We suggest the "**unitary executive" has fallen into ill repute and apparent obsolescence not because of an executive bent upon autocracy but because of a legislature freed from the constraints of the separation of powers.** In Part I we introduce the nondelegation doctrine as a necessary corollary of the unitary executive and examine the failure of the Supreme Court to enforce that doctrine. In Part II we examine the similar failure of the President to resist encroachments by the Congress. In Part III we explore the implications of these failures.

2. No Link - The President can directly spend money from the Treasury to fulfill executive responsibilities – Congressional appropriation isn't needed

Sidak 89 (J. GREGORY SIDAK, Covington & Burling, Washington, D.C. A.B. 1977, A.M., J.D. Stanford University, 1989 "THE PRESIDENT'S POWER OF THE PURSE.", 1989 Duke L.J. 1162, *)

In the first category are the duties that article II explicitly imposes on the President. In the second category are the President's prerogatives, also enumerated in article II. This Part argues that the President has the right under the Constitution to perform these explicit duties and exercise these explicit prerogatives **even if Congress has not appropriated funds** for him to do so. The Constitution commands the President to act with respect to the subjects listed in article II -- even if, as in the case of the President's prerogatives, the command is to exercise discretion. The Constitution does not condition its commands in article II on Congress periodically granting the President permission to act. This insight leads to the conclusion that the President has an implicit power to encumber the Treasury in the name of carrying out the responsibilities assigned to him by the plain text of article II.

3. All your authors are wrong – unitary executive is key to check the power of Congress and maintain SOP

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4. Turn - Presidential spending power to enforce international obligations is essential effective separation of powers, unitary executive, and protection of liberty

Sidak 89 (J. GREGORY SIDAK, Covington & Burling, Washington, D.C. A.B. 1977, A.M., J.D. Stanford University, 1989 "THE PRESIDENT'S POWER OF THE PURSE.", 1989 Duke L.J. 1162, *)

No principle is more elemental to the logic of the Constitution than the separation of powers. 405 However, much constitutional scholarship since Watergate has been predicated on the belief that a metamorphosis from a **unitary Executive to a plural Executive would be salutary**. 406 The Framers did not start from that premise. Such a metamorphosis is plainly contrary to the history, text, and structure of the Constitution. "The accretion of dangerous power does not come in a day," wrote Justice Frankfurter in Youngstown. 407 "It does come, however slowly, from [*1253] the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority." 408 Behind the pretext of protecting taxpayers from a spendthift President, Professor Stith's Principle of Appropriations Control would have Congress control decisions that the Constitution said should be made by a unitary Executive. In its extremity, Professor Stith's theory would go so far as to tell the President that he cannot protect the constitutional rights of citizens if Congress should withhold the money necessary for him to take such action. I do not claim that mine is the last word on the appropriations clause. In particular, more thought is needed on the question of a feasible limiting principle for unappropriated spending by the President. The one clear lesson that scrutiny of this provision affords is that its text is one of the "great silences" 409 in the Constitution. Particularly because the clause can generate conflicts over the separation of powers, its probable meaning must be evaluated in light of the history and structure of the Constitution and in light of whether a particular interpretation of the clause (such as Professor Stith's Principle of Appropriations Control) would produce implausible results at odds with other portions of the Constitution. I have attempted to show that the conventional understanding of Congress's "power of the purse**" has virtually no support in the historical records of the Constitutional Convention** of 1787, the Federalist Papers, or other contemporaneous writings of the Framers. Unlike Professor Stith, I consider Congress's misuse of the appropriations power to be a grave constitutional problem. The Framers would not have assigned to the President such responsibilities as the making of treaties, the commanding of the armed forces, and the faithful execution of laws if they expected that Congress could selectively veto the execution of these functions by defunding them. There must exist an implied power for the President to obligate the Treasury, at least for the minimum amount necessary for him to perform the duties and exercise the prerogatives that article II imposes on his office. To conclude otherwise would require embracing the unlikely proposition that thrift was an object more precious to the Framers than was the perfection of a Constitution that "diffuses power the better to secure liberty." 410

AT: Totalitarian

1. Non Unique – thousands of XOs have been passed without triggering the Link

2. There's no risk of totalitarianism – Our Warrants subsume yours – there's empirical proof, and post midterm backlash prevents escalating power

Calabresi and Lindgren 6 (STEVEN G. CALABRESI AND JAMES LINDGREN. Professors of Law, Northwestern University.2006. THE MOST DANGEROUS BRANCH? MAYORS, GOVERNORS, PRESIDENTS, AND THE RULE OF LAW: A SYMPOSIUM ON EXECUTIVE POWER: COMMENTARY: The President: Lightning Rod or King? Copyright (c) 2006 The Yale Law Journal Company115 Yale L.J. 2611] |Kumar|)

THE POWERS OF A KING? There is an idea current in the land today that presidential power has grown to the point where it is a threat to democracy**.** The New York Times editorial page writers and leading Democrats regularly accuse President George W. Bush of acting like a king or seeking kingly powers. n1 In the academic community, Professor Bruce Ackerman has written powerfully about what he sees as the danger that presidential power poses to democracy itself. n2 In this Symposium Issue, Professors Bill Marshall n3 and Jenny Martinez n4 argue that the presidency has become too powerful. Marshall goes so far as to argue for reducing presidential power by separately electing the Attorney General. In this Commentary, we suggest that when political power is examined more broadly**,** Presidents and their parties generally have less power in the [*2612] United States than commentators recognize. We believe the President today is less of a king than a lightning rod. Indeed, the constitutional and practical weakness of the presidency is, if not a threat to American democracy, at least a worrisome limitation on it. The reason for this is that midterm and off-year elections show a strong backlash against members of the President's party. Political scientists have put forward two theories to explain midterm elections, both of which underestimate this backlash. The first theory of surge and decline holds that presidential midterm losses are explained mostly by the absence in those years of presidential coattails. n5 The second theory of midterm elections is that they are mostly a referendum on how well the President and the economy are doing. n6 These approaches tend to look too narrowly at federal elections when much of the reaction to winning the White House occurs in the states. Our backlash theory holds that midterm elections almost always punish the President's party so that it actually loses as much or more power in state and federal elections as the party gained by winning the White House. In essence, this pattern is one step forward in presidential election years and several steps back over the succeeding three years. In midterm elections, it is not merely that, without the President at the top of the ticket, his party loses some of its gains from the presidential election years (the surge and decline theory). Nor are the losses confined to the federal government or to years with unpopular Presidents or poor economies, as the referendum theory might imply. Indeed, when a party wins the White House, it gains on average only one governor's seat, while over the next three years the President's party loses on average four governorships, leaving it worse off than before it won the presidency. Winning the White House leads to losing a lot of important statehouses, which in turn are key to influencing domestic policy. Given this pattern, recent fears about growing presidential power with respect to domestic affairs may be overblown.

3. XOs don't cause dictatorship – CONSPIRACY THEORISTS ARE WRONG

Poupard 12 (L. Vincent Poupard, political/business consultant and contributor to yahoo news, March 20, 2012, "Obama's NDRP Executive Order a Strong Move," http://news.yahoo.com/obamas-ndrp-executive-order-strong-move-175500534.html)

Questions about martial law and government takeovers have been around for decades. The concern is often spread by conspiracy theory groups but is nothing more than a push to make people paranoid about the power held in the government. 9/11 was the closest we ever came to a national security state of emergency and we did not enter a state of martial law. The executive order is an easy target for conspiracy theorists who flip out whenever they hear anything about emergency powers. If they sat down to think they might realize it is best for the government to have plans in place in case of emergency. Orders like this help to ensure our prosperity, not take it away.

4. Congressional and Judicial oversight prevent tyrannical power

Wetzel '7 [Alissa C., Juris Doctor and Master of Science in international commerce and policy degrees May 17 from Valparaiso University, The School of Law, 2007 Valparaiso University Law Review. 42 Val. U.L. Rev. 385. Beyond the Zone of Twilight: How Congress and the Court Can Minimize the Dangers and Maximize the Benefits of Executive Orders. Lexis. Accessed 6/13/09]

As this Part has shown, though executive orders may seem to leave open the possibility of Presidential abuse, in practice, the system, though not perfect, creates appropriate blocks to executive tyranny. n165 First, executive orders allow the President to issue bold prerogatives on [*425] politically sensitive issues. n166 Second, Congress is able to appropriately check any potential for Presidential abuse, though it does not often do so. n167 Finally, the Court's test for the validity of executive orders is proper, though it is improperly applied to intelligence and classification. n168 In short, the Constitutional dialogue on executive orders has been a productive one, producing a test that, if applied correctly, can guard against executive tyranny and abuse. However, Congressional oversight has not been sufficiently effective and the Court's application of the Jackson test is flawed in the area of intelligence and classification. n169 Now, it is up to Congress to take a bolder stance on such issues in order for the Court to apply the test correctly. n170 V. CONCLUSION For two centuries, executive orders have allowed Presidents to exercise enormous power. At times, that power has been used to implement important measures to advance the country. At other times, executive orders have bred scandal and national shame. Upon closer examination of 200 years of Constitutional dialogue among the three branches of government concerning how much unilateral power a President ought to have, however, it becomes clear that although executive orders may appear tyrannical based on the broad power they afford Presidents, in practice executive orders are useful tools of the Presidency, able to be checked by Congressional oversight and controlled by the Court. If correctly wielded, such Congressional and judicial oversight can guarantee that executive orders will not allow Presidents to become the despots so feared by the founding generation. Instead, by moving out of the zone of twilight and exercising proper oversight Congress and the Court can ensure that the President is able to [*430] administer the executive branch effectively, pass measures quickly, and occasionally rise above political divisions and do the right thing.

5. Turn – Unitary Executive Power is key to prevent congressional totalitarianism

Ginsburg and Menashi 10 (Douglas H Ginsburg, U.S. Court of Appeals for the District of Columbia, and Steven Menashi, Georgetown University Law Center, Kirkland and Ellis LLP, Universtity of Pennsylvania Journal of Constitutional Law, Vol. 12, No. 2, p. 251, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567819)

In fact, the theory of a unitary executive has nothing to do with the extent of presidential power but only with who is to exercise those powers, however broad, allocated to the executive. Its proponents seek not to evade the limitations of separated powers, but rather insist— especially when dealing with the other branches— that the President alone is responsible for the actions of the executive branch. The idea seems ominous today because so many functions have been allocated to the now-fragmented executive branch that reuniting it under presidential leadership seems to the present generation both to enhance presidential authority unimaginably and to create an unmanageable administrative structure. We suggest the "**unitary executive" has fallen into ill repute and apparent obsolescence not because of an executive bent upon autocracy but because of a legislature freed from the constraints of the separation of powers.** In Part I we introduce the nondelegation doctrine as a necessary corollary of the unitary executive and examine the failure of the Supreme Court to enforce that doctrine. In Part II we examine the similar failure of the President to resist encroachments by the Congress. In Part III we explore the implications of these failures.

6. History proves Executive Orders are Constitutional and that they can be controlled

Wetzel '7[Alissa C., Juris Doctor and Master of Science in international commerce and policy degrees May 17 from Valparaiso University, The School of Law, 2007 Valparaiso University Law Review. 42 Val. U.L. Rev. 385. Beyond the Zone of Twilight: How Congress and the Court Can Minimize the Dangers and Maximize the Benefits of Executive Orders. Lexis. Accessed 6/13/09]

II. BACKGROUND Like all executive power, the ability of Presidents to issue executive orders has developed through past practice and judicial decisions. n13 Indeed, Supreme Court jurisprudence in the area of executive orders has been called a "constitutional dialogue" between the executive and judicial branches. n14 Moreover, an examination of the long history of executive orders reveals the measures that Congress and the courts can take today to minimize the danger of absolute Presidential power, while preserving the positive attributes of executive orders. n15 [*388] Thus, this Part will cover over 200 years of constitutional dialogue, tracing the rise of the modern presidency and encompassing some of the great political debates and judicial decisions of the past. n16 First, this Part examines the early history of this dialogue, from its Constitutional roots to early executive orders and judicial challenges. n17 Second, this Part considers the manner in which executive orders and court challenges were affected by the Civil War and Gilded Age that followed. n18 Next, this Part focuses on how the dialogue changed with the advent of the modern presidency at the turn of the twentieth century through the duel crises of the Great Depression and World War II. n19 Finally, this Part discusses how contemporary Presidents have used executive orders and how the Supreme Court has developed the modern judicial hurdle of challenging an executive order. n20 A. Executive Orders from Constitutional Roots Through the Dawn of the Civil War: Congress Ignores Early Orders While the Court Firmly Establishes Statutory Supremacy In 1789, the framers drafted the United States Constitution and created an innovative institution: the American Presidency. n21 Though wary of creating too strong an executive figure, the framers drafted the Constitution such that the President possesses both express and implied [*389] powers. n22 The authority to issue executive orders is an implied power that has been used by Presidents dating back to George Washington. n23 Executive orders have allowed Presidents to do that which even the King of England could not: bypass the legislative process by issuing orders that carry the force of law. n24 [*390] Though executive orders did not receive their name until well into

the nineteenth century, most authorities agree that the first such order was an administrative order issued by George Washington in June of 1789. n25 However, President Washington's most divisive order did not come until 1793 in the form of a Neutrality Proclamation, declaring that the United States would not get involved in the war between France and Britain. n26 Significantly, though highly controversial, Congress never [*391] overturned the Neutrality Proclamation. n27 However, as history would soon illustrate, Congress was not the only check on Presidential power. n28 In 1804, the Supreme Court first weighed in on Presidential proclamations in Little v. Barreme. n29 The executive order at issue in Little, a naval order that was issued pursuant to a Congressional grant of Presidential authority, conflicted with a statute. n30 Firmly establishing the [*392] supremacy of statutes over executive orders, the Court held that the statute controlled and that the executive order was thus invalid. n31 The years that followed Little saw numerous executive orders unchallenged by Congress, most dealing with civil service issues and the disposition of public lands. n32 Still, two important executive orders were issued prior to the Civil War. n33 First, though seldom classified as such, President Thomas Jefferson's Louisiana Purchase had all the markings of an executive order, since it was done unilaterally by Presidential order without direct statutory or Constitutional authority. n34 Significantly, neither Congress nor the public challenged the Louisiana Purchase on [*393] the grounds that it was issued without Congressional authority. n35 Second, President John Tyler began the tradition of establishing controversial independent Presidential commissions with executive orders when he issued an 1842 order calling for a commission to investigate corruption in the New York City Customshouse. n36 Thus, by the beginning of the Civil War, the practice of issuing executive orders was firmly established in American politics, and, although the Court had established the supremacy of statutes over executive orders, Congress was seldom willing to override an order. n37 In the mid-1800s, as with modern executive orders, the Court had developed a framework for assessing the legality of executive orders; however, in order for the Court to effectively check Presidential power, Congress had to be proactive as well. n38

7. There's no risk of totalitarianism – The real problem is that people don't vote correctly

Calabresi and Lindgren 6 (STEVEN G. CALABRESI AND JAMES LINDGREN. Professors of Law, Northwestern University.2006. THE MOST DANGEROUS BRANCH? MAYORS, GOVERNORS, PRESIDENTS, AND THE RULE OF LAW: A SYMPOSIUM ON EXECUTIVE POWER: COMMENTARY: The President: Lightning Rod or King? Copyright (c) 2006 The Yale Law Journal Company115 Yale L.J. 2611]|Kumar|)

The American political landscape changes not just every four years, but every two years as well. What has not been adequately recognized in the scholarly literature is that the changes in control in the gubernatorial off-year elections are indeed larger than any coattail effect in the presidential election year, largely because only eleven small states elect their governors at the same time as they vote for President. The net effect is that by the time a President is up for reelection, his party controls fewer governorships than before he won the election. Winning the presidency seems to lead very shortly to losing power, not only in Congress, but in state governorships as well. When one adds this perverse effect to the constitutional weakness of the presidency, the extraordinary emphasis on the presidential election every four years seems misplaced. No American President has ever seriously threatened our democratic system of government, but democracy may be undermined when people regularly mobilize for and participate in a presidential election that is likely to produce on balance the exact opposite policy consequences from those for which the people have voted. Rather than worrying about imaginary threats of dictatorship, we ought to be worried today about an electoral system that may regularly be frustrating the popular will.

AT: Delay

1. FIAT solves any delay – If the Aff gets FIAT its only fair the CP would too

Executive fiat is faster than congressional and avoids separation of powers Endelman & Mehta 9

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Dinesh Shenoy made a huge first step but it was only a first step. Is action by Congress the only, or even the best, way to break the priority date stranglehold on US immigration policy? The authors do not think so. Amendment of INA Section 245 is unlikely since action by Congress, even in the best of times, takes time. When Congress finds such time, legalization and other priority items (like recapture of unused visas) will absorb it. Beyond this, is it necessary to relax the rules on adjustment of status? What do potential immigrants really want for themselves and their spouses? The ability to work in the United States on a long-term basis and travel back home for vacation and/or family emergency. Can they only do that as adjustment applicants? Is there another way? The authors think there is. While INA Section 245 conditions adjustment of status on having a current priority date and meeting various conditions,9 there would be prohibition anywhere that would bar USCIS from allowing the beneficiary of an approved I-140 or I-130 petition to apply for an employment authorization document (EAD) and advance parole. No action by Congress would be required; executive fiat suffices. For those who want some comfort in finding a statutory basis, the government could rely on its parole authority under INA Section 212(d)(5) to grant such interim benefits either for "urgent humanitarian reasons" or "significant public benefit.10 There is nothing in 8 CFR Section 212.5 that would prohibit the DHS from granting parole for this reason on the grounds that the continued presence of I-140 or I-130 beneficiaries provide a significant public benefit. Since such parole is not a legal admission,11 there is no separation of powers argument since the Executive is not trying to change existing grounds of admission or create any new ones. Moreover, Congress appears to have provided the government with broad authority to provide work authorization to just about any non-citizen.12

2. XOs are quicker than congressional action

Rottinghaus and Belco 12 (Brandon Rottinghaus, phd Canidate at University of Houston, and Michelle Helene Belco, phd Canidate at University of Houston , "In Lieu of Legislation: Presidential Preemption of the Legislative Process Through Unilateral Order," Social Science Research Center, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1900804)

In this section, we formalize our expectations about which factors influence the president‟s decision to issue a unilateral order in lieu of legislation. In our first hypothesis we consider the presidency-centered conditions that may influence decision-making with regard to "preempting" Congress in the legislative arena (as described in the previous section). Our expectations are drawn from the "strategic model" (or "evasion hypothesis") (Martin 1999). Specifically, when political circumstances engender the need for expediently enacting the president‟s agenda into law, we expect that presidents in the later stages of the administration, in election years and those with greater discretion should be more likely to act against Congress. For instance, this is prominent when the president is in a position where he needs to act efficiently to create new laws or to foster his legislative agenda. First, Mayer (2001) suggests that the later the "stage of his term," the more likely presidents are to issue an executive order (102). Moments where the president is in the second half of his term or his second term should give rise to presidents issuing more orders acting against Congress. Second, presidents are more likely to issue a preemptive order when the issue is on their political or electoral agenda. The rise of the "permanent campaign" has hastened the need to act quickly for legislative and political victories (Cook 2002) and the growth of the public presidency has exponentially magnified the need for presidents to keep their promises (Light 1999). Presidents often use this tactic to make progress on a legislative agenda item (Rudalevige 2005), especially using executive orders (Mayer 2001, 97).

3. XOs are quick and avoid cumbersome congress – only the plan would get delayed by procedural requirements

Cooper 2 [Phillip, Professor of Public Administration @ Portland State University, *By Order of the President: The Use and Abuse of Executive Direct Action"*]

Executive orders are often used because they are quick, convenient, and relatively easy mechanisms for moving significant policy initiatives. Though it is certainly true that executive orders are employed for symbolic purposes, enough has been said by now to demonstrate that they are also used for serious policymaking or to lay the basis for important actions to be taken by executive branch agencies under the authority of the orders. Unfortunately, as is true of legislation, it is not always possible to know from the title of orders which are significant and which are not, particularly since presidents will often use an existing order as a base for action and then change it in ways that make it far more significant than its predecessors. The relative ease of the use of an order does not merely arise from the fact that presidents may employ one to avoid the cumbersome and time consuming legislative process. They may also use this device to avoid sometimes equally time consuming administrative procedures, particularly the rulemaking processes require by the Administrative Procedure Act. Because those procedural requirements do not apply to the president, it is tempting for the executive branch agencies to seek assistance from the White House to enact by executive order that which might be difficult for the agency itself to more through the process. Moreover, there is the added plus from the agency's perspective that it can be considerably more difficult for potential adversaries to obtain standing to launch a legal challenge to the president's order than it is to move an agency to judicial review. There is

nothing new about the practice of generating executive orders outside the White House. President Kennedy's executive order on that process specifically provides orders generated elsewhere.

4. Congressional programs are fragmented – it is much quicker for Obama to pass orders himself – orders on abortion funding prove

Edwards and Wayne 9 (By George C. Edwards, III, Distinguished Professor of Political Science at Texas A&M University. holds the Jordan Chair in Presidential Studies and has served as the Olin Professor of American Government at Oxford and the John Adams Fellow at the University of London, has held senior visiting appointments at Sciences Po-Paris, Peking University, Hebrew University of Jerusalem, and the U.S. Military Academy at West Point, the founder and from 1991-2001 the director of The Center for Presidential Studies, Stephen J. Wayne, served as President of the Presidency Research Group and The National Capital Area Political Science Association, regularly lectures to international visitors, senior federal executives, and college students in the United States and abroad on the presidency and electoral politics, has testified before Congress, advised both the Republican and Democratic National Committees on the presidential nomination process, Presidential Leadership: Politics and Policy Making, p. 521, published by Cengage Learning, July 15, 2009 http://books.google.com/books?hl=en&lr=&id=J5U5OOSC3RAC&oi=fnd&pg=PR7&ots=Ccit2eWhB6&sig=t2MtZVMSz2KhroGK_tB2BOAF7RA#v=onepage&q=executive%20order&f=false)

The bottom line is that although Congress and the judiciary can limit the unilateral power of the president, they rarely do so in practice. Thus, the absence of congressional and judicial actions implicitly encourages presidents to turn to their executive authority to achieve their policy objectives when they cannot do so by other means or **when time is of the essence**.

AT: Inter-branch conflict

1. Strong Executive doesn't mean the Legislative has less power – cooperation more likely than competition

Cheibub and Limongi 10 (José Antonio Cheibub, University of Illinois, and Fernando Limongi, Universidade de São Paulo and CEBRAP, "From Conflict to Coordination:

Perspectives on the Study of Executive-Legislative Relations," http://scholar.googleusercontent.com/scholar?q=cache:cX5HZuddXJwJ:scholar.google.com/&hl=en&as_sdt=0,22&as_ylo=2008)

In the traditional model of legislative-executive relations, a strong government, that is, one endowed with a large array of legislative powers, will use these powers against the legislature. The greater the conflict between the two branches of government, the greater the incentives the executive will have to use these powers in order to see its will prevail over the recalcitrant legislature. This view has been challenged and the seminal work doing so is Huber's (1996) study of policy making under the 1958 French constitution. Specifically, in his book Huber focuses on the role of the package vote and the confidence vote procedure – two features of the 1958 constitution that strengthen the government's legislative powers8 –in shaping how the executive and the legislature interact. Using an adapted version of the classical agenda setter model (Rommer and Rosenthal1978) and drawing heavily on models developed to understand the relations between the floor and committees in the US Congress, Huber accomplishes a series of tasks that re-direct the way one should think about the use of restrictive legislative procedures by the executive. In the first place, he demonstrates theoretically and empirically that, contrary to the prevailing perception of students of French politics, the use of restrictive procedures is not related to the degree of policy conflict between the government and the parliament. The government does not use restrictive procedures as a way to guarantee that its preferences prevail when these preferences are at odds with those of the legislature.9Second, Huber shows that not all restrictive procedures are the same. He demonstrates that the package vote is a mechanism used by the government to protect the outcome of bargaining in a multidimensional policy space among parties within the governing coalition, or between the government and the opposition. By halting legislative debate and forcing an up-or-down vote on a bill that contains only the amendments the government chooses to retain, the package vote compels legislators to choose between a specific policy package and the status quo. Since the legislature is the last one to act –it has the last word – it will approve the bill only if it is preferred to the status quo. In this sense, the government does not impose its will; rather, it forces a choice between the status quo and policy change.8 The package vote (article 44.3), allows the government to close debate on a bill and force an up or down vote on a proposal containing only the amendments proposed or accepted by the government; the confidence vote procedure (article 49.3), when invoked by the government, stops debate on a bill and, if no motion of censure is introduced and adopted, implies approval of the bill shaped by the government.9 Huber's argument is analogous to the one developed by Shepsle (1979), Shepsle and Weingast(1987a and 1987b) and Krehbiel (1987a 1987b) to the effect that congressional committees in the US cannot legislate against the will of the floor. Finally, Huber shows that the confidence vote plays a different role than the package vote in the legislative process. While it can also serve as a mechanism for protecting policy bargains in

multidimensional spaces – it allows coalition members to implement a given policy while criticizing it in the parliament – its primary role is to allow parties in the majority to compete for votes at the same time that they cooperate to pass legislation. Thus, members of the majority can make sincere, position-taking proposals in the legislature in order to communicate their policy positions to their voters, force the government to use the confidence vote and, given that now the vote is no longer on the policy issue alone but on the very survival of the government, refrain from supporting the censure motion and allow the policy to be enacted. This policy, however, like with the package vote, is not unrelated to the preferences of the majority. Although the prime minister will explore the first mover advantage of proposing a specific policy, his or her choice will be constrained by the preferences of the majority. That is to say, the PM will propose a policy that is closest to his or her ideal point within the set of policies the majority prefers over the status quo. In this sense, while they give some leeway to the government to pick a policy it likes, neither the vote of confidence nor the package vote can be used against the majority. The implications of this analysis are profound when it comes to analyzing executive-legislative relations. To begin with, the analytical focus shifts from outside forces – the way legislators and governments get and retain their mandates – to the specific rules regulating executive-legislative relations. As with Strom, and perhaps even more forcefully than he, the relevant variables for understanding policy making are located inside rather than outside the legislature. Second, not all parliaments are rationalized in the sense used by Huber (see alsoLauvaux 1988), that is, not all parliaments contain provisions that allow the government to control the flow of legislation. In this sense, government control over the legislative agenda is not intrinsic to or follows from the principle that defines parliamentarism. That is to say, the strong cabinet control of the legislative process and the near irrelevance of individual members of parliament in this process, which characterizes England, are not inherent to parliamentary governments, as the cases of Italy after 1945and France in the Third and Fourth Republics well illustrate. In both cases, the government had no control over the definition of the legislative agenda, committees had considerable power, and the rights of individual legislators were not“expropriated.”10 Similarly, and by extension, there is nothing in presidentialism that10 In France, until 1911, it was the Chamber presidents who defined the legislative agenda. As Andrews (1978:471) reports, despite several incremental reforms, the government did not have firm control over the definition of the legislative agenda and no-confidence votes were easy to be introduced, leading to the fall of the government. Moreover, committees could veto policy since a report from the committee was necessary for consideration of a bill by the floor. The government could expedite the committee report but could not avoid it. Therefore, committees could respond to government pressure with an unsatisfactory report. Besides, **according to requires that a well-functioning system be one in which a weak president faces a strong congress. Although this describes the allocation of powers across branches in the U.S. system, and the U.S. is the only presidential democracy that has lasted for a long time, it does not follow that the success of the U.S. system can be attributed to the specific way powers are allocated across the presidential and the legislative branches.11This characterization sheds new light on the mechanisms that produce party discipline inside the legislature. The threat of dissolution and early elections is not a sufficient condition to hold party members in line, as the frequent fall of the French and Italian governments demonstrate. Neither is it a necessary condition, since party discipline does occur under presidentialism, nor, it should be noted, can it be inferred from characteristics of the electoral laws since disciplined parties are observed in countries that adopt candidate-centered rules, such as Finland, Brazil, and Chile among others. Discipline is rather a function of restrictive procedures, of denying the rank-and-file members the space for opportunistic**

behavior. In other words, party discipline is less a product of punishing free riders than of preempting the opportunities for free-riding. The expropriation of the rank-and-file legislative rights implied by the concentration of agenda powers in the hands of the executive renders the individual and independent action of legislators futile. For these legislators, the rational course of action when it comes to voting in the assembly is to follow their parties' directives. This is the only way they will be able to influence public policies and send signals to voters (see Limongi andFigueiredo 1998).

2. Nope, Other branches usually support presidential action

Julian **Ku* and** John **Yoo**, Associate Professor of Law, Hofstra University School of Law; Visiting Associate Professor of Law, William & Mary Marshall-Wythe School of Law. And Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute. Summer, **2006** THE FUNCTIONAL CASE FOR FOREIGN AFFAIRS DEFERENCE TO THE EXECUTIVE BRANCH 23 Const. Commentary 179Copyright (c) 2006 Constitutional Commentary. Lexis |Kumar|

But one need not take sides in the war powers debate between the President and Congress to see that the Court has unnecessarily interfered in the political branches' management of war. Constitutional practice shows that there has been a substantial history of inter-branch interaction and cooperation on the subject of military commissions. Rather than a story of unilateral executive branch action, Congress has supported presidential use of them in at least three different ways: a) Section 821 of the UCMJ, which recognizes military commissions; b) the Authorization to Use Military Force enacted on September 18, 2001, which authorized the President to use all necessary and appropriate force against those responsible for the September 11 attacks; and c) the Detainee Treatment Act of 2005, which created a carefully crafted review process for military commission verdicts**.** This is not to say that President Bush could not use military commissions on his own authority once war broke out; several Presidents had employed them as a wartime measure without any specific congressional authorization. But it was unnecessary for the Court to reach the issue of the President's constitutional powers since Congress was on record as supporting military commissions. Indeed, Congress's swift action to largely reinstate the pre-Hamdan military commissions simply confirms that there was no real conflict between executive and legislative policy in the use of military commissions.

3. The struggle for inter-branch power is inevitable

Moe and Howell 99 (Terry M and William G., senior fellow at the Hoover Institution and Associate Professor in the Government Department at Harvard University, “Unilateral Action and Presidential Power: A theory”, *Presidential Studies Quarterly* 29.4, December)

It was also inevitable, however, that there would be a struggle for power over the framework itself. The Constitution sets out the entire design of American government in just a few brief pages and is almost entirely lacking in detail. It does not define its terms. It does not elaborate. It does not clarify. While some of the powers it allocates are straightforward--the president's power to veto legislation, for instance--many of the others, including powers that are quite fundamental, are left wholly

ambiguous. The actual powers of the three branches, then, both in an absolute sense and relative to one another, cannot be determined from the Constitution alone. They must, of necessity, be determined in the ongoing practice of politics. And this ensures that the branches will do more than struggle over day-to-day policy making. They will also engage in a higher order struggle over the allocation of power and the practical rights to exercise it. Throughout the course of American history, this higher order struggle has been reasonably well contained. No single actor has dominated, decisions have been made for the nation, and the same formal Constitution has prevailed. Nonetheless, the reality of the governing structure has changed substantially over the years, to the point that the Founders would barely recognize the system that now governs our nation. Who has power, and how that power gets exercised, looks dramatically different today than it did two hundred years ago. The struggle has transformed it.

4. Non Unique – Thousands of XOs have been passed, the CP is no different

5. Even if the executive order is controversial would not lead to inter-branch conflict

Moe and Howell 99 [Terry, prof of political science @ Stanford, and William, Associate Prof @ Harvard, Presidential Studies Quarterly, December 1999, http://www.blackwell-synergy.com/doi/pdf/10.1111/1741-5705.00070]

What is likely to happen in Congress, then, when presidents take unilateral action by issuing executive orders that shift the policy status quo? The answer is that legislative responses (if there are any) will be rooted in constituency. An executive order that promotes civil rights, for example, will tend to be supported by legislators from urban or liberal constituencies, because it shifts the status quo in their preferred direction, while members from conservative constituencies will tend to oppose it. The fact that this executive order might well be seen as usurping Congress's lawmaking powers, or that it has the effect of expanding presidential power, will for most legislators be quite beside the point. Thus, if Congress tries to take any action at all in responding to the executive order, the battle lines will be determined by the order's effects on legislative constituencies, not by its effects on Congress's power vis-à-vis the president. Even when presidents are clearly taking action to push out the boundaries of their power, therefore, Congress will not tend to vote or respond on that basis and will not, as a result, be able to defend or promote its institutional power very effectively.

AT: Funding

1. Executive Branch –specifically presidential review – controls ESF funding

Humphage 8 (Owen F. Humpage, senior economic advisior at the research department of the federal reserve bank of cleveland, "A New Role for the Exchange Stabilization Fund," Federal Reserve Bank of Cleveland, 8/15/08, http://www.clevelandfed.org/research/commentary/2008/0808.cfm)

Congress allowed the ESF to be self-financing and to exist outside of the annual appropriations process. Doing so guarded the agency's secrecy, a precious commodity when charged with fending off currency speculators. In a like vein, Congress gave the secretary of the treasury full control over ESF operations. Responding quickly is also essential for successful foreign-exchange operations. Aside from the president, no other officer of the U.S. government has authority to review the Treasury's decisions regarding ESF operations. Since the late 1970s, Congress has imposed some oversight on operations and on the financing of the ESF, but these are largely after-the-fact reporting requirements. Fund operations remain squarely within the purview of the Treasury.

2. ESF can solve – Over 100 billion in reserve

US Department of Treasury, 8/31 (http://www.treasury.gov/resource-center/international/ESF/Documents/Trunc%20+%20Notes.pdf)

ASSETS Fund Balance with Treasury - Special Drawing Rights Special Drawing Rights Holdings 57,583,454,876.90 Accrued interest receivable on Special Drawing Rights holdings 21,077,123.25 Total Special Drawing Rights 57,604,532,000.15 US Government Securities Investments in US Government Securities 22,725,152,822.12 Accrued interest receivable on U.S. Gov't Securities - Total US Government Securities 22,725,152,822.12 European Euros (Note 1) Deposits with Official Institutions 7,629,868,019.92 Securities: Held outright 4,912,277,623.35 Held under repurchase agreements 2,681,724,835.42 Accrued interest receivable on Euro investments 100,225,520.45 Total European Euros 15,324,095,999.14 Japanese Yen (Note 1) Deposits with official institutions 4,005,466,624.34 Securities 8,112,728,753.66 Accrued interest on Yen investments 11,907,325.69 Total Japanese Yen 12,130,102,703.69 **TOTAL ASSETS** (Note 3) **$ 107,783,883,525.10**

3. The President can directly spend money from the Treasury – Congressional appropriation isn't needed

Sidak 89 (J. GREGORY SIDAK, Covington & Burling, Washington, D.C. A.B. 1977, A.M., J.D. Stanford University, 1989 "THE PRESIDENT'S POWER OF THE PURSE.", 1989 Duke L.J. 1162, *)

In the first category are the duties that article II explicitly imposes on the President. In the second category are the President's prerogatives, also enumerated in article II. This Part argues that the President has the right under the Constitution to perform these explicit duties and exercise these explicit prerogatives even if Congress has not appropriated funds for him to do so. The Constitution commands the President to act with respect to the subjects listed in article II -- even if, as in the case of the President's prerogatives, the command is to exercise discretion. The Constitution does not condition its commands in article II on Congress periodically granting the President permission to act. This insight leads to the conclusion that the President has an implicit power to encumber the Treasury in the name of carrying out the responsibilities assigned to him by the plain text of article II.

4. President has discretionary spending power within agencies

Pika et al 5 [Joseph, Professor of Political Science and International Relations @ University of Delaware + John Maltese, Associate Professor of Political Science @ University of Georgia + Norman Thomas, department of Political Science @ University of Cincinnati The Politics of the Presidency5th Edition, pg. 233]

In addition to budgeting, presidents have certain discretionary spending powers that increase their leverage over the bureaucracy. They have substantial non statutory authority, based on understandings with congressional appropriations committees, to transfer finds within an appropriation and from one program to another. The committees expect to be kept informed of such “reprogramming” actions. **Fund transfer authority is essential to sound financial management, but it can be abused to circumvent congressional decisions**. In 1970, for example, Nixon transferred funds to support an extensive unauthorized covert military operation in Cambodia. Nevertheless, Congress has given presidents and certain agencies the authority to spend substantial amounts of money on a confidential basis, the largest and most controversial of which are for intelligence activities.

5. Discretionary budgets gives the president the ability to fund things even if congress opposes

Howell 5 [William, Associate Prof @ Harvard, “Unilateral Powers: A Brief Overview”, September 2005, Presidential Quarterly, http://www.blackwell-synergy.com/doi/full/10.1111/j.1741-5705.2005.00258.x]

Third, and finally**,** given the size of the overall budget and the availability of discretionary funds, presidents occasionally find ways to secure funding for agencies and programs that even a majority of members of Congress oppose. Presidents may request moneys for popular initiatives and then, once secured, siphon off portions to more controversial programs and agencies that were unilaterally created. They can reprogram funds within budgetary accounts or, when Congress assents, they may even transfer funds between accounts. And they can draw from contingency accounts, set-asides for unforeseen disasters, and the like, in order to launch the operations of certain agencies that face

considerable opposition within Congress. By Louis Fisher's account, "The opportunity for mischief is substantial" (1975, 88). While discretion is far from absolute, the president does have more flexibility in deciding how funds are spent than a strict understanding of Congress's appropriations powers might suggest.

6. Presidents can garner funding regardless of congress

Howell 5 [William, Associate Prof @ Harvard, "Unilateral Powers: A Brief Overview", September 2005, Presidential Quarterly, http://www.blackwell-synergy.com/doi/full/10.1111/j.1741-5705.2005.00258.x]

Second, the appropriations process is considerably more streamlined, and hence easier to navigate, than the legislative process**.** It has to be, for Congress must pass a continually expanding federal budget every year, something not possible were the support of supermajorities required. But by lowering the bar to clear appropriations, Congress relaxes the check it places on the president's unilateral powers. There are a range of programs and agencies that lack the support of supermajorities that are required to create them, but that have the support of the majorities needed to fund them. Just because the president cannot convince Congress to enact a program or agency does not mean that he cannot build the coalitions required to fund them.

7. The president can use the ESF to control spending even if congress disagrees

Desltler 10 (I.M. (Mac) Destler, Professor at the School of Public Policy @ University of Maryland, Director, Program on International Security and Economic Policy, Visiting Fellow at Peterson Institute for International Economics September 2010, "THE FOREIGN ECONOMIC BUREAUCRACY," http://scholar.googleusercontent.com/scholar?q=cache:sntSnvRxc2EJ:scholar.google.com/+presidential+slush+fund+exchange+stabilities+fund&hl=en&as_sdt=0,22&as_ylo=2008)

Treasury dominance has been almost as great on matters of LDC debt. The Mexican crisis caught Robert Rubin in transition from the position of NEC director to that of Treasury Secretary, but he quickly dominated decision making on the US response, working with his Deputy Secretary, Larry Summers. **After encountering Congressional resistance, they were able to act independently by use of a Treasury-controlled institution, the Exchange Stabilization Fund**. (Henning 1999)Rubin and Summers also dominated the US response to the East Asian financial crisis of 1997, and their failure to come to Thailand's aid generated criticism that they had given short shrift to US geopolitical interests. **And when a full-blown American financial crisis emerged in 2008, and spread to other advanced nations, the international response was determined by Bush's Treasury Secretary, Henry Paulson, working again in tandem with Ben Bernanke and Timothy Geithner of the Fed**. They were, inevitably, the point persons in measures to keep the Great Recession from becoming a second Great Depression, particularly because banks and "non-bank" financial institutions were at the center of the crisis. This lead

department role continued into the Obama administration, with Geithner becoming Treasury Secretary and (together with Obama) leading the US at a series of Group of 20 international economic summits.

AT: ESF not enough $

Warehousing solves for lack of ESF funding

Humphage 8 (Owen F. Humpage, senior economic advisior at the research department of the federal reserve bank of cleveland, "A New Role for the Exchange Stabilization Fund," Federal Reserve Bank of Cleveland, 8/15/08, http://www.clevelandfed.org/research/commentary/2008/0808.cfm)

The ESF can also obtain dollars by warehousing foreign exchange with the Federal Reserve. Warehousing is a currency swap in which the Federal Reserve buys foreign currency from the ESF in a spot transaction and sells it back to the ESF in a forward transaction. The duration typically has been 12 months, but some have unwound early and some have rolled over. Because the Federal Reserve undertakes the spot and forward portions of these swaps at the same exchange rate, unanticipated exchange-rate movements have no financial consequences for the Fed. The Fed earns interest from any foreign-currency denominated assets that it holds as a consequence of the swap, but loses interest on the Treasury securities that it might have to sell to offset any monetary impacts from the ESF's dollar sales. Many FOMC participants have viewed warehousing as a temporary loan from the Federal Reserve to the ESF, collateralized with foreign exchange. The Federal Reserve Act does not include such lending authority, and the Banking Act of 1935 prohibits the Federal Reserve from purchasing U.S. government obligations, except in the open (or secondary) market. The U.S. Congress granted the Federal Reserve authority to lend up to $5 billion to the Treasury for short durations in 1942, but this authority expired in 1981. Opponents of warehousing argue that in the absence of clear ongoing lending authority, the Fed should not warehouse currencies for the ESF, especially given the foreign-policy nature of many ESF stabilization loans**. Proponents view warehousing as a temporary exchange of assets—not as a loan**. Moreover, because the Treasury does not issue German marks or Japanese yen—as it does U.S. government securities—the Treasury constitutes part of the open market for foreign exchange. They sometimes point to parallels between warehousing and the acceptance of SDR certificates. Hence, proponents contend warehousing foreign exchange is wholly acceptable. The FOMC currently authorizes the Fed to warehouse up to $5 billion in foreign exchange for the ESF. During the Mexican peso crisis of 1995, the limit was increased to $20 billion. However, no funds have been warehoused since 1992.

ESF can solve – Over 100 billion in reserve

US Department of Treasury, 3/31 (http://www.treasury.gov/resource-center/international/ESF/Documents/Trunc%20+%20Notes.pdf)

ASSETS Fund Balance with Treasury - MMMFGP GSE Securities (Note 5) - Accrued interest receivable on GSE Securities - Special Drawing Rights Special Drawing Rights Holdings 55,460,463,202.92 Accrued interest receivable on Special Drawing Rights holdings 13,349,913.55 Total Special Drawing Rights 55,473,813,116.47 US Government Securities Investments in US Government Securities 22,691,197,381.80 Accrued interest receivable on U.S. Gov't Securities 12,606.22 Total US Government Securities 22,691,209,988.02 European Euros (Note 1) Deposits with Official Institutions 7,114,649,669.89 Securities: Held outright 4,579,777,395.12 Held under repurchase agreements 2,496,539,317.87 Accrued interest receivable on Euro investments 93,286,222.87 Total European Euros 14,284,252,605.75 Japanese Yen (Note 1) Deposits with official institutions 3,726,517,907.46 Securities 7,541,190,254.79 Accrued interest on Yen investments 6,975,162.41 Total Japanese Yen 11,274,683,324.66 **TOTAL ASSETS (Note 3) $ 103,723,959,034.90**

The ESF can draw on mysterious hidden gold - it secretly controls 87% of the US gold supply

Gold Anti-Trust Action Committee 1 (http://www.gata.org/gold_reserves.html, 8/15/01)

"The ESF by law cannot issue more SDR certificates than it has SDR's. The largest amount of SDR certificates outstanding was 10,168 million in December 1995, a significant date, because I have contended all along that government actions that have depressed the gold price began in 1996, which is the same year that the SDR certificates began to decline. From this peak to the present, the SDR certificates have been reduced by 7,968 million. Given that there are 35 SDR's per ounce of gold, this reduction in the SDR certificate account equates to 227.7 million ounces, or 87 percent of the U.S. Gold Reserve...." "Everything is fitting into place," Murphy says. "It appears that the SDR certificates **are being used by the ESF to hide its gold transactions** from the American public." GATA has long claimed that central bank gold loans are two to three times the commonly accepted 5,000 tonnes cited by the gold industry. "Eighty-seven percent of the U.S. gold reserves is very close to 7,000 tonnes, which would increase to 12,000 tonnes the official sector gold out on loan in some way," Murphy notes. "No wonder former Treasury Secretaries Robert Rubin and Lawrence Summers and current Secretary Paul O'Neill have refused to directly answer members of Congress regarding their gold market queries," Murphy goes on. "**The ESF reports only to the president** of the United States and the treasury secretary, which means that these men are very aware of the mechanics of manipulating the gold price."

The ESF can use warehousing to replenish itself and the Fed's open market operations will check any adverse consequences

Henning 99 (C. Randall Henning , Institute for International Economics, September 1999 http://www.iie.com/publications/pb/pb99-8.htm)

Warehousing is the spot sale of foreign currency from the ESF to the Federal Reserve along with a parallel repurchase at some specified date in the future. **It is designed to replenish dollars in the ESF** when they have been sold or swapped for foreign currency. The treasury last availed itself of this facility in 1989 and 1990. When warehousing was first instituted in the early 1960s, the General Counsel of the Federal Reserve issued an opinion articulating its legal basis. Congress authorized the Federal Reserve in 1980 to purchase foreign securities, an affirmative action meant to facilitate the Fed's holding of foreign exchange. The counsel opinion, the 1980 law, and 35 years of practice disclosed to the Congress, would seem to consolidate the legal basis for warehousing. Should the issuance of dollars to the ESF cause an undesired expansion of the money supply, the Federal Reserve can easily offset the liquidity effect through standard open market operations. Moreover, the Federal Open Market Committee decides on matters related to warehousing, such as the limits to be set on the facility. In the event that warehousing became so large as to complicate sterilization, the FOMC could refuse further drawings.3 It is therefore difficult to foresee any realistic scenario under which warehousing could undermine the independence of the Federal Reserve or domestic price stability.

AT: Treasury Controls ESF

Nope, Prez controls treasury through appointees

Desltler 10 (I.M. (Mac) Destler, Professor at the School of Public Policy @ University of Maryland, Director, Program on International Security and Economic Policy, Visiting Fellow at Peterson Institute for International Economics September 2010, "THE FOREIGN ECONOMIC BUREAUCRACY," http://scholar.googleusercontent.com/scholar?q=cache:sntSnvRxc2EJ:scholar.google.com/+presidential+slush+fund+exchange+stabilities+fund&hl=en&as_sdt=0,22&as_ylo=2008)

Both Treasury's stances on international issues and its credibility in addressing them are shaped by its domestic policy base. Until the late 1980s, this relationship was embodied in the position of Under Secretary for Monetary Affairs, held prominently in the early seventies by Paul Volcker. Today, that job is split between domestic and international finance, and **Treasury has three presidential appointees** with specifically international responsibilities—the Under Secretary for International Affairs, an Assistant Secretary for International Finance, and an Assistant Secretary for International Markets and Development

AT: Congress Rollback

1. The CP FIATS it will not be rolled back, If the AFF gets FIAT the neg should too, otherwise the AFF can be roll backed

2. Their evidence never says the XO will be roll backed only that It can, probability is slim to none

3. Executive orders are nearly impossible to overturn – Supermajority and political criticism

Kraljic 11 (Dave Kraljic Co-Founder Votetocracy.com and government researcher, May 7, http://www.votetocracy.com/blog/detail/understanding-executive-orders-and-the-powers-they-grant.html

Executive orders can be overturned by either of the other two branches: the Supreme Court can do so through a case that is brought in front of them and Congress can do so by passing legislation that would conflict with the order or by refusing to approve funding to enforce it. The president still has the right to veto a decision from Congress, which Congress can override as always with a two-thirds majority that would end the executive order. **However, this is nearly impossible** because of the supermajority vote that is required as well as the fact that individual lawmakers can be left very vulnerable to political criticism. **To date, two executive orders have been overturned by other branches.** This includes the previously mentioned Truman order as well as a 1996 Clinton order that attempted to prevent the US government from contracting with organizations that had strike-breakers on the payroll. Executive orders can also be overturned by future presidents.

4. Courts and the Congress won't rollback XOs even if they have the power to

Edwards and Wayne 9 (By George C. Edwards, III, Distinguished Professor of Political Science at Texas A&M University. holds the Jordan Chair in Presidential Studies and has served as the Olin Professor of American Government at Oxford and the John Adams Fellow at the University of London, has held senior visiting appointments at Sciences Po-Paris, Peking University, Hebrew University of Jerusalem, and the U.S. Military Academy at West Point, the founder and from 1991-2001 the director of The Center for Presidential Studies, Stephen J. Wayne, served as President of the Presidency Research Group and The National Capital Area Political Science Association, regularly lectures to international visitors, senior federal executives, and college students in the United States and abroad on the presidency and electoral politics, has testified before Congress, advised both the Republican and Democratic National Committees on the presidential nomination process, Presidential Leadership: Politics and Policy Making, p. 521, published by Cengage Learning, July 15, 2009 http://books.google.com/books?hl=en&lr=&id=J5U5OOSC3RAC&oi=fnd&pg=PR7&ots=Ccit2eWhB6&sig=t2MtZVMSz2KhroGK_tB2BOAF7RA#v=onepage&q=executive%20order&f=false)

The judiciary for its part has also given the president considerable latitude in the issuance of executive orders. Courts do not wish to create institutional conflict, particularly conflict that may damage their reputation as a nonpartisan body or their stature as the final constitutional interpreter. Moreover, the judiciary does not have a mechanism to enforce its judgements; it is dependent on the executive branch to do so. **In the few instances in which the courts have reversed a presidential order, they have done so on the gournds that the order exceeded the president's constitutional or statutory authority**. In Truman's seizure of the steel mills, for example, the Supreme Court ruled in the case of Youngstown v. Sawyer, 353 U.S. 579 (1952), that the president had violated the Taft-Hartley Act because in its deliberations on this legislation, Congress specifically rejected a provision that would have allowed the president to intervene directly in labor-management disputes. Instead, the law provided for a "cooling off period" during which federal mediators would try to negotiate a settlement. But the Court's decision in the steel seizure case stands out as an exception to the rule that presidents tend to get their way when they issue an executive order. Howell examined eighty-three court cases in which a total of forty-five executive orders were challenged, some several times. Of these cases**, the courts decided in favor of the president 83 percent of the time**. Moreover, Howell notes, "[**I]n the vast majority of challenges to executive orders, the courts not only supported president's actions, but also provided…rationales for future presidents to further expand their base of power**." The bottom line is that **although Congress and the judiciary can limit the unilateral power of the president, they rarely do so in practice. Thus, the absence of congressional and judicial actions implicitly encourages presidents to turn to their executive authority to achieve their policy objectives when they cannot do so by other means or when time is of the essence.**

5. There is no risk of an overturn – congress will allow executive orders to avoid the burdensome overturn process

Krause and Cohen 2000 [George and David, Professors of Political Science @ South Carolina, "Opportunity, Constraints, and the Development of the Institutional Presidency: The Issuance of Executive Orders" THE JOURNAL OF POLITICS, Vol. 62, No. 1, February 2000]

We use the annual number of executive orders issued by presidents from 1939 to 1996 to test our hypotheses. Executive orders possess a number of properties that make them appropriate for our purposes. First, the series of executive orders is long, and we can cover the entirety of the institutionalizing and institutional-ized eras to date.6 Second, unlike research on presidential vetoes (Shields and Huang 1997) and public activities (Hager and Sullivan 1994), which have found support for presidency-centered variables but not president-centered factors, ex-ecutive orders offer a stronger possibility that the latter set of factors will be more prominent in explaining their use. One, they are more highly discretionary than vetoes.7 More critically, presidents take action first and unilaterally. In ad-dition, Congress has tended to allow executive orders to stand due to its own collective action problems and the cumbersomeness of using the legislative pro-cess to reverse or stop such presidential actions**.** Moe and Howell (1998) report that between 1973 and 1997, Congress challenged only 36 of more than 1,000 executive orders issued. And only two of these 36 challenges led to overturning the

president's executive order. Therefore, presidents are likely to be very suc-cessful in implementing their own **agendas through such actions**. In fact, the nature of executive orders leads one to surmise that idiopathic factors will be relatively more important than presidency-centered variables in explaining this form of presidential action. Finally, executive orders have rarely been studied quantitatively (see Gleiber and Shull 1992; Gomez and Shull 1995; Krause and Cohen 1997)8, so a description of the factors motivating their use is worth-while.9 Such a description will allow us to determine the relative efficacy of these competing perspectives on presidential behavior.10

AT: Courts Rollback

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for future presidents to further expand their base of power." The bottom line is that **although Congress and the judiciary can limit the unilateral power of the president, they rarely do so in practice. Thus, the absence of congressional and judicial actions implicitly encourages presidents to turn to their executive authority to achieve their policy objectives when they cannot do so by other means or when time is of the essence.**

4. Executive orders are nearly impossible to overturn – Supermajority and political criticism

Kraljic 11 (Dave Kraljic Co-Founder Votetocracy.com and government researcher, May 7, http://www.votetocracy.com/blog/detail/understanding-executive-orders-and-the-powers-they-grant.html

Executive orders can be overturned by either of the other two branches: the Supreme Court can do so through a case that is brought in front of them and Congress can do so by passing legislation that would conflict with the order or by refusing to approve funding to enforce it. The president still has the right to veto a decision from Congress, which Congress can override as always with a two-thirds majority that would end the executive order. **However, this is nearly impossible** because of the supermajority vote that is required as well as the fact that individual lawmakers can be left very vulnerable to political criticism**. To date, two executive orders have been overturned by other branches.** This includes the previously mentioned Truman order as well as a 1996 Clinton order that attempted to prevent the US government from contracting with organizations that had strike-breakers on the payroll. Executive orders can also be overturned by future presidents.

5. It is very difficult to overturn executive orders

Their author Cooper 97 [Phillip, Prof of Public Administration @ Portland State, Nov 97, "Power tools for an effective and responsible presidency" Administration and Society, Vol. 29]

If Congress does challenge an executive order, then the president must either demonstrate that he properly interpreted the statute in question or that the action can be independently justified from executive powers delegated by the Constitution. However, it can, for a variety of reasons, be very difficult to get a legal challenge into court, and even if such a case does reach a judicial assessment, the broad kinds of grounds that can be asserted by the president can make it extremely difficult to challenge a presidential action. It has been done but it is not a simple matter (Note, 1987a).

6. Courts refuse to overturn executive orders

Mayer 99 (Kenneth R., Associate Professor of Political Science at University of Wisconsin-Madison, May 1999 "Executive Orders and Presidential Power," Journal of Politics)

Executive orders have legal force only when they are based on the president's constitutional or statutory authority (Fisher 1991, 109). Yet, presidents take an expansive view of their own power when it suits them, and use executive orders to expand the boundaries of their authority. **The courts typically stay out of the president's way, upholding executive orders even when the they are "of -- at best --dubious constitutional authority** ... [or] issued without specific statutory authority" (Fleishman and Aufses 1976, 5). Between 1789 and 1956, state and federal courts overturned only 16 executive orders (Schubert 1957, 361-65); Youngstown Sheet and Tube v. Sawyer (343 U.S. 579, 1951), which overturned Truman's seizure of the nation's steel mills, is undoubtedly the most famous. More recently, the federal courts overturned a 1995 Clinton executive order barfing federal contractors from hiring permanent replacements for striking workers, in Chamber of Commerce v. Reich (74 F. 3d 1322, 1996). This is the exception, though, and in practice presidents have wide latitude in issuing orders.

AT: Future Prez Rollback

1. The CP FIATS it will not be rolled back, If the AFF gets FIAT the neg should too, otherwise the AFF can be roll backed

2. Their evidence never says the XO will be roll backed only that It can, probability is slim to none

3. This argument may have made sense in the context of space exploration but not for transportation – once infrastructure is being built no one can just magically make it go away – not even a future president with another executive order

4. Political barriers check – new, stronger constituencies

Branum 2 [Tara L, Associate, Fulbright & Jaworski L.L.P, "President or King? The Use and Abuse of Executive Orders in Modern Day America" Journal of Legislation]

Congressmen and private citizens besiege the President with demands [*58] that action be taken on various issues. [n273] To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. n274 Many were controversial and the need for the policies he instituted was debatable. [n275] Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. [n276] A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

AT: Can't Solve – Signal/Perception

1. Executive orders spark national dialogue and are empirically best for social change – proven by the civil rights movement.

Kenneth R. **Mayer,** Professor of Political Science @ U of Wisconsin-Madison, 20**01** (With the Stroke of a Pen: Executive Orders

and Presidential Power) p. 216-217

Presidents used executive orders to prod and drag Congress when the legislature refused to enact significant new protections, and to steer a middle course that would not prove excessively antagonizing to the South. By relying on executive orders to embark on such a difficult course, "presidents began to pick their way warily through the minefield" of racial politics.**165 Presidential involvement was crucial, in that it established the federal government's role in civil rights** enforcement: scarcely a decade after Roosevelt's 1941 establishment of the Fair Employment Practices Committee in 1941 (an important but ultimately ineffective organization), the validity of presidential nondiscrimination efforts was "assumed,"' and White House officials recognized that efforts to back away from the precedent of nondiscrimination in federal activities world provoke sharp opposition."' The use of executive orders in civil rights demonstrates in one sense the limits of executive power to foster broad and enduring social change. In this regard civil rights falls into the theoretical predictions of the "politics of structure" model I employed in chapters four and five to analyze the use of executive orders to expand the president's control over government institutions and processes. The expectation is that the farther an executive action reaches beyond the government in requiring changes in private behavior, the greater the controversy about the legitimacy and authority of the action. Executive action can serve as a spark to ignite a broader dialogue by placing an issue on the national agenda and extending the envelope of acceptable social policies. It can establish an anchor point for political debate, and can help draw Congress and the courts along. By itself, though, it cannot create consensus where the middle ground does not otherwise exist; the persistence of the affirmative action controversy nearly four decades after Executive Orders 10925 and 11246, and more than thirty years after the Philadelphia Plan established the baseline for "goals and timetables," attests to the limits of the president's ability to force a policy on a skeptical public. The discretion and flexibility of executive action as opposed to legislation can, to use Graham's language, help presidents "pick their way" carefully through complicated policies, but on sonic issues the trail is so narrow and convoluted that no path is clear of mines.

2. Executive action is best for governmental resolve – it shows determination to pursue policy, unlike the cumbersome legislative process which sends mixed signals.

Phillip J. **Cooper. 2002**. "By Order of the President: The Use and Abuse of Executive Direct Action" p. 65

Executive orders can also be used to hit quickly with policies aimed at important problems, providing a strong and immediate sense of momentum for a new administration. **These messages are sent to reassure an administration's supporters that the issue positions for**

which they campaigned are going to be acted upon in the case of symbolic orders, which are often use for this purpose, **the reward can be given to allies without a serious commitment of political resources** in Congress, legal resources in administrative rulemaking, or financial resources associated with building really, substantive programs. **They also serve to send a message to potential adversaries that the administration is truly in charge and moving. Those seeking to mobilize opposition in such conditions find themselves reactive and defensive.**

AT: Prez Can't Repeal Laws

Other precedents don't apply in the realm of foreign affairs – the President can unilaterally repeal law

Roy E. **Brownell** II, Former Editor-in-Chief of the American University Law Review, Congressional Liaison Office for USAID, and Attorney @ the Washington, D.C. firm of Muldoon, Murphy, and Faucette, LLP , **June 1998** (47 Am. U.L. Rev. 1273)

Consequently, the Court in Dames & Moore upheld the President's actions absent congressional approval, effectively placing it within Justice Jackson's second category. From Supreme Court precedent, it therefore follows that the President, whether acting with or without congressional approval, has exceptional discretion in national security affairs. In fact, as will be discussed further, when acting absent congressional authority, the President's national security power at times extends both to positive lawmaking and to unilateral repeal of existing law. Such presidential power in national security thus would appear to carve out an exception to Chadha's and City of New York's seemingly airtight holdings. Put simply, national security lawmaking has different lawmaking requirements. As a result, if the Chadha and City of New York decisions do not apply solely to domestic spending bills, then they at least apply in a different manner to national security spending, thus paving the way for recognition of National Security Rescission.

Past court precedents give the President the power to unilaterally change Congressional law

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The effect of much Supreme Court precedent on the President's unilateral national security power has been to legitimize the "coordinate construction" <=240> n239 given the Constitution by the political branches. The Court's refusal to decide Goldwater v. Carter <=241> n240 on the merits allowed the President to abrogate an existing treaty. <=242> n241 In [*1324] Goldwater, several Senators sued for declaratory and injunctive relief against President Carter, who was planning to end the nation's mutual defense treaty with Taiwan. The Court held that the case was nonjusticiable because it involved the "authority of the President in the conduct of our country's foreign relations." <=243> n242 This was because the Court reasoned, "the effect of this action, as far as we can tell is entirely external to the United States, and [falls] within the category of foreign affairs." <=244> n243

In effect, the decision gave the President a free hand to terminate existing treaties which had required not merely a majority vote in the Senate, as normal legislation would demand, but a supermajority of two thirds. Because treaties define legal relationships between the peoples of different nations and are recognized as the "law of the land" - essentially on par with that of statutes <=245> n244 - the President is in effect unilaterally redefining the law. **The President, therefore, has the power to unilaterally change the law despite prior congressional action to the contrary**: an action that likely falls within Justice Jackson's third category.

AT: XOs Aren't Law

Executive orders do constitute "law"

Kenneth R. **Mayer**, Professor of Political Science at the University of Wisconsin-Madison. **4/12/01** (http://pup.princeton.edu/chapters/s7095.html,

Even within the confines of their executive powers, presidents have been able to "legislate" in the sense of making policy that goes well beyond simple administrative activity. Yale Law School professor E. Donald Elliot has argued that many of the thousands of executive orders **"plainly 'make law' in every sense,"7**

AT: CMR

1. Turn: Congressional attempts to change military policy destroy CMR since it passes contradictory policies which dispute military leadership. Presidential action solves CMR best

Gaziano Et Al 7 Todd F. Gaziano, Attorney General Edwin Meese at The Heritage Foundation, Chief Counsel to the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, served in the Office of Legal Counsel in the U.S. Justice Department, judicial law clerk to the Honorable Edith H. Jones, United States Judge for the Fifth Circuit Court of Appeals, J.D. from Chicago, Steven Groves, responsible for developing and running the Thatcher Center's "Freedom Project", senior Counsel to the U.S. Senate Permanent Subcommittee on Investigations, Assistant Attorney General for the State of Florida, He holds a law degree from Ohio Northern University College of Law, and Brian Walsh, Senior Legal Research Fellow in The Heritage Foundation's Center for Legal and Judicial Studies, 2/6/07, "Congress's Iraq Resolutions: Without Resolve or Constitutional Purpose" http://www.heritage.org/Research/MiddleEast/wm1347.cfm

Although policymakers are not at liberty to tinker with the constitutional design except by amendment, history has vindicated the choices made by the Framers. Those choices allow a determined Congress to end a war (if it uses its own powers), **and it grants the President independence of action and ultimate responsibility for prosecuting any war** Congress funds. The Framers knew that successful war efforts require decisiveness, fixed will, and determined leadership that does not vacillate in the face of adversity and setbacks. **Timidity, equivocation, and hand-wringing compromises almost always result in defeat**. The Framers of our Constitution understood that war-making powers are best vested in a single Executive. They rejected a proposal for the executive power to be shared by a committee or privy council, even one wholly within the executive branch.[10] In contrast to the "energy" and "responsibility" they intended the President to have, they sought to make congressional action more cumbersome, as befitting "the most dangerous branch." Thus **by design**, **Congress's decision-making process is often tedious and inconclusive**. The ultimate **decisions of Congress are**, invariably, **political compromises**. The Framers sought to ensure such deliberations and internal checks as they related to the government's domestic actions, but they **expressly rejected this result for "external threats**." For external threats, they wanted to ensure presidential secrecy, dispatch, and decisiveness. Congressional deliberation is perfectly appropriate for passing legislation, particularly regarding domestic concerns, but not for prosecuting--**much less micromanaging**--a war. Whether the President's war plans are flawed or not, Congress has not yet devised--and does not even propose to devise--a single set of comprehensive recommendations for the war in Iraq on which it can agree. The recent hearings and debate to confirm General David Patreaus to command U.S. forces in Iraq are indicative of why Congress is unfit to prosecute a war. The Senate unanimously confirmed General Petraeus--a proponent of the "surge" strategy.[11] That the Senate would confirm General Petraeus so easily and subsequently pass a resolution **disputing the strategy he believes is necessary for victory is an unjustifiable inconsistency**.

2. Congressional inaction solidifies presidential authority over the armed forces. Congressional micromanaging shatters presidential powers and puts the entirety of the institution at risk.

Chen 7 (Michelle Chen, Staff Writer for the New Standard, 1/16/07, http://newstandardnews.net/content/index.cfm/items/4116)

Jan. 16 – With the Pentagon already implementing President Bush's broadly opposed plan to expand the US fighting force in Iraq, critics are calling on Congress to stop the escalation. But Democratic lawmakers are divided on whether to wield their "power of the purse" and curb or cut the war budget, leaving some to downplay Congress's ability to take concrete action. Representative John Murtha (D–Pennsylvania), a member of the House Appropriations Committee who voted to authorize the Iraq war in 2002, said he plans to try placing restrictions on military expansion in upcoming "emergency" military-funding bills. Federal allocations related to the Iraq and Afghanistan conflicts have already exceeded $500 billion. Senator Ted Kennedy (D–Massachusetts), who voted against the authorization, has already introduced legislation that would bar the president from spending money to escalate troop levels "unless and until Congress approves the president's plan." Neither Kennedy's nor Murtha's proposal would alter funding for the existing deployment in Iraq. But even such efforts to prevent the occupation from intensifying have met resistance within the Democratic Party and raised public doubts about their commitment to ending the war. Efforts to prevent the occupation from intensifying have met resistance within the Democratic Party – and raised public doubts about their commitment to ending the war. Various political snags await the proposed strictures. The most-direct threat is a veto from the White House, which has already indicated that it has no plans to heed congressional dissent. To override a presidential objection, the House and Senate would each need to muster a two-thirds majority. Nothing is stopping the president from jumping ahead of Congress and boosting the Iraq force using funds previously allocated for the war, said Lawrence Korb, a senior fellow with the liberal think tank Center for American Progress and senior advisor to the Center for Defense Information. By the time you vote on the money bill," Korb told The NewStanard, "a lot of the troops will already be there." The Bush administration says Congress does not have the power to steer the conduct of military operations. In an interview on Fox News Sunday, Vice President Dick Cheney said of the president, "He's the guy who's got to decide how to use the force and where to deploy the force." He added that while Congress serves as the military's financer, "you also cannot run a war by committee." But according to some policy experts critical of the war, within the constitutional separation of powers, Congress has both the authority and a responsibility to redirect national resources away from an unpopular war. Anthony Arend, director of the Institute for International Law and Politics at Georgetown University, argued that Congress may lack the power to "micromanage an ongoing conflict" with detailed mandates for deploying forces. However, Arend told TNS, lawmakers could rein in war spending so that the White House "would have no choice but to reduce troops in accordance with that funding reduction." "Congress, of course, being cowards, are going to hold off on cutting funds in any obvious or dramatic way… because they think they might be blamed [for defunding military forces] and not reelected." -- Lt. Col. Piers Wood, Military InsightsTaking a historical view of congressional powers in practice, a recent policy paper by the Center for American Progress lists ways lawmakers have previously used budgetary, legislative and political leverage to cap troop levels, influence the conditions and timing of missions, and bar funds for forces either before or after they are deployed. For instance, toward the end of the Vietnam War, Congress cut funding for military efforts in Southeast Asia. Though outcry against the war had already engulfed the country by then, the budget restrictions solidified the opposition and, combined with public pressure, helped compel the executive branch to withdraw US forces. Winslow Wheeler with the policy-analysis group

Center for Defense Information, who previously worked as a congressional staffer and researcher with the Government Accountability Office, said the US Constitution gives Congress "complete, utter control over how every single penny of appropriations is spent." But he added that so far, Congress has only deepened the Iraq conflict by handing the president ample war funds with minimal strings attached. Some analysts opposed to the war say that although constitutional issues and White House resistance may pose some difficulty, much of the Democrats' reluctance to seize the Iraq war's purse strings stems from political timidity. Critics suspect lawmakers are hesitant to cut military funding because they fear giving the impression that they are "abandoning" American troops. In recent statements to the press, several Democrats in Congress have emphasized that they will steer clear of withholding funds for forces in the field. Critics say the Democrats' reluctance to seize the Iraq war's purse strings stems from political timidity.Jim Manley, a spokesperson for Senate Majority Leader Harry Reid (D–Nevada), told TNS that while the Senator would scrutinize the upcoming funding requests, Reid "intends to make sure that the troops get everything they need." For now, Manley said that Reid, who initially supported the war, is promoting a conciliatory approach: a non-binding resolution criticizing Bush's troop increase, aimed at winning Republican backing to show bipartisan opposition. That resolution, Reid's office says, is still being finalized and has not been publicly released. But retired Lieutenant Colonel Piers Wood, who heads the think tank Military Insights, said de-escalating the war would not necessarily put the troops at further risk. By enacting surgical budget cuts, he said, Congress "could constrain offensive operations" but maintain funds to cover troops' basic needs. He nonetheless predicted, "Congress, of course, being cowards, are going to hold off on cutting funds in any obvious or dramatic way… because they think they might be blamed [for defunding military forces] and not reelected." Representative José Serrano (D–New York), who voted against the war authorization and has called for an immediate pullout from Iraq, said that while he understands his colleagues' concerns on the issue of neglecting the troops, he sees a straightforward way to keep soldiers safe. "My plan not to jeopardize the troops is to take them out immediately," Serrano told TNS. According to analysts interviewed by for this story, Congress could express definitive opposition to the occupation by repealing its original authorization for the Iraq war. Representative Sam Farr, for example, recently introduced a bill to rescind the war resolution, which he voted against in 2002. The initiative would pit congressional authority in wartime squarely against executive control of the military. **Some political observers say a standoff** over withdrawal **might trigger a governmental clash and national debate over the war's legality, possibly testing the scope of executive power under the Constitution and the War Powers Act that emerged from the Vietnam Era**

3. Congressional meddling with the army usurps presidential powers

Gaziano Et Al 7

Todd F. Gaziano, Attorney General Edwin Meese at The Heritage Foundation, Chief Counsel to the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, served in the Office of Legal Counsel in the U.S. Justice Department, judicial law clerk to the Honorable Edith H. Jones, United States Judge for the Fifth Circuit Court of Appeals, J.D. from Chicago, Steven Groves, responsible for developing and running the Thatcher Center's "Freedom Project", senior Counsel to the U.S. Senate Permanent Subcommittee on Investigations, Assistant Attorney General for the State of Florida, He holds a law degree from Ohio Northern University College of Law, and Brian Walsh, Senior Legal Research Fellow in The Heritage Foundation's Center for Legal and Judicial Studies, 2/6/07, "Congress's

Iraq Resolutions: Without Resolve or Constitutional Purpose"
http://www.heritage.org/Research/MiddleEast/wm1347.cfm

Congress may soon consider one or more non-binding resolutions expressing its "disagreement" with President Bush's plan to augment American forces in Iraq by 21,500 troops.[1] Such resolutions condemning the Commander in Chief's considered strategy to achieve victory and promote peace and stability in Iraq may play well on the campaign trail, but they are an abuse of Congress's authority and an unreasonable interference with the President's exclusive constitutional authority to make strategic military decisions during wartime. Congressional second-guessing of executive responsibilities has become sadly common, and few are willing to speak up to defend any policy that seems unpopular. But no degree of supposed unpopularity[2] can render constitutional actions unconstitutional--notwithstanding the confusion on such matters by the mainstream media and misstatements by academics or others with ideological axes to grind. As most Members of Congress know, their control over the troops available to the President during a war or other conflict is limited to the number of commissioned officers Congress authorizes and the Senate confirms and the overall number of non-commissioned soldiers Congress authorizes and appropriates money for. The President's constitutional authority as Commander in Chief to commit any number of these soldiers to battle, including his authority to augment the forces in Iraq, is almost absolute, with minor exceptions that are not relevant to the pending resolutions.[3] Congress expressly authorized the President to prosecute the war in Iraq in any manner that he determines necessary and appropriate, but even a revocation of that authorization would not change the President's constitutional duty to use any and all military forces Congress funds to defeat enemy soldiers bent on America's destruction. Congress does have sufficient power to starve the President of the funds necessary to win the war, but it cannot usurp the President's strategic command over troops that are funded. Given the important but distinct powers each branch possesses, it is, at best, irresponsible meddling for Congress to publicly disparage the President's command decisions. At worst, it is an attempted interference with his military command that is inconsistent with our constitutional design.

DA Thumper

Presidents have been using XO's for decades – The link is non Unique

Kelly 7 (Christopher S. Kelley Assistant Professor Department of Political Science Miami University. 2007 writing for Presidential Studies Quarterly [37 no1 169-70 Mr 2007]Northwestern Library |Kumar|)

The presidency of George W. Bush has proved a boon for presidency scholars who are interested in the area of presidential unilateralism--the idea of obtaining political objectives without the reliance upon external actors, such as Congress. Recently, in the case of the current Bush presidency, some have confused this with presidential imperialism, but as Adam Warber explains, this process of unilateralism did not start with George W. Bush and in all likelihood will not end with him or his presidency. In Executive Orders and the Modern Presidency, Warber has produced a well-written, solidly argued piece of research that is suitable for undergraduate and graduate courses on the U.S. presidency. Further, he moves presidency scholars toward developing and refining theory to explain the connections between unilateral action and presidential power.In the first chapter (of five), Warber lays out an explanation for the use of executive orders by modern presidents (his time period covers 1936-2001) that builds upon the earlier work of Terry Moe and William Howell, who used rational actor modeling to explain why presidents choose to go solo (p. 4). The rational actor approach is used, as Warber explains, "because it [weighs] political costs and benefits when deciding how to achieve policy in order to cope with an uncertain political environment" (p. 8). Warber then lists a number of assumptions that describe how unilateralism benefits from the rational actor approach. In sum, the assumptions stipulate that, because presidents are rational, they will be able to ascertain in what areas unilateralism will enable them to push their agendas while being wary of the costs involved (p. 13). In the remaining chapters, Warber fills in the gaps overlooked by other scholars interested in the executive order. He uses content analysis, rather than simply counting executive orders by president or sampling from different presidencies, to separate executive orders by type: symbolic, routine, and policy-making directives. Warber then tests what effect such independent variables as the party of the president, divided/unified government, scandal, and year in office (election or lame duck) have on the use of executive orders. He finds that political party matters--Democratic presidents are more likely than Republican presidents to use the executive order to push social policy (p. 45), and divided government sees less executive order activity than unified government (pp. 65-66). At the same time, the presence of scandal, albeit in an examination of just the Nixon and Clinton presidencies, does not appear to affect the use of executive orders (pp. 67-70); the presence of an election decreased the number of policy-making orders, while the president's final year in office saw an increase in executive orders of all types when compared with previous years of a president's term in office (pp. 71-76). Warber wraps up Executive Orders and the Modern Presidency with a look at the current Bush administration and a discussion of the directions that his own research on the executive order should go in the future. Warber tempers the flurry of discussion about the Bush administration's penchant for exercising unilateral powers in order to achieve goals not met in the course of the normal legislative process. He finds that President George W. Bush has used the executive order in a way that is not distinguishable from his predecessors--either in type or in quantity. Where President Bush has differed is his tendency to revoke or amend the executive orders of his predecessors (pp. 124-25). Warber concludes that in the future scholars may wish to study how certain executive branch officials, such as those serving in the Office of Legal Counsel, set about the task of crafting the language in an executive order to escape detection by such outside political actors as Congress or the courts. In addition to those he lists, I would encourage him and others interested in unilateralism to study how unilateral devices are used in tandem to achieve political objectives. For instance, Warber provides cursory examination of three important executive orders, 12291 and 12498 in the Reagan administration and 12866 in the Clinton administration, used to give the president greater control over regulatory process. These three executive orders also were important in the development of the signing statement as a means to influence administrative discretion.

Turns

1NC Circumvention

The executive branch does whatever it think is necessary despite any legislation – FISA secret interpretations prove

Bendix and Quirk 15 -- assistant professor of political science at Keene State College and Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, former research associate at Brookings Institution, respectively (William Bendix and Paul J. Quirk, March 28, "Secrecy and negligence: How Congress lost control of domestic surveillance," Issues in Governance Studies Number 68, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf. P. 5-6), acui

Concerned about the possibility of investigative abuse, however, lawmakers set the business records provision to expire in December 2005. Congress reviewed the use of records requests before the legislative sunset took effect and decided, in early 2006, to renew the business-records provision but with a higher evidentiary standard. Under the new law, FISA applications now needed to include a "statement of facts" demonstrating that the items sought were somehow connected to a suspected foreign agent, raising the evidentiary standard close to the 1998 version.10 In addition, Congress placed a new four-year sunset on the business-records provision to ensure another review of the measure in 2009. Although the shifting evidentiary standards for records requests created a complex body of law, two points stand out. First, in all versions of the business-records provision, Congress made clear that orders were to be used against a specific individual in a particular ongoing investigation. Legislators never contemplated bulk-collection orders that lacked named targets and that permitted the capture of records for cases yet to be launched. Second, in both the PATRIOT Act and its 2006 reauthorization, Congress specified that business-records orders were to be used by the FBI. Neither bill mentioned the NSA. As we discuss next, **secret interpretations of the PATRIOT Act authorizing dragnet collection of metadata overlooked the statutory restrictions**.11 Executive action and the metadata programs In the decade between the PATRIOT Act's passage and Snowden's first leaks, Congress played no part in developing or modifying the NSA's domestic programs. In fact, aside from the limited involvement of two FISA Court judges, the Bush and Obama administrations made all decisions over blanket-collection procedures. But Congress did not opt out of deliberations and policy formulation. **The executive simply ignored surveillance restrictions included in the PATRIOT Act and decided to keep nearly all legislators, except for congressional leaders and four members on the Intelligence committees, in the dark.12**

2NC Circumvention – Self-Sabotage

It is impossible for Congress to enact good legislation – no one knows or case what is happening and those who do prevent others from finding out

Bendix and Quirk 15 -- assistant professor of political science at Keene State College and Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, former research associate at Brookings Institution, respectively (William Bendix and Paul J. Quirk, March 28, "Secrecy and negligence: How Congress lost control of domestic surveillance," Issues in Governance Studies Number 68, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf. P. 12-13), acui

In addition to concealing classified information, Republican House leaders omitted hearings¶ and markups and restricted floor debate to rush passage of the business-records extensions.¶ Rep. Jim Sensenbrenner (R-Wis.), one of the authors of the original PATRIOT Act, defended the truncated process, arguing that Congress had debated FISA Court orders at length in previous years. "The time for multiple temporary extensions is over," he declared, calling for a permanent reauthorization.39 He dismissed Tea Party resistance to the bills as uninformed "scare-mongering."40¶ At the same time, Intelligence Chairman Rogers and Judiciary Chairman Lamar Smith (R-Texas) made the false assertion that the extensions merely continued to provide antiterrorism agents with the same tools that criminal investigators had. Business-records orders, they claimed, were used to seize the very same documents as grand jury subpoenas.41 What they omitted from their explanation was that authorities used FISA Court orders to seize data on millions of calls per day—something that investigators could never do with subpoenas. Following Republican leaders in the House, Democratic leaders in the Senate scheduled no hearings or markups on the reauthorization bills and used procedural tricks to limit floor discussion on the four-year extension. Leahy pushed to raise the evidentiary standard for business-records orders, while Senators Ron Wyden (D-Ore.) and Mark Udall (D-Colo.) offered an amendment designed to declassify the phone metadata program. But Majority Leader Harry Reid (D-N.V.) filled the amendment tree to block these proposals from the floor. With no way to modify the bill, Wyden and Udall nonetheless spoke at length against surveillance policy during debate over the four-year extension. Before the final vote on the reauthorization, Wyden gave a 23-minute floor speech that included stark warnings about the secret interpretation of the law and chastised the Senate for the members' ignorance:¶ When the American people find out how their government has secretly interpreted the PATRIOT Act, they are going to be stunned and they are going to be angry. They are going to ask senators: Did you know what this law actually permits? Why didn't you know before you voted on it?....[M]any members of Congress have no idea how the law is being secretly interpreted by the executive branch.... It is almost as if there are two PATRIOT Acts, and many members of Congress have not read the one that matters.42¶ Disregarding these warnings, Congress extended the business-records provision until June 1, 2015.43¶ Overall, ignorance and misinformation marred congressional deliberations on the renewal of the business-records provision. Prominent members, including committee chairs, made specious claims to suggest that records requests had a limited scope, much like subpoenas in criminal probes. These comparisons reinforced the general view that agents only used FISA Court orders in traditional¶ types of investigations where only one or a few suspects were targeted. Opponents could not refute these inaccurate statements without exposing the classified metadata program, and thus they faced an insurmountable deliberative challenge: to persuade colleagues of privacy violations without identifying the nature of the violations or providing any evidence of them. Wyden's speech presented the sharpest, most detailed rebuttal. But the many members who had not attended classified briefings lacked a basis for evaluating Wyden's claims against the many assurances from committee chairs that the PATRIOT Act authorized only modest, uncontroversial surveillance tools. Two years later, the Snowden leaks demonstrated the breadth and depth of Congress's ignorance during the 2011 debates. Among members who did not sit on the regularly briefed committees, many expressed shock and outrage over the revelations. They readily admitted that they had not attended¶ classified briefings offered by the Obama administration.44

Worse, members on the Intelligence¶ and Judiciary panels acknowledged that they had lacked understanding of the metadata program. They found the briefings overly technical, frequently evasive, and loaded with undocumented claims about the successes of bulk collection.45 As Rep. Jan Schakowsky (D-Ill.), a member of the House Intelligence Committee, confessed after the leaks, "In terms of the oversight function, I feel inadequate most of the time."46 In an egregious case of legislative malfeasance, a senior House Judiciary Committee Republican, Jim Sensenbrenner, who had helped lead the push for permanent authorization, claimed that he had attended no classified briefings and had had no knowledge of the metadata program prior to the leaks.47

2NC Circumvention – Passivity

Congress cannot enact effective legislation – most members haven't attending classified briefings, the ones who have can't share classified info – means they can't target the specifics of surveillance policy

Bendix and Quirk 15 -- assistant professor of political science at Keene State College and Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, former research associate at Brookings Institution, respectively (William Bendix and Paul J. Quirk, March 28, "Secrecy and negligence: How Congress lost control of domestic surveillance," Issues in Governance Studies Number 68, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf. P. 8-9), acui

In all the discussions on bulk collection between the White House and the FISA Court, Congress was absent. This absence resulted initially from the Bush administration's overt decision to exclude legislators. But once legislators gained opportunity to learn about and shape surveillance policy, a combination of indifference and deception in Congress ensured that most members remained absent from the debate. The congressional response: Deference and avoidance By the time the PATRIOT Act came up for its second renewal in 2009, the executive branch had abandoned the strategy of secrecy and unilateralism on the metadata programs. Starting in 2007, after the dragnets had received court approval, the Bush administration provided full and regular disclosures to the Intelligence and Judiciary committees.27 Going further, the Obama administration made repeated efforts to provide all members of Congress, through secret briefings, with the essential information on the metadata programs.28 The reauthorization thus gave Congress the opportunity to respond to the vast executive branch expansion of phone and email surveillance. But Congress neither sought to reassert the privacy protections of the existing business-records provisions— forcing an end to the dragnet programs—nor attempted to establish legislative standards to regulate the collection and use of metadata. In effect, Congress surrendered control to the executive branch. Congress's passivity partly reflected the incentives of individual members to defer to the executive and avoid the security and political risks of imposing constraints on investigatory methods. But the restricted flow of information on secret intelligence capabilities and practices also contributed heavily. Most legislators did not attend classified briefings—some because they lacked interest in surveillance policy, others because they were intentionally excluded from meetings by congressional leaders. A few highly engaged members, mostly Democrats, made use of the executive briefings to become well informed. But these members could not speak publicly about the actual practice of bulk collection and, as a result, could not make an effective case for policy change. Meanwhile, leading members who wanted to protect the metadata program from legislative interference took advantage of the widespread ignorance to misrepresent business-records orders as narrowly-focused investigative tools. As the later reaction to the Snowden leaks made clear, most members remained serenely clueless about metadata collection. Congress in the end opted for two short-term extensions before reauthorizing the business-records provision, without change, until June 2015. The debates over renewal stretched over three years, from 2009 to 2011, giving the appearance of thorough deliberation. But that appearance was utterly false. While maintaining the secrecy of the metadata program, Congress failed to assess the security value of mass records seizures,

to weigh the resulting harm to privacy interests, or to impose standards or requirements to minimize that harm.

1NC Credibility

Executive action is the most effective and increases credibility

Macey 6 -- Sam Harris Professor of Corporate Law, Securities Law, and Corporate Finance at

Yale Law School (Jonathan Macey, 2006, "Executive Branch Usurpation of Power: Corporations and Capital Markets," The Yale Law Journal, p.2416, http://www.yalelawjournal.org/pdf/110_wddcsum3.pdf), acui

Abstract. Agencies in the executive branch are better situated than other political¶ institutions to take advantage of opportunities to expand their power base by responding quickly and decisively to real or imagined crises. The executive has structural advantages over the other branches because it can respond faster to perceived emergencies. Congress is hampered more than the executive by gridlock caused by special-interest group pressures when it tries to act quickly. The legislative process is also inherently slower than the executive process because the executive can launch into unilateral action, as by filing a lawsuit. The executive's structural advantage over the judiciary is even more complete than its advantage over Congress because the judiciary has no power to initiate action. Executive action, particularly that of agencies, determines the course of law. This Essay argues that the ascendancy of the executive branch in policymaking is an unintended consequence of the modern administrative state. The emergence of the executive as the fulcrum of power within the administrative state upsets the traditional balance of powers among the three branches of government. This imbalance can be counteracted only by a concerted effort by the federal judiciary to rein in executive power that improperly usurps Congress's authority to make law.

Internal Net Benefits

XO – Soft Power

Obama key to set international precedent on surveillance policy, increases soft power and shields the link to prez powers

Singer and Wright 13 – Strategist and Senior Fellow at the New America Foundation, former director of the Center for 21st Century Security and Intelligence, senior fellow in Foreign Policy at Brookings and senior fellow at Brookings, respectively (Peter W. Singer and Thomas Wright, February 17, 2013, "Obama, own your secret wars," http://www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620), acui

Obama has a unique opportunity — in fact, an urgent obligation — to create a new doctrine, unveiled in a major presidential speech, for the use and deployment of these new tools of war.¶ While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield.¶ The U.S. military's unmanned systems, popularly known as "drones," now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size.¶ This is not just a military matter. American intelligence agencies are increasingly using these technologies as the tips of the spear in a series of so-called "shadow wars." These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world's first known use of a specially designed cyber weapon.¶ Throughout this period, the administration has tried to have it both ways — leaking out success stories of our growing use of these new technologies but not tying its hands with official statements and set policies.¶ This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along.¶ But that position has become unsustainable. The less the U.S. government now says about our policies, the more that vacuum is becoming filled by others, in harmful ways.¶ By acting but barely explaining our actions, we're creating precedents for other states to exploit. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps.¶ In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties.¶ Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power. The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims.¶ Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument that we cannot confirm or deny our involvement, which no one believes, either.¶ Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the "not sure" category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists.¶ The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an "Alice in Wonderland" feel.¶ The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. After years of silence, occasional statements by senior aides are acknowledging the use of drones, while lesser-noticed working level documents have been created to formalize strike policies and even to explore what to do about the next, far more autonomous generation of weapons.¶ These efforts have been good starts, but they have been disjointed and partial. Most important, they are missing the much-needed stamp of the President's voice and authority, which is essential to turn tentative first steps into established policy.¶ Much remains to be done — and said — out in the open.¶ This is why it's time for Obama's voice to ring loud and clear. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, Obama should publicly lay out criteria by which the United States will develop, deploy and use these new weapons.¶ The President has a strong

case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods.¶ But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond.¶ It's also about finally defining where America truly stands on some of the most controversial questions. These include the tactics of "signature" strikes, where the identity is not firmly identified, and "double tap" strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far.¶ The role of the President is not to conduct some kind of retrospective of what we have done and why, but to lay out a course of the future. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them?¶ There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars.¶ And, finally, the President must help resolve growing tensions between the executive branch and an increasingly restive Congress, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm's way.¶ Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel Peace Prize winner!¶ The President's voice on these issues won't be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations.

XO - Credibility

Transparent XO generates credibility

Posner and Vermeule 11 – Kirkland & Ellis Distinguished Service Professor of Law & Arthur and Esther Kane Research Chair at University of Chicago and John H. Watson Professor of Law at Harvard, respectively (Eric A. Posner and Adrian Vermeule, February 16, 2011, "The Executive Unbound: After the Madisonian Republic," p. 145, https://books.google.com/books?id=yaWuHE_PrJ4C&printsec=frontcover&source=gbs_atb#v=onepage&q&f=false), acui

The well-motivated executive might commit to transparency, as a way to reduce the costs to outsiders of monitoring his actions.80 FDR's strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive's decision-making processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publically instruct subordinates to take them into account in decision-making process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference as to credibility.

AT: Separation of Powers

No overstep and no risk of executive dominance – laundry list of factors check and presidential lead is key -- their ev is Republican fearmongering

Posner 14 -- Kirkland and Ellis Distinguished Service Professor of Law and Arthur and Esther Kane Research Chair at University of Chicago Law School (Eric A. Posner, February 3, 2014, "The Presidency Comes With Executive Power. Deal With It.," http://www.newrepublic.com/article/116450/obama-use-executive-power-unexceptional), acui

In his State of the Union address, President Barack Obama vowed to act on his own if Congress did not do its part. Republicans duly took the bait. "We don't have a monarchy in this country," said Representative Steve Scalise of Louisiana. "The abuse of power by the administration has only become more brazen," said Senator Ted Cruz.¶ Obama has unsheathed the sword of executive power, and yet rather than use it to smite his foes, he seems intent on clipping hedges. He says he will raise the minimum wage for a few thousand employees of federal contractors, tinker with the pension system, trim red tape, cajole business leaders to fund pre-kindergarten education, and do something unspecified to help stop gun violence.¶ Obama begged Congress for help far more often than he vowed to go it alone. Obama's significant acts of executive power—the Libya intervention, the refusal to defend DOMA before the Supreme Court, non-enforcement of the immigration law against certain groups, climate regulation, NSA surveillance, recess appointments, executive privilege, and so on—lie in the past.¶ So we have a paradox. In his first term, Obama humbly beseeched Congress for help and sang the virtues of bipartisanship while resorting to unilateral action whenever he needed to. Today, he announces his defiance of Congress yet seems uninterested in using his newly acknowledged executive powers to, for example, shut Guantanamo Bay or raise the debt ceiling on his own.¶ Be that as it may, it is worth understanding what is at stake in these debates. We all learned in school that the founders feared executive power and so gave policy-making authority to Congress. In fact, the founders feared a too-powerful Congress as well, and they sought to create a strong executive. But the idea that Congress makes law and the president executes it—and any deviation from this pattern is tyranny—is burned into our political culture.¶ This system of separation of powers was cumbersome from the start. The country did well in its first few decades probably because state governments led the way, and state government structure was far less rigid than federal structure, which finally collapsed with the Civil War. When the communications and transportation revolutions created national markets and new opportunities and threats in foreign relations, it was finally clear that the federal separation-of-powers system could not manage policy at a national level.¶ The problem was that Congress was an enormously clumsy institution. Its numerous members fiercely advanced their deeply parochial interests. Policies of great importance for one section of the country, or one group of people, could not be embodied in legislation unless logrolling could be arranged, which was slow, difficult, and vulnerable to corruption. **As a public, deliberative body, Congress could not react swiftly to changing events, nor act secretly when secrecy was called for**. ¶ No one held a constitutional convention to replace the eighteenth-century constitution with a twentieth-century one. Instead, political elites acting through the party system adjusted the government structure on their own. Congress created gigantic regulatory agencies and tasked the president to lead them. Congress also acquiesced as presidents asserted authority over foreign policy. The Supreme Court initially balked at the legislative delegations but eventually was bullied into

submission; it hardly ever objected to the president's dominance over foreign affairs. ¶ This was not a smooth process. The rise of executive power sometimes hurt important interests and always rubbed against the republican sensibilities that Americans inherited from the founders. From time to time, Congress reaped political benefits from thwarting the president. But today Congress reacts rather than leads. It investigates allegations of corruption in the executive branch. It holds hearings to torment executive officials. It certainly doesn't give the executive the budget he always wants, or pass every new law that he believes that he needs. But existing laws and customs almost always give the president the power he needs to govern. And when they don't, Congress will sooner or later give him the power he wants. Witness the Dodd-Frank Act and the Affordable Care Act—two massive expansions of executive power.¶ In monarchies, the official position was that the king made policy but everyone understood that his ministers did. In our system, the official story is that Congress makes policy and the president implements it—such is the inertia of history. But the reality is that the president both makes policy and implements it, subject to vague parameters set down by Congress and to its carping from the sidelines. Presidents can defy the official story and assert the reality if they want. That is what the George W. Bush administration did, to its eventual sorrow. In hindsight, the broad assertions of executive power by Bush administration lawyers in signing statements, executive orders, and secret memos were naïve. They described, with only some exaggeration, the actual workings of the government, but their account conflicted with the official narrative and thus played into the hands of critics, who could invoke tyranny, dictatorship, and that old standby, the "imperial presidency."¶ Democratic presidents have been shrewder. Bill Clinton and Obama have been just as muscular in their use of executive power as Ronald Reagan and Bush, but they resisted the temptation to brandish the orb and scepter. Whereas Republican presidents cite their constitutional powers as often as they can, Democratic presidents avoid doing so except as a last resort, preferring instead to rely on statutes, torturing them when necessary to extract the needed interpretation. Thus did Obama's lawyers claim that the military intervention in Libya did not violate the War Powers Act because the U.S. bombing campaign did not amount to "hostilities" (the word in the statute). A more honest legal theory—one that does not require such a strained interpretation of a word—is that the War Powers Act infringes on the president's military powers, but a theory like that would have provoked howls of protest. ¶ In most cases, lawyers do not need to resort to such measures because Congress has already granted authority. The president's power to raise the minimum wage comes from the Federal Property and Administrative Services Act of 1949, which, in typically broad language, permits the president to set contract terms with federal contractors so as to promote "efficiency." Far from being a bold assertion of executive power, this is the type of humdrum presidential action that takes place every day.¶ Congress gave the president the power to determine contract terms because Congress did not want to—practically speaking could not—negotiate those terms itself every time the U.S. government entered a contract. This principle explains why Congress gives the executive branch enormous discretion to determine health, education, environmental, and financial policy. Congress directed the financial regulators to implement the Volcker Rule, but it would be entirely up to those regulators to make the rule meaningful or toothless. Nor can Congress block Obama's decision to effectively implement the Dream Act—which was not passed by Congress—by not enforcing immigration laws against those who would have benefited from the act.¶ Meanwhile, the founders' anxieties about executive tyranny have proven erroneous. The president is kept in check by elections, the party system, the press, popular opinion, courts, a political culture that is deeply suspicious of his motives, term limits, and the sheer vastness of the bureaucracy which he can only barely control. He does not always do the right thing, of course, but presidents generally govern from

the middle of the political spectrum. ¶ Obama's assertion of unilateral executive authority is just routine stuff. He follows in the footsteps of his predecessors on a path set out by Congress. And well should he. If you want a functioning government—one that protects citizens from criminals, terrorists, the climatic effects of greenhouse gas emissions, poor health, financial manias, and the like—then you want a government led by the president.

Their evidence is all fear-mongering – hard studies prove no risk of separation of powers fracture – the system is strong – accounts for fluctuations

Hamon and Knott 96 -- Professor in the Department of Political Science at Michigan State University and dean of the USC Sol Price School of Public Policy, respectively (Thomas H. Hammond and Jack H. Knott, 1996, "Who Controls the Bureaucracy?: Presidential Power, Congressional Dominance, Legal Constraints, and Bureaucratic Autonomy in a Model of Multi-Institutional Policy-Making," p. 162-3, http://jleo.oxfordjournals.org/content/12/1/119.full.pdf+html), acui

12. Conclusion In a 1993 review of historical evidence on the struggle between the president and Congress for control of the bureaucracy, Francis E. Rourke (1993: 690) observed: These recent attempts of the White House to establish unilateral control over executive agencies bear a strong resemblance to the congressional effort to achieve total legislative dominance over bureaucracy in the aftermath of the Civil War. **The failure of both these efforts suggests that joint custody over bureaucracy represents a point of equilibrium from which the President and Congress may sometimes depart, but to which they invariably return**. For both institutions the idea of total control lies in a field of dreams.¶ Our own answer to the question "Who, if anyone, controls the bureaucracy?" parallels Rourke's answer to a considerable degree. In our view, control of the bureaucracy is a function of the interactions of the president and Congress (and, in a broader perspective, the courts). For some agencies, these interactions lead to great autonomy; for other agencies these interactions lead to little autonomy. Autonomy, in other words, is a contingent matter, and there is no reason to expect all agencies to be constrained to the same degree. However, whatever the extent of constraints on an agency, one cannot single out any one institution as primarily responsible for these constraints. Instead, control of the bureaucracy must be seen as a systemic matter: the president, House, and Senate collectively control the bureaucracy. It is, to use Rourke's phrase, a matter of joint custody, and this means that no one institution will necessarily like the bureaucratic autonomy, or the bureaucratic policies, that may result. But in the nature of our separation-of-powers system of government, no one institution may be able to do much about it.¶

Competition

1NC Competition

A. The federal government includes all three branches -- prefer a definition from legal code

US Code no date ("United States Federal Government Law & Legal Definition," http://definitions.uslegal.com/u/united-states-federal-government/)

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US **and** iii) Judiciary.

B. Resolutional – Resolved means legislative action

Lousiana House of Representatives 5 (http://house.louisiana.gov/house-glossary.htm)

Resolution A legislative instrument that generally is used for making declarations, stating policies, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; a resolution uses the term "resolved". Not subject to a time limit for introduction nor to governor's veto. (Const. Art. III, §17(B) and House Rules 8.11 , 13.1 , 6.8 , and 7.4)

1NC—Shields Ptx Link

Executive orders shield politics the president acts without using up capital

Howell, 2005, [William G., Presidential Studies Quarterly, Ph.D., university of Chicago, "Unitlateral Power: a Brief Overview", http://goliath.ecnext.com/coms2/gi_0199-5050927/Unilateral-powers-a-brief-overview.html]

The actions that Bush and his modern predecessors have taken by fiat do not fit easily within a theoretical framework of executive power that emphasizes weakness and dependence, and offers as recourse only persuasion. For at least two reasons, the ability to act unilaterally is conceptually distinct from the array of powers presidents rely upon within a bargaining framework. First, when presidents act unilaterally, they move policy first and thereby place upon Congress and the courts the burden of revising a new political landscape. If they choose not to retaliate, either by passing a law or ruling against the president, then the president's order stands. Only by taking (or credibly threatening to take) positive action can either adjoining institution limit the president's unilateral powers. Second, when the president acts unilaterally, he acts alone. Now of course, he relies upon numerous advisers to formulate the policy, to devise ways of protecting it against congressional or judicial encroachment, and to oversee its implementation (more on this below). But in order to issue the actual policy, the president need not rally majorities, compromise with adversaries, or wait for some interest group to bring a case to court. The president, instead, can strike out on his own. Doing so, the modern president is in a unique position to lead, to break through the stasis that pervades the federal government, and to impose his will in new areas of governance. sThe ability to move first and act alone, then, distinguishes unilateral actions from other sources of influence. Indeed, the central precepts of Neustadt's argument are turned upside down, for unilateral action is the virtual antithesis of persuasion. Here, presidents just act; their power does not hinge upon their capacity to "convince [political actors] that what the White House wants of them is what they ought to do for their sake and for their authority" (Neustadt 1990, 30). To make policy, presidents need not secure the formal consent of Congress. Instead, presidents simply set public policy and dare others to counter. And as long as Congress lacks the votes (usually two thirds of both chambers) to overturn him, the president can be confident that his policy will stand.

1NC—Prez Powers Module

XOS Shape American Policy – they are key to prez powers

McCormick 10 (James M. McCormick, , "American Foreign Policy and Process," http://books.google.com/books?hl=en&lr=&id=m_MOrBfBEmYC&oi=fnd&pg=PR5&dq=executive+orders+quick+process&ots=HTAhZJp2qW&sig=7FfCHf0qgQRvKqDAEbGC_c-Dmw0#v=onepage&q=eecutive%20order&f=false)

Other executive orders in the past sent American foreign policy in a new direction. Most notably, perhaps, was President Ford's 1976 executive order outlawing the use of political assassination by the United States. A few years later, President Reagan issued an executive order defining and setting limits on America's "special activities," or covert actions, abroad that remains in effect today**. Executive orders clearly deal with significant foreign policy matters.** Political scientists Kenneth Mayer and Kevin Price's analysis of such orders from 1936 through 1999 demonstrates their importance. Based on stringent criteria, they found that 149 out of the 1,028 executive orders sampled were "significant" in their effect on policy and society. Of those 149, moreover, we estimated that 58(or 39 percent) dealt with foreign policy. Importantly, then, executive orders afford presidents yet another avenue of influence on foreign affairs.

2NC—XT Shields Ptx

Avoids public scrutiny and has the full force of law – XO 12333 Proves

Newland 15 -- J.D. Candidate at Yale Law School (Erica Newland, April 2015, "Executive Orders in Court," http://www.yalelawjournal.org/note/executive-orders-in-court), acui

Yet a different law—one that has long served as a linchpin of surveillance programs and that reportedly authorizes many of the NSA's most controversial activities4—has largely escaped public5 and congressional6 scrutiny. This law is not a statute but rather an executive order that dates back to 1981.7¶ Known as E.O. 12,333 (twelve-triple-three), the surveillance executive order creates a framework for intelligence programs that target "the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons and their agents."8 Its sweep is extensive, and its first principles are explicit: "All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available."9¶ The relative scarcity of attention to E.O. 12,333 is all the more surprising because the Order, according to some reports, is the authority behind "most of [the] NSA's data collection."10 Despite text that imposes limitations on surveillance of U.S. persons,11 press reports have suggested that significant numbers of U.S. persons are caught in the Order's web.12 And compared to activities authorized by the Order's statutory counterparts, E.O. 12,333 programs are less likely to be briefed to the congressional intelligence committees.13 These programs also fall outside the jurisdiction of the Foreign Intelligence Surveillance Court (FISC).14¶ While it has never been put to a congressional vote, E.O. 12,333 nonetheless has the force and effect of law: executive orders, which can derive their power from congressional delegations of authority to the President (explicit, implicit, or anticipated),15 from the President's independent authority under Article II of the Constitution,16 or from some vague combination of the two,17 are generally enforceable by courts against private citizens.18 E.O. 12,333's authority purportedly derives from both constitutional and statutory sources. President Reagan captured this lineage in the opening lines of the Order, averring that it was issued "by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including the National Security Act of 1947 . . . and as President of the United States of America."19¶ Presidents may issue executive orders in order to plant a flag in a particular policy sphere, to reorganize the structure of the executive branch, or to provide policy leadership when Congress is stuck in the mud.20 Executive orders, like E.O. 12,333, are formidable instruments of power21 in large part because they are not immediately constrained by the "finely wrought and exhaustively considered" process of bicameralism and presentment,22 nor are they subject to the hoops and constraints of the Administrative Procedure Act.23As Kevin Stack has written:¶ In contrast to legislation or agency regulation, there are almost no legally enforceable procedural requirements that the president must satisfy before issuing (or repealing) an executive order or other presidential directive. That, no doubt, is central to their appeal to presidents. They rid the president of the need to assemble majorities in both houses of Congress, or to wait through administrative processes, such as notice-and-comment rulemaking, to initiate policy.24

XO avoids PC drain and solves perception

Tenpas 3 -- Nonresident Senior Fellow in Governance Studies at Brookings (Kathryn Dunn Tenpas, April 2003, "Campaigning to Govern: Presidents Seeking Reelection," http://www.brookings.edu/~/media/research/files/articles/2003/4/elections-tenpas/200305.pdf), acui

Similarly, the number of executive orders decreased from the third to the fourth year of the term for all presidents since Nixon with the exception of President Clinton. The Clinton numbers can be explained by the presence of campaign consultant Dick Morris and his deliberate efforts to showcase the president's promotion of a number of small issues (e.g., school uniforms, the V chip). The executive order approach was far more attractive than taking on the Republican Congress, risking defeat and expending precious

political capital. “Clinton often issued executive orders on small-bore issues to show he was taking action rather than calling on Congress to do something” (Allen 2002, A2). The decline in policymaking is real, and according to one staff member, “During the campaign, things change dramatically because every political story has a reelection dimension and therefore everything you work on has that potential.”17 Decisions or pronouncements that may have been advantageous, but potentially risky, in year two or three are completely avoided.

2NC--AT Aff no defend Resolved

Nope, the words after the colon just specifies what came before

UOB no date (University of Bristol, Faculty of Arts, “Improve Your Writing,” “The colon.”)

The colon has two main uses. Firstly it is used to introduce an idea that is an explanation or continuation of the one that comes before the colon. The colon can be considered as a gateway inviting the reader to go on. Have a look at these examples:

Grammar dictates words after the colon just clarify those before it

Fogarty 10 (Mignon Fogarty creator of Grammar Girl, the founder and managing director of Quick and Dirty Tips, magazine writer, technical writer, and entrepreneur, has served as a senior editor and producer at a number of health and science web sites. B.A. in English from the University of Washington in Seattle and an M.S. in biology from Stanford University, 9/23/10, “Colons,” Grammar Girl Episode 241, http://grammar.quickanddirtytips.com/colon-grammar.aspx)

Notice how the items after the colon expand on or clarify what came before the colon. I referred to my favorite hobbies before the colon and then specifically named them after the colon. A quick and dirty way to decide whether a colon is acceptable is to test whether you can replace it with the word namely. For example, you could say, "Grammar Girl has two favorite hobbies, namely, watching clouds and seeing how long she can stand on one foot." Most of the time, if you can replace a colon with the word namely, then the colon is the right choice.

2NC--Ext. The = All Parts

Federal Government means all three branches
Blacks Law Dictionary 1990

In the United States, government consists of the executive, legislative, and judicial branches in addition to the administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and country governments, and city and township governments.

A. Definitional: "The" means all parts – they're definitionally bound to defending all branches

Merriam-Webster's No Date Online Collegiate Dictionary, No Date,

http://www.m-w.com/cgi-bin/dictionary

used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

2NC--Ext. Resolved

Resolved means a determination reached by voting

Webster's 98 (Webster's Revised Unabridged, dictionary.com)

Resolved: 5. To express, as an opinion or determination, by resolution and vote; to declare or decide by a formal vote; -- followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be appropriated (or, to appropriate no money).

'Resolved' means to settle formally by voting

Webster's Law 96 ("resolved." Merriam-Webster's Dictionary of Law. Merriam-Webster, Inc. 01 Jul. 2007. <Dictionary.com http://dictionary.reference.com/browse/resolved>.)

resolve transitive verb 1 : to deal with successfully : clear up <resolve a dispute> 2 a : to declare or decide by formal resolution and vote b : to change by resolution or formal vote <the house resolved itself into a committee> intransitive verb : to form a resolution

2NC--AT: Perm Do Both

Perm guts credibility

Belia 2 – Notre Dame Law School (Patricia L. Bellia, 2002, "Executive Power in Youngstown's Shadows," p. 149 – 151, http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1089&context=law_faculty_scholarship), acui

Consider second the fact that the combination of congressional¶ silence and judicial abstention will create power where the¶ Constitution does not. If presidential powers are legitimate, they¶ must stem from some source -statutory or constitutional. In this¶ sense, the notion that presidential powers "fluctuate" is misleading.¶ The Constitution either grants the President power or it¶ does not. It is true that Congress may, through the exercise of its¶ own constitutionally granted authority, limit some presidential¶ conduct, but its failure to do so does not create presidential¶ power. At most, congressional silence despite awareness that the¶ executive is engaging in certain conduct provides, as Justice¶ Frankfurter suggested, a "gloss" on the President's constitutional¶ powers. In other words, congressional silence may indicate¶ something about Congress's understanding of the scope of the¶ President's constitutional powers, but it does not create a presidential¶ power independent of the Constitution. For this reason,¶ it is somewhat surprising that many congressional primacy scholars¶ recognize that the President possesses certain "initiating" 283¶ or "concurrent" 284 powers, the exercise of which is contingently¶ constitutional.285 Since these powers are not enumerated in the¶ constitutional text, to recognize their existence is to recognize¶ that some of the President's foreign affairs powers are nontextual-that¶ they must be inferred from the constitutional text and¶ the structure the Constitution creates. If this is the case, then any¶ justification for courts' posture of deference to executive action¶ and congressional silence evaporates. Whatever the scope of the¶ political question doctrine might be, it does not apply when the¶ question presented concerns only the constitutional division of¶ authority between Congress and the President. The fact that a¶ resolution of the question demands interstitial rather than textual¶ analysis does not make the question a political one.286 Congress¶ is in the best position to decide whether it concurs in a policy¶ the Executive develops, but it is in no better position than a court to determine whether the Executive has authority to develop¶ that policy.¶ To see the problems in giving dispositive weight to inferences¶ from congressional action (or inaction), we need only examine¶ the similarities between courts' approach to executive¶ power questions and courts' approach to federal-state preemption¶ questions. If a state law conflicts with a specific federal en-287actment, or if Congress displaces the state law by occupying¶ the field,"'8 a court cannot give the state law effect. Similarly, if¶ executive action conflicts with a specific congressional policy (reflected¶ in a statute or, as Youngstown suggests, legislative history),¶ or if Congress passes related measures not authorizing the¶ presidential conduct, courts cannot give the executive action effect.289¶ When Congress is silent, however, the state law will¶ stand; when Congress is silent, the executive action will stand.¶ This analysis makes much sense with respect to state governments¶ with reserved powers, but it makes little sense with respect¶ to an Executive Branch lacking such powers. The combination¶ of congressional silence and judicial inaction has the¶ practical effect of creating power.¶ Courts' reluctance to face questions about the scope of the¶ President's constitutional powers-express and implied-creates¶ three other problems. First, the implied presidential power given¶ effect by virtue of congressional silence and judicial inaction can¶ solidify into a broader claim. When the Executive exercises an¶ "initiating" or "concurrent" power, it will tie that power to a textual¶ provision or to a claim about the structure of the Constitution.¶ Congress's silence as a practical matter tends to validate the¶ executive rationale, and the Executive Branch may then claim a¶ power not only to exercise the disputed authority in the face of¶ congressional silence, but also to exercise the disputed authority¶ in the face of congressional opposition. In other words, a power¶ that the Executive Branch claims is "implied" in the Constitution¶ may soon become an "implied" and "plenary" one. Questions¶ about presidential power to terminate treaties provide a ready example. The Executive's claim that the President has the¶ power to terminate a treaty-the power in controversy in Goldwater¶ v. Carter, where Congress was silent-now takes a stronger¶ form: that congressional efforts to curb the power are themselves¶ unconstitutional.29

A. Parallel Action – The perm destroys prez powers – makes Obama look weak

Davis 09 (Chelyen, interviewing veteran television journalist Sam Donaldson that has covered president's since Kennedy, 3/25, http://fredericksburg.com/News/FLS/2009/032009/03252009/454697)

Veteran television journalist Sam Donaldson said an important test for President Barack Obama is whether he learns--**quickly**--to wield his presidential power effectively, especially over Congress. Speaking at the University of Mary Washington's Fredericksburg Forum, Donaldson--who has covered presidents since John F. Kennedy--said **if Obama lets Congressional Democrats take charge, he won't be seen as a strong leader**. Case in point, Donaldson said, was the stimulus bill, which Obama let Democrats in Congress write. "Next time, if he has to send up another stimulus bill, I want to see him write it," Donaldson said. One way Obama's fledgling administration could endanger itself, Donaldson said, is trying to do too much. Successful presidents pick two or three big issues and work on those, he said, whereas Obama has already promised health care reform, energy policy changes, Social Security reform and economic improvements. "You mass your forces. You bring great power," Donaldson said. "If he tries to do it all, he gets picked off here, there he's going to have a problem with his own party." If those policies turn out to be successful, of course, Donaldson said it won't matter--Obama will become a success, and any early missteps will be forgotten.

B. Turns the case---using multiple actors kills focus and coordination- turning the case since the plan gets juggled around by executive agencies

Steve **Radelet**, Senior Fellow Center for Global Development, 6/12/**07** (*CQ Testimony*)

Nevertheless, there is wide agreement that our programs can be significantly strengthened. U.S. foreign assistance programs continue to be a hodge-podge of uncoordinated initiatives from **multiple institutions without a coherent guiding strategy**. Many of the structures and guiding principles of our programs have their roots in the Cold War, and they are not well-suited to meet today's global challenges. Programs are highly fragmented with little coordination across the **20 or so executive branch agencies** that administer foreign aid programs. Sometimes these agencies work at cross purposes with each other with different objectives and techniques.

C. Perm renders the executive order useless and destroys presidential power.

Ivey '03 (Lisa, Cumberland Law Review, 33 Cumb. L. Rev. 107, lexis)

The third "zone" of presidential power occurs when the President's actions are "incompatible with the [express] or implied will of Congress." In the Youngstown Sheet & Tube Co. case itself, Jackson found President Truman's actions in seizing steel mills was incompatible with Congressional will because Congress had not been silent on the subject of seizure of private property. Thus, there was no "open field" in which the President could operate. Similarly, in enacting the Executive Order establishing military tribunals, the President is probably operating in the third "zone." Congress has specifically indicated its intention to exercise its constitutional powers and enact anti-terrorist legislation. Where Congress has indicated an intention to occupy the field of legislation and exercise its full power, none is

left over for the President. In the case of the Executive Order, Congress has already covered the playing field, and the President's power is at its lowest ebb.

D. Disad to the perm – Congressional action is like a Mack Truck – it devastates presidential flexibility and dooms effective foreign policy killing Hegemony

Brent **Scowcroft**, National Security Adviser Under Bush I and Ford, **and** Arnold **Kanter**, Undersecretary of State for Political Affairs in Bush I, **10/20/1993** (The Washington Post)

Maneuvering in the complex environment of a Somalia -- or of a Haiti, Bosnia or the other crises that loom on and just over the horizon -- requires the **agility of a ballet dancer, not the Mack truck of legislation**. In a world that increasingly places a premium on a **rapidly adaptable foreign policy**, codifying highly detailed requirements in a public law is a recipe for ineffectiveness. It undermines the president's ability to threaten, cajole and pressure our adversaries by publicizing the costs we will and won't pay and by broadcasting the conditions and constraints under which our forces will operate. At the same time, it leaves our friends and allies, whose cooperation we seek, to wonder whether Congress will permit the president to follow through on his promises and commitments. Finally, **it stays on the books, continuing to tie the president's hands** as circumstances change and Congress's attention shifts to other priorities. Now more than ever, trying to legislate foreign policy is simply a bad idea.

AT Executive CP

No Solvency--Executive Self-Restraint

Obama is not interested in stopping metadata collection – means self-restrain is a lie -- the burden is on Congress

Carpenter 14 -- Assistant Washington Editor for The Nation (Zoë Carpenter, January 17, 2014, "What Obama Didn't Say in His Speech on NSA Spying," http://www.thenation.com/article/what-obama-didnt-say-his-speech-nsa-spying/), acui

The really significant parts of Obama's speech were the things he did not mention. He did not call for a full stop to the bulk collection of communication records, only a transfer of ownership. Instead, he endorsed the idea that data about millions of Americans should be stored and made available to intelligence analysts. Tellingly, Senator Dianne Feinstein and Representative Mike Rogers, the NSA's most ardent and prominent supporters in the Capitol, applauded the president for affirming that using metadata "is a capability that is 'critical' and must be 'preserved.'"¶ Even given the new hurdles the government will face in querying the data, its collection alone poses serious privacy questions, as civil liberties advocates have been quick to point out. "The president's decision not to end bulk collection and retention of all Americans' data remains highly troubling," the ACLU said in a statement. "The president should end—not mend—the government's collection and retention of all law-abiding Americans' data. When the government collects and stores every American's phone call data, it is engaging in a textbook example of an 'unreasonable search' that violates the Constitution."¶ The president did not articulate a specific reason why this information needs to be collected and stored. His own intelligence review panel found that it serves no essential counterterrorism purpose. On the other hand, the same panel (among others) emphasized the intrusiveness of bulk data collection. Quoting Supreme Court Justice Sonia Sotomayor the panel explained, "telephone data can reveal 'a wealth of detail' about an individual's 'familial, political, professional, religious, and sexual associations.'"¶ Obama omitted much in the historical justifications he offered up, too. Explaining the genesis of the telephone metadata program, Obama said:¶ The program grew out of a desire to address a gap identified after 9/11. One of the 9/11 hijackers—Khalid al-Mihdhar—made a phone call from San Diego to a known al Qaeda safe-house in Yemen. NSA saw that call, but could not see that it was coming from an individual already in the United States. The telephone metadata program under Section 215 was designed to map the communications of terrorists, so we can see who they may be in contact with as quickly as possible.¶ In fact, we know that al-Mihdar could have been located well before 9/11. The problem wasn't a lack of information—it was the fact that intelligence agencies failed to share information with one another.¶ Still, the phone records program is only one of the many disclosed by Edward Snowden. The president failed to say anything about other types of data collection carried out under Executive Order 12333, which the NSA uses to vacuum up data flowing from Internet servers and information from Americans' digital address books. He did not address the NSA's attempts to weaken encryption technologies, a practice that has deeply alarmed US Internet companies. Nor did the president announce substantive changes to dragnet surveillance programs conducted under section 702 of the FISA Amendments Act, which contains a loophole allowing the NSA to search for information about US citizens through their international communications. There was no mention of Dishfire, the latest NSA program to be disclosed, which sweeps up "pretty much everything it can."¶ Obama made a few important acknowledgements of the potential for abuse inherent in surveillance programs, but he painted a seriously misleading picture of the NSA's recent history when he said that he's learned nothing that "indicated that our intelligence community has sought to violate the law or is cavalier about the civil liberties of their fellow citizens." In 2009, the FISA court argued that the privacy protocols set for the phone records program had been "so frequently and systematically violated that it can fairly be said that this critical element of the overall…regime has never functioned effectively." In 2011, the chief judge of the FISA court found that the NSA had, for three years, operated in violation of the Constitution by gathering and searching the contents of tens of thousands of Internet communications sent by Americans, and had repeatedly misled the court about its activities. NSA employees have used surveillance programs to spy on their spouses and exes.¶ It is not surprising that the president chose to defend rather than challenge the intelligence establishment. He has done so consistently since the first of the Snowden documents came out. Much of what he outlined today are not specific reforms, and instead directives for transparency; assurances to foreigners that they will not be spied on; and further reviews, notably a broad consideration of big data and privacy to be led by adviser John Podesta.¶ Obama did do something of potentially great significance today: open the door for others to make the

big changes that he won't.¶ **That task now rests with Congress**. Obama requested that lawmakers engage on several fronts, most critically in creating an independent panel of privacy and technology experts to inform decisions made by the FISA court, and to consider whether there should be judicial review before the FBI can issue National Security Letters to obtain communication and financial records from business. And many of the most vocal privacy advocates from both parties in Congress have made it clear that they will not stop there.

Executive self-restraint kills separation of powers

Johnsen 8 -- Walter W. Foskett Professor of Law at Indiana University Maurer School of Law, J.D. at Yale Law School (Dawn E. Johnsen, 2008, "WHAT'S A PRESIDENT TO DO? INTERPRETING THE CONSTITUTION IN THE WAKE OF BUSH ADMINISTRATION ABUSES," p. 413-4, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/JOHNSEN.pdf), acui

Second, the President must respect the constitutional functions of the other branches of government. In considering whether and how to promote distinctive constitutional views, the President must not impermissibly infringe upon the Supreme Court's judicial power or Congress's legislative power.74 For example, if Presidents were to refuse to comply with a court order whenever they disagreed with the court's constitutional analysis, the judiciary's core function would be gravely impaired. Longstanding practice and academic commentary almost universally condemn presidential defiance of a court order, even when the President's constitutional disagreement is principled and sincere.75 Although not quite as likely to be unsupportable as the violation of a court order, a presidential refusal to enforce a federal statute is highly suspect. The Constitution sets forth a detailed process for lawmaking, a "single, finely wrought and exhaustively considered, procedure," that contemplates presidential involvement prior to enactment to ensure the constitutionality of legislation.76 Presidents should work with Congress to correct constitutional problems in draft legislation, veto unconstitutional bills whenever possible, and also work with Congress to repeal and correct unconstitutional provisions. If, instead, Presidents were routinely to disregard laws they found constitutionally objectionable, they would circumvent this legislative process and threaten Congress's core legislative authority.

Discussions of separation of power key – the NSA will never stop and Obama is on their side

Wheeler 14 -- independent journalist writing about national security and civil liberties, PhD from the University of Michigan (Marcy Wheeler, January 24, 2014, "The Impasse on Executive Spying," https://www.emptywheel.net/tag/eo-12333/), acui

When NSA chose to avoid First Amendment review on the 3,000 US persons it had been watch-listing by simply moving them onto a new list, when it refused to tell John Bates how much US person content it collects domestically off telecom switches, when it had GCHQ break into Google's cables to get content it ought to be able to obtain through FISA 702, when it rolled out an Internet dragnet contact-chaining program overseas in part because it gave access to US person data it couldn't legally have here, NSA made it clear it will only fulfill its side of the compromise so long as no one dares to limit what it can do.¶ That is, Snowden has made it clear that the "compromise" never was one. It was just a facade to make Congress and the Courts believe they had salvaged some scrap of separation of powers.¶ NSA has made it clear it doesn't much care what its overseers in Congress or the Court think. It'll do what it wants, whether it's in the FISC or at a telecom switch just off the US shore. And thus far, Obama seems to agree with them.¶ Which means we're going to have to start talking about whether this country believes the Executive Branch should have relatively unfettered ability to spy on Americans. We're going to have to take a step back and talk about separation of powers again.

Separation of powers key to liberty

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Kesler 7 -- professor of Government/Political Science at Claremont McKenna College and Claremont Graduate University, Ph.D in Government from Harvard University (Charles R. Kesler, December 17, 2007, "What Separation of Powers Means for Constitutional Government," http://www.heritage.org/research/reports/2007/12/what-separation-of-powers-means-for-constitutional-government), acui

The argument from liberty holds that separation is needed in order to prevent tyranny. According to Publius's famous definition, "The accumulation of all powers legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."[3] Tyranny is a danger because ~~man's~~ [people's] passions and reason are not perfectly harmonious; ~~his~~ [their] reason may be distorted by desire. Although each ~~man~~ [person] has by nature the rights to life, liberty, and the pursuit of happiness, ~~he~~ [they] cannot secure these rights without joining together with other ~~men~~ [people] to form a civil society, a people. Despite the legal unity of this people, it is composed of individuals whose impassioned opinions and interests divide them into majorities and minorities. As a precaution against injustice, therefore, the powers of government must be so divided that no ~~man~~ [person] or group of ~~men~~ [people] may wield all of them at once. This precaution would not be necessary if reason and passion were utterly harmonious, and if the whole comprising such reason and passion were a priori unitary rather than synthetic. These conditions, however, are unique to God, who alone justly unites the legislative, judicial, and executive powers in the same hands. The Declaration of Independence affirms this by appealing at once to "the laws of Nature and of Nature's God," "the Supreme Judge of the world," and "the Protection of Divine Providence."[4]

No Solvency--XO

Real reforms require congressional approval

Gerstein 1/13 -- White House reporter for POLITICO specializing in legal and national security issues (Josh Gerstein, January 13, 2014, "The limits of President Obama's power on NSA reform," http://www.politico.com/story/2014/01/nsa-surveillance-limits-102081.html), acui

President Barack Obama on Friday will try to put the ongoing surveillance controversy behind him, laying out reforms to U.S. intelligence-gathering activities aimed at reassuring Americans that his administration will right the balance between civil liberties and national security.¶ But Obama's powers have significant limits.¶ Many of the key reforms he's expected to endorse — including changes to the National Security Agency's practice of gathering information on telephone calls made to, from or within the U.S. — will require congressional action. Like the public — and seemingly the president himself — lawmakers on both sides of the aisle are divided on what needs fixing and how to do it.¶

XO can't curtail programs that have congressional approval, Congress is key

Bhalla 13 -- consultant and policy adviser at the World Bank, U.S. Department of the Treasury, U.S. Department of Health and Human Services, and National Archives and Records Administration (Asheesh Bhalla, June 20, 2013, "NSA Surveillance Program: Obama Can't Stop What Bush and Congress Started," http://mic.com/articles/49125/nsa-surveillance-program-obama-can-t-stop-what-bush-and-congress-started), acui

A new president takes over an establishment of over 14 million people. Many civil servants have had careers in government spanning decades and administrations from both parties. Executive orders provide the president the ability to reform policies and procedures of federal agencies where these orders do not conflict with federal statutes or the Constitution. Contrary to the assertion of former presidential hopeful Governor Mitt Romney, he would not have been able to overturn the Affordable Care Act with a simple executive order.¶ President Obama is not simply able to stop the operation of congressionally legislated and funded programs that conduct warrantless wiretapping under the PATRIOT Act. And in a move out of step with his liberal constitutional-scholar background, he has actually overseen the expansion of government acts that violate civil liberties by authorizing a drone strike on an American citizen without a modicum of due process. The attorney general claims that executive due process was applied in the decision, but due process by any legitimate legal definition includes the right to notice and the opportunity to be heard underscored by the principle of "innocent until proven guilty." Anwar Al-Awlaki, no matter how deplorable his actions, was an American citizen with the right to notice and the opportunity to be heard in court before his government ordered his execution. Reports indicate that in 2006 he was arrested in Yemen and detained until December 2007, giving doubt to the claim that he could not have been captured and detained. President Obama has publicly asked Congress to reduce the ability of a future president to conduct such strikes by repealing the Authorization for Use of Military Force (AUMF), but that still does not negate the previous violation of due process by drone execution.¶ According to recent reports, the NSA surveillance program has stopped terrorist plots in 20 nations. The program arguably has significant security benefits that may outweigh concerns about personal privacy for some people. The program has been authorized and re-authorized by the Congress and the president numerous times, but it is the continuation of a program established under the Bush administration with congressional approval. President Obama would require significantly more political leverage to ask the intelligence community to not operate it.¶ **A president can only make meaningful reform to the protections of civil liberties where he has the buy-in of Congress.** President Bush initiated the NSA surveillance program with the consent of Congress, but tried to pass a guest-worker immigration legislation and was stonewalled. President Obama has supported constitutional challenges to the Defense of Marriage Act thereby supporting fundamental rights for couples in same-sex marriages, and he may sign into law legislation that increases protections of civil liberties for undocumented immigrants. Both presidents tried to protect

civil liberties and national security in a way they thought was balanced. But these agency programs are largely governed by policies established by congressional legislation.

PPD-28 proves executive action is only cosmetic – they just want to keep doing what they are doing

Goitein 4/7 -- co-director of the Brennan Center for Justice's Liberty and National Security Program (Elizabeth Goitein, April 7, 2015, "Obama's Surveillance Reform Promises, One Year Later," http://www.truth-out.org/news/item/30074-obama-s-surveillance-reform-promises-one-year-later), acui

The report makes clear that the big picture has not changed. One year after President Obama promised to end the bulk collection of Americans' phone records, the administration continues to apply for a FISA court order every three months directing American phone companies to turn all of their phone records over to the NSA. It also continues to exploit a surveillance program nominally targeted at foreigners to listen to Americans' phone calls and read their e-mails without a warrant. Overseas, the administration collects communications that involve Americans on a truly massive scale with no judicial oversight or legislative restrictions. **These activities constitute an existential threat to civil liberties that cannot be addressed by procedural tweaks**.¶ It is tempting to cheer the administration's changes simply because they happened – and because they improve the status quo, however incrementally. Context matters here: in the short period of time since 9/11, technological changes have exponentially increased the amount of personal information the government can collect, while the longstanding laws that would restrict such collection have been systematically gutted or tossed aside. Given this dizzying trajectory, any tap on the brakes is in some sense a major accomplishment.¶ But the surveillance explosion also means that small changes are not enough. **Ultimately, we must measure the administration's efforts against where we need to be, not where we have been going. By that measure, the administration's reforms fall distressingly far from the mark.**¶ • • •¶ For nearly fifteen years, the NSA has collected Americans' telephone records in bulk. Originally, the Bush administration collected the records secretly and without seeking any court approval. Starting in 2006, the administration persuaded the FISA Court to endorse the program under a provision of the Patriot Act—Section 215—that allows the Justice Department to obtain a court order requiring companies to turn over business records that are "relevant" to an investigation. The FISA Court prohibited officials from searching the collected records without reasonable suspicion of a terrorist link. However, the Court allowed officials to make this determination, and to extend the search out three hops from the suspect—i.e., officials could search the suspects' records, the records of those in contact with the suspects, and the records of those in contact with the suspect's contacts. The legal justification for these activities was flimsy and the program remained secret until Snowden revealed it in 2013.¶ Since then, two independent review panels have concluded that bulk collection adds little or no counterterrorism value. The administration nevertheless refuses to simply end it, preferring for Congress to create a substitute program that is less intrusive while still permitting broader collection than a sensible reading of Section 215 would allow. In the meantime, the NSA continues to collect phone records in bulk. The most significant reform to the program in the past year is that the administration asked the FISA Court to pre-approve searches of the data and to limit the searches to two hops.¶ As the program stands, the potential for abuse remains enormous. Initial government claims that phone metadata is no more revealing than numbers in a phone book were swiftly debunked. Sophisticated computer programs can parse this data to create intimate, detailed portraits of a person's private life, including political and religious beliefs, associations, hobbies, and more. Because the NSA collects and holds this data, any limitations on how the data are searched or used necessarily rely on self-policing. A series of FISA Court opinions shows that the NSA inadvertently but routinely violated court orders, and this shocking level of non-compliance went undetected and unreported for years. Imagine, then, how long it would take to uncover violations the NSA was actively trying to hide.¶ • • •¶ The DNI's recent report also addresses the NSA's collection of communications content. Beginning in 1978, if the government, acting inside the United States, wanted to eavesdrop on phone calls between foreign targets and Americans, it had to obtain an order from the FISA Court based on probable cause that the target was a foreign power (which includes terrorist groups) or its agent. Then the Bush administration's warrantless wiretapping program was exposed, and rather than shutting down the program, Congress amended the law to legalize it.¶ Under the FISA Amendments Act of 2008 (FAA), the government needs no individualized court order to collect the communications of foreigners overseas, even if there is an American on the other end. The government must certify, however, that its interest lies in the foreigner, not in any American whose communications are "incidentally" swept up. It also must adopt procedures to "minimize" the retention and use of Americans' information—basically, masking or deleting Americans' digital data upon recognition.¶ Both the executive branch and the FISA Court originally interpreted the "minimization" requirement as prohibiting government officials from sifting through the collected communications for Americans' information (so-called "U.S. person searches"). In 2011, however, the FISA Court allowed the government to drop this prohibition. In 2013, the NSA and CIA conducted nearly 2,000 U.S. person searches. The FBI makes no effort to count these searches, but the Privacy and Civil Liberties Oversight Board, an independent panel charged by Congress with overseeing counterterrorism policies, reported that the FBI searches FAA data every time it opens an investigation or "assessment"—a type of investigation that occurs when the FBI lacks any factual basis to suspect criminal activity.¶ These "backdoor" searches—as Senator Ron Wyden labeled them—constitute a bald-faced end run around the Fourth Amendment. The law is clear: if government officials want access to Americans' communications, they must obtain a warrant, or, if they are seeking foreign intelligence, an individualized order from the FISA Court. The legality of proceeding without such judicial authorization rests entirely on the government's promise to target only foreigners overseas, and to redact or discard Americans' information. Instead, the FBI routinely listens to Americans' calls and reads their e-mails without even a factual basis to suspect wrongdoing, let alone probable cause of criminal activity.¶ The DNI's report unveils two new reforms related to U.S. person searches. First, the NSA and CIA, when conducting U.S. person searches, will now be required to provide written statements showing that

the search is reasonably likely to return "foreign intelligence information," a term that is broadly defined under the law. Of course, internally documenting that a search is likely to yield information about foreign matters is a far cry from proving to a court that there is probable cause of a crime. More to the point, the new changes do not require the FBI to do either: the most prolific user of backdoor searches is exempt from this new limitation.¶ Second, going forward, information acquired under the FAA may be used as evidence against an American in a criminal case only if the case has national security implications or involves a serious crime. This reform could indeed reduce the damage that flows from using warrantless surveillance to prosecute Americans. But the fact remains: the Fourth Amendment contains no exception for Americans suspected of "serious crimes." If anything, the prospect of lengthy sentences or even capital punishment raises the constitutional stakes.¶ • • •¶ The largest, least regulated, and least transparent set of surveillance activities operates under Executive Order 12333, which governs surveillance of foreign targets that takes place overseas. In theory, searches of foreigners conducted overseas do not implicate the Fourth Amendment. Accordingly, no courts oversee these activities, Congress has not constrained them, and—until Snowden—the executive branch saw little reason to make any information about them public.¶ In light of today's communications technologies, the notion that overseas surveillance of foreigners' communications does not implicate Americans' privacy rights is pure fiction. Americans' communications travel through fiber-optic cables overseas and reside on servers in other countries. By its own admission, the NSA could not filter out all of this traffic if it wanted to. Americans also routinely communicate with foreigners, and these communications are captured in massive numbers. Under one program code named "MYSTIC," the U.S. has engaged in the bulk collection of every phone call transiting in or out of particular countries—including every phone call to or from the United States.¶ In any event, the right to privacy is not limited to Americans. Under treaties signed by the United States, privacy is recognized as a fundamental human right. The United States has largely disregarded this legal constraint, but before the digital age, limits on data storage and analytical capacity served as a practical constraint, forcing the government to narrow its focus. Today, as programs like MYSTIC illustrate, there is little to stop the United States from sweeping up the data of ordinary private citizens across the globe and subjecting that data to computer analysis.¶ In January 2014, President Obama issued an order (Presidential Policy Directive 28, or "PPD-28") requiring agencies to adopt new limits on electronic surveillance of foreign targets overseas. Most notably, agencies may retain or disseminate information about foreigners only if Executive Order 12333 would permit the retention or dissemination of "comparable information" about Americans.¶ There is tremendous symbolic importance in articulating the principle that foreigners have privacy rights and in requiring their data to be treated similarly to Americans' data. Unfortunately, the retention and dissemination limitations that now apply to both Americans and foreigners offer little protection in practice.¶ In general, information about Americans may be retained for five years, and may not be disseminated, unless it constitutes "foreign intelligence information" or falls under a long list of other exceptions. The definition of "foreign intelligence information" in Executive Order 12333, however, encompasses almost any information about any foreign person, rendering the retention and dissemination limitations meaningless when applied to foreigners. Recognizing this issue, the DNI in July 2014 pledged that information would not be kept or shared "solely because of [a] person's non-U.S. person status." But the standards that will be used instead are classified. Moreover, any limits on retention may be waived if the DNI determines that "continued retention is in the national security interests of the United States." It is easy to see how this exception might swallow the rule—indeed, it is difficult to see how it would not.¶ PPD-28 contains another notable limitation: when the government collects data in bulk, it may only use this data for six enumerated purposes. Whether these restrictions will have a significant effect on operations depends on how they are interpreted and applied, and history strongly suggests this will happen in secret. One of the permissible uses, for instance, is "detecting and countering . . . threats to the United States and its interests" from foreign powers or from terrorism. What will be the bar for considering something or someone a "threat to U.S. interests"—and how will we know?¶ • • •¶ Assessing the privacy impact of surveillance activities depends on knowing what those activities are. In the so-called "information age," intelligence agencies, backed by presidents and even congressional overseers, have been remarkably successful at keeping this information out of the public's hands. Despite President Obama's pledge to preside over the most transparent administration in history, his administration was, for several years, nearly as secretive as the previous one when it came to national security policy.¶ Snowden's disclosures forced a change in this approach. To manage public opinion on particular programs and to win back the public's trust and approval, the administration had to make disclosures of its own. The DNI thus created the website, "IC on the Record," on which information about intelligence activities ranging from the DNI's public speeches to declassified decisions of the FISA court are regularly posted. Although some disclosures were compelled by Freedom of Information Act litigation, the declassification and public posting of more than 4,500 pages over an 18-month time span is unprecedented.¶ Unfortunately, the disclosed documents are the tip of a massive iceberg of secret information. The unnecessary classification of information, or "overclassification," is a universally recognized problem. There were 80 million decisions to classify information in 2013, and former national security officials have estimated that between 50 and 90 percent of classified information could safely be released. There is simply no way to assess how much of the relevant information the DNI has chosen to disclose, and how much remains locked away on a classified network.¶ What is certain is that the administration's commitment to openness breaks down when transparency threatens to yield legal accountability. Despite having posted documents about the NSA's so-called "upstream collection" program on the DNI's website, the administration recently convinced a court to dismiss a legal challenge to this same program on the ground that the lawsuit would reveal "state secrets." In another case alleging unlawful surveillance, the Justice Department accidentally sent the plaintiffs a classified document showing that the government had captured their data; demanded and obtained the document's return; and then argued in court that the plaintiffs had no right to sue because they could not prove they had been surveilled. The

administration has invoked such claims of secrecy in every civil lawsuit challenging unlawful surveillance.¶ Given the intense secrecy that permeates intelligence agencies, one of the only ways in which private citizens learn about surveillance activities that affect their rights is through whistleblowers like Edward Snowden. The DNI report notes that both the administration and Congress have extended protections to intelligence employees who disclose fraud, waste, or abuse through approved channels within government. These protections are helpful if an employee wishes to call attention to the rogue misdeeds of a supervisor. They are useless, however, if the activities the whistleblower seeks to disclose constitute the agency's official policy and were most likely approved by the very people authorized to hear the whistleblower's complaint.¶ When whistleblowers have found it necessary to go to the media, the Obama administration has come down on them with unprecedented ferocity. Under Attorney General Eric Holder, the Justice Department has used the Espionage Act – a criminal statute meant for spies and traitors—three times as often as all previous administrations combined to prosecute disclosures of information to the media. Many of these cases involved the disclosure of government wrongdoing; all involved information of significant public interest. In no case did the defendant display any intent to harm national security, nor was any harm to national security alleged. Indeed, the Justice Department was forced to argue that neither the intent nor the effect of the disclosures had any relevance. Regardless of whether this is a sound reading of the law, it begs the question: why is this administration so intent on jailing well-intentioned individuals whose disclosures caused no provable harm, but only embarrassment to government officials?¶ • • •¶ Ultimately, the most important piece of information to keep in mind when reading the DNI's report is its author. No one who holds the office of DNI, and no one who heads any of the 17 intelligence agencies the DNI oversees, considers openness and the preservation of privacy to be among the agencies' core missions. (Indeed, the current director defended giving false testimony before the Senate intelligence committee on the ground that it was "the least untruthful" answer he could give.) Their job is to gather intelligence, an undertaking that is by nature secretive and invasive of privacy. This goal shapes the ethos that pervades the intelligence establishment.¶ The job of tempering the intelligence establishment's "collect it all" instinct falls to other governmental entities: the Privacy and Civil Liberties Oversight Board, the agencies' Inspectors General, the congressional intelligence committees. All of these entities are handicapped by the fact that they rely on the intelligence agencies to keep them informed, and they don't know what they don't know. Moreover, they are simply outgunned. The intelligence establishment includes seventeen agencies, some of which employ tens of thousands of people, and a declared budget of 70 billion dollars. The Privacy and Civil Liberties Oversight Board—the only independent government body whose sole mission is to ensure that counterterrorism policies respect privacy and civil liberties – has five members, thirteen staffers, and a budget of under $8 million.¶ The DNI and the agencies he oversees are thus left to focus on their mission, and they, of course, see no problem with this. The "nothing to see here" tone of the DNI's report is not an act; he is not concerned about our civil liberties. That is why we should be.

No solvency – the president has already decided he is not going to curtail surveillance, means all changes are just to appease the media

Frasse 14 -- Co-founder, partner, and editorial director (Michael Frasse, February 20, 2014, “Obama’s Orwellian surveillance reform,” http://www.farces.com/obamas-orwellian-surveillance-reform/), acui

Last Friday, President Barack Obama announced “reforms” for the US National Security Agency’s (NSA) surveillance programs that are little more than lipstick on a pig. Like putting Bondo on a car’s door panel so it can be painted up and look good but remain as structurally unsound as ever.¶ All of the usual corporate media sources seem to have conveniently “forgotten” that the Privacy and Civil Liberties Oversight Board (PCLOB) will publish its report into the NSA’s surveillance activities on 23 January 2014. That’s right friends and neighbors, that’d be after President Obama’s “reform” announcement. What’s especially interesting about the PCLOB recommendations is its considerable focus on the most controversial aspects of the NSA’s surveillance operations: Section 215 of the USA PATRIOT Act, Section 702 (.pdf; 1.4MB) of the Foreign Intelligence Surveillance Act (FISA) Amendments Act, and the Foreign Intelligence Surveillance Court (FISC).¶ But never mind, the president has already made his decisions.¶ And just what are those decisions?¶ 1. The NSA loses control of its telephone conversation metadata database¶ 2. US intelligence agencies are required to obtain court orders — except in cases of “true emergency” — to access the telephone conversation metadata and those database queries will be limited to two degrees of separation or hops¶ 3. Appointment of “outside panel of experts” to serve as public advocates in FISC cases¶ 4. Time limits on gag orders associated with national security letters¶ 5. Some rights extended to foreign citizens¶ 6. No more surveilling allied governments except in cases of “compelling national security interest”¶ After all of the revelations resulting from the secret documents leaked by Edward Snowden, that’s it? Five hand-waves, and a passing acknowledgement that legal surveillance might possibly maybe sometimes require a court order. Not a word — not one breath — about the most disturbing aspects of the US surveillance state:¶ 1. The NSA’s actions to weaken, break, and circumvent encryption¶ 2. The many other flavors of bulk surveillance than telephone conversation metadata¶ 3. The government’s resistance to purging stored information about US citizens¶ 4. Amnesty

for Snowden¶ 5. The lack of prior judicial review of national security letters¶ 6. Limiting the scope of national security letters¶ 7. And others¶ Here, see for yourself; speeches are speeches, presidential directives are executive orders equivalent to non-congressionally-vetted laws:

No solvency – some XOs can be secret allowing the president to stop following the executive order at any time

Newland 15 -- J.D. Candidate at Yale Law School (Erica Newland, April 2015, "Executive Orders in Court," http://www.yalelawjournal.org/note/executive-orders-in-court), acui

Part IV.A discussed how justiciability doctrine deprives the public of access to the courts to vindicate any interest in executive compliance with executive orders. This Part suggests that, in practice, executive orders subvert even the public's basic reliance interest in knowing the content of its government's laws. This is because the non-justiciability of many orders makes it possible for presidents to regularly waive,230 or even secretly modify, executive orders when such orders prove uncooperative.¶ For example, according to Senators Russ Feingold and Sheldon Whitehouse, an OLC memo issued under the George W. Bush Administration held that a President may "depart from the terms of a previous executive order" whenever he so desires because "an executive order cannot limit a President"231 —and this despite the fact that presidents are required, by statute, to publish executive orders in the Federal Register.232 Moreover, as Senators Feingold and Whitehouse explained, under OLC's interpretation, the President need not "change the executive order, or give notice that he's violating it, because by 'depart[ing] from the executive order,' the President 'has instead modified or waived it.'"233¶ As the Senators observed:¶ Now, no one disputes that a President can withdraw or revise an Executive Order at any time; that is every President's prerogative. But abrogating a published Executive order without any public notice works a secret change in the law. Worse, because the published Order stays on the books, it actively misleads Congress and the public as to what the law is.234 ¶

Links to Politics

Links to politics – everyone looks to the president and Congress deflects blame

Macey 6 -- Sam Harris Professor of Corporate Law, Securities Law, and Corporate Finance at

Yale Law School (Jonathan Macey, 2006, "Executive Branch Usurpation of Power: Corporations and Capital Markets," The Yale Law Journal, p.2442-3, http://www.yalelawjournal.org/pdf/110_wddcsum3.pdf), acui

This analysis sheds new light on Professor William Riker's seminal¶ observation that Congress's willingness to create administrative agencies and¶ the consequent rise of the administrative state can be explained by the fact that¶ the creation of such agencies enables Congress to deflect blame from itself for¶ bad or politically unpopular outcomes.119 When Congress acts directly, it must¶ accept the blame for its actions. When administrative agencies are created,¶ Congress can not only take the credit for acting decisively to address the issues¶ for which the agency is responsible, but can also deflect the blame if, later on,¶ the agency makes decisions and promulgates policies that prove to be¶ unpopular.¶ Presidents, however, tend to be blamed for administrative agency decisions¶ because such agencies are viewed as vehicles for diffusing presidential power to¶ a particularized level. It is widely known that Presidents are increasingly held¶ responsible for a wide variety of issues, from the state of the economy,120 to casualty rates in war,121 to the fallout from natural disasters like Hurricane¶ Katrina. It seems clear that, just as the executive has demonstrated a relentless¶ ability to act unilaterally, so too has the public demonstrated a concomitant¶ tendency to hold the President primarily responsible for all sorts of problems¶ that may not, in fact, really be within the President's control. This fact¶ probably provides an added incentive (if any was needed) for Presidents to¶ attempt to amass power. It stands to reason that if the President is being held¶ responsible for outcomes, he should at least have the power to influence those¶ outcomes.

Congress pushback against independent executive action

Weigel 14 – reporter for Bloomberg Politics (David Weigel, January 29, 2014, "The Tyranny of Barack Obama,"The Tyranny of Barack Obama," http://www.slate.com/articles/news_and_politics/politics/2014/01/republican_party_s_response_to_obama_state_of_the_union_gop_leaders_are.html), acui

More resonant warnings followed, from Republicans who had been characterizing all of Obama's actions—delays to the health care law, EPA rules, deferred action on certain deportations—as petty tyranny. "Dictatorships are often characterized by an abundance of laws," wrote Texas Sen. Ted Cruz in the Wall Street Journal. "When a president can pick and choose which laws to follow and which to ignore, he is no longer a president."¶ Kentucky Sen. Rand Paul weighed in, too, though his dark cloud concealed a rainbow. "I think it's disturbing," he said, "and I think the Supreme Court is going to rebuke him, in the near future, on the idea that he can go around Congress and decide when we're in session for recess appointments. I hope that that would chasten him, not embolden him."¶ A State of the Union isn't really an occasion for chastening, but the White House didn't go as far as conservatives feared. The president announced, for the second time in a day, an executive order that would raise the minimum wage for future federal contractors. "I intend to lead by example," he said. He planned to "direct the Treasury to create a new way for working Americans to start their own retirement savings" and "use my authority to protect more of our pristine federal lands." Twice, he sketched out a reform and said that it would work best "if Congress wants to help."¶ That was it, really, but it raised all the expected hackles. South Carolina Rep. Joe Wilson, who became famous when he yelped "you lie" during Obama's 2009 address, left the House chamber shaking his head. "I think it's just wrong," he said. "He calls on us to work together, then he threatens to act unilaterally? It just doesn't fit."¶

Perm

Perm increases solvency and key to future executive power

Johnsen 8 -- Walter W. Foskett Professor of Law at Indiana University Maurer School of Law, J.D. at Yale Law School (Dawn E. Johnsen, 2008, "WHAT'S A PRESIDENT TO DO? INTERPRETING THE CONSTITUTION IN THE WAKE OF BUSH ADMINISTRATION ABUSES," p. 396-7, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/JOHNSEN.pdf), acui

Prominent commentators have speculated with some disagreement about the likely effects of the Bush presidency on the future strength of executive power. Their assessments underscore what is at stake. Professor Jack Goldsmith, who served as a high-ranking official in President Bush's Department of Justice, has written a valuable insider's account.3 Goldsmith concludes that the "harmful suspicion and mistrust" engendered by President Bush's unnecessary unilateralism – his attempts to exclude Congress and the courts – can be expected to diminish executive power.4 Goldsmith notes the irony of this prospect, given the administration's overriding goal of expanding presidential authority: It was said hundreds of times in the White House that the President and Vice President wanted to leave the presidency stronger than they found it. In fact they seemed to have achieved the opposite. They borrowed against the power of future presidencies – presidencies that, at least until the next attack, and probably even following one, will be viewed by Congress and the courts, whose assistance they need, with a harmful suspicion and mistrust because of the unnecessary unilateralism of the Bush years.5 Due to his support of both a relatively strong presidency and many of President Bush's policy objectives,6 Goldsmith laments the potential loss of some executive power even as he criticizes the Bush administration for egregious power grabs. Goldsmith maintains that President Bush would have been more successful and presidential authority more secure if, rather than repeatedly seeking to go-it-alone in secret, he had sought congressional support more often.7 To support this assessment, Goldsmith cites the Supreme Court's aggressive review of the administration's unilateral policies8 and Congress's general willingness to support those policies.9

Congress CP

1NC Shell

Text: Congress should <plan>

Congress crucial to reform surveillance programs

Serwer 14 (Adam—reporter at msnbc, 1/30/14, "Surveillance reform is up to Congress", msnbc,

http://www.msnbc.com/msnbc/nsa-reform-congress-obama)

Republican lawmakers were less effusive. Michigan Republican Rep. Justin Amash, whose proposal to end the NSA's bulk collection program came within a handful of votes of passing the House last summer, said Obama had refused to "end the unconstitutional violation of Americans' privacy, stop the suspicionless surveillance of our people, and close the era of secret law," and he called on Congress to act. Congress was always going to be it with changes, or whether to reauthorize it at all," said Stephen Vladeck, a law professor at American University. "In that regard, the biggest takeaway from the speech is how little of a thumb the president is the most important player here. "Congress is going to have to decide whether to reauthorize [Section 215] in its current form, whether to reauthorize placing on that particular scale." Sensenbrenner, in his reaction to the speech, praised Obama's "good intentions" but emphasized that Congress must make significant changes–and not just to the metadata program, or but other significant surveillance authorities that the president's speech didn't address. "The bottom line is real reform cannot be done by presidential fiat," Sensenbrenner said in his statement. Democratic California Rep. Adam Schiff, who has also proposed legislation curtailing some of the NSA's powers, said it was "up to Congress to implement many of these changes, as well as others, and to ensure that they are durable across future Administrations."

Solvency—General—Filling in

Congress needed to steer surveillance programs—president inadequacy

James 14 (Frank, 1/17/14, “Congress Vows To Step Up To Surveillance Policy Challenge”, npr,

http://www.npr.org/sections/itsallpolitics/2014/01/17/263497478/congress-vows-to-step-up-to-surveillance-policy-challenge)

If there was a consensus emanating from Congress Friday after President Obama's NSA reform speech, it was — not surprisingly — that Congress itself has a major role to play in the ultimate fix. Whether from strong NSA supporters or agency critics, the reactions sounded similar: Congress intends to do much of the steering in the drive to overhaul the NSA's gathering of certain non-public information, especially consumer phone records, in the nation's counterterrorism efforts. Even so, if you listened closely, you could hear the sound of politics in some of the reaction. For instance, Speaker John Boehner issued a statement suggesting that much of the controversy over former NSA contractor Edward Snowden's revelations of the agency's spying practices was due to Obama's failures as a communicator. The Speaker warned the president against letting politics trump national security. "Because the president has failed to adequately explain the necessity of these programs, the privacy concerns of some Americans are understandable," Boehner's statement said. "When considering any reforms, however, keeping Americans safe must remain our top priority. When lives are stake, the president must not allow politics to cloud his judgment." Then there was Sen. Rand Paul, R-Ky., a fierce libertarian opponent of the NSA's current efforts. With a nod toward Obama's broken health care promise, he skewered the president on CNN immediately after the speech. "Well, what I think I heard was that if you like your privacy, you can keep it. But in the meantime, we're going to keep collecting your phone records, your emails, your text messages and likely, your credit card information." Much of the congressional reaction, however, lacked any noticeable partisan jabs. New York GOP Rep. Pete King, a member of the House Intelligence Committee and a national security hawk, tweeted after the speech: "Pres Obama NSA speech better than expected. Most programs left intact. But concerned about extending US citizen privacy rights to foreigners." What was clear was that some lawmakers expected that they — not the president — would ultimately have to resolve the NSA's controversial practices. "Essentially, the president was stronger on principle than he was on prescription," said Sen. Richard Blumenthal, D-Conn., in an interview with All Things Considered co-host Audie Cornish. "But Congress is going to have to fill in a lot of the blanks. Congress is going to have to resolve the question of whether this collection should continue and who is going to keep the data and resolve these issues and try to strike a balance, obviously."

Congress will continue to limit surveillance—evades the link to the terror DA
Cleveland 13 (8/6/13, "Congress can limit the scope of NSA domestic surveillance without impeding the agency's ability to keep listening to al-Qaida and its terrorist", Cleveland,
http://www.cleveland.com/opinion/index.ssf/2013/08/congress_can_limit_the_scope_o.html)

The revelation that high-level intercepts between the head of al-Qaida and a top lieutenant lay behind the U.S. decision to close nearly two dozen embassies underscores the critical importance of signals intelligence in keeping Americans safe. It was highly unusual to pick up such top-level communications but even more striking was the specificity, pointing to attacks on Sunday, and large scale of the plot, authorities said. Some officials characterized it as one of the most serious potential terrorist strikes since 9/11. Other Western countries also closed embassies. Still, however devastating this plot might have been, it was uncovered through foreign intelligence intercepts, not domestic vacuuming-up of metadata. Congress should not back off its attempts to limit such indiscriminate and poorly overseen domestic spying. A secret intelligence court should not be able to approve the widespread sweeping-up of telephone calls and other communications among ordinary Americans. Quite the contrary. The secret collection of such metadata without any apparent terrorist tie-in and without the ability of average Americans to learn of the data-gathering or to object to it is clearly beyond the intended powers of the Foreign Intelligence Surveillance Act court. U.S. Rep. Jim Sensenbrenner, a Wisconsin Republican who oversaw the drafting of the 2002 Patriot Act that set the stage for a widened FISA court role in intelligence gathering after 9/11, has said he will have legislation ready to rein in the court after Congress' August recess. Lawmakers should act on his bill swiftly. Limited, common-sense restrictions make sense and would not impede the critical intercepts that enabled authorities to unmask what appeared to be a serious plot against Western interests.

Solvency—General—Past bills

Congress shifting towards surveillance reforms—Freedom Act

Molinari 15—vice president for public policy at Google, was member of the US House of Representatives (Susan, 6/2/15, "Congress takes a significant step to reform government surveillance", Google Public Policy Blog,
http://googlepublicpolicy.blogspot.com/2015/06/congress-takes-significant-step-to.html)

In passing the USA Freedom Act, Congress has made a significant down payment on broader surveillance reform. Today marks the first time since its enactment in 1978 that the Foreign Intelligence Surveillance Act (FISA) has been amended in a way that reflects privacy rights enshrined in our history, tradition, and Constitution. While most of the focus has been on ending the bulk telephony metadata program under Section 215 of the PATRIOT Act, there are other meaningful reforms in the bill for Internet users. The USA Freedom Act shuts the door to the bulk collection of Internet metadata under a separate legal authority that the government relied upon in the past to collect Internet metadata in bulk. The USA Freedom Act additionally prevents bulk collection of Internet metadata through the issuance of National Security Letters. Not all of these legal authorities expired on June 1, and we are pleased that Congress took the initiative to prevent the bulk collection of Internet metadata under these legal authorities. Today's vote represents a critical first step toward restoring trust in the Internet, but it is only a first step. We look forward to working with Congress on further reforms in the near future.

Congress moving towards reforms—past bills and attitudes

Zeller 15—senior writer for CQ Weekly(Shawn, 4/14/15, "Congress' Surveillance Views Have Changed", Roll Call,
http://www.rollcall.com/news/congress_surveillance_views_have_changed-241173-1.html)

When Congress last reauthorized the Patriot Act in 2011, it went fairly easily. A majority of House Democrats objected, but support was strong among House Republicans and in both parties in the Senate. But lawmakers began to have second thoughts last year. First, in May, the House passed the USA Freedom Act with the aim of restricting the National Security Agency's collection of phone records. Last-minute changes, negotiated with the Obama administration, opened loopholes that caused privacy advocates, and many of the bill's co-sponsors, to balk. Still, the measure, sponsored by one of the principal authors of the Patriot Act, Republican Rep. Jim Sensenbrenner of Wisconsin, passed overwhelmingly and showed that attitudes about government surveillance have changed substantially in the Capitol. When the Senate considered a similar measure later in the year, it came two votes shy of cloture. But lawmakers approved an amendment to the annual House defense appropriations bill by Republican Thomas Massie of Kentucky and Democrat Zoe Lofgren of California that would have barred the NSA from sweeping up Americans' emails, Web-browsing data and online chats without a warrant. It was later removed when House leaders incorporated defense spending into the year-end omnibus

spending law. Massie last month introduced legislation with Democrat Mark Pocan of Wisconsin to repeal the Patriot Act.

Solvency—TSA

Congress has authority to reform and improve the TSA process

HST 14 (Homeland Security Today, "Legislation To Improve TSA Acquisition, Stakeholder Engagement Goes To Obama", December 10 2014, http://www.hstoday.us/briefings/grants-funding/single-article/legislation-to-improve-tsa-acquisition-stakeholder-engagement-goes-to-obama/8d5813ab8610974b252c9062f5301308.html))

The House Wednesday "overwhelmingly" passed Senate amendments to HR 2719 and HR 1204, bipartisan legislation to reform the Transportation Security Administration's (TSA) technology purchasing process and to improve stakeholder engagement with TSA. The House concurred with the Senate amendment to HR 2719, the Transportation Security Acquisition Reform Act, which was introduced by House Committee on Homeland Security Subcommittee on Transportation Security Chairman Richard Hudson (R-NC). The bill requires TSA to implement best practices and improve transparency with regard to technology acquisition programs. The House also concurred with the Senate amendment to HR 1204, the Aviation Security Stakeholder Participation Act, which was introduced by ranking House Homeland Security Committee member Bennie Thompson (D-Miss.). The bill ensures TSA maintains open lines of communication with relevant stakeholder groups through the Aviation Security Advisory Committee (ASAC). This legislation authorizes ASAC in law to ensure stakeholders are consulted and included in TSA's aviation security policy efforts, particularly when there are plans to change how aviation security is conducted," Thompson's office explained. "This bipartisan legislation ensures that all aviation security stakeholders, including labor organizations, airports, small business operators at airports and airlines have a permanent seat at the table when TSA is developing policies and procedures that directly impact their work and businesses," Thompson said. "I look forward to working with TSA to implementing this legislation once the President signs it." "These common sense bills will improve the way TSA spends taxpayer dollars and makes major policy decisions," said full committee chairman Michael McCaul (R-Texas). "By ensuring that private industry has a seat at the table and that TSA does not purchase new technologies without proper planning, oversight and accountability, we can better safeguard our critical aviation sector, which remains a prime target for terrorists." "These important bills are common sense steps to increase transparency and accountability at TSA while keeping travelers safe and saving taxpayer dollars," Hudson added, saying, "Despite Washington's gridlock, the bipartisan passage of today's bills show that Republicans and Democrats can work together to solve problems for the common good."

Solvency—Sox

Congress should repeal the Sarbanes-Oxley Act

Niskanen 6—economist and Cato Institute chairman (William A., 8/2/06, "Congress Should Repeal the Sarbanes-Oxley Act", Cato Institute,

http://www.cato.org/publications/commentary/congress-should-repeal-sarbanesoxley-act)

All too often, as with the hurried passage of the Sarbanes-Oxley Act of 2002 (SOA), it seems more important for government officials to be seen to address some problem of popular concern than to be held responsible over time for resolving the problem. As if to demonstrate this point, Senator Paul Sarbanes (D-MD) and Representative Michael Oxley (R-OH) have announced their resignation from Congress at the end of this term. In the concluding chapter of After Enron: Lessons for Public Policy, I wrote (in 2004) that "The SOA was the most important political response to the collapse of Enron and several other large corporations. My own evaluation of this act is much like that of (a colleague), who described the SOA as "unnecessary, harmful, and inadequate." Unnecessary – because the stock exchanges had already implemented most of the SOA changes in the rules of corporate governance in their new listing standards; the Securities and Exchange Commission (SEC) had full authority to approve and enforce accounting standards, the requirement that CEOs certify the financial statements of their firms, and the rules for corporate disclosure; and the Department of Justice had ample authority to prosecute executives for securities fraud. The expensive new Public Company Accounting Oversight Board (PCAOB) is especially unnecessary. Its role is to regulate the few remaining independent public auditors, but it has no regulatory authority beyond that already granted to the SEC. Moreover, the audit firms still have a potential conflict of interest, because they are selected by and paid by the public corporations that they audit … The PCAOB may also be unconstitutional, because it is a private monopoly that has been granted both regulatory and taxing authority. Harmful – because the SOA substantially increases the risks of serving as a corporate officer or director, the premiums for directors and officers liability insurance, and the incentives, primarily for foreign and small firms, not to list their stock on an American exchange. The ban on loans to corporate officers eliminates one of the most efficient instruments of executive compensation. And the SOA may also reduce the incentive of corporate executives and directors to seek legal advice. Inadequate – because the SOA failed to identify and correct the major problems of accounting, auditing, taxation, and corporate governance that have invited corporate malfeasance and increased the probability of bankruptcy. What to do? At a minimum, Congress should clarify that the criminal penalties in the SOA require proof of malign intent and personal responsibility for some illegal act … Any potential SOA cleanup legislation should address the potential problems of delisting by foreign and small firms from the American stock exchanges, maybe by exempting such firms from the regulatory requirements … A wise Congress would also eliminate the expensive new and wholly unnecessary PCAOB, preferably before it establishes new precedents and creates some new special interest … A Congress that is both wise and brave would repeal the SOA – lock, stock, and barrel. The SOA adds no necessary authority to those previously granted, creates the potential for substantial harm, and does not address the major policies that lead to problems in the U.S. corporate economy."

AT: Gridlock

Congress can overcome gridlock—common policy negotiating ground
Curry 13—assistant professor in the Department of Political Science at the University of Utah(James M., 2013, "BRINKMANSHIP POLITICS IN CONGRESS: OVERCOMING GRIDLOCK IN TIMES OF POLARIZED PARTIES", University of Utah,
http://poseidon01.ssrn.com/delivery.php?ID=318115065115116123004070069006031087017069064045069066075089114069073013022121124018022103030104056120001029117083081003115081117022094008013004030019103125112001112065073085001075009016002119011094087089107070097090015109116107126030019104029090066&EXT=pdf&TYPE=2)

These studies differ in their approaches to the legislative process, but their conclusions are in a similar vein. Taken together they suggest that, first, because the design of our political system requires agreement across legislative chambers and governmental branches, and because rules of the Senate require a supermajority to overcome minority obstructionism, policy change usually requires large, bipartisan coalitions of support. Second, and relating to the first conclusion, party polarization makes the formation of these large coalitions more difficult because there will be fewer policies on which the parties are in agreement. The conclusions these studies draw are important to our systematic understanding legislative productivity, but they have limitations. For one, these theories cannot explain why the parties sometimes do compromise when they are polarized and sharply divided on an issue. The theories referenced above largely imply that it will take a change in congressional membership, through an election, to alter the distribution of policy preferences and create opportunities for action. But Congress sometimes does reach compromises when previously deadlocked. For example, after months of deadlock over raising the Federal debt ceiling in 2011, Congress agreed in bipartisan fashion to raise the debt ceiling while reducing Federal deficits by $917 billion—a deal that could not have been predicted just months earlier. Additionally, the studies above are limited by their presentation of political compromise on ideological terms. From this perspective, gridlock is overcome when negotiators can locate the policy space that will attract the support of enough lawmakers to obtain passage. But compromise is not solely about proposing legislation with the right ideological balance. Other factors, including partisan and political considerations, can influence lawmakers' decisions. For example, the behavior of lawmakers is influenced by the collective party interests, as lawmakers work to improve their party's image with the public, and denigrate the image of the other party (Lee 2009; Cox and McCubbins 2005). Party leaders can further encourage partisanship, even in the face of conflicting ideological or electoral interests, by rewarding party loyalty (and punishing disloyalty) with the distribution of select incentives (Cann 2008; Rohde 1991, 77-78; Cann and Sidman 2011), or by extracting promises from lawmakers to support specific policy proposals (King and Zeckhauser 2003). Consequently, lawmakers sometimes support a policy they might otherwise oppose to avoid causing their party a defeat on the floor. Generally, lawmakers are influenced by more than their policy preferences.

AT: 3 branches Key

All 3 branches prevent real reform—flawed system

Greenwald 13 (Glenn, 11/19/14, "CONGRESS IS IRRELEVANT ON MASS SURVEILLANCE. HERE'S WHAT MATTERS INSTEAD", The Intercept,

https://firstlook.org/theintercept/2014/11/19/irrelevance-u-s-congress-stopping-nsas-mass-surveillance/)

All of that illustrates what is, to me, the most important point from all of this: the last place one should look to impose limits on the powers of the U.S. government is . . . the U.S. government. Governments don't walk around trying to figure out how to limit their own power, and that's particularly true of empires. The entire system in D.C. is designed at its core to prevent real reform. This Congress is not going to enact anything resembling fundamental limits on the NSA's powers of mass surveillance. Even if it somehow did, this White House would never sign it. Even if all that miraculously happened, the fact that the U.S. intelligence community and National Security State operates with no limits and no oversight means they'd easily co-opt the entire reform process. That's what happened after the eavesdropping scandals of the mid-1970s led to the establishment of congressional intelligence committees and a special FISA "oversight" court—the committees were instantly captured by putting in charge supreme servants of the intelligence community like Senators Dianne Feinstein and Chambliss, and Congressmen Mike Rogers and "Dutch" Ruppersberger, while the court quickly became a rubber stamp with subservient judges who operate in total secrecy.

AT: Congress CP

Fails—General

Congress fails—laundry list

Bedix and Quirk 15—assistant professor of political science at Keene State College, Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia(William and Paul, Mar 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance", Governance Studies,

http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)

After the relatively balanced and cautious provisions of the 2001 PATRIOT Act, Congress virtually absented itself from substantive decision making on surveillance. It failed to conduct serious oversight of intelligence agencies, ignored government violations of law, and worked harder to preserve the secrecy of surveillance practices than to control them. Even after the Obama administration made the essential facts about phone and email surveillance available in classified briefings to all members, Congress mostly ignored the information and debated the reauthorizations on the basis of demonstrably false factual premises. Until the Snowden revelations, only a handful of well-briefed and conscientious legislators—too few to be effective in the legislative process—understood the full extent of domestic intelligence gathering. We describe and explain Congress's deliberative failure on phone and Internet surveillance policy. We show that along with a lack of consistent public concern for privacy, and the increasing tendency toward partisan gridlock, Congress's institutional methods for dealing with secret surveillance programs have undermined its capacity to deliberate and act effectively with respect to those programs. Although the current political environment is hardly conducive to addressing such problems, we discuss long-term goals for institutional reform to enhance this capacity. We see no easy or decisive institutional fix. But without some structural change, the prospects look dim for maintaining significant limitations on investigatory intrusion in an era of overwhelming concern for security.

Fails—Regulations

Congress won't make metadata regulatory policies—risks, lack of interest, exclusion

Bendix and Quirk 15 --assistant professor of political science at Keene State College, Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia (William, Paul, "Secrecy and negligence: How Congress lost control of domestic surveillance", Brookings Institute, March 2015, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pd)

By the time the PATRIOT Act came up for its second renewal in 2009, the executive branch had abandoned the strategy of secrecy and unilateralism on the metadata programs. Starting in 2007, after the dragnets had received court approval, the Bush administration provided full and regular disclosures to the Intelligence and Judiciary committees.27 Going further, the Obama administration made repeated efforts to provide all members of Congress, through secret briefings, with the essential information on the metadata programs.28 The reauthorization thus gave Congress the opportunity to respond to the vast executive branch expansion of phone and email surveillance. But Congress neither sought to reassert the privacy protections of the existing business-records provisions— forcing an end to the dragnet programs—nor attempted to establish legislative standards to regulate the collection and use of metadata. In effect, Congress surrendered control to the executive branch. Congress's passivity partly reflected the incentives of individual members to defer to the executive and avoid the security and political risks of imposing constraints on investigatory methods. But the restricted flow of information on secret intelligence capabilities and practices also contributed heavily. Most legislators did not attend classified briefings—some because they lacked interest in surveillance policy, others because they were intentionally excluded from meetings by congressional leaders. A few highly engaged members, mostly Democrats, made use of the executive briefings to become well informed. But these members could not speak publicly about the actual practice of bulk collection and, as a result, could not make an effective case for policy change. Meanwhile, leading members who wanted to protect the metadata program from legislative interference took advantage of the widespread ignorance to misrepresent business-records orders as narrowly-focused investigative tools. As the later reaction to the Snowden leaks made clear, most members remained serenely clueless about metadata collection. Congress in the end opted for two short-term extensions before reauthorizing the business-records provision, without change, until June 2015. The debates over renewal stretched over three years, from 2009 to 2011, giving the appearance of thorough deliberation. But that appearance was utterly false. While maintaining the secrecy of the metadata program, Congress failed to assess the security value of mass records seizures, to weigh the resulting harm to privacy interests, or to impose standards or requirements to minimize that harm.

No bills will go through congress—keeping of traditional surveillance methods

Siddiqui 13 (Sabrina, 6/28/13, "NSA Surveillance Prompts Several Bills But Little Action In Congress", Huffington Post, http://www.huffingtonpost.com/2013/06/28/nsa-bills_n_3516928.html)

Senate Majority Leader Harry Reid (D-Nev.) told reporters earlier this month that any legislation in response to the NSA surveillance must go through the Judiciary committee. Leahy's office was unable to provide information on if and when the bill might be marked up. Even then, Senate Majority Whip Dick

Durbin (D-Ill.) predicted the FISA declassification bill would be unlikely to pass Congress and even more unlikely to be signed into law by President Barack Obama. "I encourage this, though I think it is going to be ill-fated," Durbin said of the bill after its introduction. "I just don't see a freight train coming down the track." Part of the problem is that most members of Congress have shown little appetite to change the nature the surveillance methods. In an era of extreme partisanship that earned the legislative body its "Do-Nothing" label, the one issue bipartisan majorities seem to agree on is that the federal government can employ far-reaching measures in the name of national security. "It's not an issue of whether anyone cares or not," said Jim Manley, Reid's former top spokesman. "I think that the fact is, based on the intelligence briefings that they have received, that many members support the NSA programs because they honestly believe that the country faces some very real threats from individuals and organizations that want to do real damage to this country." The other roadblock to an NSA legislative fix is a combination of timing and the public's short attention span. The revelations preceded monumental Supreme Court rulings on gay marriage and the Voting Rights Act, and the passage of comprehensive immigration reform in the Senate. With formal federal charges issued against Snowden, discussions around the NSA are now focused on whether the contractor will be extradited or granted asylum by a sympathetic government.

Congress won't pass SSRA—Freedom Act

Washington Newsletter 13(11/23/13, "ACTION ALERT: Four Steps Congress Can Take to End the Endless Wars", Environmentalists Against War,

http://www.envirosagainstwar.org/know/read.php?Itemid=14291)

The Surveillance State Repeal Act was one of the earliest reform bills introduced after the Guardian revealed the NSA's mass collection of Americans' calling records in June 2013. The bill, put forth by Rep. Rush Holt, would completely repeal Section 215 of the Patriot Act (used to collect all of your calling records) and Section 702 of the FISA Amendments Act (used to collect content of Internet and phone communications on a massive scale). The bill had little prospect of being passed when first introduced, and will not be passed due to the House's vote on the altered USA Freedom Act.

Courts CP

1NC

The Supreme Court should rule that <insert plan> is unconstitutional on the grounds of violation of the 4th amendment (if the aff repeals a bill or program)

OR

CP text: The Supreme Court of the United States should interpret the 4th amendment to mean <insert plan removal of regulation>

Supreme Courts solve and will rule on surveillance your court DA's don't apply

Craig **TImberg** 6/25/**14** (worked for The Valley News and Concord Monitor, both in New Hampshire, before joining The Baltimore Sun in 1996 and the Post in 1998. He spent three years in Richmond covering Virginia politics and two years in D.C., covering the mayor and city council, before joining the Foreign Staff in 2004. After a stint as Johannesburg Bureau Chief, he became education editor in 2009 and deputy national security editor in 2011Supreme Court cellphone ruling hints at broader curbs on surveillance http://www.washingtonpost.com/business/technology/supreme-court-cellphone-ruling-hints-at-broader-curbs-on-surveillance/2014/06/25/2732b532-fc9b-11e3-8176-f2c941cf35f1_story.html BP)

The words "National Security Agency" appear nowhere in the Supreme Court's opinion Wednesday prohibiting cellphone searches without a warrant. But **the unanimous ruling makes clear that the nation's most important jurists are tuned in to the roiling debate about high-tech surveillance and concerned about government officials going too far.** In broad, passionate language — spiked with the occasional joke — the ruling by Chief Justice John G. Roberts Jr. asserts that the vast troves of information police can find in modern cellphones are no less worthy of constitutional protection than the private papers that Founding Fathers once kept locked in wooden file cabinets inside their homes. Roberts even chides the government for arguing that searching a cellphone is "materially indistinguishable" from searches of other items that can be seized at the scene of an arrest, such as a pack of cigarettes or a handwritten note. "That is like saying a ride on horseback is materially indistinguishable from a flight to the moon. Both are ways of getting from point A to point B, but little else justifies lumping them together," he wrote. **Such declarations, experts said, suggest a willingness to reconsider legal rulings long used to justify modern surveillance tools. That includes some spying technologies that were unimaginable when courts first articulated those arguments but that now are routinely used by a range of government agencies, including the NSA, the FBI and many state and local police forces**. A footnote in Wednesday's ruling cautions against assuming too much about the court's views on data collection "under other circumstances." **But legal experts on both sides of the privacy debate took notice of the unanimity of the ruling and the uncommonly strong language Roberts used when describing the privacy risks in modern technologies. "It's just a big, forceful, bold decision," said Orin S. Kerr, a George Washington University law professor and former Justice Department lawyer specializing in technology issues. "If you're at the [American Civil Liberties Union], you're popping a champagne bottle. If you're at the FBI, you're scratching your head and thinking of what you're going to do next." Many observers date the Supreme Court's reconsideration of high-tech surveillance to the United States v. Jones decision in 2012, which ruled that police had trespassed**

when placing an electronic tracking device on a suspect's car. In applying a traditional constitutional protection to new technology, the court expressed concerns about the need to update the Fourth Amendment for the modern world. The ruling on cellphone searches, experts said, suggested that the court's consensus has grown on such issues over the past two years, a period in which the revelations made by former NSA contractor Edward Snowden have sparked international controversy over the privacy implications of high-tech government spying.

The Supreme Court controls public perception and the direction of the politics link—this is the best comparative evidence

Katerina LInos and Kimberly Twist 10/15/14 (Linos, Professor. UC Berkeley School of Law Twist, Ph.D. from the Travers Department of Political Science at the University of California, Berkeley "The Supreme Court, the Media, and Public Opinion: Comparing Experimental and Observational Methods" https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww.law.uchicago.edu%2Ffiles%2Ffiles accessed 7/6/15 BP)

In turn**, public responses depend heavily on the interaction of the choices of the Court** and the media. **The Court can often avoid shifting national opinion by refusing to engage with a controversial case, and thus reduce the likelihood that most Americans will hear about the issue.** The media can also prevent a shift in opinion by giving their audiences both the Court majority's frame and powerful competing frames. **National opinion changes only when the Court and the media act in concert: when the Court rules on a controversial case, and the media decide to present their audiences with one-sided coverage of the decision**. Three research design innovations allow us to test our theory, and to build the literature on public opinion formation more generally. First, we surveyed a nationally representative sample of Americans shortly before and shortly after two major and surprising Court decisions on health care and immigration. **Prior studies of Court decisions in real-life settings have been based on survey questions fielded for other purposes, such as the General Social Survey. They thus share a major limitation: There is a very long time gap, often one or more years, between the "before" and the "after" sample, and events other than the Court decision could influence opinion in this interval** (Hoekstra 1995, 112).The scarcity of real-life data shortly before and shortly after major events is a more general limitation of public opinion research, because researchers cannot anticipate occurrences such as terrorist attacks, political scandals or natural disasters. The most extensive before-and-after research to date surrounds election campaigns, but often these studies report limited opinion move- meant, as surprising events may not occur in the intervals studied. **By combining our data with other poll data, we show both that an opinion shift occurred immediately after the Court decision, and that this shift persisted for many months, as no other actor or event was able to draw as much media attention to the issues as did the Court. Second, we combine public opinion data with detailed media coverage data, and connect individuals' opinion shifts with the content of television programs they watched. "Most published work on media effects does not include measures of media content**" (Barabas and

Jerit 2009, 74) and “most researchers fail to ascertain, let alone content-analyze, the media information that, they assume, their subjects encountered” (Graber 2004, 516). As a result, major propositions of public opinion theory, such as the claim that different frames lead to dfferent opinion shifts, have**. In turn, public responses depend heavily on the interaction of the choices of the Court and the media. The Court can often avoid shifting national opinion by refusing to engage with a controversial case, and thus reduce the likelihood that most Americans will hear about the issue. The media can also prevent a shift in opinion by giving their audiences both the Court majority’s frame and powerful competing frames. National opinion changes only when the Court and the media act in concert: when the Court rules on a controversial case, and the media decide to present their audiences with one-sided coverage of the decision**

(note if they ask about media involvement in this card in cx talk about how the court can shift the way it rules or on what grounds it rules to spur more or less media attention)

Generic Solvency

Surveillance curtailment can only occur outside of executive branch –(retag possible tyranny/separation of powers net ben along with circumvention arg)

Glenn Harlan **Reynolds** 2/10/**14** (is professor of law at the University of Tennessee and the author of The New School: How the Information Age Will Save American Education from Itself. "NSA spying undermines separation of powers: Column" http://www.usatoday.com/story/opinion/2014/02/10/nsa-spying-surveillance-congress-column/5340281/ accessed 7/1/15 BP)

As the Framers conceived it, our system of government is divided into three branches -- the executive, legislative and judicial -- **each of which is designed to serve as a check on the others**. If the president gets out of control, Congress can defund his efforts, or impeach him, and the judiciary can declare his acts unconstitutional. If Congress passes unconstitutional laws, the president can veto them, or refuse to enforce them, and the judiciary, again, can declare them invalid. If the judiciary gets carried away, the president can appoint new judges, and Congress can change the laws, or even impeach. **But if the federal government has broad domestic-spying powers, and if those are controlled by the executive branch without significant oversight, then the president has the power to snoop on political enemies, getting an advantage in countering their plans, and gathering material that can be used to blackmail or destroy them. With such power in the executive, the traditional role of the other branches as checks would be seriously undermined, and our system of government would veer toward** what James Madison in The Federalist No. 47 called "**the very definition of tyranny**," that is, "the accumulation of all powers, legislative, executive, and judiciary, in the same hands." That such widespread spying power exists, of course, doesn't prove that it has actually been abused. But **the temptation to make use of such a power for self-serving political ends is likely to be very great. And, given the secrecy surrounding such programs, outsiders might never know. In fact, given the compartmentalization that goes on in the intelligence world, almost everyone at the NSA might be acting properly, completely unaware that one small section is devoted to gather political intelligence.** We can hope, of course, that such abuses would leak out, but they might not. Rather than counting on leakers to protect us, we need strong structural controls that don't depend on people being heroically honest or unusually immune to political temptation, two characteristics not in oversupply among our political class. That means that the government shouldn't be able to spy on Americans without a warrant — a warrant that comes from a different branch of government, and requires probable cause. The government should also have to keep a clear record of who was spied on, and why, and of exactly who had access to the information once it was gathered. We need the kind of extensive audit trails for access to information that, as the Edward Snowden experience clearly illustrates, don't currently exist

Courts Solve surveillance—new legal precedent from gps and cellphones

Steven **Nelson** 7/3/**14** (reporter at U.S. News & World Report "Supreme Court Cellphone Ruling May Tilt NSA Fight" http://www.usnews.com/news/articles/2014/07/03/supreme-court-cellphone-ruling-may-tilt-nsa-fight accessed 7/1/15 BP)

The cellphone ruling referenced the court's 2012 U.S. v Jones decision, which prohibited warrantless GPS tracking. Surveillance foes hope the Jones ruling will guide a rebuke to the NSA's warehousing of

billions of phone records. “Historic location information is a standard feature on many smartphones and can reconstruct someone’s specific movements down to the minute, not only around town but also within a particular building,” Roberts wrote, quoting Justice Sonia Sotomayor’s concurring opinion in Jones that “GPS monitoring generates a precise, comprehensive record of a person’s public movements that reflects a wealth of detail about her familial, political, professional, religious and sexual associations.” Roberts also noted it’s not always clear if content is stored on the phone itself or on the digital cloud. Searching phone content that’s stored on remote servers is “like finding a key in a suspect’s pocket and arguing that it allowed law enforcement to unlock and search a house,” he wrote. Even low-tech flip-phones, he wrote, are protected from warrantless searches because such searches might identify information such as a suspect’s home address. [ALSO: White House Ignores Snowden Petition for Full Year] The NSA’s bulk collection of U.S. phone records – including numbers dialed, the duration and time of calls and location data – isn’t precisely analogous to the cellphone searches proscribed by the court. But Larry Klayman, a conservative legal activist challenging the NSA phone record collection, says the writing is on the wall. “It pretty much cements victory in our case,” he says. **Attorneys defending the NSA phone program lean heavily on the Supreme Court’s 1979 decision in Smith v. Maryland, which allows the warrantless acquisition of third-party-held phone metadata, over which that decision says phone customers lack a reasonable expectation of privacy. “Smith no longer applies, Smith was basically trashed,” Klayman says. “All of the government’s briefs are now null and void.” He expects that claim to be validated in future court rulings**. [MORE: New NSA Restrictions Pass House by Large Margin] Orin Kerr, a George Washington University law professor who specializes in the Fourth Amendment, disagrees with Klayman. “That's hilarious,” Kerr says. “No, Riley does not invalidate Smith. It has nothing to do with Smith.” Kerr says the cellphone ruling applies to different aspects of Fourth Amendment law than pending NSA cases, and that its possible impact is difficult to determine. Kurt Opsahl, an attorney who works on the Electronic Frontier Foundation's lawsuits against the NSA program, has a more nuanced, albeit upbeat, perspective. [READ: Intel Committee Senator Says 'Eric Schnowden' Is NSA Leaker] "**The Riley decision is good news for challenges to the phone record spying program," he says. "It rejected the government's expansive interpretation of Smith v. Maryland and the third-party doctrine, opens the door to ratcheting back the doctrine and shows that the court is deeply concerned with government intrusion into people's private lives, even if that information is outside the home**." Editorial cartoon on national security SEE PHOTOS Editorial Cartoons on the NSA Sen. Rand Paul, R-Ky., is also suing to end the program and released a statement after the cellphone ruling, saying: “**This decision has a direct bearing on what the NSA is doing. As our technology evolves, our Constitution endures.” Klayman won the first – and thus far only – federal court victory against the NSA program in December. District Judge Richard Leon found the “almost Orwellian” program “almost certainly” violates Americans’ Fourth Amendment rights. “When I read the [Riley] decision I was elated – it rubber stamps what Leon wrote,” Klayman says. “Their decision is pretty easy to write now, they are locked in by Riley.”**

Supreme Court decisions on electronic surveillance coming now –GPS and Cellphone searches mean new solvency

Andy Greenberg 7/1/14 (Andy Greenberg is a senior writer for WIRED, covering security, privacy, information freedom, and hacker culture “Why the Supreme Court May Finally Protect Your Privacy in the Cloud” http://www.wired.com/2014/06/why-the-supreme-court-may-finally-protect-your-privacy-in-the-cloud/ accessed 7/5/15) BP

When the **SUPREME COURT RULED yesterday in the case of Riley v. California , it definitively told the government to keep its warrantless fingers off your cell phone**. But as t**he full impact of that opinion has rippled through the privacy community, some SCOTUS-watchers say it could also signal a shift in how the Court sees the privacy of data in general**—not just when it's stored on your physical handset, but also when it's kept somewhere far more vulnerable: in the servers of faraway Internet and phone companies. In the Riley decision, which dealt with the post-arrest searches of an accused drug dealer in Boston and an alleged gang member in California, the court unanimously ruled that police need a warrant to search a suspect's phone. The 28-page opinion penned by Chief Justice John Roberts explicitly avoids addressing a larger question about what's known as the "third-party doctrine," the notion that any data kept by a third party such as Verizon, AT&T, Google or Microsoft is fair game for a warrantless search. But even so**, legal analysts reading between the opinion's lines say they see evidence that the court is shifting its view on that long-stewing issue for online privacy**. **The results, if they're right, could be future rulings from America's highest court that seriously restrict both law enforcement's and even the NSA's abilities to siphons Americans' data from the cloud. Digital Is Different The key realization in Roberts' ruling**, according to Open Technology Institute attorney Kevin Bankston, can be summarized as "digital is different." Modern phones generate a volume of private data that means they require greater protection than other non-digital sources of personal information. "Easy analogies of digital to traditional analog surveillance won't cut it," Bankston says.1 Daniel Solove, a law professor at George Washington Law School, echoes that sentiment in a blog post and points to this passage in the opinion: First, a cell phone collects in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions. **That argument about the nature of digital collections of personal data seems to apply just as much to information held by a third party company** as it does to information held in the palm of an arrested person's hand. And Solove argues that could spell trouble for the third-party doctrine when it next comes before the Court. "The Court's reasoning in Riley suggests that perhaps the Court is finally recognizing that old physical considerations—location, size, etc.—are no longer as relevant in light of modern technology. What matters is the data involved and how much it reveals about a person's private life," he writes. "**If this is the larger principle the Court is recognizing today, then it strongly undermines some of the reasoning behind the third party doctrine**. The Court's opinion was careful not to make any overt reference to the third-party doctrine. In fact, it includes a tersely-worded footnote cautioning that the ruling's arguments about physical search of phones "do not implicate the question whether the collection or inspection of aggregated digital information amounts to a search under other circumstances." But **despite the Court's caveat, its central argument—that the notions of privacy applied to analog data are no longer sufficient to protect digital data from warrantless searches—doesn't limit itself to physical access to devices**. And the opinion seems to hint at the Court's thoughts on protecting one sort of remotely-stored phone data in particular: location data. The Logic of Location Data The Riley ruling cites an opinion written by Justice Sonia Sotomayor in the case of US vs. Jones, another landmark Supreme Court decision in 2012 that ended warrantless use of GPS devices to track criminal suspects' cars. GPS devices, Sotomayor wrote at the time, create "a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations." Roberts' reference to that opinion in Tuesday's ruling seems to acknowledge that the

sensitivity of GPS device data extends to phone location data too. And there's little logical reason to believe that phone data becomes less sensitive when it's stored by AT&T instead of in an iPhone's flash memory. **With Riley and Jones, "we've now seen two indications that the Supreme Court is rethinking privacy for stored data**," says Alex Abdo, a staff attorney at the American Civil Liberties Union. "Neither raises the question directly, but they both contain clues into the mindset of the court, and they both suggest that there's another victory for privacy in the waiting." "If I were to guess," Abdo adds, "I would predict that the Supreme Court will make good on its suggestion that the third-party doctrine doesn't make sense in the context of cloud storage." The ripples from Riley may extend to the NSA's surveillance practices, too. The ripples from Riley may extend to the NSA's surveillance practices, too, says Jennifer Granick, director of Civil Liberties at Stanford Law School's Center for Internet and Society. She points out that the NSA has used the same third-party doctrine arguments to justify its collection of Americans' phone data under section 215 of the Patriot Act. "What will this mean for the NSA's bulk collection of call detail records and other so-called 'metadata'?" she asks in a blog post. "The opinion suggests that when the Court has that question before it, the government's approach may not win the day.

SOX specific

***DON'T USE THE OTHER ONE**

Potential CP text : The United States Supreme should reverse the decision in Free Enterprise Fund and Beckstead and Watts v. PCAOB ruling that the Sarbanes-Oxley Act is unconstitutional

CP solves- theres legal precedent

Troutman Sanders 7/10/10 (is an international law firm with more than 600 attorneys located in North America and Asia. The firm is organized into over forty areas of legal practice within five sections: Business Law, Energy and Industry Regulation, Finance, Litigation and Real Estate "Supreme Court Upholds Constitutionality of the Sarbanes-Oxley Act of 2002" http://www.troutmansanders.com/supreme-court-upholds-constitutionality-of-the-sarbanes-oxley-act-of-2002-07-07-2010/ accessed 7/1/15 BP

On June 28, 2010, **the United State Supreme Court issued a 5-4 decision in Free Enterprise Fund and Beckstead and Watts, LLP v. Public Company Accounting Oversight Board and United States of America**. The Supreme Court held that a provision in the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") requiring the Securities and Exchange Commission (the "SEC") to remove board members of the Public Company Accounting Oversight Board (the "PCAOB") only for "good cause" is unconstitutional and, as a result, invalid. **The Supreme Court, however, further held that this unconstitutional "for-cause" removal provision of the Sarbanes-Oxley Act is severable from its other provisions and, as a result, the remainder of the Sarbanes-Oxley Act remains in effect. The much anticipated ruling therefore did not result in the dramatic invalidation of the entire Sarbanes-Oxley Act, as some commentators had speculated might occur. Companies' obligations under the Sarbanes-Oxley Act instead remain unchanged**. The PCAOB is a private-sector, nonprofit corporation created by the Sarbanes-Oxley Act to oversee accounting professionals who provide audit reports for publicly traded companies. The PCAOB is composed of five board members appointed by the SEC. PCAOB board members may only be removed by the SEC before the end of a five-year term "for good cause shown," "in accordance with certain procedures." SEC Commissioners, in turn, may be removed by the President of the United States for "inefficiency, neglect of duty, or malfeasance in office." **The Supreme Court held that these dual "for-cause" removal restrictions violated the separation of powers principle of the United States Constitution**. In the past where **the Supreme Court has upheld limited removal restrictions on the President's removal power**, only one level of protected tenure separated the President from an officer exercising executive power. In such cases, the President, or an at-will subordinate of the President, would decide whether to remove the officer for cause. The unconstitutional "for-cause" removal provision in the Sarbanes-Oxley Act protects PCAOB board members from removal except for good cause, but also removes the President from all decisions on whether that good cause exists. The decision relating to whether good cause exists is made by SEC Commissioners who are not subject to the President's direct control. The effect of this dual "for-cause" removal regime is that the President "cannot hold the [SEC] fully accountable for the [PCAOB]'s conduct, to the same extent that he may hold the [SEC] accountable for everything else that it does." **The Supreme Court further held that the unconstitutional "for-cause" removal provision of the Sarbanes-Oxley Act is severable from the remainder of the statute. As a result, other than the unconstitutional**

"for-cause" removal provision, the Sarbanes-Oxley Act remains "fully operative as a law." The removal of this provision leaves PCAOB board members removable at will by the SEC Commissioners and the President is separated from PCAOB board members "by only a single level of good-cause tenure." While the case has garnered attention as a result of the conjecture that the entire Sarbanes-Oxley Act would be invalidated by the Supreme Court, this decision ensures that the remainder of the Sarbanes-Oxley Act remains intact. Companies, therefore, are not relieved of their obligations under the Sarbanes-Oxley Act and the PCAOB continues as well

The Supreme court can curtail Sarbanes Oxley- empirics prove

Brent Kendall 2/25/15 (Kendall is a legal affairs reporter in the Washington bureau of The Wall Street Journal, where he covers the Justice Department, the Federal Trade Commission and the federal courts, including the Supreme Court. "Supreme Court Faults Use of Sarbanes-Oxley in Fisherman Case" http://www.wsj.com/articles/supreme-court-faults-use-of-sarbanes-oxley-law-in-fisherman-case-1424880168 accessed 7/7/15

WASHINGTON—**A divided U.S. Supreme Court on Wednesday curtailed the use of the Sarbanes-Oxley corporate governance law in cases** that aren't about corporate fraud, ruling it couldn't be used to prosecute a fisherman for destroying evidence he illegally harvested fish. **The decision is a setback for the government because the Justice Department increasingly has sought to use a Sarbanes-Oxley prohibition on evidence destruction in cases outside the corporate realm.** The ruling, for example, could have an immediate effect on the high-profile cases of two men charged with obstructing the investigation into alleged Boston Marathon bomber Dzhokhar Tsarnaev. A judge had postponed their sentencing until the Supreme Court ruled in the fisherman case. Arkady Bukh, a lawyer for Boston defendant Azamat Tazhayakov, said he was still studying the fisherman decision but likely would ask a judge to exonerate his client in light of the high court's ruling. A jury convicted Mr. Tazhayakov last year of a Sarbanes-Oxley violation for removing a backpack and other materials from Mr. Tsarnaev's College dorm room that were being sought by federal authorities. **A spokeswoman for the U.S. attorney's office in Massachusetts said prosecutors were studying the ruling and had no further comment**. MORE High Court Appears Ready to Allow Felon to Sell Gun Collection Supreme Court Receptive to Investors in 401(k) Case Supreme Court Faults Use of Sarbanes-Oxley Law in Fisherman Case No Second Chance for Supreme Court Litigant Who Disappeared Prosecutors in the fisherman case had charged John Yates with a Sarbanes-Oxley violation after a fish-and-wildlife officer boarded the fisherman's boat in 2007 and found Mr. Yates had kept 72 grouper that were under the minimum size limit for catch. He issued the Florida fisherman a civil citation and told Mr. Yates to bring the undersized fish back to port for further inspection. Prosecutors alleged Mr. Yates instead told his crew to throw the fish overboard and replace them with bigger fish. He was convicted in 2011 and sentenced to 30 days in jail. Wednesday's Supreme Court ruling splintered the justices and scrambled their traditional ideological lines. Four **justices, in an opinion by Justice Ruth Bader Ginsburg, said the 2002 Sarbanes-Oxley law, passed in the wake of accounting scandals at publicly traded companies, such as Enron Corp., bars the destruction of evidence, including business documents and records. It doesn't apply to a fisherman's alleged destruction of his catch, those justices said. Congress in Sarbanes-Oxley made it a crime to knowingly destroy or cover up "any record, document or tangible object**" with the intent to obstruct an investigation, with a maximum 20-year prison sentence. Justice Ginsburg conceded a fish is a tangible object, but she said reading the corporate law that broadly would be to cut it loose "from its financial-

fraud mooring." If the nation needs a broader "coverall" statute to prohibit evidence destruction, that is a decision best left to Congress, Justice Ginsburg wrote. Justice Samuel Alito didn't join that holding but provided a fifth vote, based on somewhat different legal reasoning, to toss Mr. Yates's Sarbanes-Oxley conviction. Chief Justice John Roberts and Justices Stephen Breyer and Sonia Sotomayor joined the opinion by Justice Ginsburg. A Justice Department spokesman in Washington didn't respond to requests for comment. The department had argued the Sarbanes-Oxley provision was an important tool for prosecutors because it closed loopholes in federal law on destruction of evidence. It said it had used the provision in cases prosecuting everything from the destruction of cocaine to the burning of a man killed by a police officer after Hurricane Katrina. Mr. Yates's lawyer, John Badalamenti, welcomed the ruling, saying the **Supreme Court made clear Sarbanes-Oxley is "intended to target big corporate white-collar coverups," not the destruction of any and all physical objects. Four justices— Elena Kagan, Antonin Scalia, Anthony Kennedy and Clarence Thomas—dissented from the ruling. They would have read the Sarbanes-Oxley evidence destruction provision more broadly to punish people who destroy any physical evidence to thwart a federal investigation.**

Drones

Supreme Court Solves Drones—Legal Precedent and Solvency Advocate
EPIC no date (EPIC is an independent non-profit research center in Washington, DC. EPIC works to protect privacy, freedom of expression, democratic values, and to promote the Public Voice in decisions concerning the future of the Internet. EPIC pursues a wide range of program activities including public education, litigation, and advocacy. EPIC routinely files amicus briefs in federal courts, pursues open government cases, defends consumer privacy, organizes conferences for NGOs, and speaks before Congress and judicial organizations about emerging privacy and civil liberties issues. EPIC works closely with a distinguished advisory board, with expertise in law, technology and public policy "State v. Davis" https://epic.org/amicus/drones/new-mexico/davis/default.html# accessed 7/1/15

The New Mexico Supreme Court has agreed to review a decision by the Court of Appeals in State v. Davis concerning the constitutionality of warrantless aerial surveillance. In Davis, the lower court reversed a denial of the defendant's motion to suppress evidence gathered after an Army National Guard helicopter was used to spot "vegetation" in his backyard and greenhouse. Specifically, the lower court held that the New Mexico Constitution does not permit warrantless aerial surveillance of an individual's home and curtilage.. EPIC seeks to preserve Fourth Amendment privacy protections **in light of the use of advanced surveillance technologies. State v. Davis** is especially significant and relevant to EPIC's mission **because of its potential impact on the use of increasingly sophisticated unmanned aerial surveillance technologies. As an expert on both constitutional privacy rights and advanced surveillance technologies**, EPIC is uniquely qualified to support the argument for aerial privacy protections. This case is also related to EPIC's prior work. EPIC frequently files amicus briefs in state and federal courts on important Fourth Amendment issues related to new technologies. Most recently, EPIC filed an amicus brief in Riley v. California, which was cited in the Court's majority opinion. EPIC argued in its brief that: (1) U.S. consumers are dependent on modern cell phones for a wide range of personal and business activity; (2) modern communications providers store sensitive personal information on remote servers, accessible to authorized users with cell phones, tablets, and other devices; and (3) law enforcement can easily mitigate the risk of cell phone data loss pending a judicial determination of probable cause. **The Supreme Court held in a unanimous decision that police must obtain a warrant to search a cell phone that is seized pursuant to a lawful arrest. The Court's decision in Riley emphasized the impact of new technologies on individual privacy interests**. EPIC also filed an amicus brief in Florida v. Harris, arguing that the use of advanced investigative techniques raises important new privacy considerations that should inform the Court's Fourth Amendment analysis. Specifically, EPIC's brief argued (1) that the government's burden of reliably establishing probable cause is essential to the preservation of electronic privacy; (2) that a probable cause finding under the Fourth Amendment should be based on reliable evidence; and (3) new investigative techniques should be used based on research, testing, and data indicating reliability. EPIC has also advocated strongly in favor of comprehensive privacy protections for the use of drones or unmanned aerial vehicles ("UAVs "). EPIC recently issued a new Spotlight on Surveillance report**, exploring the privacy and civil liberties**

implications of domestic drone use. Domestic use of drones by the government and private citizens has increased substantially over the past several years, yet it remains largely unregulated with not privacy restrictions at the federal level and only a patchwork of laws at the state and local levels. EPIC notes that while the capacity to perform aerial surveillance is not new, the economics of aerial surveillance have changed dramatically. Low-cost drones, coupled with leaps in camera technology and cheap data storage, create the capacity for pervasive and indiscriminate surveillance. EPIC made a number of recommendations to further the goal of protection of privacy:

More Drones ev.

EPIC 5/25/15 (EPIC is an independent non-profit research center in Washington, DC. EPIC works to protect privacy, freedom of expression, democratic values, and to promote the Public Voice in decisions concerning the future of the Internet. EPIC pursues a wide range of program activities including public education, litigation, and advocacy. EPIC routinely files amicus briefs in federal courts, pursues open government cases, defends consumer privacy, organizes conferences for NGOs, and speaks before Congress and judicial organizations about emerging privacy and civil liberties issues. EPIC works closely with a distinguished advisory board, with expertise in law, technology and public policy "Domestic Unmanned Aerial Vehicles (UAVs) and Drones" https://epic.org/privacy/drones/ accessed 7/2/15

The **US Supreme Court has held that individuals do not generally have Fourth Amendment rights with respect to aerial surveillance because of the ability that anyone might have to observe what could be viewed from the air**. Of course, **individuals do not operate drone vehicles with the capabilities of the US government. Also, some state courts have reached different conclusions about the privacy issues associated with aerial surveillance. In other cases where advanced technologies have allowed increasingly intrusive Government surveillance, courts have adjusted Fourth Amendment doctrine to account for the effect of technological change on the reasonable expectation of privacy**. In 2001, the Supreme Court ruled in Kyllo v. US that the use of a device that is not in "general public use" is a search even if it does not physically invade the home. In 2010, the D.C. Circuit Court required the Department of Homeland Security to undertake a new APA rulemaking when the Agency sought to implement Whole Body Imaging technology in the place of metal detectors as primary screening tools at U.S. airports. In 2012, the Supreme Court ruled in US v. Jones that the attachment of a GPS device to a car with the intent of gathering information was a "search" under the Fourth Amendment. The Jones decision marks a significant change from the previous doctrine, based on US v. Knotts, that an individual has no reasonable expectation of privacy in their location on public roads. **Drone surveillance also implicates public safety issues as the drones operate in airspace that may also be used by commercial and private aircraft**. For this reason**, federal agencies should regulate and control the proliferation of drone surveillance**

FISA

Clapper v. Amnesty Intl' proves the court can rule to reform FISA solves the AFF

EPIC 5/14/15 (EPIC is an independent non-profit research center in Washington, DC. EPIC works to protect privacy, freedom of expression, democratic values, and to promote the Public Voice in decisions concerning the future of the Internet. EPIC pursues a wide range of program activities including public education, litigation, and advocacy. EPIC routinely files amicus briefs in federal courts, pursues open government cases, defends consumer privacy, organizes conferences for NGOs, and speaks before Congress and judicial organizations about emerging privacy and civil liberties issues. EPIC works closely with a distinguished advisory board, with expertise in law, technology and public policy "Clapper v. Amnesty Int'l USA" https://epic.org/amicus/fisa/clapper/ BP)

The question before the Supreme Court, whether the plaintiffs can establish standing to challenge a mass surveillance program, is critically important to protecting Fourth Amendment privacy rights. The government's foreign intelligence activities necessarily involve a great deal of secrecy, and mass surveillance under the FAA is not a transparent process. A failure to recognize plaintiff's legitimate fears that their communications are being intercepted, especially where plaintiffs regularly communicate with international clients and confidential sources, would effectively bar judicial review of FISA-authorized surveillance programs. **Proceedings in the FISA Court of Review are not adversarial, and it is nearly impossible to challenge its decisions. Notably, in In re Directives, the FISA Court of Review recognized a foreign intelligence surveillance exception to the Fourth Amendment. Without an individual's right to challenge unlawful government action in Article III courts, important civil and constitutional rights may never be vindicated. The Supreme Court's Decision The Supreme Court ruled on February 26, 2013 that a constitutional challenge to the Foreign Intelligence Surveillance Act cannot go forward. The Court stated that the Respondents had not presented sufficient proof to establish standing to sue the federal government. In a divided 5-4 decision**, Justice Alito wrote that the group's alleged injuries were too speculative to be considered. The majority said that the group could not prove, with "certainly impending" likelihood, that the government has intercepted or would intercept their communications. The Court said that the group's expenditures and attempts to avoid government surveillance are also not sufficient to get their case heard in court. Chief Justice Roberts and Justices Scalia, Kennedy, and Thomas also signed on to the majority opinion.

Privacy

The Courts are the best at defending rights to privacy.

Doug Linder 2015 (Professor Linder is a recipient of the Elmer P. Pierson Teaching Award (twice, most recently in 2003) for his teaching at umkc law school, received his J.D. from Stanford Law School.
http://law2.umkc.edu/faculty/projects/ftrials/conlaw/rightofprivacy.html accessed 7/7/15 BP

The U. S. Constitution contains no express right to privacy. **The Bill of Rights, however, reflects the concern of James Madison and other framers for protecting specific aspects of privacy**, such as the privacy of beliefs **(1st** Amendment), privacy of the home against demands that it be used to house soldiers (**3rd** Amendment), privacy of the person and possessions as against unreasonable searches (**4th** Amendment), and the **5th** Amendment's privilege against self-incrimination, which provides protection for the privacy of personal information. In addition, the Ninth Amendment states that the "enumeration of certain rights" in the Bill of Rights "shall not be construed to deny or disparage other rights retained by the people." The meaning of the Ninth Amendment is elusive, but some persons (including Justice Goldberg in his Griswold concurrence) have interpreted the **Ninth Amendment as justification for broadly reading the Bill of Rights to protect privacy** in ways not specifically provided in the first eight amendments. The question of whether the Constitution protects privacy in ways not expressly provided in the Bill of Rights is controversial. Many originalists, including most famously Judge Robert Bork in his ill-fated Supreme Court confirmation hearings, have argued that no such general right of privacy exists. **The Supreme Court, however, beginning as early as 1923 and continuing through its recent decisions, has broadly read the "liberty" guarantee of the Fourteenth Amendment to guarantee a fairly broad right of privacy that has come to encompass decisions about child rearing, procreation, marriage**, and termination of medical treatment. Polls show most Americans support this broader reading of the Constitution. The Supreme Court, in two decisions in the 1920s, read the Fourteenth Amendment's liberty clause to prohibit states from interfering with the private decisions of educators and parents to shape the education of children. In **Meyer v Nebraska** (1923), the Supreme Court struck down a state law that prohibited the teaching of German and other foreign languages to children until the ninth grade. The state argued that foreign languages could lead to inculcating in students "ideas and sentiments foreign to the best interests of this country." The Court, however, in a 7 to 2 decision written by Justice McReynolds concluded that the state failed to show a compelling need to infringe upon the rights of parents and teachers to decide what course of education is best for young students. Justice McReynolds wrote: "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." Two years late, in **Pierce v Society of Sisters**, the Court applied the principles of Meyer to strike down an Oregon law that **compelled all children to attend public schools, a law that would have effectively closed all parochial schools in the state**. **The**

privacy doctrine of the 1920s gained renewed life in the Warren Court of the 1960s when, in Griswold v Connecticut (1965), the Court struck down a state law prohibiting the possession, sale, and distribution of contraceptives to married couples. Different justifications were offered for the conclusion, ranging from Court's opinion **by Justice Douglas that saw the "penumbras" and "emanations" of various Bill of Rights guarantees as creating "a zone of privacy," to Justice Goldberg's partial reliance on the Ninth Amendment's reference to "other rights retained by the people," to Justice Harlan's decision arguing that the Fourteenth Amendment's liberty clause forbade the state from engaging in conduct** (such as search of marital bedrooms for evidence of illicit contraceptives) that was inconsistent with a government based "on the concept of ordered liberty." In 1969, **the Court unanimously concluded that the right of privacy protected an individual's right to possess and view pornography** (including pornography that might be the basis for a criminal prosecution against its manufacturer or distributor) in his own home. Drawing support for the Court's decision from both the First and Fourth Amendments, Justice Marshall wrote **in Stanley v Georgia**: "Whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home. If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds." **The Burger Court extended the right of privacy to include a woman's right to have an abortion in Roe v Wade** (1972), but thereafter resisted several invitations to expand the right. Kelley v Johnson (1976), in which the Court upheld a grooming regulation for police officers, illustrates the trend toward limiting the scope of the "zone of privacy." (The Court left open, however, the question of whether government could apply a grooming law to members of the general public, who it assumed would have some sort of liberty interest in matters of personal appearance.) Some state courts, however, were not so reluctant about pushing the zone of privacy to new frontiers. The Alaska Supreme Court went as far in the direction of protecting privacy rights as any state. In Ravin v State (1975), drawing on cases such as Stanley and Griswold but also basing its decision on the more generous protection of the Alaska Constitution's privacy protections, the Alaska Supreme Court found constitutional protection for the right of a citizen to possess and use small quantities of marijuana in his own home. The Supreme Court said in the 1977 case of **Moore v. East Cleveland** that "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in the Nation's history and tradition." **Moore found privacy protection** for an extended family's choice of living arrangements, striking down a housing ordinance that prohibited a grandmother from living together with her two grandsons. Writing for the Court, Justice Powell said, "The choice of relatives in this degree of kinship to live together may not lightly be denied by the state." In more recent decades, the Court recognized in **Cruzan v Missouri Department of Health** (1990) that individuals have a liberty interest that includes the right to make decisions to terminate life-prolonging medical treatments (although the Court accepted that states can impose certain conditions on the exercise of that right). In 2003, in **Lawrence v Texas, the Supreme Court**, overruling an earlier decision, found that **Texas violated the liberty clause of two gay men when it enforced against them a state law prohibiting homosexual sodomy**. Writing for the Court in Lawrence, Justice Kennedy reaffirmed in broad terms the Constitution's protection for privacy: "**These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment**. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life....The petitioners are entitled to respect for

their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government. 'It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.'" One question that the Court has wrestled with through its privacy decisions is how strong of an interest states must demonstrate to overcome claims by individuals that they have invaded a protected liberty interest. Earlier decisions such as **Griswold and Roe suggested that states must show a compelling interest and narrowly tailored means when they have burdened fundamental privacy rights, but later cases such as Cruzan and Lawrence have suggested the burden on states is not so high. The future of privacy protection remains an open question.** Justices Scalia and Thomas, for example, are not inclined to protect privacy beyond those cases raising claims based on specific Bill of Rights guarantees. The public, however, wants a Constitution that fills privacy gaps and prevents an overreaching Congress from telling the American people who they must marry, how many children they can have, or when they must go to bed. **The best bet is that the Court will continue to recognize protection for a general right of privacy.**

The Supreme Court solves Snowden proves theres precedent.

DJ Pangburn 12/27/**13** (Editor, Death and Taxes, and contributor at VICE "After Federal Judge Ruled NSA Surveillance Legal, Will the Supreme Court Follow Suit?" http://motherboard.vice.com/blog/a-federal-judge-ruled-nsa-surveillance-legal-will-the-supreme-court-follow-suit BP)

this morning, **US District Judge Willaum Pauley ruled that the National Security Agency's dragnet phone surveillance is legal—just weeks after US District Court Judge Richard Leon ruled the NSA program was unconstitutional**. According to the Associated Press, Judge Pauley determined the September 11 terrorist attacks might have been prevented if bulk telephone data mining had been in place. In ruling that mass surveillance is legal, **Pauley dismissed an ACLU lawsuit that argued the government's interpretation of the Patriot Act's powers was far too broad to justify the mass data mining of Americans' electronic communications**. "The government learned from its mistake and adapted to confront a new enemy: a terror network capable of orchestrating attacks across the world," wrote Pauley. "It launched a number of counter-measures, including a bulk telephony metadata collection program—a wide net that could find and isolate gossamer contacts among suspected terrorists in an ocean of seemingly disconnected data." **Could this be a preview of how the Supreme Court might rule on the surveillance question? Judge Leon's decision, while encouraging to many observers, feels like a judicial anomaly. More often than not, courts favor the US intelligence complex. There is little reason to believe the Supreme Court's ideologically conservative majority would suddenly reverse course on surveillance**.

Patriot Act/SSRA

CP text: the SCOTUS should reverse the decision in Holder v. Humanitarian law on the grounds that the patriot act is unconstitutional

CP solves the Court has authority over the patriot act

Warren Richey 6/21/10 (Staff writer for the Christian Science Monitor, " Supreme Court upholds controversial part of Patriot Act" http://www.csmonitor.com/USA/Justice/2010/0621/Supreme-Court-upholds-controversial-part-of-Patriot-Act accessed 7/6/15 BP)

WASHINGTON — **The US Supreme Court on Monday upheld the constitutionality of a federal law that makes it illegal to teach members of a foreign terrorist group how to use peaceful means to pursue political goals. The statute, outlawing the provision of "material support" to designated terrorist organizations, does not violate free-speech and free-association protections of the First Amendment, and it is not unconstitutionally vague, the majority justices declared. In a 6-to-3 decision, the high court said the law – part of the USA Patriot Act – is specific enough to provide would-be violators fair notice of when their conduct crosses the line into illegality**. The majority opinion, written by Chief Justice John Roberts, says that Congress intentionally wrote the statute with a broad sweep to outlaw material support to terror groups in any form, including assistance or expertise that might help nudge the group toward nonviolence. Chief Justice Roberts quoted a congressional finding in support of his broad reading of the statute: "[F]oreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct." In a dissent, Justice Stephen Breyer said that the majority's broad reading of the statute raises "grave" doubt about its constitutionality. "... I would read the statute as criminalizing First-Amendment-protected pure speech and association only when the defendant knows or intends that those activities will assist the organization's unlawful terrorist actions," Justice Breyer wrote. For example, if an aviation expert gave advice that facilitated a hijacking, the expert could be prosecuted for his role in facilitating the hijacking, he said. But teaching leaders of a terror group how to petition the United Nations would not. Roberts said Congress and the executive branch have rejected this view. Support is fungible, he said: "Such support frees up other resources within the organization that may be put to violent ends." He added that diplomatic and legal assistance might help bolster the international image of a terror group that the US considers an enemy. "In the dissent's world, such training is all to the good. Congress and the Executive, however, have concluded that we live in a different world," Roberts said. The material-support law has been one of the most effective tools in the

government's effort to fight international terrorism. It is designed to isolate extremist groups that use wanton violence for political ends by cutting them off from all potential supporters. It is also designed to enable prosecutors to act preemptively to disrupt terror plots in the planning stages. **The law, broadly interpreted, will make it easier for prosecutors to win convictions against those suspected of helping international terror groups**. **Critics have attacked the statute as being so broadly worded that it renders illegal any assistance to a designated terror group – including independent statements of support of a particular group.** The majority opinion says that the First Amendment protects the right of individuals to publicly support – and even join – terror groups. But statements of support must be free of any coordination with terror-group members, the court said. The decision in Holder v. Humanitarian Law Project stems from a lawsuit filed on behalf of human rights activists who were working with members of the Kurdistan Workers' Party (PKK) and the Liberation Tigers of Tamil Eelam (LTTE). The PKK is an underground group seeking to establish an independent Kurdish state in southeastern Turkey. The LTTE wants to establish Tamil independence in Sri Lanka. Both groups have carried out terrorist attacks in support of their goals, and both have been designated as terrorist organizations on a US State Department list.

The Supreme court has the ultimate authority to rule the Patriot act is unconstituitonal

Andaleeb Khalil 2005 (Writing a Senior honors thesis at EMU "The Patriot Act and Its Infringment on Civil Liberties"
http://commons.emich.edu/cgi/viewcontent.cgi?article=1043&context=honors&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Fcse%3Fcx%3D010627838012573663791%3Ako94ry4bv4s%26cof%3DFORID%3A1%26q%3D%2522Supreme%2BCourt%2522%2BAND%2B%2522SSRA%2522%26sa%3DSearch#search=%22Supreme%20Court%20SSRA%22 accessed 7/5/15 BP)

The Judicial Branch of Government and the Patriot Act 20 **The judicial branch of government doesn't really like to take cases they think to be as too controversial or political**. There are many cases in history that the Supreme Court didn't want to review but knew that if they didn't they would receive much negative reply from the other branches of government and from the people. However, **the Supreme Court is the most powerful in the Court system not only because they are the last court that people can petition to but also because they have discretionary jurisdiction**. The Supreme Court does not have to take all the cases that come to them. To get a case to the Supreme Court a person must simply apply for a writ of cert. and the writ must be granted by at least four justices on the Supreme Court (rule of four). On the same token however, the Court can't go out and pick and choose the cases that they want to review. The case does have to come to them. The Supreme Court sometimes decides not to review cases that they simply don't think it is in their

arena to review. I think this is the reason that there are barely any cases that have worked its way up to the Supreme Court that deals with the Patriot Act. The only cases that I seemed to come across that has to deal with the Patriot Act and the Supreme Court reviewing is cases that have to do with U.S. citizens (of Muslim or Arab descent) being tried in a military tribunal as an enemy combatant. An example of such is a case is Hamdi v. Rumsfeld which I've talked about earlier. **Final Evaluation Even if the Patriot Act was formulated to serve as a tool to prevent future terrorist activities, there are major sections in the Act that seem to infringe immensely on 21 the rights of individuals**. Evaluating major parts of the Act, I have shown that substantive rights under the Constitution seemed have been disregarded because of the cry of terrorism. When looking at such a complex issue one needs to simply conduct a balancing test to weigh out the costs and benefits of such an act. The benefits that the government seem to give for the Patriot Act is that it will act as a deterrent for terrorists who plan to plot another terrorist attack against the American people. This is when the costs start to play in. The more the government seeks to protect the American people, the more they seem to take away from our liberty. A core democratic value that America lives by is freedom and liberty. The Bill of Rights is specifically planted in the first part of the Constitution to prove that the rights of the people and freedom are what make a democracy. The government has previously intruded on the rights of Americans in other times of crises. Still however, there are parts in the Patriot Act that allows the government to do things that they never before have done. As the reporter that I quoted earlier said there are things that the government was doing that was unprecedented. More costs to the Patriot Act include the direct violations of the Constitution. Many sections of the Patriot Act go against numerous amendments. Also, something that isn't explicitly in the Constitution is the right to privacy. The Patriot Act shuts this down though as well. **Even though the Supreme Court in Griswald, determined that the right to privacy does exist in the Constitution, the Patriot Act completely disregards this**. Another major cost to the Patriot Act is that it undermines the notion of checks and balances. When one branch of 22 government is given immense power over the other, the threat of tyranny is taken into account. **The Patriot Act allows for the Executive to snoop in documents that they would normally not allow them to do without the check of the other branches of government. The checks and balances principle is another principle that makes the American government so distinct from others. With the Patriot Act threatening this all for the possible prevention of terrorism doesn't seem to be that much of a benefit to the people**. Of the cases I have discussed and read about, they barely have even cracked down on these terrorists that might plan out another attack. For ever person that is being caught as being a threat to our safety who actually turns out to be terrorists, millions of Americans rights are being infringed upon. The costs do outweigh the benefits with the Patriot Act. To me and to a number of other Americans who seem to agree that parts of

the Patriot Act is unconstitutional, the potential security of the government with the exchange of the people's privacy being gone, doesn't seem to be a good enough trade off**. It is the job of the Supreme Court and the judicial branch of government to ensure that the other branches of government are acting with accordance to the U.S. Constitution. The Supreme Court however doesn't seem to want to tackle this issue probably for political reasons**. They barely have granted writs of certs. to cases that involve the Patriot Act. How else could we amend such a statue that seems to trample all over our rights? I guess the American people need to elect better members of Congress so they might do away with such an act.

Courts Solve Cloud Computing

EPIC 1/28/**11** (EPIC is an independent non-profit research center in Washington, DC. EPIC works to protect privacy, freedom of expression, democratic values, and to promote the Public Voice in decisions concerning the future of the Internet. EPIC pursues a wide range of program activities including public education, litigation, and advocacy. EPIC routinely files amicus briefs in federal courts, pursues open government cases, defends consumer privacy, organizes conferences for NGOs, and speaks before Congress and judicial organizations about emerging privacy and civil liberties issues. EPIC works closely with a distinguished advisory board, with expertise in law, technology and public policy "Cloud Computing" https://epic.org/privacy/cloudcomputing/ accessed 7/2/15 BP

One of the biggest risks of storing data in the cloud is the possibility that this data will be accessed by unwanted third parties. While some cloud computing services encrypt user data when it is stored, others store data in clear text, leaving it especially vulnerable to a security breach. Data stored in the cloud might also be provided to marketers. For example, many email providers allow secondary advertising uses for e-mail communications. In recent studies, an overwhelming majority of Cloud Computing Services users expressed serious concern regarding the possibility that a Cloud Computing Services provider would disclose their data to others. According to a report by the Pew Internet and American Life Project, 90% of cloud application users say they would be very concerned if the company storing their data sold it to a third party. 80% of users say they would be very concerned if companies used their photos or other data in marketing campaigns and 68% say they would be very concerned if companies who provided these services analyzed their information and then displayed ads to them based on their actions. **Legal rights and regulatory authority for the protection of the privacy of cloud computing users are not well defined. Data stored in the cloud may be subject to less stringent legal protection than data stored on a personal computer. Under the Electronic Communications Privacy Act, data stored in the cloud may be subject to a lesser standard for law enforcement to gain access to it than if the data were stored on a personal computer. Moreover, the terms of service for cloud computing services often make clear that they will preserve and disclose information to law enforcement when served with legal process. Health information services that store user medical information may not be subject to the privacy protections of the Health Insurance Portability Protection Act. Even where it is clear that user data is protected, cloud computer service providers often limit their liability to the user as a condition of providing the service, leaving users with limited**

recourse should their data be exposed or lost. Storing data in the cloud means that access to that data is subject to the cloud computing service provider's terms. Often the terms of service allow the cloud computing service provider to terminate the service at any time. On the other hand, depending on the terms of service, deleting an account may not actually remove the stored data from the provider's servers. One might also imagine a data hostage scenario where it is vital that a user gain access to online information, but the data holder refuses that access without first receiving a payment or other compensation. In addition, there are serious concerns about the reliability of cloud computing services. As mentioned earlier, if the cloud computing service goes down or loses data, the users would have little legal recourse.

Gender/body scanners

Courts Solve Body Scanners there's legal precedent for their reform and more coming in the status quo

EPIC 5/30/**13** (EPIC is an independent non-profit research center in Washington, DC. EPIC works to protect privacy, freedom of expression, democratic values, and to promote the Public Voice in decisions concerning the future of the Internet. EPIC pursues a wide range of program activities including public education, litigation, and advocacy. EPIC routinely files amicus briefs in federal courts, pursues open government cases, defends consumer privacy, organizes conferences for NGOs, and speaks before Congress and judicial organizations about emerging privacy and civil liberties issues. EPIC works closely with a distinguished advisory board, with expertise in law, technology and public policy "Whole Body Imaging Technology and Body Scanners ("Backscatter" X-Ray and Millimeter Wave Screening)" https://epic.org/privacy/airtravel/backscatter/ accessed 7/2/15 BP

Public Opposes TSA Nude Body Scanners: **Following a court mandate that the Transportation Security Administration receive public comment on airport body scanners, the public overwhelmingly opposes invasive nude body scanners. The court mandate was in response to EPIC's lawsuit in EPIC v. DHS, where EPIC successfully challenged the TSA's unlawful deployment of airport body scanners**. The TSA will accept comments until June 24, 2013. The public has submitted almost 2,000 comments noting various problems with the scanners, including privacy violations, potential health risks, and the machine's inability to accurately detect threats. For more information, see EPIC: Comment on the TSA Nude Body Scanner Proposal, EPIC: Radiation Risks lawsuit, and EPIC: ATR lawsuit. (Apr. 23, 2013) EPIC Appeals FOIA Decisions Concerning Body Scanner Information**: EPIC has filed appeals in two Freedom of Information Act cases seeking documents related to airport body scanners from the Department of Homeland Security and the Transportation Security Administration. EPIC filed FOIA requests with the agencies seeking records related to radiation risks from body scanners and the threat detection software the machines use. The TSA is currently developing formal rules for the use of body scanners in response to a court order in one of EPIC's previous cases**. Body scanners allow routine digital strip searches of individuals who are not suspected of any crime. For more information, see EPIC: Radiation Risks lawsuit and EPIC: ATR lawsuit, and EPIC: Suspension of Body Scanner Program. (Apr. 16, 2013) TSA Broadens Use of 'Backscatter X-Ray' Machines That Conduct 'Virtual Strip Searches': **The Transportation Security Administration is expanding the use of "backscatter X-ray" systems for passenger screening. The $100,000 refrigerator-size machines use "backscatter" technology, which bounces low-radiation X-rays off of a passenger to produce photo-quality images of travelers as if they were undressed. Computer processing partially obscures the image that is available to operators. TSA states that the agency will delete the raw images, but there is no law or regulation that prevents the agency from saving the original, detailed images. Until there is such a prohibition, EPIC believes funding for the program should be suspended**. See EPIC's Spotlight on Surveillance and page on Backscatter X-ray. (October 11, 2007) Field Tests Begin in Arizona on Backscatter X-Ray Machines: An X-ray machine aimed at detecting weapons and explosives hidden on passengers is scheduled to make its debut Friday at Phoenix's Sky Harbor International Airport. The "backscatter" will be in operation at Security Checkpoint

B in Terminal 4. While any Terminal 4 ticketed passenger can pass through any checkpoint, the B concourse is primarily used by travelers on Tempe-based US Airways. (February 21, 2007) Phoenix Airport to Use 'Backscatter' X-Ray on Travelers: Sky Harbor International Airport here will test a new federal screening system that takes X-rays of passenger's bodies to detect concealed explosives and other weapons. The technology, called backscatter, has been around for several years but has not been widely used in the U.S. as an anti-terrorism tool because of privacy concerns. (December 1, 2006)

Courts Solve bodyscanners

David Kravits 7/15/11 (David Kravets is a WIRED senior staff writer "Court OKs Airport Body Scanners, Rejects Constitutional Challenge" http://www.wired.com/2011/07/court-approves-body-scanners/ accessed 7/7/15 BP)

A federal appeals court on Friday unanimously declined to block the government from using intrusive body scanners across airports nationwide, saying it is "not persuaded by any of the statutory or constitutional arguments" against them. **The U.S. Court of Appeals for the District of Columbia Circuit was deciding a constitutional and procedural challenge to the Advanced Imaging Technology "nude" body scanner**s, which began rolling out in 2007 and are deployed to at least 78 airports nationwide. **The E**lectronic **P**rivacy **I**nformation **C**enter **asked the court to block usage of the devices** — of which 500 more are to be rolled out this year — **on grounds that they are an unconstitutional privacy invasion**, ineffective and unhealthy to airline passengers. "The petitioners argue that using AIT for primary screening violates the Fourth Amendment because it is more invasive than is necessary to detect weapons or explosives," the appeals court noted. "As other circuits have held, and as **the Supreme Court has strongly suggested, screening passengers at an airport is an 'administrative search'** because the primary goal is not to determine whether any passenger has committed a crime but rather to protect the public from a terrorist attack." The court said that, whether an administrative search is unreasonable, is a balancing test on how much it intrudes upon an individual's privacy, and how much that intrusion is needed for the promotion of "legitimate" government interests. "That balance clearly favors the government here," the court ruled 3-0. The court added that an "AIT scanner, unlike a magnetometer, is capable of detecting, and therefore of deterring, attempts to carry aboard explosives in liquid powder form." The three-judge appellate panel did not address limited research suggesting that the machines might not detect explosives or even guns taped to a person's body. **However, the appellate court**, which is one stop from the Supreme Court**, said that the Transportation Security Administration breached federal law in 2009 when it formally adopted the airport scanners as the "primary" method of screening.** The judges said the TSA violated the Administrative Procedures Act for failing to have a 90-day public comment period, and ordered the agency to undertake one. Generally, under the APA, agency decisions must go through what is often termed a "notice and comment" period if their new rules would substantially affect the rights of the public — in this case air passengers. The Environmental Protection Agency often undertakes "notice and comment" periods for proposed pollution regulations. **The court did not penalize the TSA for its shortcomings. The TSA argued to the court in March that a public comment period would thwart the government's ability to respond to "ever-evolving threats.**"

AT: CP Links to Politics

SCOTUS takes flack for politically devicive issues –obamacare proves

Scott Greer 7/2/15 (Associate Director at the Daily Caller "The Supreme Court's Insufferable Weathervane" http://dailycaller.com/2015/07/02/anthony-kennedy-the-insufferable-weathervane/ accessed 7/6/15 BP)

Poor John Roberts: He just can't catch a break from conservatives. After voting to uphold Obamacare for the second time during his tenure last week, Roberts caught a lot of flak from the right. The chief justice even caught hell from the right on his bench, with Antonin Scalia opining that Roberts had made the health care initiative "SCOTUScare." Oddly enough, **all this rage at Roberts for Obamacare has seemingly distracted conservatives** from the supposed "swing vote" on the court — Anthony **Kennedy. In addition to joining Roberts in saving Obamacare, the supposedly conservative Kennedy authored two decisions — on same-sex marriage and housing discrimination claims respectively — that imposed the will of elite opinion on the rest of the countr**y. Maybe Roberts is getting the hate because he was sold as a true-blue conservative. But Kennedy was also sold that way when he was placed on the court in 1988 after the nomination of arch-conservative Robert Bork failed to pass the Senate in 1987. The Reagan appointee looked poised to bring judicial restraint and a respect for liberty when he was confirmed. However, for most of his career Kennedy has failed to do as promised, and he proved last week that he's the worst Supreme Court justice on the bench right now. Yes, the worst. **The out-and-out liberal justices like Ruth Bader Ginsburg and Stephen Breyer are not nearly as bad as Kennedy simply because they make decisions based on their own principles. On the other hand, Kennedy appears to be making decisions based more on the supposed popular consensus** — which happens to now align with the liberal jurisprudence of Ginsburg and Breyer. Not only that, but the legal weathervane tries to look like an intellectual heavyweight when his latest opinions are gooey, feel-good nonsense draped in the dour decor of legalese. Simply put, Kennedy has abandoned any pretense of principle in favor of etching his name on the so-called right side of history. Take his opinion on the case that legalized gay marriage in all 50 states. Kennedy argued that marriage is a "fundamental right" and, thus, he said it is necessary to grant an undefined "dignity" to gay individuals seeking the arrangement.

Supreme Court turns the direction of the link determines public perception on controversial issues—empircs prove

Joseph Ura 2/20/**14** (an Associate Professor, the Director of Undergraduate Studies, and Director of the American Politics Program in the Department of Political Science at Texas A&M, "In the long run, the Supreme Court leads public opinion on controversial issues" http://blogs.lse.ac.uk/usappblog/2014/02/20/in-the-long-run-the-supreme-court-leads-public-opinion-on-controversial-issues/ accessed 7/6/15 BP)

This perspective rests on the idea that **the Supreme Court can lead public opinion—an ideal with special appeal for mid-twentieth century progressives who hoped that the judicial action might catalyze broad social change.** These scholars envisioned the Court as a "republican schoolmaster" that could "transfer to the minds of the citizens the modes of thought lying behind legal language and the notions of right fundamental to the regime" or an "educational body" leading "a vital national seminar." **They argued that the moral force of the Supreme Court and American's deep loyalty to the Court and the Constitution for which it presumed to speak might "appeal to men's better natures" and remind them of their fundamental commitments to equality and equity "**which may have been forgotten in the moment's hue and cry." Despite these expectations, though, evidence of the Supreme Court's ability to shape Americans' political attitudes has been mixed. Franklin and Kosaki's seminal study of public responses to Roe v. Wade (1973), for example, found that public support for access to legal abortion to protect a mother's life and in cases of rape or probable birth defects increased from 1972 (prior to Roe) to 1973 (after the Court's abortion decision) while there was no significant change in the level of public support from 1972 to 1973 for legal abortion due to families' economic circumstances, a mother's marital status, or parents' desire to have no more children. **Subsequent studies examining year-over-year changes in attitudes about the death penalty and gay rights have similarly found uneven support for the idea that the Court pulls public opinion toward its position.** More broadly, in two separate studies, Marshall compares a total of forty-six pre-decision and post-decision polls (eighteen in the 1989 study and another twenty-eight in the 2008 study) asked in similar forms, though at substantially variable intervals, investigating public attitudes on issues before **the Court, finding that "poll shifts'" away from positions adopted by the Court happen as often as shifts toward the Court's positions. Despite its development over the last three decades, though, the literature on public responses to Supreme Court decisions is limited in two important ways. First, these prior studies tend to focus on the effects of individual cases on public attitudes. This approach prevents scholars from identifying effects associated with the accumulated influence of Supreme Court decisions**— either within or across issues. Second, **the literature emphasizes comparisons of public opinion shortly before and shortly after Supreme Court decisions**. This methodological choice has prevented scholars from identifying long-term dynamics that might follow from Supreme Court decisions. To overcome these obstacles and reconsider the Supreme Court's ability to influence American's hearts and minds, I borrow from research examining American's aggregate responses to policymaking in the elected branches of government and national economic conditions. I use data on the overall level of liberalism or conservatism in American public opinion since the mid-1950s developed by Jim Stimson at the University of North Carolina at Chapel Hill. This "**policy mood" data collapses scores of national survey questions into a single measure of the country's overall demand for greater or lesser policy liberalism. I use these data to estimate a model of the cumulative influence of Supreme Court decisions** on Americans' overall levels of

liberalism or conservatism. The particular statistical model I utilize also allows me to identify whether the Court influence public opinion in the short-run, the long-run, or both. The data show that public responses to important Supreme Court decisions are generally marked by a backlash in public opinion in the short-term that decays and is replaced by a long-run movement in public opinion toward the positions adopted by the Court. In other words, on average, there is negative reaction in public opinion against important decisions of the Supreme Court. However, these negative responses are relatively short lived. Over the long run, backlash against the Court's decisions tends to be replaced by significant movement toward positions taken by the Supreme Court. The key result of the study is that the Supreme Court generally leads public opinion in an important way—even if there is typically some initial pushback against its decisions in public opinion.

The public is overwhelmingly uniformed about the Supreme court

Meredith Dost 5/14/15 (Research Assistant at Pew Research Center for the People & the Press "Dim public awareness of Supreme Court as major rulings loom" http://www.pewresearch.org/fact-tank/2015/05/14/dim-public-awareness-of-supreme-court-as-major-rulings-loom/ accessed 7/3/15 BP)

In the next few weeks, the U.S. Supreme Court is expected to issue rulings that could potentially affect same-sex marriage, health care and capital punishment in the United States. Yet it remains an institution whose members – and even the facts about some of its most important decisions – are a mystery to many Americans. In Pew Research Center's most recent knowledge quiz, just 33% knew that there are three women on the Supreme Court – Justices Ruth Bader Ginsburg, Elena Kagan and Sonia Sotomayor. A higher percentage (39%) said that there are two women on the high court, while 14% said there is one and 4% said four. It was by far the lowest correct response percentage for any of the 12 questions in the quiz. **But lack of awareness about the Supreme Court's members is nothing new. In fact, Americans have fared no better when asked other questions about the court's members in recent years. An August 2013 survey included the names and photos of four justices – Ginsburg, Antonin Scalia, Anthony Kennedy and Clarence Thomas – and asked which one had most often been the court's "swing vote." Despite the fact that there had been several closely divided Supreme Court cases during the 2012-2013 term in which Kennedy's votes were often decisive, just 28% correctly identified him as the swing vote. Chief Justice John Roberts is also not well-known. In July 2012, shortly after Roberts cast the deciding vote upholding most of the Affordable Care Act, just 34% identified Roberts as chief justice from a list that included Stephen Breyer, Harry Reid and William Rehnquist. That was not much better than the 28% who identified Roberts from a similar list in 2010.**J

AT: Judicial Activism

Judicial Activism theory is false and inconsistent

Clark Neily and Dick M. Carpenter II 2011 (Clark Neily joined the Institute for Justice as a senior attorney in 2000. He litigates economic liberty, property rights, school choice; Dick M. Carpenter II, Ph.D. Director of Strategic Research at the intituite for justice "Government Unchecked: The False Problem of "Judicial Activism" and the Need for Judicial Engagement" http://www.ij.org/government-unchecked09/11 accessed 7/7/15 BP)

The past five decades have seen a relentless expansion in the size of government and a sharp increase in the num-ber of liberty-stifling laws and regulations at every level. Despite this explosion of political power, commentators and scholars of all ideological stripes appear to worry more about the supposed growth of judicial power. Those who decry so-called "judicial activism" complain that the Supreme Court too frequently strikes down the acts of elected rep-resentatives, infringes on the prerogatives of the executive branch or upends settled law by overturning its own precedents. This report puts those claims to the test with empirical data and concludes that we suffer not from rampant judicial activism, but rather from too little judicial engagement**. The Supreme Court rarely strikes down government enactments or overturns its own precedents—and this is consistently true over the past 50-plus years. The years examined in this report saw more than a million federal and state laws passed and more than 20,000 regulations adopted. Many of these restrain liberty in significant ways. Decades of the Supreme Court's abdicating its duty to enforce the Constitution have made this growth in the size and scope of government possible. More judicial "restraint" is not the answer. Judges engaging in meaningful review of constitutional claims and the facts behind them is the answer**.

Theories of Judicial Activism are tainted by right wing hypocrisy Their authors are from heritage and CATO

Carlos A. Ball 12/14/10 (Professor of Law, Rutgers University "Right-Wing Hypocrisy on "Judicial Activism" http://www.huffingtonpost.com/carlos-a-ball/rightwing-hypocrisy-on-ju_b_796344.html accessed 7/8/15 BP

Conservative politicians and commentators are celebrating the decision by a federal judge in Virginia striking down the recently enacted health insurance legislation. This means that in the next few days we will hear repeatedly from conservatives how a federal court has agreed with the law's critics that it constitutes an unwarranted federal takeover of health care in this country. **The one thing we will not hear from the ruling's supporters is the charge of "judicial activism." This is because conservatives only complain about judges striking down laws enacted by democratically elected representatives when those rulings are inconsistent with right-wing ideology**. It is possible to take issue with a judicial opinion interpreting the Constitution in two different ways. The first is to disagree with the legal reasoning adopted by the court. The main question in the cases challenging the health legislation is whether the Constitution authorizes congressional regulation of individuals who choose not to purchase health insurance. Although I believe that the Constitution does grant Congress the power to do so, I

recognize that reasonable people disagree on the correct answer to that legal question. The second way in which it is possible to take issue with a constitutional ruling is not to question its legal reasoning, but to argue instead that courts should not be involved in deciding the issue to begin with. At the heart of this second critique is the notion that it is illegitimate for unelected judges to decide matters that are best left to democratically elected officials. It is rare these days for liberals to question the legitimacy of courts deciding constitutional questions, though they (like others) frequently take issue with the reasoning behind particular judicial decisions. In stark contrast, **conservatives for the last several decades have astutely deployed the "judicial activism" charge to great political effect as a way of undermining the legitimacy of judicial rulings with which they disagree. That they have done so is ironic because recent studies show that it is conservative members of the Supreme Court who are more likely to strike down laws enacted by Congress than liberal ones**. Indeed**, there is no better example of judicial activism in recent memory than the ruling in Bush v. Gore**, the decision that handed the presidency to George W. Bush. It is very difficult for a lawyer, much less for someone who is not an attorney, to articulate the constitutional grounds relied upon by the five Supreme Court justices (all appointed by Republican Presidents) who ordered that Florida stop counting votes during the contested 2000 presidential election. And yet, to my knowledge, **no prominent conservative politician or commentator has ever criticized the Court for its interference with the democratic process in that case**. But when it comes to an issue such as same-sex marriage, for example, it is common for right-wingers to proclaim, usually with much indignation, that courts have no business interfering with the wishes of a majority of voters or of elected representatives. The difference between liberals and conservatives on the role of the courts, then, is not that only one side frequently seeks the help of judges in trying to render unenforceable laws approved through the democratic process. Instead, the difference is that **only right-wingers criticize their political opponents for doing so. A case such as the recent ruling by the federal court in Virginia on the health insurance legislation, whatever its constitutional merits, helps to expose right-wing hypocrisy on the issue of judicial activism**. Most right-wingers are not truly troubled by "judicial activism," so long as it is an activism aimed at promoting conservative ideology.

Judicial activism theory is wrong any court decision can be seen activist bringing this up in debate is what undermines the court This is a rhetoric DA to the affirmative

Thelton Henderson 2003 (Thelton Eugene Henderson is currently a federal judge in the Northern District of California. He has played an important role in the field of civil rights as a lawyer, educator, and jurist "Social Change, Judicial Activism, and the Public Interest Lawyer"
http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1308&context=law_journal_law_policy&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Fcse%3Fcx%3D010627838012573663791%3Ako94ry4bv4s%26cof%3DFORID%3A1%26q%3D%2522surveillance%2522%2BAND%2B%2522judicial%2Bactivism%2522%26sa%3DSearch#search=%22surveillance%20judicial%20activism%22 accessed 7/8/15 BP)

We need not debate the soundness or the wisdom of this jurisprudential trend to expand states' rights in order to understand the concerns of the civil rights community where, historically speaking, the term "states' rights" has been considered synonymous with racial segregation and Jim Crow laws that perpetuated second class citizenship for blacks in our southern states. **Further compounding this effect is the growing trend to label decisions upholding or expanding civil rights as the product of judicial activism**, with the pejorative implication that **such decisions represent an attempt by judges to improperly disregard legal precedent or to thwart "the will of the legislature" or "the will of the people**." Conversely, decisions that are consistent with a more politically conservative outlook are typically portrayed as products of judicial restraint. It seems to me, however, that the term 'judicial activism' ultimately depends upon whose ox is being gored, and not upon judicial, political, or social persuasion. **The truth is that the term 'judicial activism' is not a particularly coherent concept to begin with**. All judges are required to act in every case, **and every form of judicial action bears some social consequences, if only for the parties involved**. Thus, the claim that a judge who maintains the status quo is quiescent whereas a judge whose decisions modify the status quo is active seems to me to be a distinction without a difference. In reality, there are plenty of issues on a conservative agenda that would require active judging to implement, just as there are a host of liberal issues that will only hold firm if judges are restrained in approaching them. Indeed, the misleading nature of the judicial activism debate is made even more evident when one considers that it seems to be only invoked to describe decisions perceived as having a liberal bent. Washingt5. Alden sv. Maine, c527 rU.S. 706 (1999); College Sav. Bank v. Florida Prepaid PostseocnonUdnairvyeEr dituyc.O, 5p2e7n US .Sh.o6la66sh(i1p999); United States v. Morrison, 529 U.S. 598 (2000). **The true nature of the judicial activism debate can**, in my view, **be fairly easily and obviously exposed**, as was recently done by Professor William P. Marshall of the University of North Carolina.6 After comprehensively analyzing the decisions of the Supreme Court since 1995, Professor Marshall concluded that the current court is actually the most "activist" in our history.7 Among other things, he found that it has invalidated over twenty-six federal laws in the last six years.8 In striking contrast, he tells us that during the entire first 200 years following ratification of the constitution, the Supreme Court only struck down a grand total of 127 federal laws, an average of a little more than one law every two years.9 It has also been frequently observed that the recent line of Eleventh Amendment cases that I mentioned earlier10 represents one of the most dramatic departures from precedent in Supreme Court history. Indeed, Judge John T. Noonan, a former Boalt Hall Law School professor, and now a highly regarded member of the Ninth Circuit Court of Appeals, who also happens to be a Reagan appointee and who is usually considered a judicial conservative, made this point quite passionately in his recent book.11 In his extraordinary critique of the Supreme Court, Judge Noonan contends that the Supreme Court's recent expansion of the states' immunity from the reach of federal law is untethered from the Constitutional design, and "without justification of any kind,"12 thus threatening "intolerable injury to the enforcement of federal standards"13 and presenting a "danger to the exercise of democratic government."14 This is strong language indeed, especially from a federal judge who is supposed to take his marching orders from the Supreme Court. What reform or 6. William P. Marshall, Conservatives and the Seven Sins of Judicial Activism, 73 U. COLO. L. REV. 1217 (2002). 7. Id. at 1223. 8. Id. (citing Seth P. Waxman, Defending Congress, 79 N.C. L. REV. 1073, 1074 (2001)). 9. Id. 10. See supra note 5 and accompanying text. 11. JOHN T. NOONAN, NARROWING THE NATION'S POWER: THE SUPREME COURT SIDES WITH THE STATES (2002). 12. Id. at 154. 13. Id. at 155. 14. Id. at 140. improvement is more evidently needed than light on decisions that fail to carry out purposes set out by the Constitution itself. Unfortunately, however, **the persistent drumbeat of judicial activism may take a**

toll. While I would not expect that it would affect the outcome of any particular case, the persistent campaign against judicial activism inevitably contributes to the politicalization of the judiciary, especially at the federal level, which can only serve to undermine the overall independence of the judiciary and, in turn, the legitimacy and effectiveness of our courts as an institution. This, in turn, necessarily increases the challenge for the public interest lawyer who must rely upon a strong and independent judiciary to vindicate civil rights and implement its judgments. Of course, no discussion of the challenges facing public interest lawyers would be complete without addressing the very real obstacles to effectuating social change through civil rights litigation, obstacles that have been revealed all too clearly by the last 25 years of civil rights history in this country.

All of the solves links to ptx cards answer this cross apply them here.

Judicial Activism DA

The Courts cannot access social change, Hobby Lobby proves.

Elias Isquith 7/5/14 (Elias Isquith is a staff writer at Salon, focusing on politics ""Something the Supreme Court is not supposed to do": Are Christians getting preferential treatment"
http://www.salon.com/2014/07/05/something_the_supreme_court_is_not_supposed_to_do_are_christians_getting_preferential_treatment/ accessed 7/7/15 BP)

yet **despite the Court's modern reputation as a bulwark against government overreach and a protector of civil rights** — a reputation earned largely due to the historic and epoch-defining work of the Warren Court — **there's an argument to be made that the reactionary rulings handed down by the Court on Monday were, in truth, quite in keeping with its historical role in American politics**. (During his heyday, for example, Thomas Jefferson was generally seen as a leader of those in American politics who we'd today call progressives; and he hated the idea of judicial review.) Hoping to further explore the Court's historically complicated relationship with social change and progress, Salon called up University of Pennsylvania Law School professor Kermit Roosevelt, author of "The Myth of Judicial Activism," to discuss Monday's rulings and the "inherently conservative" nature of the Court. Our conversation can be found below, and has been edited for clarity and length. First off, did anything about Monday's decisions surprise you? I would say disappointed more than surprised. I sort of saw them coming; I think a lot of people did. **You know, this is a pretty conservative Supreme Court and we're getting conservative decisions. Some folks who oppose the Hobby Lobby ruling have argued that it's a form of right-wing judicial activism**. Do you think that's a fair description? It depends on what you mean by "judicial activism." **So, if by judicial activism people mean designing cases based on political preferences rather than the law or the Constitution, I think that's not typically a helpful way to frame the issue because in a lot of these cases, the law really isn't clear and it's possible to have disagreements. And sometimes — probably most of the time — which position you take will depend on a broader judicial philosophy or a broader conception of the appropriate nature and relation of the state and the federal government or the federal government and the people or something like that. And that's just legitimate Constitutional interpretation**. Occasionally, you'll find justices taking positions that seem to advance a partisan preference and that are contrary to everything they've said about broader Constitutional issues and that really does look like a politically motivated decision. Bush v. Gore is a great example of that. There aren't really any other such striking examples. In Bush v. Gore, the conservative justices were suddenly very aggressive in enforcing an equal-protection claim — and that's what the case was based on — against the state, which is totally at odds with what they usually do in equal-protection cases. And the liberals were advocating restraint and respect for the states, which is also not what they typically do in equal-protection cases. So there it looks like that decision was driven by

partisan politics. Most of the time, I think, decisions can be understood in less partisan terms and it's better to try and understand them that way

Using the courts to activate change is bad- it undermines the court itself
Eilzabeth Slattery 6/13/13 (Elizabeth Slattery is a legal fellow in the Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies. She researches a variety of issues such as the rule of law "How to Spot Judicial Activism: Three Recent Examples" http://www.heritage.org/research/reports/2013/06/how-to-spot-judicial-activism-three-recent-examples accessed 7/7/15 BP)

Since the late 1930s, **the courts have gradually abandoned their proper and essential role under the Constitution to police the structural limits on government and neutrally interpret the laws and constitutional provisions without personal bias**. Many judges refuse to interpret the Constitution and statutes according to their original public meaning (or perhaps lack the understanding of how to do so).[2] Instead, they seek to impose their personal preferences. But a judge who looks beyond the text of the Constitution "looks inside himself and nowhere else."[3] While **the Supreme Court of the United States should interpret the laws and constitutional provisions according to their original public meaning**, the lower courts—and state courts when dealing with federal constitutional rights—are bound by the precedents of the Supreme Court. To the extent that a case presents an unresolved question, lower courts should likewise give effect to the original public meaning of the text before them. Although attempts to define "judicial activism" are often criticized as too broad, too partisan, or simply "devoid of content,"[4] a simple working definition is that judicial activism occurs when judges fail to apply the Constitution or laws impartially according to their original public meaning, regardless of the outcome, or do not follow binding precedent of a higher court and instead decide the case based on personal preference. The proper measure is not whether a judge votes to uphold or strike down a statute in any given case. Adhering to an original understanding of the law is the only way to consistently "minimize or eliminate the judge's biases."[5] At times, this means that judges must strike down laws that offend the Constitution. Some scholars mistakenly argue that judges engage in judicial activism whenever they strike down a law,[6] but judges' subjective policy preferences could just as easily lead them to uphold unconstitutional laws that they favor as to strike down ones that they oppose. In either situation, **judges abdicate their duty of fidelity to the law. Judicial activism is therefore not in the eye of the beholder. In applying the law as it is written, judges may reach conclusions that are** (or may be perceived to be) **bad policy** but are nonetheless correctly decided. Judges are charged not with deciding whether a law leads to good or bad results, but with whether it violates the Constitution and, if not, how it is properly construed and applied in a given case.[7] Labeling as "activist" a decision that fails to meet this standard expresses

not policy disagreement with the outcome of a case, but disagreement with the judge's conception of his or her role in our constitutional system. Judicial activism can take a number of different forms. These include importing foreign law to interpret **the U.S. Constitution, elevating policy considerations above the requirements of law, discovering new "rights" not found in the text, and bending the text of the Constitution or a law to comport with the judge's own sensibilities, to name just a few.[8] Rather than succumb to these temptations, judges should strive to put aside their personal views and policy preferences in order to maintain impartiality and render sound judgments according to the laws as written.**

Surveillance rulings uniquely link to the DA

Paul Mirengoff 12/17/13 (Paul Mirengoff is a retired attorney in Washington, D.C. He is a 1971 graduate of Dartmouth College and a 1974 graduate of Stanford Law School "The NSA, Privacy, and Judicial Activism" http://www.powerlineblog.com/archives/2013/12/the-nsa-privacy-and-judicial-activism.php accessed 7/8/15)

J**udge Leon's response to Smith is, in essence, that things have changed considerably since 1979** when that case was decided. **He cites the vast increase in the government's surveillance capacity and changes in people's phone usage** habits. But these changes provide no sound basis for distinguishing Smith. That case rests on the view that, because of the nature of metadata, its collection by the government without a warrant isn't constitutionally problematic. This true no matter the quantity of metadata the government collects. It's possible that the Supreme Court would decide that changed circumstances warrant limiting the holding of Smith. **The Court has seen fit to limit or dispense with other old decisions in the name of striking down certain government policies intended to protect the nation from terrorism. But this isn't something that district courts or courts of appeals are supposed to do**. John Yoo and Max Boot are right to condemn Judge Leon's decision on this basis**. It is an egregious example of judicial activism**. I also agree with Yoo that even the Supreme Court shouldn't reconceive the rules of search and seizure in light of new Internet technologies. As Yoo explains: [T]hat is **the responsibility of our elected representatives. Only they can determine what society's "reasonable expectation of privacy" is in Internet and telephone communications. Judges are the last people to fairly claim they have their fingers on the pulse of the American people**. **Only our elected representatives can properly balance existing privacy rights (if any), against the need for information to protect the nation from terrorist attack. Judges are far too insulated and lack the expertise to make effective judgments on national-security and foreign affairs. Unfortunately, judges — even district court judges — are too immodest and/or too power hungry to recognize this reality.**

Judicial restraint not activism is key to liberties means they cant solve Activism means a zero sum tradeoff with congressional powers

Sandhya Bathija 2/7/14 (campaign manager of Legal Progress at the Center for American Progress. Previously, she worked in the national communications department of the American Civil Liberties Union, where she led media and communications campaigns on the organization's federal policy work, with a specific focus on immigrant rights, voting rights, racial justice, and criminal justice. "Why Judicial Restraint Best Protects Our Rights"

T**he federal government's powers are divided among Congress, the president, and the judiciary**. None is superior to any other. **Whenever the U.S. Supreme Court rules a legislative act is beyond Congress's inherent powers, it second-guesses a constitutional determination made by Congress and expands the Court's power at Congress's expense. Not only does this assert judicial supremacy, it also discounts the fact that Congress is better-suited than the courts for protecting (and expanding) our rights.**[5] Consider that throughout history most victories protecting our liberties have been secured through the political process. During Reconstruction, **Congress passed the Thirteenth, Fourteenth, and Fifteenth Amendments** to abolish slavery and provide ongoing equal rights protections. In the 1930s, Congress passed New Deal legislation such as the Wagner Act, which created a right by statute for workers to organize into a union and engage in collective bargaining. It also passed the Fair Labor Standards Act, which included the right to earn a minimum wage. In the 1960s, **Congress passed the Civil Rights Act** of 1964 and the Voting Rights Act of 1965. Also in the 1960s, **Congress passed anti-poverty laws** such as Medicaid and Medicare. And most recently, **Congress passed the Affordable Care Act** and the Lilly Ledbetter Equal Pay Act. **The Court's proper role in a system of checks and balances isn't to strip Congress of its ability to pass laws that protect our rights and the public welfare. Rather, the role of the Court is to allow Congress the autonomy to do so. Otherwise, Congress, which has traditionally upheld our rights and expanded opportunity for all, will cease to be able to do so**. Democracy Informs Our Liberty Rights Sandefur defends his judicial philosophy by arguing that liberty, not democracy, is the "central constitutional value." **To argue that democracy and liberty are in tension discredits the fact that advocacy by the people, not through the courts, has led to the expansion of equal rights and liberty protections. The truth is, the will of the people impacts our definition of liberty, which is then interpreted and applied by the courts**. Therefore, liberty and democracy are not at odds; they are congruent. For example, scholars often argue that the Warren Court's "activist" decisions in protecting civil rights and civil liberties weren't activist at all, but rather followed the politics of the era.[6] The courts, just like the other two branches of government, are "influencing and influenced by American politics and its cultural and intellectual currents."[7] As the will of the people changes, so do our definitions of liberty, for better or worse.

(This is the only good card in the DA ^^)

Judicial activism undermines the law, destroys separation of powers, causes war
Robert H. Bork 2/24/10 (Bork served as a Yale Law School professor, Solicitor General, Acting Attorney General, and a judge of the United States Court of Appeals for the District of Columbia Circuit. "Keeping a Republic: Overcoming the Corrupted Judiciary" http://www.heritage.org/research/lecture/keeping-a-republic-overcoming-the-corrupted-judiciary accessed 7/8/15 BP)

The Court's performance strikes at the heart of the concept of a republic. **Without any warrant in law, nine lawyers split five to four, and the judgments of Congress, the President, state legislatures, governors, other federal judges, and the judges of all 50 states all are made instantly irrelevant**. **Whatever else it is, that is not democracy or a republican form of government. It is a robed oligarchy**. **So far, all attempts to tame it, to bring it back to democratic legitimacy, have failed**. So contemptuous of the electorate has the Court majority become that it routinely publishes opinions notable for their

incoherence and remains unperturbed by the most devastating criticisms. The best known, but hardly unique, example is Roe v. Wade, which invented a wholly fictitious right to abortion. Though they have tried desperately, nobody, not the most ingenious academic lawyers nor judges, in the 36 years since it was decided has ever managed to construct a plausible legal rationale for Roe, and it is safe to say nobody ever will. Roe is the premier example of what we now call judicial activism. You will hear it argued that to apply the term "activism" means no more than that you don't like a case's outcome. That is not true, and people who talk that way are, whether they realize it or not, implicitly saying that there are no criteria for judging the goodness or badness of a case other than personal or political sympathy. "Activism" has a real meaning, and it is an indispensable term in our debates. A judge is an activist when he reaches results or announces principles that cannot plausibly be derived from the actual historic Constitution. The historic Constitution is the set of principles that the ratifiers, who made the Constitution law, understood themselves to be enacting--the original understanding. **That approach is now called "originalism," and under no other approach can we have any semblance of the rule of law, which means in turn that no other approach is compatible with a republican form of government**. Activism means lawlessness, and it is rife among many judges and most professors of constitutional law. The rule of law requires that the principles announced and relied upon by judges be neutral in their application. Neutrality requires that a principle, once chosen, be applied according to its terms to all relevant cases without regard to the judge's personal views of the parties or issues before him. That is a powerful discipline, for in deciding Case A he must realize that he has committed himself to decisions in future cases that fall within the principle but whose particulars are at the moment unknown to him. That counsels great care in choosing and articulating the principle which he advances as dispositive in Case A. Should the principle prove unsatisfactory in Case B, the judge's only recourse is to reformulate it with a full explanation of his reasons. It is not sufficient, of course, that a principle be neutrally applied. That requirement would be met if the judge chose the principle that a labor union always loses and applied it neutrally, no matter the merits of a particular case. The principle chosen must also be neutrally derived, chosen without regard to the judge's individual preferences. The only source for principles that minimize or eliminate the judge's biases is the Framers' original understanding of the principles they were making into law. The morality and the policy enforced come from outside the judge. The judge who looks outside the historic Constitution looks inside himself and nowhere else. No judge can possibly avoid seeing a case without his own worldview coloring his vision. But **there is a chasm between a judge who knows that and consciously strives for objectivity and a judge who knowingly undertakes to impose his vision of justice** upon the parties before him and upon the society. Professor Lino Graglia of the University of Texas Law School summarizes what the Court has done in recent years to domestic policy, moving the nation to the cultural left: Virtually every one of the Court's rulings of unconstitutionality over the past 50 years--on abortion, capital punishment, criminal procedure, [school busing], prayer in the schools,...public display of religious symbols, pornography,...discrimination on the basis of sex, illegitimacy, alien status,...flag burning...have reflected the views of the elite. **In every case, the Court has invalidated the policy choice made in the ordinary political process, substituting a choice further to the political Lef**t.... Graglia observes that the thought that the making of policy should fall into the hands of the American people is the intellectual's nightmare. Maintaining a liberal activist judiciary is the only means of preventing that. Even more egregiously, the Court has forced itself into the conduct of our war against Islamic terrorists. Professor Gregory Maggs, of George Washington University Law School, points out that our current Supreme Court has overruled every precedent established in World War II, **and it has done so in defiance of the**

foreign affairs powers the Constitution entrusts to Congress and the President, as well as the President's role as commander in chief of the armed forces. The Court's incursions into areas best governed by the political branches are unprecedented as well as far beyond its competence. Detained enemy combatants, even those held abroad, are now for the first time in our history entitled to challenge their detention by claiming due process rights formerly available only to American citizens and lawful residents. The alternative system of justice, trial by military commissions, which goes back at least to George Washington and was ratified as recently as World War II by Franklin Roosevelt, has been made subject to new rules that seriously impair the effectiveness of the commissions. **Judges have interfered with the collection of intelligence about terrorists by electronic means even where there is no conceivable threat to any citizen's privacy. The threat to American lives and war aims by the American judiciary is real and serious.** Professor Jack Goldsmith warns **that our capacity to wage war "has been strangled by law"--the war has been "judicialized." So accustomed are Americans becoming to control by judges and legal processes that we are introducing law into areas where it is incapable of performing well and instead debilitates other vital national functions. Lawyers now oversee the conduct of war, often down to tactical levels**.

AT: Courts CP

Exports

Exports China Mil Addendum

Link—ECR Helps China militarize

The economic-competitiveness exemption creates a civilian-end use exception that helps China militarize

Goodman 14 (Colby, Senior Research Associate for the Security Assistance Monitor where he leads research and analysis on U.S. foreign security assistance around the world, "U.S. Export Reform May Increase Military Exports to China", January 26 2015, http://securityassistance.org/east-asia-and-pacific/blog/us-export-reform-may-increase-military-exports-china)

A central component of the ongoing Export Control Reform Initiative has been the regrouping of tens of thousands of arms and military items from the State Department's more strictly controlled U.S. Munitions List (USML) to the Commerce Department's more loosely controlled Commerce Control List (CCL). According to the administration, these ongoing regulatory changes will allow the U.S. government to better control sensitive military items and reduce some burden on the U.S. defense industry for the less sensitive items. Although the administration has taken steps to require U.S. government review of most of the arms and military items moving to the CCL for export to China, CCL controls are not as strong as those on the USML. Based on a review of U.S. regulations by this author, for instance, the CCL Control Policy states that there is a general policy of approval for companies seeking to export certain military items on the CCL to China intended for civilian-end uses, but not for military-end-uses. This civilian-end use exception does not apply to items on the USML and could continue to be used acquire U.S. military items to support its military modernization. In connection with ECRI, the U.S. government is also transferring many items formerly considered "specially designed" for military purposes or otherwise formerly deemed important to control off both the State Department and Commerce Department control lists. Once off both of these control lists, companies are now able to export or provide these items, such as nuts and bolts for military vehicles or potentially larger items for military aircraft, to China **without U.S. government review**. As China continues to seek Western equipment and technology to address problems it has in developing "naval propulsion, aircraft engines and new materials," and the United States remains concerned about China's military actions in the Pacific region, the SIPRI report encourages countries to communicate more about the goals of their embargoes and be more transparent about exports to China. Although it's too early to tell exactly how U.S. export reforms may effect U.S. exports to China or U.S. diplomatic pressure on European countries, it is clear that ECRI has raised EU concerns about a potential U.S. double standard.

"Dual-use" Items can be used militarily—it's just a term to paper over opposition to control reforms

Goodman 14 (Colby, Senior Research Associate for the Security Assistance Monitor where he leads research and analysis on U.S. foreign security assistance around the world, "More than F-16 Bolts: A Problematic Ruse on Export Reform", June 6 2014, http://www.pogo.org/blog/2014/06/more-than-f-16-bolts-a-problematic-ruse-on-export-reform.html?referrer=https://www.google.com/)

Attempting to support this mass move of war materials and military technology to Commerce Department controls, Administration representatives have also frequently said that many of these military items are essentially **dual-use items** or are widely or **predominantly used in civilian systems**.

Although it is true that some military items formerly controlled by the State Department have been used in civilian applications or systems, absolutely none of them have been used widely or predominately in civilian applications. If they had been, they would have already been moved to Commerce Department controls as required by the Export Administration Act. Numerous Justice Department public releases also show that Chinese, Iranian, Russian, and other foreign military procurement networks often focus on acquiring the same parts and components the Administration has regrouped onto the Commerce Department control list. In recent years, for instance, it is clear that the Chinese government is aggressively seeking U.S. made radiation-hardened microchips, which are critical components in the operation of missiles and satellite systems and now on the CCL. The Iranians also continue to attempt to acquire many military aircraft parts recently moved to the CCL that are key to maintaining their aging fighter jets and military helicopters. For such reasons, the State Department has previously said exports of helicopter spare parts can be just as dangerous as attack aircraft or missiles. Many of the military items moving to Commerce Department control such as military body armor, military detonators and explosives, smoke grenades, certain control electronics for UAVs and drones, and diesel engines for tanks and armored vehicles also clearly contribute to military capabilities. In 2006, for instance, Amnesty International published a report showing that less advanced dual-use U.S. designed diesel engines controlled by Commerce ended up in Chinese military trucks delivered to the Sudanese government for likely use by the Sudanese military and Janjawid in Darfur. Although the Administration has yet to finalize its regulations on many other types of military categories, it has also indicated it would transfer most types of firearms and some night vision devices to the Commerce Control list, which can significantly improve a terrorist or insurgent group's military capabilities.

AT: Illegal Exports Now

Effective export controls now

BIS 15 (US Department of Commerce, Bureau of Industry and Security, "2015 REPORT OX FOREIGN POLICY-BASED EXPORT CONTROLS")

5. Effective Enforcement of Controls. The Secretary has determined that the United States has the ability to effectively enforce these controls. Controls on exports to embargoed and sanctioned countries and persons, including those discussed in this Chapter, raise a number of challenges. These include the need to concentrate limited resources on priority areas, develop new strategies to limit re-export violations, strengthen the cooperative relationship with other law enforcement agencies in the United States and overseas, and maintain a consistent outreach effort to help limit U.S. business vulnerability. Overall, the sanctions are generally understood and supported by the U.S. public. Voluntary cooperation from most U.S. exporters is common. BIS gathers leads on activities of concern and conducts end-use checks, primarily through its Export Control Officer and Sentinel programs, to verify the end use and end-users of U.S.-origin items. End-use checks involve the assessment of bona fides (i.e.. legitimacy and reliability) of foreign end users that receive U.S.-origin items and prospective end-users on pending license applications for diversion risk, as well as educational outreach to foreign trade groups. The Department conducted a number of enforcement actions regarding noncompliance with these export controls, including: Lev Steinberg Riflescopes to Russia On February 25. 2014. Lev Steinberg was sentenced in the U.S. District Court for the Southern District of New York to one year of probation and a S4.000 criminal fine. On September 16. 2009. Steinberg, a resident of Brooklyn. NY. pled guilty to violating the International Emergency Economic Powers Act in connection with an unlicensed export of riflescopes as well as to a violation of the Foreign Corrupt Practices Act. Steinberg was arrested in March 2009 for exporting riflescopes controlled for crime control reasons to Russia without the required license from the U.S. Department of Commerce. This was a joint investigation involving the Office of Export Enforcement. U.S. Immigration and Customs Enforcement, and the Defense Criminal Investigative Service. C. Consultation with Industry In a September 4. 2014 Federal Register notice (79 FR 52630) the Department of Commerce solicited comments from industry and the public on the effectiveness of U.S. foreign policy- based export controls. In addition, comments were solicited from the public via the BIS website. The comment period closed on October 6. 2014. A detailed review of all public comments received can be found in Appendix I. The Department of Commerce consults with the Regulations and Procedures Technical Advisory Committee, one of seven technical advisory committees that advise BIS. in preparation for publication of major regulatory changes affecting crime controls. Li addition, the Department of Commerce has consulted with exporters of crime control items and with human rights groups concerned about the potential for misuse of such items in various parts of the world. BIS has frequent consultations with exporters about specific items proposed for export to specific end users and for specific end uses. D. Consultation with Other Countries Most other countries that supply crime control and detection items have not imposed similar export controls. The United Kingdom and Canada maintain controls similar to U.S. controls on certain crime control commodities. Certain European Union member states prohibit or impose a license requirement on the export of dual-use items not covered by the multilateral export control regimes for reasons of public security or human rights considerations. E. Alternative Means Section 6(n) of the EAA requires the Department of Commerce to maintain export controls on crime control and detection items. Attempting to achieve the purposes of the crime control restrictions through negotiations or other alternative means would not meet this requirement. The U.S.

Government does, however, use diplomatic efforts, sanctions, and other means to convey its concerns about the human rights situation in various countries.

Cross-agency and private-public cooperation solves

Mueller III 12 (John S, Director Federal Bureau of Investigation, "U.S. Department of Commerce, Bureau of Industry and Security Annual Update Conference on Export Controls and Policy Washington, D.C.", July 18 2012, https://www.fbi.gov/news/speeches/preventing-illegal-exports-and-protecting-national-security-in-todays-global-marketplace)

In addition to our resources dedicated to countering espionage and insider threats, one year ago we established the Counterproliferation Center at FBI Headquarters. This center brings together the expertise of our Weapons of Mass Destruction and Counterintelligence Divisions to prevent the illegal export of protected United States goods. And we are making progress. We now have more than 1,500 pending cases, and in the past year, we made several high-value arrests and **witnessed a significant increase in disruptions**. One recent case, called Wintry Blast, was opened when our Minneapolis Field Office uncovered a major Iranian procurement network operating through front companies in Asia. The network was seeking export-controlled U.S. technology for the Iranian military and for Iran's ballistic missile programs. In September 2010, five individuals and four of their companies were indicted for participating in the illegal export of military-grade restricted antennas and 6,000 radio frequency modules. Sixteen of those modules were found in unexploded bombs and in weapons caches in Iraq. Last October, officials in Singapore arrested four of the five defendants—all citizens of Singapore. We continue to seek their extradition to the United States. The fifth defendant—an Iranian national—remains at large. We would not have been successful without our strong partnership with the Departments of Commerce and Homeland Security and our counterparts in Singapore. But just as we develop sophisticated tradecraft, so, too, do those individuals who seek our protected technology. To stay ahead of our adversaries, we must continue to work with partners at home and abroad. And we must constantly improve our efforts to counter the threat, always remaining within the limits of the Constitution and the rule of law. Turning to the importance of private sector partnerships… Close working relationships with our federal and international partners are but one aspect of our efforts to prevent illegal exports. Our partnerships with those of you in the private sector are equally important. Proliferation networks are sophisticated and far-reaching. They use deceptive practices and they frequently work in concert with a web of associates to disguise their true activities. We are working hard to disrupt, neutralize, and eliminate these networks, and we need your help. Through the FBI's InfraGard program, individuals in law enforcement, government, and the private sector, as well as academia, meet to talk about how best to protect our country's critical infrastructure and key resources. Since its inception in 1996, InfraGard has grown from a single chapter in the Cleveland Field Office to 88 chapters around the country, with more than 51,000 members. Members have access to an FBI secure communications network through which we disseminate threat alerts, advisories, and intelligence products. There are also several special interest groups within InfraGard, including one that is focused on research and technology protection. This group works to share relevant information with members so that we can better protect our collective research and technology. Beyond InfraGard, our Counterintelligence and Weapons of Mass Destruction Divisions run a number of partnership initiatives. We have a partnership coordinator in each of our 56 field offices to inform you about foreign

intelligence threats to your research, your products, and your personnel. Another such initiative addresses the synthetic biology sector. We are working with biology companies to protect the new technology that enables the synthetic generation of DNA sequences. Together, we have developed procedures to screen unusual purchases…and we have created a reporting mechanism for suspicious orders that may pose a threat.

Exports Case Defense

1NC—Squo solves

Squo STA exemption solves

Fergusson and Kerr 14 (Ian F, Specialist in International Trade and Finance, Paul, Analyst in Non-Proliferation, "The U.S. Export Control System and the President's Reform Initiative", January 13 2014, https://www.fas.org/sgp/crs/natsec/R41916.pdf)

In 2011, the Administration devised a new license exception known as the Strategic Trade Authorization (STA), which is designed to facilitate transfers to low risk countries and to promote interoperability to allies in the field.37 To be eligible, exporters have to provide notification to BIS of the transaction and a destination control statement notifying the foreign consignee of the terms of the exception's safeguard requirements, and they must obtain from the foreign consignee a statement acknowledging its understanding and willingness to comply with the requirements of the license exception. Under the final rulemaking, STA is available in various degrees **to 44 countries**. To a group of 36 countries made up of NATO partners and members of all 4 multilateral non-proliferation control regimes, dual-use items controlled for national security (NS), chemical or biological weapons, nuclear non-proliferation, regional stability, crime control, or significant items (hot section jet technology) are eligible for an STA. This includes **almost all items on the CCL** that are not controlled for statutory reasons. An additional eight countries are eligible for exports, reexports, or transfers controlled for NS-only and that are not designated as STA-excluded.38 Dual-use items controlled for missile technology (MT), chemical weapons (CW), short supply (SS), or surreptitiously listening (SL) are not be eligible for export under STA. Certain implements of execution and torture, pathogens and toxins, software and technology for "hotsections" of aero gas-turbine engines, and encryption have also been excluded from the STA. According to former Commerce Secretary Locke, the license exception will eliminate the need for licenses for over 3,000 yearly types of transactions, **affecting $1.4 billion in exports**.39

Streamlining the application process now

Fergusson and Kerr 14 (Ian F, Specialist in International Trade and Finance, Paul, Analyst in Non-Proliferation, "The U.S. Export Control System and the President's Reform Initiative", January 13 2014, https://www.fas.org/sgp/crs/natsec/R41916.pdf)

The fourth singularity is the creation of a single information technology system to be used to administer the export control system. The USXPORTS database, currently used by the Department of Defense to track license applications referred to it, is being expanded to State and Commerce. When completed, it will become the platform for a proposed single export license application form to be used by State, Commerce, and the Treasury's Office of Foreign Assets Control. It will also be used by the Department of Energy, Immigration and Customs Enforcement, and the Export Coordination Enforcement Center. DDTC reportedly has adopted the new system, but sequester-related budget constraints have held up final adoption by BIS.44 This reform is being proposed to streamline the interagency review process. Currently, the agencies' computer systems are not compatible and cannot seamlessly share licensing application information with referring agencies. Until recently, OFAC used a paper-based licensing system, but in April 2013 announced it had transitioned to an electronic filing system.45 BIS, in particular, has had difficulties in securing its system, which was hacked in late 2006. In response, BIS completed a replacement of all its computers in 2010—a step that will help prepare it for the adoption of the single IT system.46 The Administration's plan calls for the adoption of USXPORTS first for internal communications such as license referrals, while exporters would continue to use the existing SNAP-R and D-Trade electronic license filing

portals. Currently, a license submitted to BIS using the SNAP-R system must be converted to BIS's internal ECASS system for internal deliberation, and to be sent for referral, it must be converted to the USXPORTS system.47 The Administration has indicated that eventually it would like to facilitate interoperability between the license portals, the internal system, and Customs' Automated Export System (AES), the information system that tracks actual movement of goods. In conjunction with the single IT system, the Administration has developed a single license application form. To make this possible, the Administration has standardized certain definitions between the different regulations, such as the use of the term "technology" in the EAR as opposed to the term "technical data" used in the ITAR.48 To assist in compliance with U.S. export regulations, the Administration has also compiled a consolidated screening list of over 24,000 entities from existing Commerce, Treasury, and State Department screening lists. The list consolidates the BIS Denied Person List, Unverified List, and Entity List; the Department of State's Nonproliferation Sanctions List; the Directorate of Defense Trade Controls Debarred List; and the Office of Foreign Assets Control Specially Designated Nationals List.

1NC—Alt Cause to Offshoring

Alt Cause—uncertain tax policy creates uncertainty and is driving companies elsewhere

Master 12 (Jonathan, writes on issues related to national security and defense, and contributes to CFR's Renewing America initiative that focuses on the economic underpinnings of U.S. foreign policy, "Policy Initiative Spotlight: Checking the Innovation Box", May 4 2012, http://blogs.cfr.org/renewing-america/2012/05/04/policy-initiative-spotlight-checking-the-innovation-box/)

In the competition to attract and retain global corporate investment, tax policy is often seen as one of the most immediate and potent levers that legislators can pull. This is especially true given the ability of multinational companies to move business and capital across borders. These transnational flows often take with them the jobs, the R&D, and the innovations that drive and sustain long-term growth. Intellectual property (IP)—including copyrights, trademarks, and patents—is particularly mobile as an intangible asset. In April of next year, the United Kingdom will become the latest country to introduce a corporate tax incentive known as a "patent box," a policy that grants companies a significant tax break on profits attributed to IP. The policy's name refers to the box that is physically checked on the tax form. The UK patent box, which hopes to attract innovative industries and all their economic fruits, will allow corporations to apply a reduced 10 percent rate to income from patents- versus a headline rate of 23 percent. Patent box policies have also been deployed recently in Holland and Belgium (2007), as well as in Spain and Luxembourg (2008). The Dutch "innovation box" goes even further by including a broader class of IP and a lower rate of 5 percent. As other nations jockey for position, the United States has slipped well behind. The current U.S. corporate tax regime hasn't undergone a major facelift since 1986. And the current system is doubly flawed, combining the highest top tax rate in the world, at 35 percent, with a host of complex subsidies and loopholes that add to inefficiency. While both parties have acknowledged a need to cut the top rate and end many of the tax subsidies, one incentive that most policymakers—including President Obama and Mitt Romney—would like to preserve is the Research and Experiment (R&E, sometimes R&D) tax credit. Most economists agree that unlike many other corporate tax incentives, the R&D credit deserves special treatment because it provides a wellspring of growth and has social returns that are not captured by businesses—a market failure. But despite the **near consensus**, Washington has proved unable to make the R&D tax credit a permanent fixture of the U.S. code. It has expired and been renewed thirteen times (often retroactively) since 1981, sunsetting yet again last January. The impermanence of the credit in the U.S., as with many tax policies, has made it less effective as businesses are reluctant to change behavior given uncertainty. "What's happened traditionally every year is that in the fourth quarter or maybe even beyond the fourth quarter, the R&D credit is enacted and we have to then figure out the deduction for the whole year's credit," said Bruce Lassman, vice president of international tax at IBM. "So that's kind of a nerve-wracking thing. It's difficult to manage your affairs when you have a legislative situation like that." While there is broad consensus that the R&D tax credit should be made permanent, the idea of adding a patent box tax incentive has not been part of the debate in the United States. If adopted in concert with the R&D credit, a U.S. innovation box could supply a back-end incentive in the so-called innovation value chain. In other words, it would target the back end, the income from innovations, while the R&D credit incentivizes the front end, or the underlying research. While the latter is more important because the R&D provides spillover social benefits, the revenue incentive provided by an innovation box would likely sweeten the deal and encourage companies to maintain or expand IP-intensive activities in the United States.

2NC—Alt Cause

Other countries are changing tax policy to encourage innovation

Atkinson and Andes 11 (Robert D, president of the Information Technology and Innovation Foundation, a public policy think tank based in Washington, D.C., that promotes policies based on innovation economics, Scott, "Patent Boxes: Innovation in Tax Policy and Tax Policy for Innovatio", October 2011, http://www.itif.org/files/2011-patent-box-final.pdf)

Countries interested in winning the race for global innovation advantage need to shift the debate over domestic tax policy from one of revenue enhancement to one of global competitiveness. And most countries are doing just that. However, over the last quarter century the U.S. tax code has seen little change. More countries are entering the global race and others are running faster to keep the lead. If the United States' pace remains constant, we will slowly but surely fall further behind. Implementing a patent box is an opportunity for the United States to develop a tax code that more effectively drives innovation, competitiveness, and family-wage jobs. Many countries have patent boxes but most have significant shortcomings in design. The U.S. patent box wouldn't be the world's first, but it could be the world's best. By tying together R&D, high-tech manufacturing, and commercialization of U.S. IP, a well-formulated patent box would create a powerful incentive for firms to develop and produce innovation within the United States.

Can't solve—innovation isn't focused on commercialization now

However, commercialization has never been a major part of the U.S. innovation agenda. The R&D tax credit focuses on the inputs to innovation in the private sector, while only a small fraction of the budgets of innovation-driven agencies like NSF, NIST, and DOE's Office of Science are allocated to commercialization efforts.41 On the other hand, countries like Finland are taking the commercial side of innovation far more seriously. In the last two decades, Finland has transformed itself from a largely natural resource-dependent economy to a world leader in technology, with Tekes, Finland's National Agency for Technology and Innovation, playing a key role in the country's transformation. Affiliated with the Ministry of Employment and the Economy, Tekes funds many research projects in companies, multi-company partnerships, and business-university partnerships. With a

budget of $560 million (in a country of only 5.2 million people), Tekes works in partnership with business and academia to identify key technology and application areas that can drive the Finnish economy.

The United States needs a hybrid approach to innovation policy. European-style patent boxes that do not require domestic R&D or production will not induce enough R&D or high-tech manufacturing, while the U.S. R&D credit, useful as it is, does not go far enough to promote commercialization and domestic production. A patent box that reduces the corporate tax rate on revenue from qualifying IP to a significantly lower rate, coupled with an incentive for corresponding R&D and production to be located in the United States, would provide firms with a much stronger incentive to innovate and to produce in the United States.

2AC--AT: Tax Policy AC

Patent box does nothing—its unsustainable in the long term

Thornton 15 (Alexandra, Senior Director of Tax Policy on the Economic Policy team at American Progress, "Patent Tax Dodge: Why the Patent Box Does Not Answer America's Need for Tax Reform", June 1 2015, https://www.americanprogress.org/issues/economy/news/2015/06/01/114088/patent-tax-dodge-why-the-patent-box-does-not-answer-americas-need-for-tax-reform/)

Theoretically, under a U.S. patent box law, a U.S. multinational company would report all of its patent-related income worldwide on its U.S. tax return each year and pay U.S. tax on those earnings even if they were not repatriated. The key attraction of this for companies is that income in the patent box is subject to what is usually a much lower tax rate. The United Kingdom, which adopted a patent box structure in 2013, applies a 10 percent tax rate to that income, well below its top business tax rate of 20 percent. Proponents of a U.S. patent box argue that this is necessary to discourage companies from moving offshore, where foreign companies receive much more favorable treatment of their patent-related income. A recent study confirmed that there is a strong association between U.S. corporate expatriations and the growth in revenue from intangibles such as patents. The same study also found that corporate expatriations have generated excess returns of about 225 percent above market returns, suggesting the magnitude of the international tax avoidance problem.

From a budget perspective, however, a U.S. patent box is too good to be true. Rep. Dave Camp (R-MI) included an expansive version of a patent box in his Tax Reform Act of 2014. The Congressional Joint Committee on Taxation scored that measure, along with some related changes, as raising $115 billion in federal revenue within the 10-year budget window that lawmakers use to assess tax proposals' impact. Unfortunately, because it was included in a costly and much broader proposed reform of the taxation of foreign income, the estimate is not helpful in determining how much revenue, if any, a more typical patent box proposal would raise in the early years.

Nevertheless, it seems likely that a patent box provision would lose significant revenue in the long term, as earnings that would have been repatriated at a higher tax rate would instead be taxed at the much lower patent box rate. The majority chief tax counsel of the House Ways and Means Committee has implied that this would be the case, and as such, it would hamper later efforts to achieve a broader-based corporate tax rate cut. To be sure, the amount of revenue lost depends in part on whether the income would have been repatriated and on the specific tax rate lawmakers choose for the patent box income. But the long-term revenue loss could grow as companies find ways to include other income in the box, such as income related to a large product that includes one small patented part, a criticism raised over the U.K. patent box. Alternatively, companies could pressure policymakers to expand the definition of qualifying property to a wider range of patentable items. These could include computer programs and software, business methods, financial instruments, accounting systems or even tax strategies. Worse, lawmakers could expand the box to include unpatented forms of intellectual property, an approach referred to as an innovation box.

Conclusion

In the end, the patent box would reward many of the very companies that have taken the greatest advantage of this form of profit shifting to avoid paying their fair share of U.S. taxes. These companies already benefit from the strong legal protection the U.S. provides for patents. And many of them

undoubtedly benefited from the R&E tax credit when developing their patented products. The R&E credit arguably provides incentives for innovation when it matters most—before ideas become commercially valuable and regardless of whether they do. Patent boxes, however, reward only innovation that proves itself to be commercially successful.

In their effort to find revenue to support other federal priorities, lawmakers should ensure that U.S. multinational corporations pay their fair share of taxes. A patent box with a low tax rate could end up being just another tax loophole for U.S. multinationals, further reducing these corporations' tax bills while requiring others to endure higher taxes or program cuts to make up for it. Congress should avoid putting international patent income into such a budget sieve.

Doesn't do anything for R AND D

CTJ 15 (Citizens for Tax Justice, "A "Patent Box" Would Be a Huge Step Back for Corporate Tax Reform", June 4 2015, http://ctj.org/ctjreports/2015/06/a_patent_box_would_be_a_huge_step_back_for_corporate_tax_reform.php#.Vb0fIPlViko)

The 2012 fiscal cliff deal cut federally funded research by $26 billion in 2015 compared to its 2010 level.[12] If lawmakers want to boost research and innovation, the most straightforward way to do so would be to expand direct research funding by the federal government. This approach would avoid the problem of subsidies for "research" has little or nothing to do with real scientific advances. Federally funded research is typically much more beneficial than profit-driven corporate research because it allows companies to focus on broadly beneficial research that may take years or even decades to generate profits. While Congress has cut federal research funding in recent years to lower the deficit, corporations have not been asked to give up generous tax breaks to contribute to deficit reduction. Instead, corporations and their congressional allies continually cite the nation's 35 percent corporate tax rate as reason for "reform" and more tax breaks. But that is a ruse. U.S. corporate tax collections as a percent of GDP are already close to the lowest in the developed world,[13] and on average large, profitable corporations pay about half the statutory tax rate.[14] Congress should close loopholes and raise more revenue from corporations.[15] If Congress's priority is research and innovation, it could use the revenue raised from corporations to undo the cuts in federal research spending enacted in recent years.

Amendment CP

Plan: The United States should amend its national Constitution to _____ unconstitutional. The US Congress should initiate the process. The US Supreme Court should not review any cases concerning this amendment in the next two terms.

The Counterplan solves.

NCC Staff 13 [National Constitution center, June 17, 2013, The Next 10 Amendments: Do we need more laws to protect privacy? http://news.yahoo.com/constitutional-amendment-protect-privacy-133028314.html] Achal Patel

The furor in the past two weeks over government eavesdropping on the media and citizens has raised a lot of questions related to the First Amendment and the Fourth Amendment. Government actions to monitor the phone records of the Associated Press and track the activities of a Fox News reporter started a debate about the First Amendment. And last week's revelations about widespread government collection of phone call data—followed by broader claims about data collection involving the Internet—started a whole new argument about the Fourth Amendment. Those are just a few of the issues about privacy that have been debated over the past year. There's also the pesky issue of drones and other forms of technology that can do much good, but also cause massive privacy invasions in the wrong circumstances. And there's the issue of when and how police can enter your home. As for the government surveillance programs, the Obama administration and Congress members say the activities of the National Security Agency are approved and monitored by all three government branches, in accordance with the Constitution. In past court decisions, the Fourth Amendment has been applied to support privacy rights—to learn more about the evolution of privacy rights, National Constitution Center president Jeffrey Rosen suggests the five must-read books about privacy issues that are now all too contemporary.

Amendments best solve for rights.

Ehling 12 Matt Ehling | 10/04/12 Minnesotans need to better evaluate when (and why) to amend their constitution https://www.minnpost.com/community-voices/2012/10/minnesotans-need-better-evaluate-when-and-why-amend-their-constitution

Rights can either be granted by statute (through legislative action) or through a constitution's provisions. The former tend to be more specific in nature, and can change with social needs and desires. The latter tend to be broader philosophical statements that guarantee individual rights by permanently restraining governmental powers. There has been just one amendment made to the U.S. Constitution that has exclusively constrained individual conduct, and it was short-lived. The most durable and stable constitutional amendments have been those that have secured broad-based rights for the people. One can recognize this by looking to the earliest history of the U.S. Constitution. As originally written, the federal Constitution contained almost no guarantees of individual rights, save for the "privilege of the writ of habeas corpus." Because of this, a political struggle ensued, and the Constitution was ratified under the terms of a brokered deal that added 10 rights-based amendments to the original text. These amendments constituted the Bill of Rights a group of amendments that has survived for over 200 years because of its close correlation to our nation's guiding philosophy of securing individual liberty.

Amendments can overrule court decisions.

Schaffner, 05

(Associate Law Professor – GW, 54 Am. U.L. Rev. 1487)

Because the judicial branch has the ultimate authority over constitutional interpretation and construction, the **only "check**" on judicial power of constitutional interpretation is the constitutional amendment process. The amendment process should be used to overturn the Court only when it acts beyond its powers or inconsistently with constitutional principles. Otherwise, the careful balance of powers among the branches is compromised.

The history of amending the Constitution to overrule Supreme Court decisions is consistent with this view and is particularly relevant here. While the U.S. Supreme Court is not being overturned by the FMA, the Massachusetts Supreme Judicial Court's Goodridge decision is in jeopardy. Goodridge was the catalyst for the fervor behind the proposed marriage amendment. Moreover, the FMA will forever prevent the U.S. Supreme Court from addressing the issue.

Only four constitutional amendments have been adopted to overrule the Supreme Court. 186 They are: (1) the Eleventh Amendment, which overruled Chisolm v. Georgia; 187 (2) the Thirteenth Amendment and, most specifically, the first sentence of the [*1519] Fourteenth Amendment, 188 which overruled Dred Scott v. Sanford; 189 (3) the Sixteenth Amendment, which overruled Pollack v. Farmer's Loan & Trust Co.; 190 and (4) the Twenty-Sixth Amendment, which overruled Oregon v. Mitchell. 191 As we will see, each amendment was in harmony with the basic principles that underlie the Constitution - individual rights, separation of powers, and federalism. Moreover, in the cases where fundamental liberty interests were at stake, the amendment reestablished individual rights in light of the Court's limited interpretation of those rights. Without analyzing the propriety of the individual Supreme Court decisions, the following will demonstrate that, unlike the FMA, **the use of the amendment power to overrule these cases was proper and consistent with basic democratic principles.**

Mootness DA

2NC – Mootness DA

(A) The perm decides a moot legal question

Watson, Northwestern University Law Review, **1991**

(Corey C., "Mootness and the Constitution," Fall 1991, lexis)

A case becomes "moot" when "its factual or legal context changes in such a way that a justiciable question no longer is before the court." n32 [*147] Defining mootness as the absence of a justiciable issue, however, merely raises the question of what is meant by the term "justiciability." n33 The Supreme Court has distinguished a justiciable controversy "from one that is academic or moot." n34 Accordingly, a justiciable controversy is one that is "definite and concrete, touching the legal relations of parties having adverse legal interests." n35 The controversy must be "real and substantial[,] . . . admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising **what the law would be upon a hypothetical state of facts**." n36 The rule that a court will not decide a moot case is recognized in virtually every American jurisdiction. n37 With the concepts of mootness and justiciability so loosely formulated, some scholars have attempted to understand mootness jurisprudence by cataloguing the various circumstances which render a case moot. n38 A case may become moot because the alleged wrong passes and cannot be expected to recur; n39 because a defendant pays money owed [*148] and no longer wishes to appeal; n40 because a criminal defendant dies while appealing his case; n41 because the law under which the suit was brought has since changed; n42 or because a party is no longer affected by the challenged statute. n43 Indeed, the Court has attempted to generalize the causes of mootness by declaring a case moot when it finds either (a) that the issues presented are no longer "live" or (b) that the "'parties lack a legally cognizable interest in the outcome.'" n44 These are commonly referred to as the "live issue" and "personal stake" requirements. n45 For a party to satisfy the live issue test, he must show more than abstract injury. n46 The plaintiff must demonstrate that he "'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.'" n47 Finally, the "personal stake" criterion requires a "logical nexus between the status asserted and the claim sought to be adjudicated" n48 and a sufficient degree of "contentiousness." n49

(b) Violates separation of powers

Watson, Northwestern University Law Review, **1991**

(Corey C., "Mootness and the Constitution," Fall 1991, lexis)

Public law model advocates explain that requiring a party's claim to implicate constitutional rights circumscribes judicial power. n156 This, however, recalls the problems encountered when trying to define the constitutional terms "case" and "controversy." n157 The public law model attacks those who pretend to objectively define constitutional terms. Yet, when a model purports to describe a case as that which implicates constitutional rights, one must ask how to define those rights. All legislative issues must necessarily implicate "constitutional" issues and rights since the legislative power is constitutionally created. Therefore, although the public law model theoretically accounts for a functionally enumerated judicial power, its fundamental principle of a judicial authority that can reach all issues which touch the Constitution runs afoul of another constitutional edict: separation of powers. n158 Hence, one is driven to the public law model's second line of defense in limiting judicial power, the prudential screen. To say that prudential factors beget the mootness doctrine, which begets

justiciability, which begets the case and controversy requirement, which begets judicial power is to say, in effect, that a judge defines his own jurisdiction. But this is precisely what the Constitution was intended to prevent: a government that defines its own powers. This recalls the problem of unrestricted judicial [*164] power encountered under the pure prudential model. The omnipotence of a judge under the public law model may be even more dangerous because here prudential decision-making is masquerading as a constitutional doctrine. At least the pure prudential model does not purport to be more than it is.

(c) equivalent of a nuclear war

Martin H. **Redish**, professor of law at Northwestern, **and** Elizabeth J. **Cisar**, Law Clerk to Chief Judge William Bauer, United States Court of Appeals, Seventh Circuit, December **1991**, Duke Law Journal, 41 Duke L.J. 449, p. 474

In summary, no defender of separation of powers can prove with certitude that, but for the existence of separation of powers, tyranny would be the inevitable outcome. But the question is whether we wish to take that risk, given the obvious severity of the harm that might result. Given both the relatively limited cost imposed by use of separation of powers and the great severity of the harm sought to be avoided, one should not demand a great showing of the likelihood that the feared harm would result. For just as in the case of the threat of nuclear war, no one wants to be forced into the position of saying, "I told you so."

Ruling on Moot Issue Destroys the Constitution

Violates and destroys the constitution

Watson, Northwestern University Law Review, **1991**

(Corey C., "Mootness and the Constitution," Fall 1991, lexis)

According to the textual constitutional model, the mootness doctrine inheres in a fundamental definition of a case and controversy n106 -- thatis, mootness doctrine is directly related to a court's jurisdiction over a case. n107 According to this model, the case or controversy clause of article III has an identifiable and immutable meaning that dictates the limits on judicial power. n108 This meaning is derived from a natural, intuitive [*157] understanding of the confines of a case, n109 an historical articulation of this understanding, n110 and a refinement of the definition through judicial precedent. Although the case and controversy clause may have fluctuated at its margins as it evolved, proponents maintain that article III has retained a core meaning that is somewhat analogous to the "traditional judicial business of the English courts." n111 Accordingly, article III "does not extend the judicial power to every violation of the constitution which may possibly take place, but to 'a case in law or equity,' in which a right, under such law, is asserted in a court of justice." n112 From this core meaning, according to the model, have sprung various interpretative doctrines which, when taken together, flesh out the meaning of the case and controversy clause. These doctrines are incorporated under the broad label of "justiciability." The doctrine of mootness, a species of justiciability, is umbilically attached to the case and controversy clause and is thus subservient to article III of the Constitution. n113 Hence, **the relationship between the mootness doctrine and the Constitution is symbiotic**: the Constitution gave birth to the doctrine of mootness while the doctrine itself illuminates the limitation of federal judicial power. Although courts are permitted to entertain prudential considerations when deciding questions of jurisdiction, n114 the model forbids courts from allowing prudential concerns to compromise the fundamental principles of article III. n115 Consequently, whether a case is justiciable is a threshold question throughout the judicial proceeding which must be answered affirmatively for a court to assume jurisdiction. n116 [*158] The textual constitutional model, therefore, contends that the language chosen to formulate the Constitution has particular significance. Attempts to manipulate this language by superimposing specific value systems n117 or by tossing prudential factors into the constitutional calculus n118 **dissolve the integrity of the Constitution itself**. The Constitution retains flexibility by establishing procedures for its amendment, and judicial or scholarly glosses which essentially rewrite the Constitution circumvent the amendment process. Such circumvention, the model asserts, is violent to democratic and representative ideals.

Reject all constitutional violations

Stephen L. **Carter**, professor of law at Yale University, **1987**, Brigham Young University Law Review, 1987 BYU L. Rev. 719, HeinOnline, p. 750-751

The problem with this use of our burgeoning public policy science, an inevitable one in an area of theory driven by instrumental rationality, is that the law itself is stripped of the aura of uniqueness which is assigned to it in liberal theory. The law becomes all too mutable, and is left as no more than one of the means that must be tested against its efficacy in achieving the desired end. The Constitution, which is after all a species of law, is thus quite naturally viewed as a political impediment to policy, a barrier that must be adjusted, through interpretation or amendment, more often than preservation of government under that Constitution is viewed as a desirable policy in itself. In this the modern student of policy is like the modern moral philosopher – and like a good number of constitutional theorists as well – in denigrating the value of preserving any particular process and exalting the desirable result. But constitutionalism assigns enormous importance to process, and consequently assigns costs, albeit perhaps intangible ones, to violating the constitutional process. For the constitutionalist, as for classical liberal democratic theory, the autonomy of the people themselves, not the achievement of some well-intentioned government policy, is the ultimate end for which the government exists. As a consequences, no violation of the means the people have approved

for pursuit of policy—here, the means embodied in the structural provisions of the Constitution, can be justified through reference to the policy itself as the end.

Answer To: “Mootness Doctrine Destroys Judicial Review”

No Link

Watson, Northwestern University Law Review, **1991**

(Corey C., “Mootness and the Constitution,” Fall 1991, lexis)

[*172] At first blush, cases of judicial review seem to collide with mootness doctrine as defined in the proposed model. In this context, pragmatic reasons exist for sustaining a case through the appellate levels even though the case may have become moot under traditional standards. If the legislation is unconstitutional, it seems not to matter that the particular parties to the dispute are no longer entitled to the remedy of repealing the law because, arguably, the law should not have existed in the first place. Hence, the broad effect of declaring a law unconstitutional seems to conflict with the narrow requirement of personal stake in the outcome of a case. Anyone, it seems, should be able to challenge the constitutionality of a law. Under the pure prudential model, or the flexible constitutional model, or the public law model, a court would probably proceed with the case because it seems a good investment of judicial resources to repeal an unconstitutional law. The remedy is, practically speaking, capable of judicial administration. The apparent conflict can be reconciled by recognizing that personal stake is not constitutionally required in cases of judicial review.

Constitutional Amendment CP - Wave 1 - GLAGG - NDI 15

1NC

1NC

Text: The appropriate number of the fifty states will invoke their power under Article V of the Constitution to call a limited constitutional convention for the purpose of [plan]. A sufficient number of the fifty states will ratify the amendment.

CP solves the AFF and avoids the DA

Vermeule 4 (Adrian – Professor of Law at the University of Chicago, "Constitutional Amendments and the Constitutional Common Law," University of Chicago Public Law & Legal Theory Working Paper No. 73, 2004, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1072&context=public_law_and_legal_theory)

These points, however, capture only one side of the ledger. Precedent, and the constraint that new decisions be related analogically to old decisions, effect a partial transfer of authority from today's judges to yesterday's judges. As against claims of ancestral wisdom, Bentham emphasized that prior generations necessarily possess less information than current generations. If the problem is that changing circumstances make constitutional updating necessary, it is not obvious why it is good that current judges should be bound either by the specific holdings or by the intellectual premises and assumptions of the past. Weak theories of precedent may build in an escape hatch for changed circumstances, but **the escape hatch in turn weakens the whole structure**, diluting the decisionmaking benefits said to flow from precedent. Another cost of precedent is path dependence. Path dependence is an ambiguous term, but a simple interpretation in the judicial setting is that the order in which decisions arise is an important constraint on the decisions that may be made. Judges who would, acting on a blank slate, choose the constitutional rule that is best for the polity in the changed circumstances, may be barred from reaching the rule, even though they would have reached it had the cases arisen in a different order. Precedent has the effect of making some optimal rules inaccessible to current decisionmakers. When technological change threatened to render the rigid trimester framework of Roe v. Wade obsolete, the Supreme Court faced the prospect, in Pennsylvania v. Casey, that precedent would block a decision revising constitutional abortion law in appropriate ways, even though a decisive fraction of the Justices would have chosen the revised rule in a case of first impression.78 The joint opinion in Casey resorted to intellectual dishonesty, proclaiming adherence to precedent while discarding the trimester framework that previous cases has taken to be the core of Roe's holding.79 The lesson of Casey is sometimes taken to be that precedent imposes no real constraint, but absent precedent the Justices would have had no need to write a mendacious, and widely ridiculed, opinion. The institutions that participate in the process of formal amendment, principally federal and state legislatures, are not subject to these pathologies. The drafters of constitutional amendments may write on a blank slate, drawing upon society's best current information and deliberation about values, while ignoring precedent constraints that prevent courts from implementing current learning even if they possess it. The contrast is overdrawn, because legislatures deliberating about constitutional amendments use precedent in an informal way. But precisely because the practice of legislative precedent is relatively less formalized than the practice of judicial precedent, legislative practice may capture most of the decisional benefits of formal precedent while minimizing its costs. Legislatures may draw upon their past decisions purely to conserve on decisionmaking costs, while shrugging off precedential constraints whenever legislators' best current information clearly suggests that the constitutional rules should be changed.

Constitutional amendment is necessary to curtail domestic surveillance.

Jurist 15 (Eric – writer with an interest in Constitutional history, "The Case for an Article v, Convention of States, Amending Convention - Part 2 - Surveillance State," published January 12, 2015, https://www.scribd.com/doc/251693629/The-Case-for-an-Article-v-Convention-of-States-Amending-Convention-Part-2-Surveillance-State-Plus-Solution)

The problem we face is daunting and multifaceted, but, in short, it is: a concentration of power by some branches of Government and the abdication of authority by others such that we, as individuals, are left feeling isolated, helpless, and hopeless. Know that none of those things is true, for the ties that bind us as unique, individual Americans, rooted in Natural Law, can never truly be broken so long as we continue, as our Founders (and subsequent generations of Americans), to hold that, with the "firm reliance on the protection of divine Providence," we can unleash a power the likes of which Washington, heretofore, has never seen. The Framers left us with just such power, and it is codified in our Constitution (Article V - an Amending Convention). The Sheer Breadth of the Problem (a few intertwined examples --- all hat tips (h/t) are at the very end): The Surveillance State: The power and scope of these Federal Agencies'

authority is not only astonishing, it is downright frightening, for they continue, unabated, to seize more (for more read Part 1). It is now well known that the **N**ational **S**ecurity **A**gency (NSA) continues to collect not only meta-data, which is concerning as German politician Malte Spitz shows, but it is also collecting email address books, buddy lists, texts, phone records, and audio calls of Americans (even burner phones are not safe as Edward Snowden revealed in his interview with Brian Williams - transcript & audio @3:18). That is most certainly the tip of the iceberg. The vast amount of data collected and stored by the NSA is estimated to reach "966 Exabytes (0.966x10^12 Gigabytes or almost 200 times greater than Eric Schmidt's, former Google CEO, estimated sum of all human knowledge up to 2003 - 5 Exabytes) a year by 2015 (RT interview with NSA whistleblower William Binney, July 2014)." Now, it is incontestable, even at an innate level, that the NSA's (among others) collection of information of Americans violates our most fundamental rights; and none other than James Otis made a better case against such arbitrary abuse of power when arguing in defense of merchants in Salam & Boston, MA in 1761 against General Writs of Assistance (General Warrants issued by officers or their deputies) against the Crown, and in his spirited defense, as notated by John Adams, he states: "I was desired by one of the Court to look into the books, and consider the question now before them concerning the Writs of Assistance…It appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book… Your Honours will find in the old books concerning the office of a Justice of the Peace, precedents of general warrants to search suspected houses. But in more modern books, you will find only special warrants to search such and such houses, specially named, in which the complainant has before sworn that he suspects his goods are concealed; and will find it adjudged that special warrants only are legal. In the same manner I rely on it, that the writ prayed for in this petition, being general is illegal. It is a power that places the liberty of every man in the hands of every petty officer. I say I admit that special writs of assistance, to search special places, may be granted to certain persons on oath; but I deny that the writ now prayed for can be granted, for I beg leave to make some observations on the writ itself…In the first place, the writ is universal, being directed 'to all and singular Justices, Sheriffs, Constables, and all other officers and subjects;' so that, in short, it is directed to every subject in the King's dominions. Every one with this writ may be a tyrant in a legal manner, also may control, imprison, or murder any one within the realm. In the next place, it is perpetual, there is no return. A man is accountable to no person for his doings. Every man may reign secure in his petty tyranny, and spread terror and desolation around him, until the trump of the archangel shall excite different emotions in his soul. In the third place, a person with this writ, in the day time, may enter all houses, shops, &c. [etc.] at will, and command all to assist him. Fourthly, by this writ, not only deputies, &c. but even their menial servants, are allowed to lord it over us. What is this but to have the curse of Canaan with a witness on us; to be the servant of servants, the most despicable of God's creation? Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and every thing in their way; and whether they break through malice or revenge, no man, no court, can inquire. Bare suspicion without oath is sufficient. This wanton exercise of this power is not a chimerical suggestion of a heated brain. I will mention some facts." Presently, the NSA is a **tyrant in a legal manner**, as so sanctioned by the Foreign Intelligence Surveillance (FISA) Court. According to NSA whistleblower Russ Tice they are not indiscriminate in the individuals they target: from high-ranking military officials to members of Congress (especially those on intelligence or armed services committees), to judges and so forth. A similar organization, the Central Intelligence Agency (CIA) revealed, on July 31st, 2014 that it did spy on the Senate Intelligence Committee. It is not so farfetched to suggest that the NSA would also conduct such surveillance as well and lord it over us. The surveillance and data collection does not end there: In May 2013, it was learned that the Department of Justice (DOJ) "secretly obtained two months' worth of telephone records of journalists working for the Associated Press." Following the heels of that story, it was learned that the DOJ also "obtained a portfolio of information about a Fox News correspondent's conversations and visits (DOJ Targets Fox News, Accuses Reporter of a Crime.., May 2013). And, in October 2013 a journalist's home was raided and "agents had taken her private documents – documents that were not listed on the search warrant." In August 2013, Reuters learned that the Drug Enforcement Administration (DEA) Special Operations Division (SOD), which is made up of "two dozen partner agencies…including the FBI, CIA, NSA, Internal Revenue Service and the Department of Homeland Security," "is funneling information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation to help them launch criminal investigations of Americans." In January 2014, it was revealed that the, relatively, newly created Consumer Financial Protection Bureau (CFPB) is "conducting a massive, NSA-esque data-mining project collecting account information on an estimated 991 million American credit card accounts….[and] that CFPB officials are working with the Federal Housing Finance Agency on a second data-mining effort, this one focused on the 53 million residential mortgages taken out by Americans since 1998." In August 2014 The Intercept obtained documents showing that the "NSA built its own secret Google" called ICREACH. "ICREACH has been accessible to more than 1,000 analysts at 23 U.S. government agencies that perform intelligence work, according to a 2010 memo. A planning document from 2007 lists the DEA, FBI, Central Intelligence Agency, and the Defense Intelligence Agency as core members. Information shared through ICREACH can be used to track people's movements, map out their networks of associates, help predict future actions, and potentially reveal religious affiliations or political beliefs." Couple all of the above with what Edward Snowden pointed out just in relation to innocuous Web searches and what the information allows an agency to conclude: "Are you doing something, are you someplace you shouldn't be, according to the government, which is arbitrary, you know — are you engaged in any kind of activities that we disapprove of, even if they aren't technically illegal? And all of these things can raise your level of scrutiny, even if it seems entirely innocent to you. Even if you have nothing to hide. Even if you're doing nothing wrong. These activities can be misconstrued, misinterpreted, and used to harm you as an individual, even without the government having any intent to do you wrong. The problem is that the capabilities themselves are unregulated, uncontrolled, and dangerous." Under such unreasonable surveillance and collection of data, how can an individual ever be secure in their person, house, papers, and effects? "It is impossible to devise a more outrageous and unlimited instrument of tyranny than this proposed writ: and it cannot be wondered at, that

such an alarm should have been created, when it is considered to what enormous abuses such a process might have led (Remarks about Otis' speech, as published by William Tudor in 1823, James Otis's speech on Writs of assistance, Parker P. Simmons, 1906, p.16)." The Solution: As James Otis asserted in his fiery arguments against Writs of Assistance (General Warrants), in 1761, "Every man, merely natural, was an independent sovereign, subject to no law, but the law written on his heart, and revealed to him by his Maker, in the constitution of his nature, and the inspiration of his understanding and his conscience. His right to his life, his liberty, no created being could rightfully contest. Nor was his right to his property less incontestible...He asserted that these rights were inherent and inalienable. That they never could be surrendered or alienated." However, tyranny abounds, attempting to separate, surrender, and alienate our inherent and inalienable rights; in the face of so much tyranny what can we do? **There is only one legitimate answer left**, and the Framers deliberately gave it to us in **Article V - an Amending Convention**. "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress." Thus, all that is needed is for 34 States to pass an application (resolution) calling for an Amending Convention. In 2014, three States (GA, AK, & FL) successfully passed an application calling for an Amending Convention for the sole purpose of limiting the size, scope, and jurisdiction of the Federal Government. Now, we have this second mode of amending the Constitution, because two days prior to the end of the Constitutional Convention George Mason (from James Madison's notes): "thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second, ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case." And so, the adopted version of Article V included the method of using the State Legislatures to propose amendments, for a tyrannical government would never restrain its own power.

Net Benefits

Amendment avoids Legitimacy DA

Amendments save court legitimacy—court action uniquely undermines it

Vermule 2004(Adrian, Professor of Law at the University of Chicago, September, "Constitutional Amendments and the Constitutional Common Law", http://www.law.uchicago.edu/files/files/73-av-amendments.pdf)

There is another side to the ledger, however. Premise (i) holds that the lower the rate of amendment, the more updating that the Court must supply; and the need to update constitutional law can itself damage the Court' s public standing in straightforward ways. Overrulings, switches in time, creative and novel interpretation, all the tools that judges use to change the course of constitutional adjudication, them selves may draw down the Court's political capital by fracturing the legalistic façade of constitutional interpretation. An equally plausible causal hypothesis, then, is that increasing the rate of amendments might increase the Court's sociological legitimacy by reducing the need f o r judicial self - correction. In particular cases, legitimacy-granting publics might react poorly to judicial flip-flops, while viewing form al amendments that overturn judicial decisions as the proper legal channel for change—the very use of which assumes that the judges have done their job well, not poorly. This is rankly speculative, but the point is that (ii) is rankly speculative as well. It is hard to know about any of this in the abstract; but we cannot simply assume (ii), in the faith that a world without (nonjudicial) amendments is the best of all possible worlds to inhabit.

Legitimacy DA—Link

Court action undermines legitimacy

Lasser 1988(William, Professor of Political Science at Clemson, "The Limits of Judicial Power: The Supreme Court in American Politics", P. 246)

An institution apparently so weak and so dependent on conformity to the popular will had to move with great care and circumspection, at least in extreme cases. If the justices tried to impose their will on an unwilling public, they were doomed to failure or worse. "Surely the record teaches that no useful purpose is served when the justices seek the hottest political cauldrons of the moment and dive into the middle of them," McCloskey counseled. "Nor is there much to be said for the idea that a judicial policy of fiat and uncompromising negation will halt a truly dominant political impulse." Instead, the justices had to learn history's compelling lesson: "The Court's greatest successes have been achieved when it has operated near the margins rather than at the center of political controversy, when it has nudged and gently tugged the nation, instead of trying to rule it." After two hundred years of struggling to establish itself as a vital force in American politics, McCloskey concluded, "it would be a pity if the judges . . . should now once more forget the limits that its own history so compellingly prescribes."

Legitimacy DA—A2: CP Links

The counterplan doesn't link—its key to prevent legitimacy collapse

Carter 1986(Stephen, Professor of Law at Yale University, January 1, "The Morgan "Power" and the Forced Reconsideration of Constitutional Decisions", http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3260&context=fss_papers)

If all of this is so, then the place of the Morgan power in the dialogue between the Court and its constituents should be plain. I earlier outlined the ideal of symbiotic progress, in which the Congress and the Supreme Court take turns leading the way toward a better future. An exercise of the Morgan power may fit into that progression in a special way, as the Congress's most effective tool for expressing its strong disapproval of a judicial decision accepting [*857] or rejecting a claim of fundamental right without risking the Court's legitimacy, hence the Constitution's, hence ultimately its own.

2NC/1NR

2NC Solvency-General

CP solves the case and no AFF offense applies

Rotunda and Safranek 96 (Ronald D. – Professor of Law at the University of Illinois College of Law, and Stephen J. – Associate Professor of Law, University of Detroit Mercy School of Law, "An Essay on Terms and Limits and A Constitutional Convention," 80 Marq. L. Rev. 227, http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1487&context=mulr)

Constitutional conventions, like constitutional amendments proposed by Congress, should not be taken lightly. However, the convention method does not threaten constitutional rights as feared by critics. The convention method is a necessary and integral part of the Constitution that must remain available to state legislators, and the people they serve, to ensure that Congress serves the people, rather than its own self-interest. As Abraham Lincoln noted in his first inaugural address: I will venture to add that, to me, the convention mode seems preferable, in that it allows amendments to originate with the people themselves, instead of only permitting them to take, or reject, propositions, originated by others, not especially chosen for the purpose, and which might not be precisely such, as they would wish to either accept or refuse. The convention method of amendment is a **critical component of the constitutional balance of power** because it acts as a safety valve for proposing amendments. Congress has proposed numerous constitutional amendments and some of these amendments have directly limited state power. However, none of the proposed amendments have directly limited congressional power. The framers of the Constitution anticipated that Congress would be reluctant to make proposals that would reduce its own powers. Thus, the framers created the convention method as an important safety valve to propose needed amendments when federal lawmakers impede reform. Indeed, history has shown that even the looming possibility of a convention can be enough to force Congress to act. Without this safety valve, the Seventeenth Amendment, providing for the direct popular election of Senators, might never have come to be.

Article V upholds Constitutional intention best, checking executive branch and Congressional overreach.

Denning 97 (Brannon P., Associate Professor of Law at the Cumberland School of Law at Samford University, "Means to Amend: Theories of Constitutional Change," 65 Tenn. L. Rev. 155, http://heinonline.org/HOL/Page?handle=hein.journals/tenn65&div=10&g_sent=1&collection=journals)

An obvious weakness of informal constitutional change, regardless of how impermanent, is that it effects a change in the constitutional order independent of Article V's rigors. Article V was meant to reinforce important principles of the Constitution: order, stability, legitimacy through consensus, and federalism. Change produced outside Article V runs the risk of producing disorder, instability, and dissensus. Further, the reliance on informal change can produce a constitutional culture in which people feel less and less bound by the words of the document which supposedly governs them. Worse, that culture may produce leaders who do not feel constrained by a document they take a pledge to uphold and defend. In the end it might be true, as John Vile has written, that an amendment to prohibit flag burning may do less damage to the Constitution in the long run than does a Supreme Court interpretation of the First Amendment allowing the same conduct. By the same token, it may do less harm to the country in the long run to redefine the war-making responsibilities of Congress and the President through a constitutional amendment than to have those powers claimed on an ad hoc basis by the President every time he exercises power as commander-in-chief.

2NC—Solvency-Surveillance

A radically different approach to addressing surveillance concerns is necessary given Washington's polarization

Wright 15 (Jazzy – Press Officer at the American Library Association, citing Alan S. Inouye – director of the American Library Association's (ALA) Office for Information Technology Policy (OITP), "It's time that we had a digital Constitutional Convention," in District Dispatch, 5-28-15, http://www.districtdispatch.org/2015/05/we-need-to-have-a-digital-constitutional-convention/)

Is it time to organize a digital **constitutional convention** on the future of the internet? In a thought-provoking op-ed published in The Hill, Alan S. Inouye, director of the American Library Association's (ALA) Office for Information Technology Policy (OITP) calls on the nation's leaders in government, philanthropy, and the not-for-profit sector to convene a digital constitutional convention for the future of the internet. Today we stand at the crossroads of **establishing digital society for generations to come**. By now, it is clear to everyone—not just network engineers and policy wonks—that the Internet is at the same time a huge mechanism for opportunity and for control. Though the advent of the Internet is propelling a true revolution in society, we're not ready for it. Not even close. For one thing, we are so **politically polarized** at the national level. The latest evidence: the net neutrality debate. Except it wasn't. For the most part, it was characterized by those who favor assertive regulatory change for net neutrality stating their position, restating their position, then yelling out their position. Those arguing for the status quo policy did likewise. As the battle lines were drawn, there was little room to **pragmatically consider a compromise advanced** by some stakeholders. The current state of digital privacy seems along these lines, as well. With copyright, it is even worse, as a decades-long "debate" has those favoring the strongest copyright protection possible dominating the discourse. Another problem, as the preceding discussion suggests, is that issues clearly related to each other—such as telecommunications, privacy, and copyright—are debated mostly in their own silos. We need a **radically different approach to address** these foundational concerns that will have ramifications for decades to come. We need something akin to the Constitutional Convention that took place 228 years ago. We need today's equivalents of George Washington, James Madison, and Benjamin Franklin to come together and apply their intellectual and political smarts—and work together for the good of all, to lay out the framework for many years to follow. Most people in the country are in the middle of the political spectrum. They (We) are reasonable people. We want to do as we please, but realize that we don't have the right to impinge on others' freedom unduly. We're Main Street USA. This sounds so simple and matter-of-fact, but we inside-the-beltway people understand how hard this is to achieve in national policy. We just look outside our windows and see the U.S. Capitol and White House to remind ourselves of the challenge of achieving common-sense compromise in a harsh political climate. Of course this is not easy. Some of us think of the challenge we need to address as access to information in the digital society, but really we're talking about the allocation of power—so the stakes are even higher than some may think. In a number of respects, power is more distributed in digital society. Obviously, laws, regulation, and related public policy remain important. Large traditional telecommunications and media companies remain influential. But now the national information industry includes Google, Apple, Facebook, Microsoft, and other major corporate players who also effectively make "public policy" through product decisions. Similarly, the continuing de facto devolvement from copyright law to a licensing regime (with the rapid growth of ebooks as the latest major casualty) also is shifting power from government to corporations. In some respects, individuals also have more power thanks to the proliferation of digital information and the internet that enable capabilities that previously only organizations could muster (e.g., publishing, national advocacy).

Amendments are the best way to advance constitutional law and check intelligence authority

Denning and Vile 2 (Brannon P. – Professor of Law at Samford University, John R. – Department Chair of Political Science at Middle Tennessee State University, "The Relevance of Constitutional Amendments: A Response to David Strauss," 77 Tul. L. Rev. 247, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=319702)

But let us concede, for the sake of argument, that informal channels for constitutional change would have developed. 28 We are then faced with another of Strauss's troubling assumptions: that constitutional change advances, uninterrupted, toward whatever progressive norms that we have heretofore relied on amendments to install in the Constitution - racial equality, full political participation for women and eighteen-year-olds, and the elimination of barriers to [*256] full enfranchisement for the poor and other minorities. 29 In

Strauss's world, there is no reaction, no backlash that forestalls future gains (perhaps placing them out of reach), and no backsliding by courts or legislatures. Again and again, he assures us that whatever gains were secured by amendment were already secured in large part or would have been in due time, amendment or not. 30 But often these assertions are made on his own authority, and he does not entertain the possibility that circumstances would have intervened that slowed change, or reversed its direction. Even in the case of a failed amendment, one might argue that by putting the change sought on the Nation's political agenda, the amendment's proponents acted as a catalyst for that change, which, in the absence of an amending mechanism, would not have otherwise progressed in the same way. 31 Strauss also ignores the inherently unstable nature of informal change. Congress may pass laws, but those laws are subject to repeal (or presidential veto). Executive orders may be rescinded. Court decisions may be overruled, distinguished, or ignored. And so on. Consider the New Deal. David Kyvig contrasts Reconstruction with the New Deal by noting the absence of any trace left by the latter in [*257] the text of the Constitution. 32 If Strauss's theory is correct, one would have expected that the Supreme Court's federalism decisions during the 1990s (and early 2000s) would have encountered more resistance from a public that had demanded substantial changes to the small-c-constitution effected after 1937. 33 Yet it is precisely because the New Deal did not enshrine its changes in the Constitution that change was provisional and subject to yet more change in the future. 34

2NC Solvency-Courts

Incremental judicial changes are surpassed by amendments.

Labunski 2k (Richard – Professor of Journalism at the University of Kentucky, "The Second Constitutional Convention: How American People Can Take their Government Back," p. 177-178)

For the judicial branch to serve its indispensable function within a complicated political and legal environment, it must be able to create certain standards that preserve its independence and legitimacy. Many of those standards permit judges to be creative in advancing the law and shaping it to reflect changing conditions. But many of the self-imposed rules and procedures — which have developed over a long period of time and which judges believe are necessary for the courts to function—significantly limit the scope and pace of constitutional change. The American people cannot wait while the courts make incremental modifications to the Constitution one case at a time over many years. They must take bolder and more comprehensive action by holding a second convention to recommend amendments that will help to restore democratic principles and make government more accountable.

Constitutional amendments are not influenced by petty political concerns.

Labunski 2k (Richard – Professor of Journalism at the University of Kentucky, "The Second Constitutional Convention: How American People Can Take their Government Back," p. 111)

Judges cannot, however, be the sole source of constitutional interpretation, aided by an occasional amendment. Because of political nature of the court system — especially the way cases come to and are decided by courts — judges cannot be expected to solve the problems created by an out-of-control campaign finance system and the other challenges that must be addressed by a second constitutional convention. The judicial branch plays an indispensable role in preserving civil liberties against encroachment by government, in striking down laws that violate the Constitution, in interpreting statutes, and by settling other legal disputes. But judges cannot do more than make incremental changes in **a system that cries out for more comprehensive reform**.

Extrajudicial interpretations of the Constitution have resolved multiple issues --- empirically solves

Whittington 2 (Keith – Professor of Politics at Princeton University, "Extrajudicial Constitutional Interpretation: Three Objections and Responses," North Carolina Law Review, Vol. 80, No. 3, 2002, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=293479)

If critics of extrajudicial constitutional interpretation overstate the stability of judicial interpretation, they also underestimate the stability of nonjudicial interpretation. Judicial supremacy is not necessary to settle constitutional understandings. Examples of extrajudicial settlement of constitutional disputes are **commonplace**. Britain has long relied on constitutional convention rather than constitutional law to provide such settlements, and analogous practices exist in the United States. n133 Policymakers were faced with constitutional indeterminacies early on in the nation's history and had little expectation that the judiciary either would or could clarify and stabilize the constitutional rules. Elected officials reached constitutional settlements of their own. Congress determined, for example, that the President could unilaterally remove executive officials. n134 The President successfully vetoed legislation

on policy grounds n135 and excluded the Senate from the negotiation of treaties. n136 Congress and the President agreed on procedures for acquiring new territory and admitting new states into the union. n137 The House and Senate established an understanding of impeachable offenses, and insisted that partisanship was inconsistent with judicial office. n138 George Washington set an enduring precedent of the two-term presidency, and Abraham Lincoln marshaled support for the view that states did not have a right to secede from the Union. The Senate understands that Presidents will generally nominate only members of [*805] their own party to serve in government offices, while the President understands the requirements of "senatorial courtesy." These settlements and others have endured through most of the nation's history with **little assistance from the judiciary**. Other political interpretations of the Constitution have structured government behavior for decades at a time. The Federalists established a broad interpretation of federal powers that embraced the incorporation of a national bank, and the Jacksonian Democrats replaced it with a narrow interpretation - John Marshall's formal endorsement of the broad interpretation notwithstanding. n139 The Federalists successfully claimed that the federal tariff power could be used to protect domestic manufacturers, and the Jacksonian Democrats forcefully abandoned that claim. n140 Presidents through most of American history claimed a power to impound appropriated funds, and in the 1970s Congress successfully established a framework for regulating the presidential spending power and clarifying the congressional power of the purse. n141 Congress regularly passes "framework legislation" and "statutes revolving in constitutional law orbits." n142 For much of the nineteenth century, legislatures were the primary institution for determining the scope of individual rights and were able to settle such disputes at least as effectively as the judiciary. n143 Extrajudicial constitutional settlements gain their stability from a variety of sources, despite the absence of a formal commitment to the authority of precedent. Not least among these supports for settlement is popular opinion. As Edward Corwin noted in outlining departmentalist theory, "finality of interpretation is hence the outcome - when indeed it exists - not of judicial application of the Constitution ... but of a continued harmony of views among the three [*806] departments. It rests, in other words, in the last analysis, on the voting power of public opinion." n144

2NC Judicial Review Key (Sullivan)

Only the counterplan solves – no one models an obsolete document-a strong Constitution is the basis for all of their court key arguments

Law and Versteeg 2012

David S., University of Washington St. Louis Professor of Law and PoliSci, and Mila, UVA Law Professor, The Declining Influence of the United States Constitution New York University Law Review, Vol. 87, 2012 http://whatthegovernmentcantdoforyou.com/wp-content/uploads/2012/02/ssrn-id1923556.pdf

It is equally plausible, however, that responsibility for the declining appeal of American constitutionalism lies with the idiosyncrasies of the Constitution itself rather than the proclivities of the Supreme Court. As the oldest formal constitution still in force, and one of the most rarely amended constitutions in the world,276 the U.S. Constitution contains relatively few of the rights that have become popular in recent decades,277 while some of the provisions that it does contain may appear increasingly problematic, unnecessary, or even undesirable with the benefit of two hundred years of hindsight.278 It should therefore come as little surprise if the U.S. Constitution strikes those in other countries—or, indeed, members of the U.S. Supreme Court279 –as out of date and out of line with global practice.280 Moreover, **even if the Court were committed to interpreting the Constitution in tune with global fashion,** it would still lack the power to update the actual text of the document. Indeed, efforts by the Court to update the Constitution via interpretation may actually reduce the likelihood of formal amendment by rendering such amendment unnecessary as a practical matter. 281 As a result, there is **only so much that the U.S. Supreme Court can do to** make the U.S. Constitution an attractive formal template for other countries. The obsolescence of the Constitution, in turn, may **undermine the appeal of American constitutional jurisprudence**: **foreign courts have little reason to follow the Supreme Court's lead on constitutional issues if the Supreme Court is saddled with the interpretation of an unusual and obsolete constitution**.282 **No amount of ingenuity or solicitude for foreign law on the part of the Court can entirely divert attention from the fact that the Constitution itself is an increasingly atypical document.**

Amendments cause judicial modeling

Marron '03 [Brian P. Editor in Chief of MARGINS Symposium @ Maryland Law, 3 Conn. Pub. Int. L.J. 157, ln]

Raskin explains that some of the solutions require the adoption of new Constitutional amendments such as the ones he has mentioned earlier. Congress lacks the power to effectively reverse the Supreme Court's (mis)interpretations of the Constitution that rejected democratic values. 129 In fact, a movement for democratic constitutional change itself can **influence the reasoning of the Court**. For instance, although the Equal Rights Amendment failed to pass, the Supreme Court apparently took notice of the movement's principles and began to apply "**heightened" scrutiny to** cases of **gender**-based **classifications.** 130

2NC CP doesn't do anything (Strauss)

Only amendments can solve in a national security crisis-the plan is meaningless

Goldstein 1988(Yonkel, J.D. from Stanford Law School, July, "The Failure of Constitutional Controls Over War Powers in the Nuclear Age: The Argument for a Constitutional Amendment", 40 Stan. L. Rev. 1543, Lexis)

None of the proposals to control nuclear weapons discussed above provide the kind of clarity and definitiveness which one would hope would characterize the rules governing the initiation and prosecution of a nuclear war. These proposals are grounded not in a line of clear precedent, but in a soggy morass of conflicting principles. Equally important, there is the perception, by people who regard themselves as hardened realists, that to adhere religiously to orthodox principles of congressional war declaration would be to render the entire nuclear defense deterrence system virtually worthless. [*1587] Because of these considerations, a constitutional amendment concerning the appropriate distribution of war powers should be adopted. More than any other legislative or rulemaking device, a constitutional amendment has a chance of commanding sufficient authority to be credible, **especially in time of crisis**. Because the constitutional problems associated with the control of nuclear weapons are so closely related to the war powers in general, the amendment must deal with war powers generally. Because technical capabilities of weapons and defense systems can change relatively rapidly, it is important that the amendment does not rigidly lock the nation into any specific procedure which is sure to become obsolete. Finally, the amendment ought to account for the recent congressional tendency to avoid taking stands on controversial issues until public opinion has clearly been discerned. Although the desire of members of Congress to see how their constituencies regard an issue is understandable, following massive public sentiment is not a viable option in many nuclear scenarios. Analogous to this congressional hesitancy is the Judiciary's reluctance to involve itself in questions of this kind. If my characterization of the problem is correct, namely that the Executive, aided by judicial acquiescence, has expanded its powers at the expense of congressional power, only one additional source of power on the federal level remains -- that is, of course, the people. The amendment proposed below attempts to take all of the above considerations into account.

Specificity ensures solvency (also in delay block)

Strauss 01 [David A., not David P. but Prof of Law @ Chicago, 114 Harv. L. Rev. 1457, ln]

Finally, for an amendment to matter, it must be unusually difficult to evade. An amendment that specifies a precise rule, for example, is more likely to have an effect than one that establishes only a relatively vague norm. If its text is at all imprecise, an amendment that is adopted at the high-water mark of public sentiment will be prone to narrow construction or outright evasion once public sentiment recedes, as the Fourteenth and Fifteenth Amendments were.

Strauss is wrong

Denning and Vile 02 [Brannon P., Prof of Law @ Samford, and John R., Dept. Chair of PoliSci @ MTSU, "The Relevance of Constitutional Amendments: A Response to David Strauss," 77 Tul. L. Rev. 247, ln]

But let us concede, for the sake of argument, that informal channels for constitutional change would have developed. 28 We are then faced with another of Strauss's **troubling assumptions**: that constitutional change advances, uninterrupted, toward whatever progressive norms that we have heretofore relied on amendments to install in the Constitution - racial equality, full political participation for women and eighteen-year-olds, and the elimination of barriers to [*256] full enfranchisement for the poor and other minorities.

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2NC-Delay

---Fiat is immediate and reciprocal—ensures fair division of ground between the aff and neg, their interpretation means all counterplans would be delay, and the neg could never win.

---amendment process is not inherently slow

Jackson '01 (Jesse L. Jackson, Jr., 2001, U.S. Representative, "A More Perfect Union: Advancing New American Rights")

Some will say that amending the Constitution once, not to mention eight times, takes too long, requires too much energy, and costs too much money – that it's an inefficient stewardship of time and resources. The answer to the first argument is that the Constitution has been amended twenty-seven times, including seventeen times since the original Bill of Rights was passed. (The Bill of Rights itself required 811 days – from September 25, 1789, to December 15, 1791 – for ratification.) Following the initial, usually lengthy struggle to get an amendment through two-thirds of the House and Senate, there is no time limit for ratifying it – that is, no seven-year limitation on ratifying amendments, as many people believe. This schedule was arbitrarily placed on the Equal Rights Amendment (and later extended to ten years) and the D.C. Statehood Amendment. Once a state legislature votes for an amendment, that affirmation remains in place, unless a later body reverses it. How long it takes for my amendments to be passed by House and Senate, and ratified by three-quarters of the state legislatures, will be determined by a combination of political leadership and the will of the American people. If Americans have a strong desire for these rights – have a political fire burning in their bellies – such amendments can be shuttled through the House and Senate and ratified relatively quickly after a legitimate national debate on their substance and implications.

---Plan is slow-massive delay

Rosenberg, McClatchy Newspaper, 2011

(Carol, "How Congress helped thwart Obama's plan to close Guantanamo", 1-22, http://www.mcclatchydc.com/2011/01/22/107255/how-congress-helped-thwart-obamas.html, ldg)

Key among the factors, the cables suggest: Congress' refusal to allow any of the captives to be brought to the United States. In cable after cable sent to the State Department in Washington, American diplomats make it clear that the unwillingness of the United States to resettle a single detainee in this country — even from among 17 ethnic Muslim Uighurs considered enemies of China's communist government – **made other countries reluctant to take in detainees**. Europe balked and said the United States should go first. Yemen at one point proposed the United States move the detainees from Cuba to America's SuperMax prison in the Colorado Rockies. Saudi Arabia's king suggested the military plant micro-chips in Guantanamo captives before setting them free. A January 2009 cable from Paris is a case in point: France's chief diplomat on security matters insisted, the cable said, that, as a precondition of France's resettling Guantanamo captives the United States wants to let go, "the U.S. must agree to resettle some of these same LOW-RISK DETAINEES in the U.S." In the end, France took two. Closing the Guantanamo detention center had been a key promise of the Obama presidential campaign, and the new President Barack Obama moved quickly to fulfill it. Just two days after taking the oath of office, on Jan. 22, 2009, Obama signed an executive order instructing the military to close Guantanamo within a year. European countries were effusive in their praise. But as the second anniversary of that order passed Saturday, the prison camps remain open, and the prospects of their closure appear dim. Prosecutors are poised to ramp up the military trials that Obama once condemned, and the new Republican chairman of the House Armed Services Committee, Rep. Buck McKeon of California, last week said the U.S. should grow the population to perhaps 800 from the current 173. Many factors worked to thwart Obama's plans to close the camps — from a tangled bureaucracy to fears that released detainees would become terrorists. But Congress'

prohibition on resettling any of the detainees in the United States hamstrung the administration's global search for countries willing to take the captives in. The U.S. refusal to take in the captives "comes up all the time," acknowledged a senior Obama administration official of U.S. efforts to find homes for released detainees. "Were we willing to take a couple of detainees ourselves, it would've made the job of moving detainees out of Guantanamo significantly easier," said the official, who agreed to speak only anonymously because of the delicacy of the diplomacy.

An amendment that specifies a precise rule is immediate in effect.

Strauss 1 (David A. – Harry N. Wyatt Professor of Law at the University of Chicago, "The Irrelevance of Constitutional Amendments," 114 Harv. L. Rev. 1457, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2986&context=journal_articles)

Finally, **for an amendment to matter, it must be** unusually **difficult to evade**. **An amendment that specifies a precise rule**, for example, **is more likely to have an effect than one that establishes only a relatively vague norm**. If its text is at all imprecise, an amendment that is adopted at the high-water mark of public sentiment will be prone to narrow construction or outright evasion once public sentiment recedes, as the Fourteenth and Fifteenth Amendments were.

2NC—AT: Runaway

The CP solves --- a limited Constitutional convention solves.

Eidsmoe 92 (John – Senior Counsel and Resident Scholar at the Foundation for Moral Law, "New Constitutional Convention--Critical Look at Questions Answered, and Not Answered, by Article Five of the United States Constitution," 3 U.S. A.F. Acad. J. Legal Stud. 35, http://heinonline.org/HOL/Page?handle=hein.journals/usafa3&div=6&g_sent=1&collection=journals)

Concon proponents answer that these fears are totally unfounded. States may limit the convention to a single issue by calling for a convention for that limited purpose. Likewise, Congress, in calling the convention, may in its statutory call limit the convention's authority and purposes. The late Senator Everett Dirksen (R-Ill) believed a convention could be limited: I apprehend that when the applications are for a stated purpose or amendment... then in effect the state legislatures, which alone possess the initiative in convening a convention, have by their own action taken the first step toward limiting the scope of the convention. It would then remain for the Congress to implement this attempt to limit the convention by making appropriate provision in its call.' The late Senator Sam Ervin (D-NC), regarded as one of the leading constitutional experts ever to serve in the U.S. Senate, also believed the states and Congress can limit the scope of a convention." The American Bar Association conducted a detailed study of the issue and reached the same conclusion in 1973.

2NC—AT: Theory

CP provides unique education on surveillance and the separation of powers.

Forsythe and Presser 6 (Clarke D. – Director of the Project of Law and Bioethics at Americans United for Life, and Stephen B. – Professor of Legal History at Northwestern University School of Law, "RESTORING SELF-GOVERNMENT ON ABORTION: A FEDERALISM AMENDMENT," 10 Tex. Rev. Law & Pol. 301, http://www.trolp.org/main_pgs/issues/v10n2/Forsythe.pdf)

Our constitutional system provides only two ways to overturn a Supreme Court holding interpreting the Constitution: an overruling decision by the Court itself or a constitutional amendment. Obviously, constitutional amendments are among the most difficult political goals to achieve in our constitutional system. This article is unique in its explanation of the legal effect and implications of a federalism amendment on abortion. Because no previous legal analysis of this kind exists, this article is limited to evaluating the legal impact of a federalism [*341] amendment. It is beyond the scope of this article to evaluate fully the political obstacles or implications involved in the passage of such an amendment. For those who believe, as we do, that Roe has poisoned our political and judicial discourse, the political obstacles facing such an amendment ought to be weighed against the political obstacles to changing the Court's membership in the coming years to accomplish the same goal. Given that these political obstacles have resulted in a situation where there are only two publicly-declared Justices remaining on the Supreme Court who advocate the overturning of Roe thirty-three years after Roe, the obstacles to a constitutional amendment, while severe, may be less formidable than attempting to overrule Roe by changing the membership of the Court. Even if an amendment is impossible to accomplish, we do believe that legal and strategic dialogue and debate on abortion is healthy for its own sake. It is also possible that the arguments, public education, and political support involved in advocating a federalism amendment, even if Congress fails to consider an amendment, might move future Justices closer to the point of finally overturning this tragic decision.

---Don't get it twisted---the plan also does something that never happens i.e. the Court contradicting something when both branches agree it's a national security issue.

---Probability of amendment process isn't an argument

Castro 86—JD Candidate at UPenn

(A Constitutional Convention: Charting Article V's Undiscovered Country,

134 U. Pa. L. Rev. 939)

[*940] **The possibility of a convention is not here merely for the moment -- it is here to stay.** Convention requests have already been filed on a variety of issues; [6] this is the second time in the past twenty years that Congress has **almost been forced to call a constitutional convention**. [7] Unfortunately, the process of amendment via a constitutional convention has never been thoroughly worked out. [8] No one need elaborate on what may happen if Congress calls a convention while the convention process remains undefined; one need only reflect on the impact of the last convention on the Articles of Confederation to gain a sense of the magnitude of change that might occur.

---Topic Focus---this is a legal topic-process matters-their interpretation turns the topic into surveillance good/bad-the question of how executive authority should be constrained is obviously a core issue and a legitimate avenue for negative ground.

---Reciprocity isn't a reason to reject

A. Structural affirmative advantages offset. Speaking first and last, infinite prep time, and affirmative win percentages prove.

B. Arbitrary. Multi-actor fiat is not intrinsically more fiat than single-actor fiat. Increasing a controversial restriction on executive authority is reciprocal to the counterplan.

C. Undermines policy analysis and education. Issues like reciprocity are not absolute and should be balanced against attempts to find the best policy and developing arguments grounded in the literature.

---Optimal Policy-The purpose of policy debate is to find the best policy. The affirmative has unlimited time to devise the best plan it can. If it's proven not to be the best, it should be rejected.

2NC A2: Multi-Actor Fiat

--- Their interpretation is like a bad high school civics class-multiple actors is an intrinsic element in policymaking

GEYH 98 Georgetown Law Journal

http://www.findarticles.com/p/articles/mi_qa3805/is_199810/ai_n8809190

Despite the high school civics mantra that our government is comprised of three separate and independent branches, the paradoxical interdependence of these "independent" branches-brought about by a system of checks and balances in which each branch possesses the means to make the others miserable if they get out of line-is widely understood. Thus, we all know that legislators depend on judges to interpret the meaning of statutes and assess their constitutionality, while judges depend on legislators for the resources needed to perform their interpretive functions.

---Almost all plans require action by multiple agents. Acting through Congress implies the persuasion of over half of its 535 members. There's no difference between this and persuading actors in other government institutions.

2NC State Fiat

---Counter-interpretation. Domestic Actor Model. Fiat should be limited to domestic political actors in the United States. Debate is best understood as an adjunct to democratic decision making. This explains why we always select topics where we have at least some fractional impact on. This provides a fair limit on negative fiat as state or local action as an alternative to federal action is a recurrent issue in American politics.

---Search for best policy justifies. Net benefits checks abuse and is a warrant for voting negative. No rational decision-maker would reject the counterplan if it is a superior policy option to the affirmative.

---Uniform action isn't an argument. Policy realism is a double-edged sword for the affirmative since the status quo not restricting war power.This is a solvency argument at best that enforcement would be uneven not a reason to reject the counterplan.

---Reciprocity isn't an argument. First, the states are treated as a collective in the literature comparing state versus federal action. This checks against their infinite regression impact and proves the counterplan is reciprocal. Second, numerical standard is flawed since one state is clearly not equal to the federal government.

---Solvency advocate isn't an argument. First, all of our solvency evidence for the counterplan is a solvency advocate. Their interpretation is arbitrary. Second, At best this is a solvency argument. Their predictability argument is insane in the context of the damn states counterplan.

2NC Perm-Do Both

---Simultaneous adoption links to our net benefits---the permutation has the Court engage in Constitutional interpretation at the same time an amendment process is resolving the same issue-adopting the plan after the counterplan is an illegitimate time-frame permutation-Future fiat undermines negative ground. It eliminates all short term, time sensitive disadvantages. Without these arguments, debate would be incredibly skewed towards the affirmative

---Judicial involvement undermines the legitimacy of the amendment
Harvard Law Review, 19**90**

103 Harv. L. Rev. 1344 NOTE: CONSTITUTIONAL STARE DECISIS.

Judicial review does not as effectively guarantee widespread public support for the Constitution. 81 Rather than involving both Houses of Congress and each of the states, overruling decisions involve **only the federal courts**. Moreover, while amendments are valid because they follow the process mandated by the Constitution, a Supreme Court decision is acceptable only if its interpretation of the Constitution is convincing. Finally, judicial "amendments" contradict one of the purposes of article V. The amendment process affirms that sovereign power remains with the people and gives them a way to override the [*1357] judgment of the judiciary. 82 As a consequence, **judicial involvement in "amending" is inherently suspect**. 83

---And it links to our Court DA-The permutation bust the Political question doctrine
Castro 86—JD Candidate at UPenn

(A Constitutional Convention: Charting Article V's Undiscovered Country,

134 U. Pa. L. Rev. 939)

> Although there are a number of cases supporting a Supreme Court review of issues arising out of constitutional conventions, [75] it could be [*959] argued that the political question doctrine bars a fourteenth amendment challenge to a state's article V activities. In a nutshell, the problem is that the Court's review of constitutional convention activity must not threaten or undermine "either the *independence and integrity* of one of the branches or levels of government, or the ability of each to fulfill its mission in checking the others so as to preserve the *interdependence* without which independence can become domination." [76] Contrary to the contentions of some commentators, [77] however, the political question doctrine does not present an absolute bar to judicial review of article V activity. Thus, a plaintiff should be able to challenge a state's selection of delegates to a constitutional convention, for example, on the grounds that the selection process did not provide for the adequate representation of minorities.

2NC Perm-Do CP

Court rulings on an issue are distinct from upholding the amendment-Severance is illegitimate because if the 2AC could pick and choose what part of the plan to defend, no counterplan would compete.

Worthen 4 <Kevin J. (Professor of Law and Associate Dean, J. Reuben Clark Law School, Brigham Young University), *BYO Journal of Public Law*, "Same-Sex Marriage Symposium Issue: Who Decides and What Difference Does It Make?: Defining Marriage in "Our Democratic, Federal Republic," 18 BYU J. Pub. L. 273, 2004, lexis>

[*306] As a practical matter, recent experience has demonstrated that state court judicial review of state statutes can too easily lead to judicial resolution of the issue contrary to the will of the people and the legislature. n135 At least some state **court judges appear to be too eager to the resolve the issue for themselves**, without a careful consideration of their proper role in the system. The risk of tyranny of the judiciary is therefore somewhat high on such an impassioned issue. This, in turn, lessens the net benefit of a "double" judicial security. More importantly, as a theoretical matter, in our system, the ultimate sovereign who must remain responsible for whatever acts the government takes is the people. n136 While there are filters though which the people's judgment must pass before it is properly implemented in our system, in the long run, it is their judgment, not that of the judiciary, which should control. If a state constitutional amendment were adopted through the non-initiative process, the people's judgment would have passed through the requisite filters, and federal judicial review would be available to further ensure that other more process-oriented norms were not violated. Thus, while a proponent of "our democratic, federal, republican" form of government might be persuaded either way on the matter, this particular proponent concludes that the optimum form of resolution of the same-sex marriage issue is to specifically address the issue through a non-initiative generated state constitutional amendment.

---Severs judicial restriction-Judicial restrictions are initiated by the Judiciary and distinct from Congressional action

Sullivan-JD Candidate Baylor-4 56 Baylor L. Rev. 253, *

NOTE: The Grizzle Bear: Lingering Exculpatory Clause Problems Posed by Texas Commerce Bank, N.A. v. Grizzle

Exculpatory clauses are governed **not only by legislative requirements but also by judicial restrictions as well.** This Note next **explores the additional requirements imposed by the judiciary**. IV. Judicial Restrictions on Exculpatory Clauses Before the TTA, then under the TTA, and then under the TTC, **Texas courts supplemented statutory law with judicial restrictions on exculpatory clauses**. Texas courts thereby ensured additional protections against breaches committed with reckless indifference, in bad faith, or with intentional adversity to the beneficiary's interests. Courts, however, often employed imprecise language in attempting to constrain exculpation. This imprecise language created a trap for future unwary courts.

2NC—AT: Perm-vs Congress affirmatives

The plan is statutory law, the CP is constitutional law --- they sever normal means

Difference Between 13 ("Difference between Statutory Law and Constitutional Law," http://www.differencebetween.info/difference-between-statutory-law-and-constitutional-law)

Laws are an important part of society; they ensure peace and tranquility throughout the land. Imagine a world without laws, where everyone would be allowed to do as they wish. It would be chaos! Everyone would be free to steal, murder, do business as they please, etc. There would be no one to make sure everyone is treated fairly, business is being lawfully, people are being treated properly, etc. Hence, laws are very important to ensure that everyone is treated fairly and right. No one under the law is given extra power and everyone is treated the same. There are various different types of laws that are used to monitor different parts of the society and each law created monitors that specific part only. For people that are not well versed with the law and its studies can often become confused (with the language adding to the confusion). Statutory Law and Constitutional Law are two different types of law that are used to govern different aspects of the society. Statutory Laws are laws that have been written down and codified by the legislative branch of a country. The law has been set down by a legislature or legislator (if it is a monarchy) and codified by the government. These laws are also known as written law or session law. Statutory laws are often subordinate to the higher constitutional laws. The laws are written on a bill and must be passed by the legislative body of the government. Statutory laws originate from municipalities, state legislature or national legislature. The term 'codified' states that the law is organized by the subject matter. However, not all statutory laws are considered as 'codified'. The statues are often referred to as code. Codifying a law can also refer to taking a common law and putting it in statute or code form. Statues are prone to being over written or expiring, depending on the law that was passed. Many countries depend on a mixed law system to provide the proper justice. This is because statutory laws are often written in general language and may not govern every situation that may arise. In cases like these, the courts must interpret and determine the proper meaning of the statute that is most relevant to the case. Both statutory laws and common laws can be disputed and appealed in higher courts. Constitutional Law is the body of law that defines the relationship between different entities within a nation, most commonly the judiciary, the executive and the legislature bodies. Not all nations have a codified constitution, though all of them have some sort of document that states certain laws when the nation was established. These rules could state the basic human rights of the man and women of that state, including rights to own property, freedom of speech, etc. The main purpose of the constitutional law is to govern the law making bodies in the nation. It gives them set boundaries of the laws they cannot violate. For example, the law makers cannot violate the public's rights to do certain things such as freedom of speech, right to petition, freedom of assembly, etc. The constitutional law of a country can be changed if the government falls or changes. Additions can also be made to the constitution in form of amendments.

2NC Legitimacy-Shifts spotlight to convention (Schafly)

Their evidence is Phyllis Schlafly propaganda against the ERA-you should discount everything she says

Michel-Exildas **Galipeau** 9/6/**11**

http://rooferonfire.blogspot.com/2011/09/michele-bachmann-is-idiot-of-day.html

Phyllis Schlafly did stop the Equal Rights Amendment to the Constitution. She used popular **homophobia and sexism** under the guise of women's rights to **convert minds and prevent ratification of an amendment** that consisted of these sole points: Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article. Section 3. This amendment shall take effect two years after the date of ratification. Here are some smart kids spelling it out for you: Secondly, Mrs. Schlafly believes, to this day, that **women cannot be raped by their husbands**. In 2007, while giving a speech at Bates College, she uttered the following: "By getting married, the woman has consented to sex, and I don't think you can call it rape. She didn't back down from the statement, in fact, she affirmed it in 2008, when Washington University bestowed an honorary doctorate on her. In an interview with the student newspaper, she reiterated her prior statement. "I think that when you get married you have consented to sex. That's what marriage is all about, I don't know if maybe these girls missed sex ed." Phyllis Schlafly has all kinds of other crazy ideas too. From **blaming the Virginia Tech massacre on the English department** to calling for the impeachment of a Justice who voted to bar minors from receiving the death penalty, old Phyllis is the proud queen of the ultraconservative lobby. She also believes in men's supremacy, with a strong belief that men should avoid career women at all costs, and even the fact that women deserve less pay than men in order to encourage them to pursue their **Christ-approved position as wives and mothers** of many children: "we want a society in which the average man earns more than the average woman so that his earnings can fulfill his provider role in providing a home and support for his wife who is nurturing and mothering their children". She doesn't believe in women holding management positions, wage equality, or discrimination protection in the workplace for women because such protections might give women overtime work or promotions that interfere with her far more important domestic duties. To this day, the 87 year old Queen of Mean is at the forefront of movements against women's health care, gay rights, and fair divorce. Michele Bachmann desires to go to the White House with the teachings of her headmistress firmly at the forefront of her policies. Phyllis Schlafly is one of the meanest women in the public eye, and Bachmann wants to be a bigger, badder, louder version of her.

Commissions CP

1NC

Counterplan: The United States Congress should establish an independent commission empowered to submit to Congress recommendations regarding domestic federal government surveillance. Congress will allow 60 days to pass legislation overriding recommendations by a two-thirds majority. If Congress doesn't vote within the specified period, those recommendations will become law. The Commission should recommend to Congress that _____<insert the plan>_____

2NC O/V

Counterplan solves 100% of the case—Congress creates an independent commission comprised of experts to debate the merits of the plan, and the commission recommends to Congress that it passes the plan—Congress must pass legislation specifically blocking those recommendations within 60 days or the commission's recommendations become law

AND, that solves the AFF—commissions are empowered to debate Internet backdoors and submit recommendations—that's RWB

2NC Solvency

Empirics prove commissions solve
FT 10

(Andrews, Edmund. "Deficit Panel Faces Obstacles in Poisonous Political Atmosphere," Fiscal Times. 02-18-2010. http://www.thefiscaltimes.com/Articles/2010/02/18/Fiscal-Commission-Faces-Big-Obstacles?page=0%2C1//ghs-kw)

Supporters of a bipartisan deficit commission note that at least two previous presidential commissions succeeded at breaking through intractable political problems when Congress was paralyzed. The 1983 Greenspan commission, headed by Alan Greenspan, who later became chairman of the Federal Reserve, **reached an historic agreement to gradually raise Social Security taxes and gradually increase the minimum age at which workers qualify for Social Security retirement benefits. Those recommendations passed both the House and Senate, and averted a potentially catastrophic financial crisis with Social Security.**

2NC Solves Better

CP solves better—technical complexity

Glassman and Straus 15

(Glassman, Matthew E. and Straus, Jacob R. Analysts on Congress at the Congressional Research Service. "Congressional Commissions: Overview, Structure, and Legislative Considerations ," Congressional Research Service. 01-27-2015. http://fas.org/sgp/crs/misc/R40076.pdf//ghs-kw)

Obtaining Expertise Congress may choose to establish a commission when legislators and their staffs do not currently have sufficient knowledge or expertise in a complex policy area.22 By assembling experts with backgrounds in particular policy areas to focus on a specific mission, legislators might efficiently obtain insight into complex public policy problems.23

2NC Backdoors Solvency

Commission solves the plan

RWB 13

(Reporters Without Borders is a UNESCO and UN Consultant and a non-profit organization. "US congress urged to create commission to investigate mass snooping," RWB, 06-10-2013. https://en.rsf.org/united-states-us-congress-urged-to-create-10-06-2013,44748.html//ghs-kw)

Reporters Without Borders **calls on the US Congress to create a commission of enquiry into the links between US intelligence agencies and nine leading Internet sector companies that are alleged to have given them access to their servers.** The commission should also identify all the countries and organizations that have contributed to the mass digital surveillance machinery that – according to reports in the Washington Post and Guardian newspapers in the past few days – the US authorities have created. According to these reports, the telephone company Verizon hands over the details of the phone calls of millions of US and foreign citizens every day to the National Security Agency (NSA), while **nine Internet majors – including Microsoft, Yahoo, Facebook, Google and Apple – have given the FBI and NSA direct access to their users' data** under a secret programme called Prism. US intelligence agencies are reportedly able to access all of the emails, audio and video files, instant messaging conversations and connection data transiting through these companies' servers. According to The Guardian, Government Communication Headquarters (GCHQ), the NSA's British equivalent, also has access to data collected under Prism. The proposed congressional commission should evaluate the degree to which the collected data violates privacy and therefore also freedom of expression and information. The commission's findings must not be classified as defence secrets. These issues – protection of privacy and freedom of expression – **are matters of public interest.**

2NC Cybersecurity Solvency

Commissions are key—solves legitimacy and perception
Abrahams and Bryen 14

(Rebecca Abrahams and Dr. Stephen Bryen, CCO and Chairman of Ziklag Systems, respectively. "Investigating Heartbleed," Huffington Post. 04-11-2014. http://www.huffingtonpost.com/rebecca-abrahams/investigating-heartbleed_b_5134404.html//ghs-kw)

But who can investigate the matter? This is a non-trivial question because the government is no longer trustworthy. Congress could set up an independent commission to investigate compromises to computer security. It should be staffed by experts in cryptography and by national security specialists. The Commission, if empowered, should also make recommendations on a way forward for internet security. What is needed is a system that is accountable, where the participants are reliable, and where there is security from interference of any kind. Right now, no one can, or should, trust the Internet.

2NC Financial Dereg Solvency

Commissions solve financial deregulation
Tiberghien 7

(Tiberghien, Yves. Yves Tiberghien (Ph.D. Stanford University, 2002) is the Director of Institute for Asian Research (IAR) and an Associate Professor of Political Science at the University of British Columbia. He is also a Faculty Associate at the Center for Chinese Research, at the Center for Japanese Research, and at the Institute for European Studies at UBC, as well as a Research Associate at Science Po Paris and at the Asia Centre (Paris). Yves is a graduate from HEC Paris (Hautes Etudes Commerciales). He earned a Master of Science in Management from the Community of European Management Schools (CEMS) and a Master of International Policy Studies from Stanford University. Yves was an Academy Scholar at Harvard University in 2004-2006. He has also been a Japan Foundation Scholar at the Japanese Ministry of Finance, Keio University and GRIPS (Tokyo). In 2010-2011, he was a visiting professor at National Chengchi University of Taiwan, as well as an East Asian Institute Fellow at Peking University, Fudan University, Keio University, and Taiwan University. He specializes in comparative political economy and international political economy with an empirical focus on China, Japan, and Korea. At UBC, he teaches courses in international and comparative political economy (with a focus on Asian political economy and geopolitics), as well as the courses on Chinese Politics and Japanese Politics. "Entrepreneurial States: Reforming Corporate Governance in France, Japan, and Korea," Cornell University Press, 2007.
https://books.google.com/books?id=YjLfVYCUeTUC&pg=PA69&lpg=PA69&dq=(%22congressional+commission%22+OR+%22independent+commission%22)+AND+%22financial+deregulation%22&source=bl&ots=RPir7fo0de&sig=hezwFSnCJAWjwLQ_P-QtMQKJmVY&hl=en&sa=X&ved=0CEMQ6AEwBWoVChMIl_7N_IilxwIVgUo-Ch3FBADR#v=onepage&q&f=false//ghs-kw)

In January 1984, the government first passed a far-reaching banking act (first major banking reform since 1945), **which removed old divisions between investment and commercial banks and introduced new unified prudential rules for all financial institutions, under the leadership of an empowered independent commission**, the Comission Bancaire. 11 The government abandoned credit control in November 1984, then created new financial instruments such as money markets, commercial markets, and financial futures. The crowning step in the process of financial deregulation came on 1 July 1990 with the abolition of capital controls, a decision that came as part of EU-wide liberalization, as contained in the Single European Act of 1986. Another related and very important reform was the liberalization of inward foreign direct investments (FDI), with the removal in the late 1980s of the requirement that the prime minister personally approve any foreign investment proposal in France (autorisation préalable du Premier Ministre). 12

2NC Prisons Solvency

Commissions are key to accountability—Florida proves

Kennedy 15

(Kennedy, John. "Independent commission may oversee Florida's troubled prisons," Palm Beach Post. 2-16-2015. http://postonpolitics.blog.palmbeachpost.com/2015/02/16/independent-commission-may-oversee-floridas-troubled-prisons///ghs-kw)

Florida's troubled prison system would be guided by an independent oversight commission that could probe allegations of inmate abuse and poor health care, under legislation that sailed Monday through a Senate panel. The Criminal Justice Committee's 4-0 vote adds heft to a key recommendation made recently by a university panel that studied the nation's third largest prison system and found it horribly flawed. "This is a big step," said Allison DeFoor, chairman of the Project on Accountable Justice at Florida State University, whose November report called for the monitoring board. "Given the breadth of what the Senate committee is recommending, **people seem really serious about reform**," he added. Still, the measure (CS/SB 7020) has a long way to go. The House has only begun holding hearings on the Department of Corrections, plagued by months of media reports of suspicious inmate deaths, allegations of guards beating prisoners, staffing woes and shoddy medical treatment documented in a series of stories by the Palm Beach Post. Gov. Rick Scott and Department of Corrections Secretary Julie Jones – the governor's fourth prisons chief in as many years – also have shown little support for establishing an outside commission. But Sen. Rob Bradley, R-Fleming Island, said the proposed nine-member Florida Corrections Commission is needed. "We talk a lot in Tallahassee about accountability in things like health care and education and that's very important," Bradley said, adding, **"It also holds true for our criminal justice system…I think the people** of the state of Florida **expect nothing less."**

2NC Politics NB

No link to politics—commissions result in bipartisanship and bypass Congressional politics

Glassman and Straus 15

(Glassman, Matthew E. and Straus, Jacob R. Analysts on Congress at the Congressional Research Service. "Congressional Commissions: Overview, Structure, and Legislative Considerations ," Congressional Research Service. 01-27-2015. http://fas.org/sgp/crs/misc/R40076.pdf//ghs-kw)

Overcoming Political Complexity Complex policy issues may also create institutional problems because they do not fall neatly within the jurisdiction of any particular committee in Congress.26 By virtue of their ad hoc status, commissions may circumvent such issues. Similarly, a commission may allow particular legislation or policy solutions to bypass the traditional development process in Congress, potentially removing some of the impediments inherent in a decentralized legislature.27 Consensus Building Legislators seeking policy changes may be confronted by an array of political interests, some in favor of proposed changes and some against. When these interests clash, the resulting legislation may encounter gridlock in the highly structured political institution of the modern Congress.28 **By creating a commission, Congress can place policy debates in a potentially more flexible environment, where congressional and public attention can be developed over time**.29 Reducing Partisanship Solutions to policy problems produced within the normal legislative process may also suffer politically from charges of partisanship.30 Similar charges may be made against investigations conducted by Congress.31 **The non-partisan or bipartisan character of most congressional commissions may make their findings and recommendations less susceptible to such charges and more politically acceptable to diverse viewpoints**. **The bipartisan or nonpartisan arrangement can potentially give their recommendations strong credibility, both in Congress and among the public, even when dealing with divisive issues of public policy.**32 Commissions may also give political factions space to negotiate compromises in good faith, bypassing the short-term tactical political maneuvers that accompany public negotiations.33 Similarly, because commission members are not elected, they may be better suited to suggesting unpopular, but necessary, policy solutions.34 Solving Collective Action Problems A commission may allow legislators to solve collective action problems, situations in which all legislators individually seek to protect the interests of their own district, despite widespread agreement that the collective result of such interests is something none of them prefer. Legislators can use a commission to jointly "tie their hands" in such circumstances, allowing general consensus about a particular policy solution to avoid being impeded by individual concerns about the effect or implementation of the solution.35 For example, in 1988 Congress established the Base Closure and Realignment Commission (BRAC) as a politically and geographically neutral body to make independent decisions about closures of military bases.36 The list of bases slated for closure by the commission was required to be either accepted or rejected as a whole by Congress, **bypassing internal congressional politics** over which individual bases would be closed, **and protecting individual Members from political charges** that they didn't "save" their district's base.37

CP avoids the focus link to politics

Glassman and Straus 15

(Glassman, Matthew E. and Straus, Jacob R. Analysts on Congress at the Congressional Research Service. "Congressional Commissions: Overview, Structure, and Legislative Considerations ," Congressional Research Service. 01-27-2015. http://fas.org/sgp/crs/misc/R40076.pdf//ghs-kw)

Overcoming Issue Complexity Complex policy issues may cause time management challenges for Congress. Legislators often keep busy schedules and may not have time to deal with intricate or technical policy problems, particularly if the issues require consistent attention over a period of time.24 A commission can devote itself to a particular issue full-time, and can focus on an individual problem without distraction.25

No link to politics—commissions create bipartisan negotiations
Campbell 01

(Campbell, Colton C. Dr. Colton Campbell is Professor of National Security Strategy. He received his Ph.D. from the University of California, Santa Barbara, and his B.A. and M.A. from California State University, Chico. Prior to joining the National War College, Dr. Campbell was a Legislative Aide to Representative Mike Thompson (CA-01), chair of the House Intelligence Committee's Subcommittee on Terrorism, Analysis and Counterintelligence, where he handled Appropriations, Defense and Trade matters for the congressman. Before that, he was an Analyst in American National Government at the Congressional Research Service, an Associate Professor of Political Science at Florida International University, and an American Political Science Association Congressional Fellow, where he served as a policy adviser to Senator Bob Graham of Florida. Dr. Campbell is the author, co-author, and co-editor of 11 books on Congress, most recently the Guide to Political Campaigns in America, and Impeaching Clinton: Partisan Strife on Capitol Hill. He has also written more than two dozen chapters and articles on the legislative process. Discharging Congress : Government by Commission. Westport, CT, USA: Greenwood Press, 2001. ProQuest ebrary. Web. 27 July 2015. Ghs-kw.)

The third major **reason for Congress to delegate to a commission is the strategy of distancing itself from a politically risky decision.** These instances generally occur when Congress faces redistributive policy problems, such as Social Security, military base closures, Medicare, and welfare. Such problems are the most difficult because legislators must take a clear policy position on something that has greater costs to their districts than benefits, or that shifts resources visibly from one group to another. Institutionally, Congress has to make national policy that has a collective benefit, but the self-interest of lawmakers often gets in the way. Members realize that their individual interests, based on constituents' demands, may be at odds with the national interest, and this can lead to possible electoral repercussions. 55 Even when pursuing policies that are in the interests of the country as a whole, legislators do not want to be blamed for causing losses to their constituents. In such an event, the split characteristics of the institution come into direct conflict. Many on Capitol Hill endorse a commission for effectively resolving a policy problem rather than the other machinery available to Congress. A commission finds remedies when the normal decision making process has stalled. A long-time Senate staff director said of the proposed Second National Blue Ribbon Commission to Eliminate Waste in Government: **"At their most effective, these panels allow Congress to realize purposes most members cannot find the confidence to do unless otherwise done behind the words of the commission."** 56 When an issue imposes concentrated costs on individual districts yet provides dispersed benefits to the nation, Congress responds by masking legislators' individual contributions and delegates responsibility to a commission for making unpleasant decisions. 57 Members avoid blame and promote good policy by saying something is out of their hands. This method allows legislators— especially those aiming for reelection— to vote for the general benefit of something without ever having to support a plan that directly imposes large and traceable geographic costs on their constituents. **The avoidance or share-the-blame route was much of the way Congress and the president finally dealt with the problem of financially shoring up Social Security in the late 1980s.** One senior staff assistant to a western Republican representative observed that the creation of the Social Security Commission was largely for avoidance: "There are sacred cows and then there is Social Security. Neither party or any politician wants to cut this. Regardless of what you say or do about it, in the end, you defer. Everyone backs away from this." Similarly, a legislative director to a southern Democratic representative summarized: "So many people are getting older and when you take a look at who turns out, who registers, people over sixty-five have the highest turnout and they vote like clockwork." The Commission on Executive, Legislative, and Judicial Salaries, later referred to as the Quadrennial Commission (1967), is another example. Lawmakers delegated to a commission the power to set pay for themselves and other top federal officials, whose pay they linked to their own, to help them avoid blame. Increasing their own pay is a decision few politicians willingly endorse. **Because the proposal made by the commission would take effect unless Congress voted to oppose it, the use of the commission helped insulate legislators from political hazards.** 58 That is, because it was the commission that granted pay raises, legislators could tell their constituents that they would have voted against the increase if given the chance. Members could get the pay raise and also the credit for

opposing it. Redistribution is the most visible public policy type because it involves the most conspicuous, long run allocations of values and resources. Most divisive socioeconomic issues— affirmative action, medical care for the aged, aid to depressed geographic areas, public housing, and the elimination of identifiable governmental actions— involve debates over equality or inequality and degrees of redistribution. These are "political hot potatoes, in which a commission is a good means of putting a fire wall between you [the lawmaker] and that hot potato," the chief of staff to a midwestern Democratic representative acknowledged. Base closing took on a redistributive character as federal expenditures outpaced revenues. It was marked not only by extreme conflict but also by techniques to mask or sugarcoat the redistributions or make them more palatable. The Base Closure Commission (1991) was created with an important provision that allowed for silent congressional approval of its recommendations. Congress required the commission to submit its reports of proposed closures to the secretary of defense. The president had fifteen days to approve or disapprove the list in its entirety. If approved, the list of recommended base closures became final unless both houses of Congress adopted a joint resolution of disapproval within forty-five days. Congress had to consider and vote on the recommendations en bloc rather than one by one, thereby giving the appearance of spreading the misery equally to affected clienteles. A former staff aide for the Senate Armed Services Committee who was active in the creation of the Base Closure Commission contended, "There was simply no political will by Congress. The then-secretary of defense started the process [base closing] with an in-house commission [within the Defense Department]. Eventually, however, Congress used the commission idea as a 'scheme' for a way out of a 'box.'" CONCLUSION Many congressional scholars attribute delegation principally to electoral considerations. 59 For example, in the delegation of legislative authority to standing committees, legislators, keen on maximizing their reelection prospects, request assignments to committees whose jurisdictions coincide with the interests of key groups in their districts. Delegation of legislative functions to the president, to nonelected officials in the federal bureaucracy, or to ad hoc commissions also grows out of electoral motives. Here, delegation fosters the avoidance of blame. 60 Mindful that most policies entail both costs and benefits, and apprehensive that those suffering the costs will hold them responsible, members of Congress often find that the most attractive option is to let someone else make the tough choices. Others see congressional delegation as unavoidable (and even desirable) in light of basic structural flaws in the design of Congress. 61 They argue that Congress is incapable of crafting policies that address the full complexity of modern-day problems. 62 Another charge is that congressional action can be stymied at several junctures in the legislative policymaking process. Congress is decentralized, having few mechanisms for integrating or coordinating its policy decisions; it is an institution of bargaining, consensus-seeking, and compromise. The logic of delegation is broad: to fashion solutions to tough problems, to broker disputes, to build consensus, and to keep fragile coalitions together. The commission co-opts the most publicly ideological and privately pragmatic, the liberal left and the conservative right. Leaders of both parties or their designated representatives can negotiate a deal without the media, the public, or interest groups present. When deliberations are private, parties can make offers without being denounced either by their opponents or by affected groups. Removing external contact reduces the opportunity to use an offer from the other side to curry favor with constituents.

2NC Commissions Popular

Commissions give political cover—result in compromise

Fiscal Seminar 9

(The Fiscal Seminar is a group of scholars who meet on a regular basis, under the auspices of The Brookings Institution and The Heritage Foundation, to discuss federal budget and fiscal policy issues. The members of the Fiscal Seminar acknowledge the contributions of Paul Cullinan, a former colleague and Brookings scholar, in the development of this paper, and the editorial assistance of Emily Monea. "THE POTENTIAL ROLE OF ENTITLEMENT OR BUDGET COMMISSIONS IN ADDRESSING LONG-TERM BUDGET PROBLEMS," The Fiscal Seminar. 06-2009. Ghs-kw)

In contrast, the Greenspan Commission provided a forum for developing a political compromise on a set of politically unsavory changes. In this case, the political parties shared a deep concern about the impending insolvency of the Social Security system but feared the exposure of promoting their own solutions. The commission created political cover for the serious background negotiations that resulted in the ultimate compromise. The structure of the commission reflected these concerns and was composed of fifteen members, with the President, the Senate Majority Leader, and the Speaker of the House each appointing five members to the panel.

2NC AT Perm do the CP

Permutation is severance:

1. **Severance: CP's mechanism is distinct—delegates to the commission and isn't Congressional action**
   Campbell 01

   (Campbell, Colton C. Dr. Colton Campbell is Professor of National Security Strategy. He received his Ph.D. from the University of California, Santa Barbara, and his B.A. and M.A. from California State University, Chico. Prior to joining the National War College, Dr. Campbell was a Legislative Aide to Representative Mike Thompson (CA-01), chair of the House Intelligence Committee's Subcommittee on Terrorism, Analysis and Counterintelligence, where he handled Appropriations, Defense and Trade matters for the congressman. Before that, he was an Analyst in American National Government at the Congressional Research Service, an Associate Professor of Political Science at Florida International University, and an American Political Science Association Congressional Fellow, where he served as a policy adviser to Senator Bob Graham of Florida. Dr. Campbell is the author, co-author, and co-editor of 11 books on Congress, most recently the Guide to Political Campaigns in America, and Impeaching Clinton: Partisan Strife on Capitol Hill. He has also written more than two dozen chapters and articles on the legislative process. Discharging Congress : Government by Commission. Westport, CT, USA: Greenwood Press, 2001. ProQuest ebrary. Web. 27 July 2015. Ghs-kw.)

   So why and when does Congress formulate policy by commissions rather than by the normal legislative process? Lawmakers have historically **delegated authority to others who could accomplish ends they could not.** Does this form of congressional delegation thus reflect the particularities of an issue area? Or does it mirror deeper structural reasons such as legislative organization, time, or manageability? In the end, what is the impact on representation versus the effectiveness of delegating discretionary authority to temporary entities composed largely of unelected officials, or are both attainable together?

2. **Severs resolved: resolved means to enact by law—not the counterplan mandate**
   Words and Phrases 64 vol 37A

   Definition of the word "resolve," given by Webster is "to express an opinion or determination by resolution or vote; as 'it was resolved by the legislature;" It is of similar force to the word "enact," which is defined by Bouvier as meaning "to establish by law".

3. **Severs should: Should requires immediate action**
   Summers 94 (Justice – Oklahoma Supreme Court, "Kelsey v. Dollarsaver Food Warehouse of Durant", 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

   ¶4 The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16 [CONTINUES – TO FOOTNOTE] 13 "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as **more** than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence

of the plaintiff was held to imply an obligation and to be more than advisory); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an obligation to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or ***immediately effective***, as opposed to something that *will* or *would* become effective ***in the future*** *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

4. **Severs should again: should is mandatory**

Summers 94 (Justice – Oklahoma Supreme Court, "Kelsey v. Dollarsaver Food Warehouse of Durant", 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling in praesenti.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16 [CONTINUES – TO FOOTNOTE] 13 "Should" not only is used as a "present indicative" synonymous with ought but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an obligation and to be more than advisory); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an obligation to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) **("should"** would **mean the same as** "shall" or **"must"** when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is presently or immediately effective, as opposed to something that will or would become effective in the future [in futurol]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

Severance is a reason to reject the team:

1. **Neg ground—makes the AFF a shifting target and allows them to spike out of offense**
2. **Unpredictable—kills clash which destroys advocacy skills and education**

2NC AT Perm do Both

Permutation do both links to politics:

1. **Congressional debates—CP means Congress doesn't debate the substance of the plan, only the commission report—perm makes Congress to debate the plan, triggers the link over partisan inclinations and electoral pressures—that's the politics net benefit ev**
2. **Time crunch—perm forces the plan now, doesn't give the commission time to generate political support and links to politics**
   Biggs 09

(Biggs, Andrews G. Andrew G. Biggs is a resident scholar at the American Enterprise Institute, where his work focuses on Social Security and pensions. From 2003 through 2008, he served at the Social Security Administration, as Associate Commissioner for Retirement Policy, Deputy Commissioner for Policy, and ultimately the principal Deputy Commissioner of the agency. During 2005, he worked at the White House National Economic Council on Social Security reform, and in 2001 was on the staff of the President's Commission to Strengthen Social Security. He blogs on Social Security-related issues at Notes on Social Security Reform. "Rumors Of Obama Social Security Reform Commission," Frum Forum. 02-17-2009. http://www.frumforum.com/rumors-of-obama-social-security-reform-commission///ghs-kw)

One problem with President Bush's 2001 Commission was that it didn't represent the reasonable spectrum of beliefs on Social Security reform. This didn't make it a dishonest commission; like President Roosevelt's Committee on Economic Security, it was designed to put flesh on the bones laid out by the President. In this case, the Commission was tasked with designing a reform plan that included personal accounts and excluded tax increases. That said, a commission only builds political capital toward enacting reform if it's seen as building a consensus through a process in which all views have been heard. In both the 2001 Commission and the later 2005 reform drive, Democrats didn't feel they were part of the process. They clearly will be a central part of the process this time, but the goal will now be to include Republicans. Just as Republicans shouldn't reflexively oppose any Obama administration reform plans for political reasons, so Democrats shouldn't seek to exclude Republicans from the process. Second, a reform task force should include a variety of different players, including members of government, both legislative and executive, representatives of outside interest groups, and experts who can provide technical advice and help ensure the integrity of the reforms decided upon. The 2001 Bush Commission didn't include any sitting Members of Congress and only a small fraction of commissioners had the technical expertise needed to make the plans the best they could be. A broader group would be helpful. Third, any task force or commission needs time. The 2001 Commission ran roughly from May through December of that year and had to conduct a number of public hearings. This was simply too much to do in too little time, and as a result the plans were fairly bare bones. There is plenty else on the policy agenda at the moment, so there's no reason not to give a working group a year or more to put things together.

2NC AT Theory

Counterinterp: process CPs are legitimate if we have a solvency advocate

AND, process CPs good:

1. **Key to neg ground—agent CPs are the only generics we have on this topic**
2. **Policy education—commissions are key to understanding the policy process**

Schwalbe, 03

(Steve,- PhD Public Policy from Auburn, former professor at the Air War College and Col. in the USAF "Independent Commissions: Their History, Utilization and Effectiveness")

FIFTH BRANCH Many analysts characterize commissions as an unofficial, separate branch of government, much like the news media. Campbell referred to commissions as the "**fifth arm of government**," after the media, the often-referred-to fourth arm.17 However, the media and independent commissions have as many similarities as differences. They are similar in that neither is mentioned in the Constitution. Both conduct oversight functions. Both serve to educate and inform the public. Both allow elites to participate in shaping government policy. On the other hand, the media and independent commissions are dissimilar in many ways. Where the news media responds to market forces, and hence will likely operate in perpetuity, independent commissions respond to a federal requirement to resolve a difficult problem. Therefore, they exist for a relatively short period of time, expiring once a final report is published and disseminated. Where the media's primary functions are reporting and analyzing the news, a commission's primary responsibilities can range from developing a recommended solution to a difficult problem to regulating an entire department of the executive branch. The media receives its funding primarily from advertisers, where commissions receive their funding from Congress, the President, or from private sources. The news media deal with issues foreign and domestic, while independent commissions generally focus on domestic issues. PURPOSE Commissions serve numerous purposes in the U.S. Government. Campbell cited three primary reasons for the establishment of federal independent commissions. First, they are established to provide expertise the Congress does not have among its own elected officials or their staffs. Next, he noted that the second most frequently cited reason by members of Congress for establishing a commission was to reduce the workload in Congress. Finally, they are formed to provide a convenient scapegoat to deflect the wrath of the electorate; i.e., "blame avoidance."18 Fisher found three advantages of regulatory commissions. First, commission members bring essential expert insights to a commission because the regulated industries are normally "complex and highly technical." Second, appointing commissioners for extended terms of full-time work allows commissioners to become very familiar with the technical aspects of an industry, through periodic contacts that Congress would not be able to accomplish. As a result of their tenure, varied membership, and shared responsibility, commissioners would be resistant to external pressures. Finally, regulatory commissions provide policy continuity essential to the stability of a regulated industry.19 What the taxpayers are primarily looking for from independent commissions are non- partisan solutions to current problems. A good example of establishing a commission to find non-partisan solutions is Congress regulating its own ethical behavior. University of Florida Professor Beth Rosenson researched this issue and concluded that authorizing an ethics commission may be "based on the fear of electoral retaliation if legislators do not take aggressive action to regulate their own ethics."20 Campbell noted that commissions perform several other functions besides providing recommendations to the President and Congress. The most common reason provided by analysts is that members of Congress generally want to avoid making difficult decisions that may adversely affect their chances for reelection. As he noted, "Incentives to avoid blame lead members of Congress to adopt a distinctive set of political strategies, such as 'passing the buck' or 'deflection'…."21 Another technique legislators use to avoid incurring the wrath of the voters is to schedule any controversial independent commissions for after the next election. Establish- ing a commission to research the issue and come up with recommendations after a preset period of time is an effective way to do that. The most clear-cut example demonstrating this technique is the timing of the BRAC commissions in the 1990s — all three made their base closure recommendations in non-election years (1991, 1993, and 1995). Even the next BRAC commission, established by the National Defense Authorization Act for Fiscal Year 2002, is not required to submit its base closure recommendations until 2005. Congress certainly is not the most efficient organization in the U.S.; hence, there are times when an independent commission is the more efficient and effective way to go. Law- makers are almost always short on time and information, which makes the option of delegating authority to a commission very appealing. Oftentimes, the expertise and necessary information is very costly for Congress to acquire. Commissions are generally the most inexpensive way for Congress to solve complex problems. From 1993-1997, Campbell found that 92 congressional offices introduced legislation that included proposals to establish ad hoc commissions.22 There are numerous other reasons for establishing independent commissions. They are created as a symbolic response to a crisis or to satisfy the electorate at home. They have served as trial balloons to test the political waters, or to make political gains with the voters. They can be created to gain public or political consensus. Often, when Congress has exhausted all its other options, a commission serves as an option of last resort.23 Commissions are a relatively impartial way to help resolve problems between the executive and legislative branches of government, especially during periods of congressional gridlock. Wolanin also noted that commissions are "particularly useful for problems and in circumstances marked by federal executive branch incapacity." Federal bureaucracies suffer from many of the same shortcomings attributed to Congress when considering commissions. They often lack the expertise, information, and time to conduct the research and make recommendations to resolve internal problems. They can be afflicted by groupthink, not being able to think outside the box, or by not being able to see the big picture. Commissions offer a non-partisan, neutral option to address bureaucratic policy problems.24 Defense Secretary Donald Rumsfeld has decided to implement the recommendations of the congressionally- chartered **Commission on Space**, which he chaired prior to being appointed Secretary of Defense!25 One of the more important functions of independent commissions is educating and persuading. Due to the high visibility of most appointed commissioners, a policy issue will automatically tend to gain public attention. According to Wolanin, the prestige and visibility of commissions give them the capability to focus attention on a problem, and to see that thinking about it permeates more rapidly. A recent example of a high-visibility commission chair appointment was Henry Kissinger, selected to chair the commission to look into the perceived intelligence failure regarding the September 11, 2001 terrorist attack on the U.S. .26 Wolanin cited four educational impacts of commissions: 1) educating the general public; 2) educating government officials; 3) serving as intellectual milestones; and, 4) educating the commission members themselves. Regarding education of the general public, he stated that, "Commissions have helped to place broad new issues on the national agenda, to elevate them to a level of legitimate and pressing matters about which government should take affirmative action." Regarding educating government officials, he noted that, "The educational impact of commissions within government…make it safer for congressmen and federal executives to openly discuss or advocate a proposal that has been sanctioned by such an 'august group'." Commission reports have often been so influential that they serve as milestones in affected fields. Such reports have become source material for analysts, commentators, and even students, particularly when commission reports are widely published and disseminated. Finally, by serving on a commission, members also learn much about the issue, and about the process of analyzing a problem and coming up with viable recommendations. Commissioners also learn from one another.27

3. **Predictability—commissions are widely used and predictable and solvency advocate checks**

Campbell 01

(Campbell, Colton C. Dr. Colton Campbell is Professor of National Security Strategy. He received his Ph.D. from the University of California, Santa Barbara, and his B.A. and M.A. from California State University, Chico. Prior to joining the National War College, Dr. Campbell was a Legislative Aide to Representative Mike Thompson (CA-01), chair of the House Intelligence Committee's Subcommittee on Terrorism, Analysis and Counterintelligence, where he handled Appropriations, Defense and Trade matters for the congressman. Before that, he was an Analyst in American National Government at the Congressional Research Service, an Associate Professor of Political Science at Florida International University, and an American Political Science Association Congressional Fellow, where he served as a policy adviser to Senator Bob Graham of Florida. Dr. Campbell is the author, co-author, and co-editor of 11 books on Congress, most recently the Guide to Political Campaigns in America, and Impeaching Clinton: Partisan Strife on Capitol Hill. He has also written more than two dozen chapters and articles on the legislative process. Discharging Congress : Government by Commission. Westport, CT, USA: Greenwood Press, 2001. ProQuest ebrary. Web. 27 July 2015. Ghs-kw.)

Ad hoc commissions as instruments of government have a long history. They are used by almost all units and levels of government for almost every conceivable task. Ironically, the use which Congress makes of commissions— preparing the groundwork for legislation, bringing public issues into the spotlight, whipping legislation into shape, and giving priority to the consideration of complex, technical, and critical developments— receives relatively little attention from political scientists. As noted in earlier chapters, following the logic of rational choice theory, individual decisions to delegate are occasioned by imperfect information; legislators who want to develop effective policies, but who lack the necessary expertise, often delegate fact-finding and policy development. Others contend that some commissions are set up to shift blame in order to maximize benefits and minimize losses.

4. **At worse, reject the argument, not the team**

2NC AT Certainty

Counterplan solves your certainty args—expertise

Campbell 01

(Campbell, Colton C. Dr. Colton Campbell is Professor of National Security Strategy. He received his Ph.D. from the University of California, Santa Barbara, and his B.A. and M.A. from California State University, Chico. Prior to joining the National War College, Dr. Campbell was a Legislative Aide to Representative Mike Thompson (CA-01), chair of the House Intelligence Committee's Subcommittee on Terrorism, Analysis and Counterintelligence, where he handled Appropriations, Defense and Trade matters for the congressman. Before that, he was an Analyst in American National Government at the Congressional Research Service, an Associate Professor of Political Science at Florida International University, and an American Political Science Association Congressional Fellow, where he served as a policy adviser to Senator Bob Graham of Florida. Dr. Campbell is the author, co-author, and co-editor of 11 books on Congress, most recently the Guide to Political Campaigns in America, and Impeaching Clinton: Partisan Strife on Capitol Hill. He has also written more than two dozen chapters and articles on the legislative process. Discharging Congress : Government by Commission. Westport, CT, USA: Greenwood Press, 2001. ProQuest ebrary. Web. 27 July 2015. Ghs-kw.)

By delegating some of its policymaking authority to "expertise commissions," Congress creates institutions that reduce uncertainty. Tremendous gains accrue as a result of delegating tasks to other organizations with a comparative advantage in performing them. Commissions are especially adaptable devices for addressing problems that do not fall neatly within committees' jurisdictional boundaries. They can complement and supplement the regular committees. In the 1990s, it became apparent that committees were ailing— beset by mounting workloads, duplication and jurisdictional battles, and conflicts between program and funding panels. But relevant expertise can be mobilized by a commission that brings specialized information to its tasks, especially if commission members and staff are selected on the basis of education, their training, and their experience in the area which cross-cut the responsibilities of several standing committees.

2NC AT Commissions Bad

No disads—commissions are inevitable due to Congressional structure

Campbell 01

(Campbell, Colton C. Dr. Colton Campbell is Professor of National Security Strategy. He received his Ph.D. from the University of California, Santa Barbara, and his B.A. and M.A. from California State University, Chico. Prior to joining the National War College, Dr. Campbell was a Legislative Aide to Representative Mike Thompson (CA-01), chair of the House Intelligence Committee's Subcommittee on Terrorism, Analysis and Counterintelligence, where he handled Appropriations, Defense and Trade matters for the congressman. Before that, he was an Analyst in American National Government at the Congressional Research Service, an Associate Professor of Political Science at Florida International University, and an American Political Science Association Congressional Fellow, where he served as a policy adviser to Senator Bob Graham of Florida. Dr. Campbell is the author, co-author, and co-editor of 11 books on Congress, most recently the Guide to Political Campaigns in America, and Impeaching Clinton: Partisan Strife on Capitol Hill. He has also written more than two dozen chapters and articles on the legislative process. Discharging Congress : Government by Commission. Westport, CT, USA: Greenwood Press, 2001. ProQuest ebrary. Web. 27 July 2015. Ghs-kw.)

Others see congressional delegation as unavoidable (and even desirable) in light of basic structural flaws in the design of Congress. 61 They argue that Con**gress is incapable of crafting policies that address the full complexity of modern-day problems.** 62 Another charge is that congressional action can be stymied at several junctures in the legislative policymaking process. Congress is decentralized, having few mechanisms for integrating or coordinating its policy decisions; it is an institution of bargaining, consensus-seeking, and compromise. The logic of delegation is broad: to fashion solutions to tough problems, to broker disputes, to build consensus, and to keep fragile coalitions together. The commission co-opts the most publicly ideological and privately pragmatic, the liberal left and the conservative right. Leaders of both parties or their designated representatives can negotiate a deal without the media, the public, or interest groups present. When deliberations are private, parties can make offers without being denounced either by their opponents or by affected groups. Removing external contact reduces the opportunity to use an offer from the other side to curry favor with constituents.

2NC AT Congress Doesn't Pass Recommendations

Recommendations are passed—either bipartisan or perceived as non-partisan
Glassman and Straus 15

(Glassman, Matthew E. and Straus, Jacob R. Analysts on Congress at the Congressional Research Service. "Congressional Commissions: Overview, Structure, and Legislative Considerations ," Congressional Research Service. 01-27-2015. http://fas.org/sgp/crs/misc/R40076.pdf//ghs-kw)

Reducing Partisanship Solutions to policy problems produced within the normal legislative process may also suffer politically from charges of partisanship.30 Similar charges may be made against investigations conducted by Congress.31 **The non-partisan or bipartisan character of most congressional commissions may make their findings and recommendations less susceptible to such charges and more politically acceptable to diverse viewpoints. The bipartisan or nonpartisan arrangement can potentially give their recommendations strong credibility, both in Congress and among the public, even when dealing with divisive issues of public policy.**32 Commissions may also give political factions space to negotiate compromises in good faith, bypassing the short-term tactical political maneuvers that accompany public negotiations.33 Similarly, because commission members are not elected, they may be better suited to suggesting unpopular, but necessary, policy solutions.34

Recommendations are passed—BRAC Commission proves
Fiscal Seminar 9

(The Fiscal Seminar is a group of scholars who meet on a regular basis, under the auspices of The Brookings Institution and The Heritage Foundation, to discuss federal budget and fiscal policy issues. The members of the Fiscal Seminar acknowledge the contributions of Paul Cullinan, a former colleague and Brookings scholar, in the development of this paper, and the editorial assistance of Emily Monea. "THE POTENTIAL ROLE OF ENTITLEMENT OR BUDGET COMMISSIONS IN ADDRESSING LONG-TERM BUDGET PROBLEMS," The Fiscal Seminar. 06-2009.)

On the other hand, the success of BRAC seems to have resulted more from the defined structure and process of the commission.5 Under BRAC, a package of recommendations originated with the Department of Defense, was modified by the BRAC commission, and was then reviewed by the President. Congress then had to consider the package as a whole with no amendments allowed; if it failed to pass a resolution of disapproval, the recommendations would be implemented as if they had been enacted in law. Not one of the five sets of BRAC recommendations has been rejected by the Congress.6,

2NC AT No Authority

Commissions have broad authority

Campbell 01

(Campbell, Colton C. Dr. Colton Campbell is Professor of National Security Strategy. He received his Ph.D. from the University of California, Santa Barbara, and his B.A. and M.A. from California State University, Chico. Prior to joining the National War College, Dr. Campbell was a Legislative Aide to Representative Mike Thompson (CA-01), chair of the House Intelligence Committee's Subcommittee on Terrorism, Analysis and Counterintelligence, where he handled Appropriations, Defense and Trade matters for the congressman. Before that, he was an Analyst in American National Government at the Congressional Research Service, an Associate Professor of Political Science at Florida International University, and an American Political Science Association Congressional Fellow, where he served as a policy adviser to Senator Bob Graham of Florida. Dr. Campbell is the author, co-author, and co-editor of 11 books on Congress, most recently the Guide to Political Campaigns in America, and Impeaching Clinton: Partisan Strife on Capitol Hill. He has also written more than two dozen chapters and articles on the legislative process. Discharging Congress : Government by Commission. Westport, CT, USA: Greenwood Press, 2001. ProQuest ebrary. Web. 27 July 2015. Ghs-kw.)

Congressional commissions have reached the point where they can take over various fact-finding functions formerly performed by Congress itself. Once the facts have been found by a commission, it is possible for Congress to subject those facts to the scrutiny of cross-examination and debate. And if the findings stand up under such scrutiny, there remains for Congress the major task of determining the policy to be adopted with reference to the known factual situation. Once it was clear, for example, that the acquired immune deficiency syndrome (AIDS) yielded an extraordinary range of newfound political and practical difficulties, the need for legislative action was readily apparent. The question that remained was one of policy: how to prevent the spread of AIDS. Should it be by accelerated research? By public education? By facilitating housing support for people living with AIDS? Or by implementing a program of AIDS counseling and testing? The AIDS Commission could help Congress answer such questions.

2NC AT Perception

CP solves your perception arguments

Glassman and Straus 15

(Glassman, Matthew E. and Straus, Jacob R. Analysts on Congress at the Congressional Research Service. "Congressional Commissions: Overview, Structure, and Legislative Considerations ," Congressional Research Service. 01-27-2015. http://fas.org/sgp/crs/misc/R40076.pdf//ghs-kw)

Raising Visibility **By establishing a commission, Congress can often provide a highly visible forum for important issues that might otherwise receive scant attention** from the public.38 Commissions often are composed of notable public figures, allowing personal prestige to be transferred to policy solutions.39 **Meetings and press releases from a commission may receive significantly more attention in the media than corresponding information coming directly from members of congressional committees.** Upon completion of a commission's work product, public attention may be temporarily focused on a topic that otherwise would receive scant attention, thus increasing the probability of congressional action within the policy area.40

Congress CP – Wave 1 – GGAL – NDI 15

1NC

1NC—Oversight CP

Counterplan text: Congress should make the NSA Inspector General subject to Senate confirmation, require a NSA Civil Liberties & Privacy officer, change the jurisdiction of the PCLOB to include all intelligence activities, institutionalize privacy concerns in performance reviews, have the DNI annually report in a public forum on privacy and civil liberties matters, and create panels of cleared external reviewers for consultation by the DNI regarding new programs to encourage executive restraint in the area of [the plan.]

Rosenzweig 13 (Paul – Senior Legal Research Fellow in the Center for Legal and Judicial Studies at The Heritage Foundation, "The NSA Doesn't Need Wholesale Reform, Just Greater Oversight," in the New Republic, 10-29-13, http://www.newrepublic.com/article/115392/nsa-reform-not-essential-congressional-oversight)

What should we do about the NSA? Should we do anything at all? These question are on the forefront these days.

The right answer, of course, is **complex**. The **perception of illegality** at the NSA has **outrun the reality** by a fair bit. On the other hand, it seems quite clear that the NSA has often done things of which it is technically capable without considering whether or not they were wise in the context of a broader strategy. As Lisa Monaco the White Couse Counterterrorism advisor said the other day in USA Today: "Today's world is highly interconnected, and the flow of large amounts of data is unprecedented. That's why the president has directed us to review our surveillance capabilities, including with respect to our foreign partners. We want to ensure we are collecting information because we need it and not just because we can."

Last week, I was scheduled to give some testimony on the very subject to the House Permanent Select Committee on Intelligence (the hearing was cancelled and rescheduled). Those who want to can review the entire testimony for an explanation of the theory that underlies much of what I proposed and a consideration of many more proposals. But for the curious, here's a short summary, with footnote citations excised, of some of the reform proposals and their merits (or demerits, as the case may be):

Congress should probably provide for an in-house advocate before the Foreign Intelligence Surveillance Court, to be called called at the court's discretion. This would improve decision-making;

Data retention rules and distributed databases (that is the idea of asking the telecommunications companies to hold the data on behalf of the NSA) will be ineffective and no more privacy protective than current rules;

Post-collection judicial assessment of reasonable articulable suspicion is worth considering;

We should reject the assertion that the FISA court is somehow either a rubberstamp or a packed court;

The most effective reforms are likely structural rather than legislative; and

Finally, our current system of intelligence oversight generally works. It is incumbent on this Committee and those in Congress with knowledge of how our intelligence apparatus operates to defend that system as effective and appropriate.

Here's a deeper analysis:

First, we can't with one breath condemn government access to vast quantities of data about individuals as a return of "Big Brother," and at the same time criticize the government for its failure to "connect the dots" (as we did, for example, during the Christmas 2009 bomb plot attempted by Umar Farouk Abdulmutallab).

More to the point—large scale data analytical tools of the type the NSA is apparently using are of such great utility that governments will expand their use, as will the private sector. Old rules about collection and use limitations are no longer technologically relevant. If we value privacy at all, these ineffective protections must be replaced with new constructs. The goal then is the identification of a suitable legal and policy regime to regulate and manage the use of mass quantities of personal data.

We should therefore favor those reforms that create delegated or calibrated transparency (enough to enable oversight without eliminating essential capabilities) and respond to the new paradigm of data analytics and privacy (by controlling use rather than collection):

Adversarial Advocate: This proposal would create a standing team of attorneys to respond to and present a counter argument before the FISC to requests for permission to collect information against an individual or entity. Presumably, this team of attorneys would either be from within the government (such as the DNI's Civil Liberties and Privacy Officer) or a cadre of non-government attorney's with clearances.

There is much to be said in favor of this proposal. With regular criminal warrants the ex parte nature of the application for a warrant does not systematically create a lack of a check on overreaching because of the possibility for post-enforcement review during criminal prosecution with its adversarial process. By contrast, in intelligence investigations that post-execution checking function of adversarial contest is often missing—few if any intelligence collection cases wind up before the courts. As a result there is no systematic way of constraining the authority of the United States government in this context. Providing for an adversarial advocate would give us the general benefits of adversarial presentation and provide a useful checking function on the overarching broad effect of FISA law on the public.

To be sure, this would be a novel process. We don't typically do pre-enforcement review of investigative techniques. And if poorly implemented, this sort of process risks slowing down critical time sensitive investigations. Perhaps most importantly, many worry (not without justification) that the adversarial advocate will in the end have an agenda that may distort legal developments.

On balance, this seems to be a positive idea — but only if it is implemented in a limited way for novel or unique questions of law. It should be is limited to situations where the FISA court itself requests adversarial presentation. That would limit the number or circumstances where the process was used to those few where new or seminal interpretations of law were being made. The adversarial advocate should not appear routinely and should not appear on his or her own motion. The court is, in my view, capable (and likely) to define when it can benefit from adversarial argument quite well.

Phone Company Data Retention: Some have suggested that, instead of NSA collecting and retaining telephone call metadata, Congress should amend the law and impose a data retention requirement on phone companies and ISPs, requiring them to retain metadata for a fixed period of time, say five years. NSA and the FBI would, in turn, only be able to access this data set after a FISC court had passed on the validity of the request and determined that it met some evidentiary threshold, say, of relevance.

While the idea is attractive it is, in the end, more problematic than beneficial. To begin with, the FISC pre-access review would be more privacy protective–but it would achieve this protection in the old fashioned way of limiting access to the underlying data. More effective ways that focus on managing end uses rather than collection are to be preferred.

More to the point, this sort of system would be extremely cumbersome. Searching on multiple distributed databases is always more difficult than searching a single database. Worse, this arc hitecture would require the disclosure of classified threat information to private actors, on a regular basis–a structure that we ought to try and avoid. And, of course, though we might begin by limiting use of this database to counter-terrorism activities, I have nodoubt that political pressures will soon push us down the slippery slope to other attractive uses (e.g. combatting drug cartels or child pornography). In the end, we might fear that databases held by the private telecommunications companies would be the target of other legal process in the civil system.

Finally, at bottom, we cannot be sure that large commercial databases are actually more privacy protective than government ones. As Stewart Baker has said in assessing a comparable set of laws in Europe: "Not only does the 'data retention' requirement in European law cover more personal information, it comes with far fewer safeguards. In Europe, unlike the UnitedStates, the authorities need only ask for stored data; companies can and do "volunteer" their data without any court order or other legal process." We should be skeptical that any system we design for use here in American would not be subject to the same sorts of issues.

Non-NSA Determination of Reasonable Articulable Suspicion: One variant on the forgoing would break off a piece of the data retention proposal — namely the portion that requires external approval before NSA analysts access the Section 215 metadata database. Logically, this requirement could be implemented even if the database were housed in NSA rather than, as proposed above, in distributed databases at the telecommunications companies. In other words, Congress could add a requirement that every time the NSA determines that there is a reasonable articulable suspicion that a phone number is associated with terrorism, that the determination be promptly adjudicated before access is granted. The identity of "who" might adjudicate the reasonable articulable suspicion and "when" is capable of many variations–it might be the FISC, before access is granted; or it might be post-access review by the FISC. Or, it might even be pre-access review by some other portion of the Executive Branch, like DOJ's NSD.

In all its variants, this proposal has several positive aspects to it. First, by requiring external non-NSA approval, we enhance the credibility of the determination of reasonable articulable suspicion. Second, by invoking FISC jurisdiction or DOJ oversight we limit the likelihood that the database will be subject to mission creep and repurposed to non-counter-terrorism uses. Third, and most saliently from a theoretical viewpoint, this paradigm of review after collection and in a control of use is more consistent with what we see as the technological reality of data analytics today.

Regarding the modality of review, some argue that pre-use review by the FISC would be, in their judgment, too slow and cumbersome. This argument may not be persuasive—after all, many warrant applications are approved on an emergency basis. But if we were to reject pre-access judicial review the credibility of the section 215 program would be most enhanced by a combination of two other structures—pre-access approval outside of NSA within the Executive Branch (say at DOJ), followed by post-access approval by the FISC.

Reforming the FISA Court: A wide range of proposed reforms have been suggested for changing how the FISA court is staffed and operates. These include suggestions to add more FISC judges to the process (i.e. have decisions made by panels); mandating more diversity of views among judges; changing the appointment authority, and so on.

The grounds for these proposed reforms are a series of false and pernicious premises–ones that, regretfully, are fostered by our friends in the media. They suggest that the Chief Justice has been preferentially appointing pro-government judges to the FISC,and that the FISC is a rubber stamp for government action. While that Manichean view of justice is one that many liberal doubters of the court system espouse, it should be resisted with every fiber of our being.

In the first place, it simply isn't true. As anyone who has read the recent FISC opinions recognizes, the judges of that court have been vigilant (some critics even say too vigilant) in overseeing the NSA's activities, having called large scale programs into question on at least three occasions that are publicly known and having declared at least one aspect of one program unconstitutional. More to the point, we now know (and this is actually one of the few good results stemming from the Snowden disclosures)that the FISC requires substantive modification to roughly one-quarter of all FISA warrant applications. We don't know what the comparable figure. are for traditional criminal investigations (and I don't think they are collected) but my own experience as a prosecutor suggests that the rate of substantive amendment is far lower in that context.

And, of course, the premise of the entire argument is the ipse dixit that judges reflect their political views. As a society we must reject that premise, lest law become nothing more than politics by other means. It says everything you need to know about the validity of that premise that the original Section 215 order, authorizing metadata collection was (according to public reports–though it has not been declassified itself) issued in 2006 by Judge Colleen Kollar-Kotelly. Judge Kollar-Kotelly was appointed to the FISC by Chief Justice Rehnquist (i.e. before Chief Justice Roberts' tenure) and appointed to the bench by President Clinton. If the most controversial decision of which we are aware is a counter-factual to the general charge, we should doubt the charge itself.

Worse yet, the cure would be worse than the disease. Imagine, if you will, subjecting FISC appointments to Senate confirmation. Nothing would be more likely to politicize the proces. Likewise, attempting to democratize the proces by spreading it across the circuits would be impractical (since most FISC matters occur here in Washington) and would simply develve the criticism one step lower. The problem isn't with the FISC so much as its critics.

Structural Changes: Finally, most of the more effective possible changes lie not in significant legislative tinkering, but rather in interstitial structural and operational reforms that improve the audit and oversight process without fundamentally altering the capabilities of NSA or the IC organizations. Here are a few, listed just in bullet point form, that might be worth thinking about:

Make the NSA Inspector General, a presidential appointment, **with Senate confirmation**;

Require statutorily, the appointment of an NSA Civil Liberties & Privacy Officer;

Change the jurisdiction of the **P**rivacy and **C**ivil **L**iberties **O**versight **B**oard to include all intelligence activities, not just those with a counter-terrorism focus;

Create panels of cleared external reviewers for consultation by the DNI regarding new programs;

Institutionalize privacy and civil liberties concerns by making it a factor in performance reviews; and

Have the DNI annually report in a public forum on privacy and civil liberties matters.

Oversight solves --- empirics

Kriner 9 (Douglas – Assistant Professor of Political Science at Boston University, "CAN ENHANCED OVERSIGHT REPAIR "THE BROKEN BRANCH"?," in *SYMPOSIUM: THE MOST DISPARAGED BRANCH: THE ROLE OF CONGRESS IN THE TWENTY-FIRST CENTURY*, in 89 B.U.L. Rev. 765, http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume89n2/documents/KRINER.pdf)

C. Failures of Oversight

Throughout American history, legislative oversight conducted by congressional committees has been **one of the most powerful tools** in Congress's arsenal to exercise a check on the executive branch and defend its institutional prerogatives. Particularly in times of national exigency - both military and economic - the need for Hamiltonian "energy" tilts the pendulum of power toward the executive branch. The very same **collective action dilemmas and cumbersome institutional machinery** that encourage such a shift to the executive also hinder Congress's capacity to police the executive branch and retain a check on delegated powers by acting legislatively. Instead, Congress has repeatedly turned to the oversight and investigative powers of its committees to police the executive branch. And, at least anecdotally, when Congress wields its oversight powers forcefully, **it can lead to genuine changes in public policy.** The War of 1812 and the accompanying expansion of presidential power strongly contributed to the initial evolution and growth of the standing committee system in the early-nineteenth century. 38 As the era of congressional dominance ended and presidential power grew in the early-twentieth century, Congress increasingly used its committee-based oversight powers to keep a watchful eye on the executive branch. For example, in the wake of the Spanish American War it fell to the executive to administer the nation's first major colonial acquisitions in the Philippines. The war undoubtedly bolstered presidential foreign policy power; yet, Congress retained some check on the exercise of this power through inquests into the conduct of the American occupation and continued oversight of its operations. In the aftermath of Teddy Roosevelt's bold assertions of unilateral presidential power, Congress struck back in the committee room with months of investigatory hearings into misconduct in the Interior Department and Forestry Bureau stemming from Roosevelt's proclamations and orders. Investigative oversight was also one of the primary means through which Congress pushed back at President Franklin Roosevelt's New Deal regime. The exponential growth in the size of government and its substantive scope fundamentally shifted the balance of power away from Capitol Hill and toward the other end of Pennsylvania Avenue. However, even in the midst of the Great Depression, Congress routinely used its investigative powers to exercise a check on the Administration's use of executive powers. Democratic Congresses launched sustained high profile investigations into the operation of many of Roosevelt's alphabet army of executive agencies including the National Recovery Administration, the Works Progress Administration and the Tennessee Valley Authority. 39 [*774] Even today in the post-World War II era, many of the **most potent symbols of congressional power** in our system of separated institutions sharing power have emerged not from the chamber floors, but **from Congress's committee rooms**. In a diverse range of cases from investigations of misconduct by executive agencies to Iran Contra, from Watergate to Whitewater, **Congress has used its bully pulpit** again and again to expose executive wrongdoing, challenge presidential policies and even to bring presidential administrations to the brink of political disaster. To be sure, the vast majority of congressional oversight is a far cry from such high profile publicity probes aimed at extreme allegations of executive misconduct. However, even more mundane oversight can play an important role in maintaining congressional influence over the implementation of public policy. Indeed, **even the anticipation of congressional oversight can be enough to keep an executive agency in line** and improve its adherence to legislative intent. 40 Yet despite its political importance, there are reasons to believe that, on the metric of conducting rigorous oversight, the contemporary Congress is again a broken branch. Interestingly, a principal recommendation of the 9/11 Commission regarding Congress emphasized the critical importance of augmented congressional oversight of anti-terrorism policy. 41 Rather than advocating a further transferal of power to the executive to meet the exigent threat posed by global terrorism, the Commission called for the strengthening of the intelligence committees and emphasized the importance of legislative oversight of antiterrorism policy across levels of government. 42 The Commission bemoaned the lack of oversight in the pre-9/11 era; 43 and there are strong reasons to worry that Congress has done little to improve its oversight capacity - in the realm of military policy and terrorism as well as in other policy arenas - in recent years. The level and quality of congressional oversight and changes in it over time are inherently difficult concepts to measure. In a leading quantitative study of the volume of congressional oversight over time, Joel Aberbach found that congressional oversight increased significantly in the early 1970s, even before the Watergate scandal rocked Washington, and remained strong into the [*775] 1990s. 44 More qualitative analyses, by contrast, have bemoaned a general decrease in quality oversight in recent years, a decline that reached its nadir during the first six years of the George W. Bush Administration. 45 However, what most sets trends in congressional oversight apart from the quality of legislative deliberation

and the nature of widespread delegation of legislative powers to the executive branch is that congressional oversight has not monotonically decreased or increased over time. Rather, when we examine the intensity with which Congress has dedicated itself to its oversight responsibilities, we see a pattern much like that of a swinging pendulum; at times, Congress appears to use its investigative powers aggressively to police the executive while at others it takes a decidedly passive role and fails to meet normative standards of a responsible independent legislature. Perhaps nowhere is this variable nature more readily apparent than in the fluctuations in oversight of the war in Iraq over the preceding five years. The next Part examines these sharp temporal fluctuations in detail. However, the fact that Congress does, **in certain political contexts,** continue to use its oversight tools to check the executive branch and influence the scope and conduct of public policy raises the hope that Congress might be able to reform itself and bolster its institutional capacity for sustained oversight. The Essay returns to such reforms in the Conclusion.

1NC—Appropriations CP

Counterplan text: The Congress of the United States should deny any and all appropriated funds for [program].

Appropriations enforce executive and agency change efficiently and without backlash.

Stith 98 (Kate – Professor of Law at Yale Law School, "ARTICLE: Congress' Power of the Purse," 97 Yale L.J. 1343, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2282&context=fss_papers)

E. The Power To Deny Appropriations The genius of regulating executive branch activities by limitations on appropriations is that these limitations can be bureaucratically 79 and contemporaneously enforced **without the need for litigation or after-the-fact congressional investigations in every case**. 80 Appropriations limitations constrain every government action and activity and, assuming general compliance with legislative prescriptions, **constitute a low-cost vehicle for effective legislative control over executive activity**. Should the Executive choose to ignore congressional declarations of policy, Congress may enact purse-string limitations. 81 Historically, however, Congress has been reluctant to use appropriations control to limit federal activities in certain sensitive areas. 82 Only since World War II has Congress consistently enacted appropriations limitations as a means of controlling some aspects of foreign policy. 83 During [*1361] the Vietnam War, Congress cut off funds for Cambodian operations 84 only after a statutory "declaration of policy" -- not tied to continued funding -- had failed to achieve that end. 85 The "object" limitation used in the Cambodian situation (and used a decade later to constrain United States involvement in support of the armed Nicaraguan opposition, or contras) is especially powerful: the denial of any appropriated funds for a specific purpose. 86 Generally, a complete denial provides that no appropriated funds may be used for an activity that otherwise would be a proper object of expenditure from a lump-sum appropriation for the agency. 87 Where Congress thus denies appropriations, the denial is not merely a determination that the public fisc cannot afford spending any money on that activity. By such appropriations legislation, Congress decides that, under our constitutional scheme, for the duration of the appropriations denial, the specific activity is no longer within the realm of authorized government actions. This legislative action **denies the Executive all means of engaging in the prohibited activity** because employee salaries and other overhead costs are almost invariably paid out of appropriated funds. 88 When government employees act on behalf of the United States, they are subject to every limitation that applies to appropriated funds. In principle, a government employee acting in an official capacity -- including the President -- **may not spend one minute to make one phone call** to solicit private funds (for use [*1362] of the government or directly for a third party) for an activity explicitly denied appropriated funds. 89 Even where Congress grants authority to an agency to spend donations or other receipts not deposited first in the Treasury, 90 that authority is not sufficient to permit continuation of an activity which has been denied all appropriated funds. Pursuant to the terms of the congressional action denying appropriations, an agency may not use donated funds to engage in a prohibited activity if any appropriated funds (including funds for employee salaries) would be expended in administering the donated funds. 91 Quite simply, the letter of the appropriation limitation applies to **every penny of appropriations**. Unless Congress clearly intends to permit continued use of gift funds for an activity explicitly denied "appropriated" funds, an agency has no authority to invoke its gift authority to avoid such object restrictions on its appropriations. This is not an exaltation of form over substance; the form (an appropriations limitation) and the substance (a limitation on executive authority) are entirely congruent. Suppose, for instance, that Congress enacts an appropriation for the Department of Health and Human Services (HHS) which provides that "no funds appropriated herein" may be used for family planning programs or activities. This provision would prohibit HHS employees from administering or otherwise supporting the now-unauthorized family planning activity. 92 Although an employee of HHS perhaps could raise private funds for family planning programs by making a few phone calls, the employee is prohibited from doing these things while acting in his or her official capacity. 93 In sum, there is no de minimis exception to appropriation limitations, just as there is no de minimis exception to the constitutional appropriations requirement. Appropriations for federal agencies, like conditions in [*1363] spending programs for nonfederal entities, 94 are important sources of regulatory authority because the expenditure of any and all monies is conditioned upon compliance with prescribed policy. Where Congress prohibits use of any appropriated funds for an activity, 95 the **Executive simply has no authority to finance the prohibited activity** with either private or public funds. 96 By placing the power of the purse in Congress, the

Constitution makes Congress accountable for the actions of the operating branch of the federal government.

2NC/1NR

2NC—Oversight CP

1. Congressional oversight studies found Congress can be a game-changer in terms of public sway, forcing the executive to change tracks

Kriner 9 (Douglas – Assistant Professor of Political Science at Boston University, "CAN ENHANCED OVERSIGHT REPAIR "THE BROKEN BRANCH"?," in *SYMPOSIUM: THE MOST DISPARAGED BRANCH: THE ROLE OF CONGRESS IN THE TWENTY-FIRST CENTURY*, in 89 B.U.L. Rev. 765, http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume89n2/documents/KRINER.pdf)

IV. Does Oversight Afford a Check on Executive Power? The presumption is widespread that through rigorous oversight of the executive branch Congress can maintain a degree of influence over policymaking, even in an era of expanded presidential powers and broad delegations of authority to the executive branch. Immediately after the Democratic takeover of both houses of Congress in 2006, California Congressman Henry Waxman argued that investigations may be "just as important, if not more important, than legislation." 75 Similarly, in academic circles Thomas Mann spoke for many when he argued that the rise of oversight in the 110th Congress "has been the most important change since the 2006 election in terms of relations between the Congress and the administration." 76 However, the precise mechanisms through which oversight alone can influence executive behavior and the course of policymaking are frequently ignored. Recommendations by oversight committees are nonbinding and have no force of law. Congress does have budgetary control over executive departments and agencies, an important means of leverage. However, as noted [*785] by skeptics of congressional dominance theories in the literature on bureaucratic control, budgetary tools are somewhat clumsy instruments for encouraging greater executive compliance with legislative intent. 77 Moreover, oversight committees themselves normally lack appropriations authority, which diminishes the credibility of any threatened committee sanctions for noncompliance. 78 Indeed, in most situations an oversight committee's only formal recourse is to propose new legislation that would legally compel a change in course. However, such efforts are subject to the collective action dilemma and intricate procedures riddled with transaction costs and super-majoritarian requirements, not to mention a presidential veto. 79 If oversight can only constrain executive branch activities through such formal mechanisms, then there are strong reasons to question whether it can truly serve as a real constraint on the executive's freedom of action. And if it does not, then oversight is merely inconsequential position-taking, not a tool for continued congressional influence over policymaking when legislative options fail. However, there are strong theoretical reasons and growing empirical evidence to suggest that congressional oversight can influence executive branch behavior through more **informal means**. Vigorous congressional oversight can inform policy discourse, influence public opinion and bring popular pressure to bear on the **executive to change course**. In David Mayhew's words, members of Congress can wield considerable influence **not only by legislating**, but also by "making moves" in what he terms the "public sphere." 80 Surveying over **200 years** of congressional history, Mayhew identified more than **2300 "actions"** members of Congress have taken in the public sphere in an attempt to shape the national policy discourse and mobilize popular opinion. 81 Again and again, oversight and investigative committee hearings have served as a critically important forum in which members of Congress take stands, stake out positions in contrast to those of the executive branch, and battle for influence over the attentive public. As a result, Mayhew argues that "the politics involving members of Congress needs to be modeled not just as opinion expression - the custom in political science analysis - but also as opinion formation." 82 [*786] But can congressional oversight really influence public opinion? After all, the vast majority of Americans rarely tune to C-SPAN to catch the latest proceedings from hearing rooms in the Russell or Cannon congressional buildings. However, Congress may have an important ally in the mass media, which aids them in their quest to reach a broader audience. A large literature within political communications suggests that the media "indexes" the scope and tone of its coverage to the political debate in Washington, particularly in Congress. 83 Moreover, many congressional hearings are made-for-television events and are consciously designed to generate conflict. Conflict, according to many journalistic norms, is inherently newsworthy, and thus the press may play an important role in amplifying the congressional challenge to administration policies and actions and in broadening the audience such congressional cues reach. 84 A number of recent studies have found strong empirical evidence that the positions articulated in Congress may indeed have a considerable influence on public opinion, particularly in questions of military policy. 85 Many studies rely on observational data. 86 Matthew Baum and Tim Groeling's research demonstrates strong correlations between media-reported congressional rhetoric surrounding multiple major military missions in the last quarter century and popular support for those endeavors. 87 However, such studies relying exclusively on observational data usually only demonstrate correlations between congressional actions and public opinion. If this relationship is endogenous - that is, if members of Congress respond to public opinion when crafting their rhetoric

and actions even as they seek to lead it - then raw correlations between the two tell us little about the direction of the causal [*787] arrow. 88 Is Congress leading public opinion, or are shifts in public opinion producing changes in congressional positions? To untangle such thorny questions about causality, a number of studies have turned to experimental evidence. For example, research by William Howell and Douglas Kriner explores the influence of various cues for or against the President's military policies by Republican and Democratic members of Congress on popular support for a number of real and hypothetical military ventures. 89 A main critique of experimental evidence, however, is that it lacks external validity. While the experimental design clearly establishes the direction of the causal arrow from the treatment condition (e.g., congressional cues) to the observed change in the dependent variable (e.g., observed differences in popular support for the President's military policies), it remains unclear whether similar effects will be observed in the much more complicated environment of real world politics. A complete investigation of these complicated questions of causality, linking congressional oversight and investigative activity and public opinion, is beyond the scope of this Essay. However, the data analyzed previously - documenting changes in the level of critical oversight of the war in Iraq from 2003 to 2008 - does afford an important opportunity to examine whether congressional oversight patterns have had any influence on levels of popular support for the war. V. Congressional Oversight and Public Support for the War in Iraq Since the invasion of Iraq in March 2003, multiple polling organizations have repeatedly asked the public whether the United States did the "right thing" by invading Iraq. On this metric, support for the war has declined dramatically over time from a high of seventy percent in the opening days of the American invasion to a low of thirty-five percent in March of 2008. This trend in popular support is captured in Figure 2. 90 [*788] Figure 2: Invading Iraq Was the "Right Thing" to Do [SEE FIGURE 2 IN ORIGINAL] When we compare shifts in popular support for the war (Figure 2) and trends in congressional oversight (Figure 1) we see a strong negative correlation (r = -.38). As the intensity of critical congressional oversight increases, support for the war decreases. 91 However, from this raw correlation alone we cannot make any inferences about the direction of causality. Increased congressional critical oversight and the challenges to presidential policies it poses in the public sphere may indeed be driving the observed decreases in popular support for the Iraq War. Alternatively, drops in public war support may compel or embolden members of Congress to speak out against the war as well so that they appear in tune with the preferences of their constituents. To get some leverage on this question of causality, an instrumental variable approach is needed. To assess the causal effect of oversight activity on war support requires the identification of an instrumental variable that strongly predicts oversight activity, but has no relationship with wartime support except through its influence on oversight. Armed with such an instrument, we can use it to calculate predicted values of congressional oversight that are not influenced by [*789] the level of public support for the war. Using these predicted values, we can then obtain an estimate of the independent effect of oversight on changes in support for the Iraq War. In most cases, identifying a proper instrumental variable is exceedingly difficult. However, in the current context one of the variables already examined in the analyses of Table 1 is a strong possibility: the number of days that Congress was in session in a given month. The days in session variable is strongly correlated with monthly counts of critical oversight (r = .42). Of equal importance, it is difficult to conceive of any reason why popular support for the war in Iraq should affect the number of days that Congress is in session in a given month. Thus, the days in session variable meets both of the criteria for a good instrument: it is strongly correlated with the independent variable of interest (congressional oversight), and it has no relationship with the dependent variable (war support) except through its influence on the independent variable. Accordingly, to investigate the influence of oversight on support for the Iraq War, I estimated a two-stage least squares regression modeling monthly war support as a function of: monthly and logged casualties; positive and negative conflict events; and the predicted number of days of critical congressional oversight hearings for that month, obtained from a first stage equation using the same variables plus the instrumental variable, the number of days Congress was in session. Results are presented in Table 2 below. [*790] Table 2: Effect of Congressional Oversight on Public Support for Iraq War 92 Days of oversight .52* (.35) Monthly casualties (10s) .21* (.13) Logged cumulative casualties 8.94*** (.50) Positive events .18 (.94) Negative events .36 (.92) (N) 62 R2 .92 *p < .10 **p < .05 *** p < .01 The coefficient for the predicted values of congressional oversight is negative as expected, and statistically significant. According to the model, a standard deviation increase in days of critical oversight (three days) produces an estimated 1.5% decrease in popular support for the war in Iraq. Popular support for the war also decreases in the wake of spikes in American casualties, and the strong, significant negative coefficient for logged cumulative casualties tracks the downward trend in wartime support over time. 93 Finally, the coefficients for positive and negative events are in the expected direction, though neither is statistically significant. Thus, even after controlling for endogeneity in the relationship, the instrumental variable analysis strongly suggests that critical congressional oversight can cause political problems for the President by eroding popular support for his military policies. If oversight can systematically influence [*791] public opinion on multiple issues, it may well provide an **important check on presidential behavior**, **even when legislative remedies are unavailable**.

2. The consensus of scholars agree oversight is more powerful than legislation

Kriner 9 (Douglas – Assistant Professor of Political Science at Boston University, “CAN ENHANCED OVERSIGHT REPAIR “THE BROKEN BRANCH”?,” in *SYMPOSIUM: THE MOST DISPARAGED BRANCH: THE ROLE OF CONGRESS IN THE TWENTY-FIRST CENTURY*, in 89 B.U.L. Rev. 765, http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume89n2/documents/KRINER.pdf)

At least since Aaron Wildavsky's seminal article declaring that there are two presidencies, the conventional wisdom in presidency scholarship is that while Congress can effectively constrain executive power in the domestic arena, the president enjoys significant advantages in foreign affairs. 46 Throughout American history, Congress has faced significant barriers to using legislation to compel the President to change his preferred policy course and constrain his freedom of action in the international arena. However, even as many legislative initiatives have failed, Congress has repeatedly succeeded in using the oversight and investigative tools at its disposal to offer sharp, politically [*776] damaging critiques of executive foreign policy. From the lengthy inquiry into the Truman policies that allegedly "lost China," to the exposure and condemnation of the Nixon Administration's clandestine war in Cambodia, to the Iran-Contra investigations that threatened to take down the Reagan presidency, committee hearings have proved an invaluable

weapon in Congress's arsenal when dealing with the foreign policy executive. 47 In the assessment of Mann and Ornstein, in foreign affairs, "**oversight, even more than direct legislation, is key to movement**." 48

3. Congress has the authority to curtail surveillance in its responsibility as guarantor of national security policy

Auerswald and Campbell 12 (David P. – Professor of Security Studies at the National War College, and Colton C. – Professor of National Security Strategy at the National War College, "Congress and National Security," in *Congress and the Politics of National Security*, p. 3)

Over the last decade, a growing number of scholars and practitioners have called for a reexamination of our national security system, with much attention devoted to interagency reform (Davidson 2009, Smith 2009, Project on National Security Reform 2008). The structures and processes set in place more than a half-ccnturv ago by the National Security Act of 1947, they argue, are outdated, designed to meet the security challenges of the Cold War era instead of those of the 21st century. This can have potentially sobering outcomes, as the Project on National Security Reform noted in its 2008 study. Accordingly, the U.S. government is unable to "integrate adequately the military and nonmilitary dimensions of a complex war 011 terror" or to "integrate properly the external and homeland dimensions of post-9/11 national security strategy" (Project on National Security Reform 2008, ii).

Any **major reform** of the nation's national security system will **require congressional action**. Indeed, Congress has a constitutional responsibility to weigh issues of national security concerns. Congress has the authority to raise an army and a navy, to regulate the armed forces, and to declare war. It must **authorize new federal policies** and determine the **scope of agency actions and portfolios**. It is Congress that must **appropriate the money** for the federal government. In addition, Congress may influence military strategy directly by legislating war aims or military regulations, or indirectly by altering the end- strength and weapons systems of the different services. If no major reform can occur without congressional action, the obvious question is whether Congress is willing and/or able to execute such a major national security undertaking.

2NC—Heg Internal Net Benefit

1. Congress failing to tackle national security policy weakens the American image abroad

King 10 (Kay – former deputy assistant secretary of state for legislative affairs and vice president for external relations at the Center for Strategic and International Studies, "Congress and National Security," Council Special Report No. 58, November 2010, pub. by the Council on Foreign Relations, http://www.cfr.org/content/publications/attachments/Congress_CSR58.pdf)

Much has been written, blogged, and broadcast in the past several years about the dysfunction of the U.S. Congress. Filibusters, holds, and poison pill amendments have become hot topics, albeit intermittently, as lawmakers on both sides of the aisle have increasingly exploited these tactics in pursuit of partisan or personal ends. Meanwhile, such pressing national issues as deficit reduction, immigration reform, and climate change have gone unresolved. To be fair, the 111th Congress has addressed many significant issues, but those it has addressed, such as health-care reform and economic stimulus, exposed Americans to a flawed process of backroom deals that favors obstruction over deliberation, partisanship over statesmanship, and narrow interests over national concerns. Although partisan politics, deal making, and parliamentary maneuvering are nothing new to Congress, the extent to which they are being deployed today by lawmakers and the degree to which they obstruct the resolution of national problems are **unprecedented**. This may explain why Congress registered a confidence level of only 11 percent in July 2010, marking its lowest rating ever in the annual Gallup institutional confidence survey and ranking it last among sixteen major U.S. institutions.1

Most of the recent attention devoted to Congress's dysfunction has centered on its impact on domestic issues and has overlooked its effect on national security. Yet Congress's inability to tackle tough problems, both domestic and international, has serious national security consequences, in part because it **leads the world to question U.S. global leadership**. Reporting from the World Economic Forum in Davos in January 2010, New York Times columnist Tom Friedman wrote, "'Political instability' was a phrase normally reserved for countries like Russia or Iran or Honduras. But now, an American businessman here remarked to me, 'people ask me about "political instability" in the U.S.' We've become unpredictable to the world."2 Furthermore, when Congress fails to perform, national security suffers thanks to ill-considered policies, delayed or inadequate resources, and insufficient personnel. Without congressional guidance, allies and adversaries alike devalue U.S. policies because they lack the support of the American people that is provided through their representatives in Congress.

2. Reforming and cracking down on surveillance affairs reverses Congress's bad image and strengthens US leadership

King 10 (Kay – former deputy assistant secretary of state for legislative affairs and vice president for external relations at the Center for Strategic and International Studies, "Congress and National Security," Council Special Report No. 58, November 2010, pub. by the Council on Foreign Relations, http://www.cfr.org/content/publications/attachments/Congress_CSR58.pdf)

In a perfect world, Congress would serve as an equal branch of gov-ernment in the national security arena. It would be a fully informed body providing prompt and inclusive action on annual budgets, congressional proposals, and executive branch initiatives; supplying **realistic and effective oversight** of the executive branch; and offering knowledgeable and timely consideration of treaties and nominations. It would devote time and resources to strengthening its own expertise, and it would commit to engaging in a regular consultative process with the executive branch on matters of national security, especially regarding the use of military force.

If such a Congress were to materialize, it could partner with the executive branch to provide the insights and perspectives on defense, diplomacy, development, and intelligence matters that only the most representative branch of government can offer. It could assist in a transition to a comprehensive, integrated approach to national security that utilizes diminishing resources judiciously and guides policies wisely to diminish external threats; prevent conflicts and reduce the need for

military interventions; cultivate new markets for U.S. trade and investment; and improve health, education, and entrepreneurial opportunities in developing states. A revitalized Congress could serve as a proud embodiment of the nation's democratic tradition and values and contribute to maintaining, and, where necessary, **restoring U.S. leadership**, ensuring the admiration of allies and the respect of adversaries worldwide.

2NC—AT: Links to Politics

Oversight doesn't have to result in new legislation

Kriner 9 (Douglas – Assistant Professor of Political Science at Boston University, "CAN ENHANCED OVERSIGHT REPAIR "THE BROKEN BRANCH"?," in *SYMPOSIUM: THE MOST DISPARAGED BRANCH: THE ROLE OF CONGRESS IN THE TWENTY-FIRST CENTURY*, in 89 B.U.L. Rev. 765, http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume89n2/documents/KRINER.pdf)

One means for Congress to become a more responsible branch is for it to wrest back control of legislative powers delegated to the President and to stem the tide of ever-greater delegation to the executive branch. Yet, with the size and scope of government and the ever-increasing complexity of public policy, delegation is unavoidable. Indeed, without it the government would fail to take advantage of the resources and expertise of the permanent bureaucracy in forging and refining public policy. Rather, for Congress to delegate authority responsibly it must maintain some check on power once delegated. When other political actors abuse delegated authority in a way that conflicts with legislative intent, Congress must retain some mechanism to call that actor to account. Of course, Congress always has the ability to pass new legislation when the executive branch interprets and implements a law in a way that is contra legislative intent. However, an extensive literature in political science has laid bare the stark barriers to Congress doing so. Such efforts require that Congress overcome its collective action problems and a legislative process riddled with transaction costs. 35 Any such effort to pass new legislation to undo an executive action must clear super-majoritarian hurdles in the Senate, and even then, it faces a President wielding the veto pen. 36 As a result, legislation will frequently offer little remedy to rectifying perceived abuses of delegated authority. An alternative mechanism, the legislative veto, was ruled unconstitutional by the Supreme Court in 1982. 37 While the legislative veto survives by the mutual consent of both branches in many alternative forms, the court ruling and the sometimes cumbersome provisions for the veto to be exercised limit its usefulness as a widespread check on executive discretion. A third mechanism for Congress to **delegate responsibly is to conduct rigorous, sustained oversight of the executive branch and its use of delegated powers**. Oversight is perhaps the most logical solution for Congress to maintain some **influence over how delegated authority is exercised**; yet in this realm too, Congress all too often appears to be the "broken branch."

2NC—Appropriations CP

1. Congress has an incredible power through the purse which it has used many times to check the executive

Fisher 97 (Louis – Senior Specialist in Separation of Powers, Congressional Research Service, "ARTICLE: Presidential Independence and the Power of the Purse," 3 U.C. Davis J. Int'l L. & Pol'y 107)

II. STATUTORY RESTRICTIONS Through its prerogative to authorize programs and appropriate funds, **Congress can define and limit presidential power by withholding all or part of an appropriation**. 20 It may attach "riders" to appropriations measures to proscribe specific actions. 21 It has become the custom in Congress to admit certain "limitations" in an appropriations bill. Since Congress, under its rules, may decline to appropriate for a purpose authorized by law, "so it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it." 22 It is sometimes argued that the power of the purse is ineffective in [*111] restraining presidential wars. Senator Jacob Javits said that Congress "can hardly cut off appropriations when 500,000 American troops are fighting for their lives, as in Vietnam." 23 The short answer is that Congress can and has used the power of the purse to **restrict presidential** war **power**. If members of Congress are worried about American troops fighting for their lives in a futile war that is unrelated to American national interests, those lives are not protected by voting for continued funding. The proper and sensible action is to terminate appropriations and bring the troops home. Members need to make that case to their constituents. It can be done. Congress used the power of the purse to **end the war in Vietnam**. 24 In 1976, by adopting the Clark amendment, 25 Congress prohibited the Central Intelligence Agency (**CIA**) **from operating in Angola** other than to gather intelligence. Legislation also prohibited the CIA from conducting military or paramilitary operations in Angola and denied any appropriated funds to finance directly or indirectly any type of military assistance to Angola. 26 Beginning in 1982, Congress drafted **increasingly tighter language** to prohibit the use of appropriated funds to assist the Contras in Nicaragua. In 1986, Congress placed language in an appropriations bill to restrict the President's military role in Central America by stipulating that U.S. personnel "may not provide any training or other service, or otherwise participate directly or indirectly in the provision of any assistance, to the Nicaraguan democratic resistance pursuant to this title within those areas of Honduras and Costa Rica which are within 20 miles of the border with Nicaragua." 27 The statute defined U.S. personnel to mean "any member of the United States Armed Forces who is on active duty or is performing inactive duty training" and any employee of any department, agency, or other component of the executive branch. 28 The clear purpose was to prevent military activities in Honduras and Costa Rica from spilling over into Nicaragua. The Reagan Administration never offered any constitutional objections to this statutory restriction. Statutory restrictions were again used in 1991, when Congress authorized President Bush to use military force against **Iraq.** The statutory authority was explicitly linked to UN Security Council Resolution 678, which was adopted to expel Iraq from Kuwait. 29 Thus, the legislation did not [*112] authorize any wider action, such as using U.S. forces to invade and occupy Iraq, perhaps by reaching as far into the country as Baghdad. Two years later, Congress established a deadline for U.S. troops to leave **Somalia**. No funds could be used for military action after March 31, 1994, unless the President requested an extension from Congress and received express statutory authority. 30 From 1993 to 1995, Congress considered, but discarded, language to prohibit the use of appropriated funds for the invasion of **Haiti** and the deployment of U.S. ground troops to **Bosnia**. 31 Congress has ample authority to **control covert funding**. The CIA uses a contingency fund to initiate covert operations before notifying Congress. If administrations abuse this authority and claim a constitutional right not to notify Congress, even within forty-eight hours or some minimal period, Congress can **abolish the contingency fund** and force the President to seek congressional approval in advance for each covert action. 32 With regard to war powers in general, Congress may pass a concurrent resolution (not subject to the President's veto) stating that it shall not be in order in either House to consider any bill, joint resolution or amendment that provides funding to carry out any military actions inconsistent with an enabling statute, such as the War Powers Resolution. Under the ruling of INS v. Chadha, 33 concurrent resolutions may not direct the President or the executive branch, but they can control the internal procedures of Congress.

2. Appropriations serve as 'red lights' which represent incontrovertible directives to agencies and the executive

Raven-Hansen and Banks 94 (Peter – Glen Earl Weston Professor of Law at the National Law Center at George Washington University, and William – Professor of Law, Syracuse University College of Law,

“Pulling the Purse Strings of the Commander in Chief,” Volume 80, Number 4, May 1994, http://www.jstor.org/stable/1073484)

Not only do national security appropriation measures thus meet most of the objections to the making of customary national security law, but restrictive appropriations can also be **especially effective as "red lights"** against the creation of such law. 115 They may act as **signals to courts** that finding a certain "custom" is inappropriate. For instance, it was crucial to the finding of customary legal authority for executive claims settlements in Dames & Moore that Congress had not "in some way resisted the exercise of Presidential authority." 116 Restrictive appropriations serve as the **strongest and clearest evidence** of such resistance to an executive practice. 117 They are effective, as the Senate Committee on Governmental Operations has noted, "precisely because ... [they] are so **direct**, **unambiguous**, and **virtually self-enforcing**. While agencies are able to bend the more ambiguous language of authorizing legislation to their own purposes, the dollar figures in appropriations bills represent commands which **cannot be bent or ignored except at extreme** [*856] **peril to agency officials**." 118 Moreover, the annual cycle of appropriations affords regular opportunities for Congress to express its disapproval of executive practice. Finally, the history of national security appropriations suggests that resistance to executive national security actions is in part their raison d'etre; they were originally conceived as the ultimate check on executive national security practices. 119

2NC—AT: Pres Power of Purse

1. The President can spend money but will never do it without approval or face impeachment

Rosen 98 (Colonel Richard – Judge Advocate General's Corps in the United States Army, "FUNDING "NON-TRADITIONAL" MILITARY OPERATIONS: THE ALLURING MYTH OF A PRESIDENTIAL POWER OF THE PURSE," 155 Mil. L. Rev. 1, http://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/276C75~1.pdf)

Finally, if a situation is sufficiently grave and an operation is essential to national security, the President has the raw, physical power--but not the legal authority--to spend public funds without congressional approval, after which he or she can either seek congressional approbation or attempt to weather the resulting political storm. To the President's immediate advantage is the fact that the only sure means of directly stopping such unconstitutional conduct is impeachment. 703 Congress could, however, [*149] certainly make a President's life miserable through other means, such as denying requested legislation or appropriations, delaying confirmation of presidential appointments, and conducting public investigations into the President's actions.

2. Congress can exercise the power of the purse in order to prevent executive circumvention

Auerswald and Campbell 12 (David P. – Professor of Security Studies at the National War College, and Colton C. – Professor of National Security Strategy at the National War College, "Congress and National Security," in *Congress and the Politics of National Security*, p. 9-10)

Congress is often dubbed powerless to directly affect presidential power in the areas associated with national security. What is clear, pursuant to the Constitution, is that the underlying relationship between Congress and the executive in national security issues is one of **shared agenda control**. Each branch has the power to affect U.S. policy. While contemporary presidents generally direct this agenda, control occasionally **shifts toward Congress**, as it did in the inter-war period, in the absence of consensus over American grand strategy, and given that absence, during divided government or prolonged mil-itary conflicts.

One reason is that today's legislative branch is armed with resources to **actively engage in national security matters**. The proliferation of congressional support staff and news media have **facilitated congressional activism** and provided individual members an incentive to be involved in major national security legislation. That is a dramatic change from 50 years ago. In the 1950s, national security decisions essentially were made by a handful of powerful committee chairmen. In the late 1960s and early 1970s, in reaction to Vietnam and Watergate and the growth and complexity of the federal government, Congress increased the number of congressional oversight panels and their associated staffs, as well as created various legislative branch research entities. These resources gave members of Congress the means to become assertive on security issues. At the same time, the proliferation of media outlets and the explosion of interest groups gave members of Congress an incentive to speak out. Today's members are adept at harnessing television coverage and interacting with interest groups to get their points across. In short, individual members now have both the means and an incentive to challenge the presi dents security priorities. Indeed, virtually every member of Congress can now become involved to some degree in national security debates.

2NC—AT: Political Will

Congress has the authority and political will to reform surveillance policy.

Bendix and Quirk 15 (William – Assistant Professor of Political Science at Keene State College, and Paul J. – Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia and a former research associate at the Brookings Institution, "Secrecy and negligence: How Congress lost control of domestic surveillance," in *Issues in Governance Studies*, Number 68, March 2015, pub. by the Brookings Institution, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)

REFORMING SURVEILLANCE POLICYMAKING

Ideally, in the aftermath of the Snowden scandals, Congress would undertake to **restore order and legal regularity** to surveillance policy by passing new legislation on the metadata program. Conceivably, it could **choose to end bulk collection** of phone records and reaffirm the original requirement of individual orders for the seizure of a target's business records. Given the prevailing sense of urgency about antiterrorism security, however, we think a constructive measure would more likely **sanction metadata collection, subject to conditions** and requirements designed to avoid unnecessary harm to privacy interests.

For the immediate future, however, Congress appears to have gone out of the business of determining policy for antiterrorism surveillance. In the near term, the best hope for privacy interests is for President Obama to make good on his post-Snowden pledge, repeated in his 2015 State of the Union Address, to reform surveillance programs in order to instill "public confidence...that the privacy of ordinary people is not being violated." He promised to work with Congress on the issue. If Congress is not capable of acting, the executive branch can impose its own constraints on surveillance practices. But the maintenance of self-imposed executive-branch constraints would depend entirely on the strength of the administration's commitment—and, in two years' time, on the disposition of the next president. Because of the president's central responsibility for national security, the presidency is hardly a reliable institutional champion for privacy interests.

If over the long run surveillance practices are to afford significant protection to privacy interests, Congress will need to overcome its partisan gridlock and strengthen the institutional framework for surveillance policymaking. We suggest two long-term goals. First, Congress should seek some means of enhancing its capacity for oversight and policymaking on secret surveillance practices. Some reformers have called for abolishing or prohibiting any secret laws or interpretations that control investigations. In his 2011 speech mentioned above, Senator Wyden acknowledged that surveillance activities are necessarily secret. He insisted, however, that the policies governing those activities should be debated and decided openly, through normal democratic processes.

He argued that secret laws, or secretly sanctioned interpretations of laws, are incompatible with democracy.

This position is appealing from the standpoint of democratic principles. But we find it too simple. There will inevitably be intelligence methods that offer major benefits for investigations and that require secrecy—even about general practices or capabilities—to be fully effective. These methods will often raise new issues of policy, or require change in existing policy; but discussing the policy openly will, in itself, reveal the methods and undermine their effectiveness. In such cases, there are only three options for Congress: forego using the new methods, despite the resulting sacrifice of investigative effectiveness; delegate the decisions about them, without legislative guidance, to the intelligence agencies; or adopt secret laws or interpretations to control their use. We believe the last option—acknowledging the need for secret policies—is the preferable course. Instead of abolishing secret laws, amendments, or interpretations, reformers should try to establish processes for making them that help minimize their frequency and provide some degree of accountability to Congress and the public.

Such a process, even if achievable, would be far from fully democratic. But it would provide far more accountability to Congress and the public than do secret executive interpretations reviewed simply by the FISA Court.

2NC—AT: Courts

The Courts ducked checking the executive --- only Congress has the power

Menitove 10 (Jonathan T. – J.D. from Harvard University, "Note: Once More Unto the Breach: American War Power and a Second Legislative Attempt to Ensure Congressional Input," 43 U. Mich. J.L. Reform 773)

III. Mixed Messages: How the Judiciary Has Addressed War Power Notwithstanding a few early Supreme Court decisions defending Congress's predominance over the president in exercising war power, the judiciary has been largely unhelpful in restoring the constitutional Framers' original vision. Initial decisions arising out [*786] of the Quasi-War with France affirmed Congress's authority, but subsequent holdings - most especially the Supreme Court's decisions in The Prize Cases 61 and United States v. Curtiss-Wright 62 - seemed to imbue the president with extra-constitutional war power authority. 63 By the time litigation arose during the Vietnam and Persian Gulf Wars, the courts timidly refused to decide the issue, claiming the issue to be a nonjusticiable political question. 64 As such, **the judiciary does not represent a viable means for mandating** the constitutionally required congressional input in war-making decisions. A. The Earliest Supreme Court Cases Pertaining to War Power Affirmed Congress's Authority The earliest Supreme Court cases pertaining to war power arose out of the Quasi-War with France between 1798 and 1800, which, although authorized by congressional statute, was undeclared. Writing in 1800, the Supreme Court noted in Bas v. Tingy, 65 that regardless of whether hostilities were declared or undeclared, the conflict still constituted "war" in the constitutional sense, with the declared war being "perfect" and "general" war and the undeclared war constituting "imperfect" and "limited" war. 66 While the Court did not expressly identify Congress to be the dominant player in war-making decisions, the Court strongly implied this message: Congress is empowered to declare a general war, or congress may wage a limited war; limited in place, in objects, and in time. If a general war is declared, its extent and operations are only restricted and regulated by the jus belli, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal laws [as passed by Congress]. 67 [*787] The Court was far more explicit in Talbot v. Seeman, 68 an 1801 case also with origins in the Quasi-War with France. In Talbot, the newly-sworn Chief Justice John Marshall confronted a dispute between Captain Silas Talbot, whose American warship (the U.S.S. Constitution) libeled the Amelia, a Hamburgh vessel that had been captured by the French. 69 In finding Captain Talbot's seizure of the Amelia lawful, Justice Marshall held that although war had not been declared against France, Congress had authorized the U.S. Navy to capture French vessels, and since the Amelia was carrying eight carriage guns and in possession of the French, there was sufficient probable cause for Captain Talbot to capture the ship. 70 Most notable is Justice Marshall's explicit statement regarding Congress's war power: The whole powers of war being, by the constitution of the United States, vested in congress, the acts of that body can alone be resorted to as our guides in this enquiry. It is not denied, nor in the course of the argument has it been denied, that congress may authorize general hostilities, in which case the general laws of war apply to our situation; or partial hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed. To determine the real situation of America in regard to France, the acts of congress are to be inspected. 71 Justice Marshall more precisely defined his views regarding the balance of war power between the legislative and executive branches in Little v. Barreme, 72 an 1804 case also arising out of the Quasi-War. In Little, Justice Marshall held that in authorizing war, Congress may place limits on the president's conduct. The facts of Little relay the story of Congress authorizing President Adams to seize ships sailing to French ports, with President Adams - contrary to Congress's wishes - issuing an order to capture vessels sailing to or from French ports. 73 Captain George Little seized a Danish ship sailing from a French port, and was subsequently sued for damages. Marshall, in deciding the case, held that Captain Little could [*788] be held liable for damages, 74 thus ruling that orders issued by the Commander-in-Chief during wartime are still subject to Congress's restrictions. 75 Such a ruling clearly indicates Justice Marshall's belief that, on war-making decisions, Congress reigned supreme over the president. The Court affirmed the notion of congressional war power supremacy in Martin v. Mott, 76 a controversy arising in 1827 in the aftermath of the War of 1812. While some cite this case as support for broad presidential war power, the Court actually imposed limits on the president's authority. 77 In the decision, Justice Story sustained the delegation by Congress to the president of the authority to call up the militia, but the Court carefully constricted the circumstances in which the president could act, noting the president's power to be "a limited power, confined to cases of actual invasion, or of imminent danger of invasion." 78 Furthermore, the Court confirmed that the president did not hold any inherent war power authority; he could only exercise war power when such power was "confided by Congress to the President." 79 These four decisions illustrate early Supreme Court recognition of Congress's dominant role, thus fulfilling the Framers' original vision for the balance of war power. B. Subsequent Decisions Imbued the President with Extra-constitutional War Power Authority In two decisions - one rendered in 1862 pertaining to President Lincoln's conduct at the start of the Civil War, the other decided in 1936 discussing the president's role in foreign affairs - the Supreme Court expanded presidential war power. The Supreme Court addressed Lincoln's order to blockade southern ports and seize ships without Congress's authorization in The Prize Cases, 80 splitting five to four, with the majority sustaining the Union seizures. 81 According to the Court's opinion, the president's inherent authority as Commander-in-Chief justified his action 82 and, even if [*789] he lacked the constitutional authority to issue the blockade, Congress ratified the blockade via subsequent legislation, thus rendering this military action without Congress's consent a valid exercise of the war power. 83 The Supreme Court further weakened Congress's ability to intervene on the president's foreign affairs activity in United States v. Curtiss-Wright Export Corp. 84 in 1936. Upholding the president's declaration of an arms embargo, the Court noted, "the powers of external sovereignty did not depend upon the affirmative grants of the Constitution" 85 and that "participation [by Congress] in the exercise of the power is significantly limited." 86 Citing "this vast external realm, with its important, complicated, delicate and manifold problems" 87 Justice Sutherland, writing the majority opinion, argued that the president has an inherent power to be "the sole organ of the federal government in the field of international relations." 88 Justice Sutherland further elaborated on this view of presidential supremacy in foreign affairs, focusing specifically on war: He, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results. 89 Thus, according to Justice Sutherland's constitutional interpretation, it is the president - and not Congress - who is predominant in exercising war power. In both The Prize Cases and Curtiss-Wright, the Supreme Court has undermined its previous commitment to congressional war power, and provided support to those who support broad presidential war-making authority. [*790] C. Modern Courts Refuse to Rule on War Power, Declaring the Issue a Nonjusticiable Political Question In more recent decisions, the courts have adopted a different approach, refusing to decide cases concerning war power on grounds that the issue is a nonjusticiable political question. During the Vietnam War, Members of Congress sought assistance from the courts in reasserting their constitutionally-provided war power. However, rather than hear these cases, the judiciary sidestepped the issue, declining to hear cases concerning the constitutionality of the continuation of the war on grounds that the political question doctrine prevented the courts from deciding the issue. 90 During the Reagan and Bush Administrations, courts declined to reach the merits in war powers cases relying on other excuses including mootness, 91 ripeness, 92 standing, 93 the doctrines on judicial prudence and **equitable discretion**, 94 and the notion that **Congress would be a better fact-finder** than the courts on this issue. 95 Unlike the early Supreme Court cases, or the subsequent Prize Cases and Curtiss-Wright decisions, the judicial branch over the last thirty years has steered clear of the war powers issue. While the Supreme Court once served as a bulwark in defense of Congress's predominance over the president in administering the war power, subsequent Supreme Court decisions undermined Congress's constitutional authority. The courts have thus revealed themselves as unable to restore the balance of war power to the Framers' original vision. The judiciary's more recent strategy of treating war power as a nonjusticiable political question has unequivocally established that the **courts cannot be trusted** to protect [*791] Congress. For this reason, Congress must seek to help itself, acting to pass a legislative war power reform act to ensure that its input is considered when the United States goes to war.

2NC—AT: Theory

1. best policy option --- debaters can't limit themselves to 1 actor to find the best solution

2. the agent is key to policy education --- different surveillance agencies have different jurisdictions, enforcement agencies and funding which are crucial to understanding policy

3. aff choice of agent is unfair --- if the neg has to use the actor chosen by the AFF the AFF will choose actors that limit out neg CPs

4. no abuse --- the aff chose that agent and thus should be able to defend it

5. CP is core of the topic --- engages in the core topic question of reform versus oversight

Rosenzweig 13 (Paul – Senior Legal Research Fellow in the Center for Legal and Judicial Studies at The Heritage Foundation, "The NSA Doesn't Need Wholesale Reform, Just Greater Oversight," in the New Republic, 10-29-13, http://www.newrepublic.com/article/115392/nsa-reform-not-essential-congressional-oversight)

One final point, more about Congress and its role than the NSA. Since the mid-1970s, with the reforms prompted by the Church and Pike Committee investigations we in America have been engaged in an experiment — an experiment to see whether it is possible for a country like America to have covert operations under law—or, to coin a phrase, whether we can have intelligence collections within the bounds of democracy. To my mind the system of delegated transparency, where Congress stands in for the general public, has worked reasonably well–allowing us to use intelligence capabilities while minimizing the risks of abuse of law. Today, however, thanks to the Snowden disclosures, that system is under assault. Most who challenge the system do so from the best of motives. But there are some whose calls for transparency mask the intention of diminishing American capabilities. And that means that in this post-Snowden era, this House Intelligence Committee (and its Senate counterpart) bear a great responsibility. To them falls the task of defending the integrity of our current system of intelligence oversight. While we have discussed possible reforms to the NSA's programs, both legislative and structural, the **critical insight** is that, **despite the hue and cry**, the system is not badly broken. It can be improved, but in the main it has produced a reasonably effective system of oversight that, if the public record is an accurate reflection, resulted in precious little abuse of the sort we ought to fear. Congress should be proud of that record and of your role in creating it. Can the Intelligence Committees, perhaps, do a better job of oversight? No doubt. But in the end, **notwithstanding the calls for reform and the many plausible reforms you might consider**, this Committee should **defend the essential structure of our current system**. And that, in the end, means rejecting most calls for wholesale reform and complete transparency, and, instead, defending the role of graduated or delegated oversight.

2NC—AT: Perm

The perm severs 'curtail' --- it does not fundamentally alter the NSA's capabilities, just improves the oversight process

Rosenzweig 13 (Paul – Senior Legal Research Fellow in the Center for Legal and Judicial Studies at The Heritage Foundation, "The NSA Doesn't Need Wholesale Reform, Just Greater Oversight," in the New Republic, 10-29-13, http://www.newrepublic.com/article/115392/nsa-reform-not-essential-congressional-oversight)

Structural Changes: Finally, most of the more effective possible changes lie **not in significant legislative tinkering**, but rather in interstitial structural and operational reforms that **improve the audit and oversight process** without **fundamentally altering the capabilities of NSA** or the IC organizations. Here are a few, listed just in bullet point form, that might be worth thinking about:

PCLOB CP

PCLOB CP 1NC Shell

The United States federal government should propose <the plan> to the Privacy and Civil Liberties Oversight Board for review. The board should solicit feedback from all relevant stakeholders. The board should issue a report recommending that the United States federal government do the plan.

PCLOB investigations are key to effective surveillance policymaking – congressional backing, access to classified info, and public interest ensure its recommendations shape policy.

Levy, 2013

(Pema, International Business Times Writer, "NSA Spying Controversy: The New Agency That Could Change Government Surveillance" *IB Times*, July 11, http://www.ibtimes.com/nsa-spying-controversy-new-agency-could-change-government-surveillance-1342409)

You've probably never heard of it, but there is a new agency in Washington that is working to make sure the government's anti-terrorism efforts do not ride roughshod over Americans' civil liberties. These days, when a sharply divided Congress struggles to get nearly anything accomplished, there is little evidence that such an agency, armed only with the mandate to offer advice, can influence lawmakers. But the Privacy and Civil Liberties Oversight Board may have a better chance at reforming the national security apparatus than many assume. In fact, the board is in a unique position to shape the legislative debate over the government's spying abilities -- and has powerful allies to make sure Congress takes up its recommendations. Referred to as the PCLOB (sounds like 'pee-klawb'), the new agency has the job of advising the president, federal agencies and Congress on how to balance the government's national security efforts with civil liberties concerns. Board members have top-secret clearances, and agency heads are expected to turn over any documents the board requests. If the board needs information from the private sector, the attorney general can issue a subpoena on its behalf. Created in 2004 at the recommendation of the 9/11 Commission, the PCLOB did not get off to an auspicious start. It was originally located within the Executive Office of the President, and its first report to Congress was edited by the Bush White House, prompting one Democratic member to resign. In response, in 2007 the new Democratic Congress made the board an independent agency within the executive branch. Then-President George W. Bush clashed with Senate Democrats over board nominees, and ultimately none were confirmed. President Barack Obama dragged his feet in choosing nominees and when they finally did come, Republicans refused to approve them. Four part-time members were finally approved in the last nine months. The board's chairman, David Medine, was not formally installed on until May 29, 2013. One week later, the Guardian newspaper published its first scoop, based on leaked National Security Agency documents, showing the government collected and stored metadata on the phone calls of millions of Americans. Over the next few days, the documents leaked by Edward Snowden revealed that the government went further, collecting and storing metadata on the phone calls of virtually all Americans. The government was also scooping up an untold amount of Americans' electronic communications as part of its foreign surveillance operations. These revelations thrust the board into the middle of the most important debate over privacy and civil liberties in years. Sen. Tom Udall, D-N.M., sent a letter to the board asking it to "make it an urgent priority to investigate the programs" and provide an unclassified report on their legality and whether they take the "necessary precautions to

protect the privacy and civil liberties of American citizens under the Constitution." Twelve additional senators, including two Republicans, signed Udall's letter. On June 21, the board met with Obama. All this before its office space was even ready or emails set up. The full board's first public appearance came Tuesday at a workshop in Washington, D.C., where the five members -- three Democrats and two Republicans -- queried three separate panels of experts on how the surveillance programs might be brought more in line with civil liberties concerns. Civil liberties advocates appear cautiously optimistic about the new board, whose opinion could help determine whether Congress decides to take on the massive surveillance programs. Advocates are also aware of the board's ability to actually move their cause backward and entrench these programs. "If it blesses these programs, they are likely to continue," privacy rights advocate Greg Nojeim, who participated in one of Tuesday's panels, said in an interview Wednesday. Whether the board deems the phone metadata collection is unlawful or not will be "one of the most significant tests of PCLOB," said Nojeim, a lawyer at the Center for Democracy and Technology. But whatever its recommendations ultimately are, the PCLOB is armed by circumstance with the power to shape the laws governing the surveillance state, particularly Section 215 of the USA Patriot Act, also known as the "business records" provision, under which the government claims the authority to collect Americans' call data. During Tuesday's workshop, panelist Michael Davidson, former legal counsel to the Senate Intelligence Committee, hinted at the board's potential for influence. "Can I suggest a focus for the board, and that is the Congress will turn to the many important questions that have been discussed through the day when it has to," Davidson said. "And it will have to when, initially, when the sunset for business records [provision] is reached in the middle of 2015." In other words, the government's authority to carry out the phone metadata collection will expire on June 1, 2015, absent congressional action – a situation the board can use to shape the debate and even push its recommendations. On June 1, 2017, the portion of the Foreign Intelligence Surveillance Act under which the NSA conducts electronic foreign intelligence sweeps that also snag domestic communications will expire without reauthorization, as well. Privacy advocates don't want the board or Congress to wait years to address the surveillance programs they believe are illegal. But at the end of the day, the sunset dates guarantee that a debate over these programs will take place -- and when it does, the PCLOB can have its reports and recommendations ready to shape that conversation. Moreover, because the issues in are so complex from a legal, practical and technological point of view, lawmakers who want to put forward serious reforms may not have the ability to craft adequate proposals before the sunset deadline. The board can help in that practical function to make sure that lawmakers have reforms ready to be implemented when the debate begins. Nojeim also sees this as an "advantage" unique to the PCLOB. "The board has a guaranteed congressional audience that other boards don't have because it's making recommendations on statutes that will expire unless acted on," he said Wednesday. Despite the leverage the PCLOB has in 2015 and 2017, the civil liberties community believes it has a popular mandate to move reforms -- at least more basic changes like releasing more classified materials -- while the public is engaged on the issue. The NSA leaks are "a game-changer," said Michelle Richardson, a legislative counsel at the American Civil Liberties Union, noting that members of Congress on both sides of the aisle have indicated that the NSA's programs need to be reined in. "This certainly seems like our best opportunity yet." Whether or not Congress takes up a range of proposals put forward in the last month to reform the intelligence system, the board has allies in Congress who will have the power to make sure its recommendations are debated, even if it takes until 2015 for that to happen. "There are senators and representatives, including [Vermont Democratic Sen. Patrick] Leahy, who chairs the Senate Judiciary Committee, who struggled and pushed and cajoled until the PCLOB members were nominated and approved," Nojeim said Wednesday. "They are not going to ignore the recommendations of the board they fought for."

Solvency – General Extension

PCLOB oversight key – exposes security establishment abuses and provides policy guidance.

Ball, 2012

(Michael, Director of ACLU's DC Legislative Office, "Letter to PCLOB", 26 October, https://www.pclob.gov/library/20121031-Submission-ACLU.pdf)

Oversight of these new authorities is limited largely to internal controls. Important oversight bodies such as Congress and the President's Intelligence Oversight Board aren't required to be notified, even of "significant" failures to comply with the guidelines.7 **Additional oversight by the PCLOB is essential to protecting Americans' privacy from this invasive new collection authority.** Other programs need additional oversight as well and include: o New or expanding Intelligence Community activities focused on domestic collection of US person information, including new cyber-security programs, the proposed expansion of the DNI Information Sharing Environment to include suspicious activity reporting not related to terrorism, and the increasing number of US persons being placed on watch lists, particularly while travelling abroad, preventing return flights to the United States; o Surveillance and obstruction of activity protected under the First Amendment, including intelligence community and law enforcement surveillance/tracking of protest groups and the FBI's use of aggressive and coordinated raids of activists' homes, and abusing the use of Grand Jury subpoenas to jail activists; o Racial profiling in law enforcement and intelligence activities, such as the FBI's racial and ethnic mapping program and the Transportation Security Agency's behavioral detection programs; o The use of new surveillance technologies by federal law enforcement and national security agencies, such as mobile phone data and other location-tracking technologies, unmanned surveillance drones, and databases maintained by commercial data aggregators. This list should is by no means comprehensive. The pool of programs put in place in the years since 2001 is broad, deep, and alarming. The nation's security establishment has greatly expanded in scope and power in recent years, and the oversight structures created to oversee these vast agencies are small and inadequate. Aside from Japan and South Korea, the United States is the only advanced industrial nation that has no privacy and data protection commissioner to enforce its privacy laws. We hope that the PCLOB will embark on its mission quickly and begin filling this oversight vacuum with vigor and energy. We also hope that the PCLOB will engage in the full spectrum of privacy oversight activities—not only investigating and reviewing government actions to ensure the adequate consideration of privacy and civil liberties interests, but also engaging in pro-active policy leadership, providing broad public guidance on how privacy and other civil liberties interests should be protected as our security agencies make use of new technologies.

Solvency – Awareness

Commissions are more efficient than Congress and solve groupthink

Schwalbe, 2013

(Steve, Auburn University, "Independent Commissions: Their History, Utilization and Effectiveness," March 22, Weather Coalition, http://weathercoalition.org/sites/default/files/documents/2013/independent_commissions.pdf)

There are numerous other reasons for establishing independent commissions. They are created as a symbolic response to a crisis or to satisfy the electorate at home. They have served as trial balloons to test the political waters, or to make political gains with the voters. They can be created to gain public or political consensus. Often, when Congress has exhausted all its other options, a commission serves as an option of last resort.23 Commissions are a relatively impartial way to help resolve problems between the executive and legislative branches of government, especially during periods of congressional gridlock. Wolanin also noted that commissions are "particularly useful for problems and in circumstances marked by federal executive branch incapacity." Federal bureaucracies suffer from many of the same shortcomings attributed to Congress when considering commissions. They often lack the expertise, information, and time to conduct the research and make recommendations to resolve internal problems. They can be afflicted by groupthink, not being able to think outside the box, or by not being able to see the big picture. Commissions offer a non-partisan, neutral option to address bureaucratic policy problems.24 Defense Secretary Donald Rumsfeld has decided to implement the recommendations of the congressionally-chartered Commission on Space, which he chaired prior to being appointed Secretary of Defense!25 One of the more important functions of independent commissions is educating and persuading. Due to the high visibility of most appointed commissioners, a policy issue will automatically tend to gain public attention. According to Wolanin, the prestige and visibility of commissions give them the capability to focus attention on a problem, and to see that thinking about it permeates more rapidly. A recent example of a high-visibility commission chair appointment was Henry Kissinger, selected to chair the commission to look into the perceived intelligence failure regarding the September 11, 2001 terrorist attack on the U.S. .26 Wolanin cited four educational impacts of commissions: 1) educating the general public; 2) educating government officials; 3) serving as intellectual milestones; and, 4) educating the commission members themselves. Regarding education of the general public, he stated that, "Commissions have helped to place broad new issues on the national agenda, to elevate them to a level of legitimate and pressing matters about which government should take affirmative action." Regarding educating government officials, he noted that, "The educational impact of commissions within government…make it safer for congressmen and federal executives to openly discuss or advocate a proposal that has been sanctioned by such an 'august group'." Commission reports have often been so influential that they serve as milestones in affected fields. Such reports have become source material for analysts, commentators, and even students, particularly when commission reports are widely published and disseminated. Finally, by serving on a commission, members also learn much about the issue, and about the process of analyzing a problem and coming up with viable recommendations. Commissioners also learn from one another.27

Solvency – Awareness

PCLOB actions build systems of accountability – squo disclosures are insufficient

Setty, 2015

(Sudha, Professor of Law at Western New England University, "SEARCH FOR MEANINGFUL ACCOUNTABILITY," *Stanford Journal of International Law*, 51:1, Online: http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol)

More troubling to proponents of the efficacy of existing legislative and executive accountability mechanisms are the disclosures made by Snowden. These mechanisms were revealed to be either theoretical or passive until significant leaks forced a public discourse that demanded a more active accountability regime. In fact, the federal government exploited the lack of transparency and effective accountability mechanisms until the stim of the Snowden disclosures to secure dismissals like that in Clapper I and to circumvent efforts of criminal defendants to discover whether they had been actually surveilled. 106 Reliance on sporadic leaks to trigger genuine accountability is structurally problematic. 107 Our reliance on leaks thus far should force us to reconsider the extreme secrecy under which intelligence-gathering programs, like the NSA Metadata Program, are administered, and to consider means by which institutional actors can exert meaningful and regular oversight and control over these programs. Such change would force politicians to take ownership over secret counterterrorism programs, weighing their expediency against possible constitutional defects or the judgment of public opinion. An atmosphere in which accountability mechanisms are not merely ersatz pending an illegal leak could provide space for genuine public discourse and at least the possibility of greater protection of civil liberties.

Solvency – External Review

PCLOB key – external review

Fidler, 2015

(David P. Fidler - J.D. at Harvard Law School 1991 and Professor of Law (specifically international law and its relation to cyberspace) at Indiana University, Apr-24-2015, The Snowden Reader, Indiana University Press)

The PCLOB has started to function in the wake of the Snowden leaks, producing reports on the telephone metadata program under Section 215 of the USA PATRIOT Act and surveillance of foreign targets conducted under Section 702 of FISA. These are important – and long overdue – steps that demonstrate the importance of the PCLOB. Subjecting surveillance and intelligence programs to external, independent review inserts more discipline, transparency, critical analysis, and alternative approaches, and shared responsibility into this area of policy and law. The PCLOB must build on this promising start, and the president must take seriously its recommendations.

Solvency – Public Awareness

The PCLOB is ideal for regulating surveillance practices – access to classified documents & government officials + it holds public hearings to expand public knowledge

PCLOB, 2014 The PCLOB consists of David Medine (Chairman), Rachel Brand, Elisebeth Collins Cook, James Dempsey and Patricia Wald. It is a committee within the Executive Branch that was established shortly after the first unauthorized disclosure of classified documents from the NSA by Edward Snowden. The PCLOB's purpose is to conduct reviews of surveillance practices and security measures to ensure that people's civil liberties are, and continue to be, respected by government agencies and make recommendations wherever necessary. (Private Civil Liberties Oversight Committee "Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court" Pg. 2-7 1/23/14 https://www.pclob.gov/library/215-Report_on_the_Telephone_Records_Program.pdf)//ER

The Board has been provided **access to classified opinions** by the FISC, various inspector general reports**, and** additional classified **documents** relating to the operation and effectiveness of the programs. At **every step of the way, the Board has received the full cooperation of the intelligence agencies.** Board staff have **conducted a detailed analysis of applicable statutory authorities, the First and Fourth Amendments to the Constitution, and privacy and civil liberties policy issues.** As part of its study, and **consistent with our statutory mandate to operate publicly where possible**, the Board held two public forums. The first was a day-long public workshop held in Washington, D.C., on July 9, 2013, comprised of three panels addressing different aspects of the Section 215 and 702 programs.15 The **panelists provided input on the legal, constitutional, technology, and policy issues implicated by the two programs**. The first panel addressed the legality of the programs, and included comments from a former FISC judge regarding the operation of that court. Because technological issues are central to the operations of both programs, the second panel was comprised of technology experts. The third panel included academics and members of the advocacy community; panelists were invited to provide views on the policy implications of the NSA programs and what changes, if any, would be appropriate. As the Board's study of the NSA surveillance programs moved forward, the Board began to consider possible recommendations for program changes. At the same time, the Board wanted to try to identify any unanticipated consequences of reforms it was considering. Accordingly, on November 4, 2013, the Board held a public hearing in Washington, D.C. 16 The hearing began with a panel of current government officials who addressed the value of the programs and the potential impact of proposed changes. The second panel, designed to explore the operation of the FISA court, consisted of another former FISC judge, along with a former government official and a private attorney who both had appeared before the FISC. Finally, the Board heard from a diverse panel of experts on potential Section 215 and 702 reforms. The Board provided its draft description of the operations of the FISA court (but not our recommendations) to court's staff to ensure that this description accurately portrayed the court's operations. The Board also provided draft portions of its analysis regarding the effectiveness of the Section 215 program (but not our conclusions and recommendations) to the U.S. Intelligence Community to ensure that our factual statements were correct and complete. While the Board's Report was subject to classification review, none of the changes resulting from that process affected our analysis or recommendations. There was no outside review of the substance of the Board's analysis and recommendations. During the time the PCLOB has been conducting this study, members of Congress have introduced a variety of legislative proposals to address the Section 215 and 702 programs, the government has engaged in several internal reviews of the programs, and several lawsuits have been filed challenging the programs' legitimacy.

Solvency – Previous Rulings

PCLOB provides valuable insight into surveillance programs - previous research into Section 702 of FISA.

Kwon, 2014

(Max, JD Candidate at Harvard Law, "The PCLOB's Recommendations for a More Reasonable Surveillance Program," July, http://jolt.law.harvard.edu/digest/privacy/the-pclobs-recommendations-for-a-more-reasonable-surveillance-program)

On July 2, 2014, the Privacy and Civil Liberties Oversight Board ("PCLOB") issued a report analyzing the legal and policy implications of Section 702 of the Foreign Intelligence Surveillance Act of 1978 ("FISA"). Section 702 was introduced by Congress through the FISA Amendments Act of 2008 and allows the Attorney General and the Director of National Intelligence to "jointly authorize surveillance targeting persons who are not U.S. persons, and who are reasonably believed to be located outside the United State, with the compelled assistance of electronic communication service providers, in order to acquire foreign intelligence information." Report at 6. The PCLOB concluded that "the core Section 702 program is clearly authorized by Congress, reasonable under the Fourth Amendment, and an extremely valuable and effective intelligence tool," Id. at 15, but noted that "**the applicable rules potentially allow a great deal of private information about U.S. persons to be acquired by the government."** Id. at 11. In order to "ensure that the program remains tied to its constitutionally legitimate core," the PCLOB outlined a set of ten policy proposals **aimed at increasing accountability**, transparency, and efficacy of the surveillance program. Id. at 9. Pursuant to Section 702, the Attorney General and Director of National Intelligence can make annual certifications that identify categories of information to be collected without specifying the particular non-U.S. persons who will be targeted. Id. Although Section 702 requires the government to develop targeting and "minimization" procedures in order minimize "incidental" or "inadvertent" surveillance of U.S. persons, the PCLOB stated that "certain features of the [Section 702] program **implicate privacy concerns**" regarding the scope and usage of U.S. person communications that are collected. Id. at 6–10. Many of the privacy concerns regarding Section 702 surveillance stem from the two methods that the government can use to acquire information, namely, "PRISM" collection and "upstream" collection. In PRISM collection, the government sends a particular "selector," such as an email address or telephone number associated with targeted persons, to a United States-based electronic communications service provider. Id. at 7. The provider is then "compelled to give the communications sent to or from that selector to the government." Id. The National Security Agency ("NSA") receives all of this data and select portions of the data are passed on to the Central Intelligence Agency ("CIA") and the Federal Bureau of Investigation ("FBI"). Id. In upstream collection, the government compels the assistance of telecommunications providers. Id. The information collected includes both Internet communications and telephone calls and is received only by the NSA. Id. Notably, upstream collection also includes the acquisition of (1) "about" communications, information about the targeted person even if the targeted person is not a participant of the communication, and (2) "multiple communications transactions" ("MCTs"), an Internet transaction that is composed multiple parts or communications. Id. The NSA is allowed to obtain the entire MCT so long as a single part is "to, from, or 'about' a tasked selector, and if one end of the transaction is foreign." Id.

Solvency – Previous Rulings

PCLOB solves accountability – previous rulings highlight ability to raise public awareness.

Kayyali, 2015

(Adia, JD from UC Hastings & member of EFF's (Electronic Frontier Foundation) activism team focused on addressing the racial profiling of the Arab, Muslim, Middle Eastern, and South Asian community, "Privacy and Civil Liberties Oversight Board to NSA: Why is Bulk Collection of Telephone Records Still Happening?," *Electronic Frontier Foundation*, 2/4, https://www.eff.org/deeplinks/2015/02/privacy-and-civil-liberties-oversight-board-nsa-why-bulk-collection-telephone)

(PCLOB) exists to ensure that national security does not trump privacy and civil liberties, and it has been especially busy since the publication of the first Snowden leak. Congress and the President asked the Board to review the use of Section 215 of the PATRIOT Act and Section 702 of the FISA Amendments Act, as well as the operations of the Foreign Intelligence Surveillance Court. In 2014, PCLOB published two reports addressing these issues. And last week, the Board published a "Recommendations Assessment Report [pdf]." Section 215 Recommendations The most striking piece of the report is also the first: Recommendation 1: End the NSA's Bulk Telephone Records Program Status: Not implemented (implementing legislation proposed) The NSA uses Section 215 of the Patriot Act to justify its bulk telephone records collection program. But as we have noted repeatedly, there's no evidence that the Section 215 program is necessary for stopping terrorism—something PCLOB, the President's Review Group, and even the administration itself have all admitted. On the other hand, there's plenty of evidence of how the program invades innocent peoples' privacy. And PCLOB's recommendation is very simple here: the program should end. Of course, Section 215 expires on June 1, and Congress will have to vote on whether to reauthorize it. It's important to note that "the Board did not recommend that ending the program be contingent on the passage of legislation that would replicate the program's capabilities." We agree. Congress cannot simply reauthorize Section 215 and ignore the serious civil liberties concerns it creates. PCLOB highlighted another important recommendation: the administration should ensure that the public understands how it is interpreting statutes, especially "if the text of the statute itself is not sufficient to inform the public of the scope of asserted government authority," both "intended uses of broadly worded authorities at the time of enactment" and "novel interpretations of laws already on the books." This recommendation has been partially implemented. But considering the concern about how intelligence reform legislation such as USA FREEDOM could have been interpreted, this recommendation should be at the forefront as discussions about NSA reform legislation continue.

Solvency – Roadmap

PCLOB's recommendations are relevant – assessments form key roadmap for reforms

Bomboy '14 (Scott Bomboy - writer for the National Constitution Center, 1-24-2014, "PCLOB report latest blow to NSA surveillance policies," Constitution Daily, http://blog.constitutioncenter.org/2014/01/pclob-report-latest-blow-to-nsa-surveillance-policies/)

On Thursday, the Privacy and Civil Liberties Oversight Board released its long-awaited report on the NSA's phone-records program. That's the program in which the NSA collects—and stores for five years—a record of virtually every telephone call made every single day in the country. The report is damning, and much attention will rightly focus on its central conclusion: that the program is illegal and should be ended. The report is comprehensive, though, and its principal conclusion is buttressed by a series of other critical findings and recommendations. Here are the three other points from the report that will shape the debate about the NSA and privacy over the coming months: 1. Bulk collection of phone records is unnecessary and has not made the country safer. Since the revelation of the NSA's phone-records program on June 5, 2013, the government's principal talking point has been that the program is essential to keeping the country safe. The PCLOB examined that claim in depth—reviewing "a wealth of classified materials," requesting "follow-up information" from the intelligence agencies, and receiving "a series of classified briefings." The board paid special attention to the "specific cases cited by the government as instances in which telephone records obtained under [the program] were useful." The PCLOB's conclusion: Bulk collection has not made the country safer. The board did not "identif[y] a single instance involving a threat to the United States in which the telephone records program made a concrete difference in the outcome of a counterterrorism investigation." And even when the phone-records program offered additional information, "in nearly all cases the benefits provided have been minimal" and could "have been obtained through traditional, targeted collection of phone records." Here's the bottom line in the PCLOB's words: FT-ACLU1 2. Bulk collection of our metadata poses a serious threat to civil liberties. The PCLOB joined the growing consensus that telephone records—particularly when collected in bulk—are extraordinarily sensitive. In fact, it noted, "the aggregation of numerous calling records over an extended period of time can paint a clear picture of an individual's personal relationships and patterns of behavior. This picture can be at least as revealing of those relationships and habits as the contents of individual conversations—if not more so." Having recognized the sensitivity of our phone records, the PCLOB went on to analyze the impact on civil liberties of allowing the government to collect that information in bulk. As we at the ACLU have argued for years, bulk collection threatens to reshape the relationship between the citizens of this country and their government. The PCLOB agreed. It noted that "[a]llowing [the government] to gather vast quantities of information about the conduct of individuals as a routine matter where those individuals are not suspected of any crimes affects the balance of power between the state and its people." But the PCLOB didn't just stop there. **It cataloged some of the other harms of bulk collection, such as mission creep and the possibility of abuse**. In a crucial passage, the board stated, "Prudence cautions against assuming that abuse of surveillance powers is a problem that will never reoccur, and any decision to invest the government with a broad surveillance power must duly take into account the abuse that this power could enable, whether or not such abuse is evident today." Here's the bottom line in the PCLOB's words: FT-ACLU2 3. Forcing companies to store sensitive data about their customers is not the answer. If the government ultimately embraces the push to end the NSA's phone-records program, the question will remain whether it repackages the program in private hands. Toward that end, some officials have called for new laws forcing the telephone companies to retain their customers' sensitive phone records for years. Others have called for some third party to hold onto all of the records, instead of the NSA. As President Obama recognized in his speech last week, both of those solutions raise serious privacy concerns of their own. The PCLOB agreed. It, too, recognized the privacy implications of compelling companies to keep information against their will or of creating a centralized database of the nation's call records. The board is exactly right on this point. Companies should remain free to offer services to their customers that provide greater privacy protections. And if cybersecurity truly is as serious a threat as the government claims, we are all made less secure by centralizing all of our most sensitive information. After all, it isn't just the NSA that wants access to all of our data, but foreign governments and criminal

hackers. Here's how the PCLOB explained it: FT-ACLU3 In the days to come, the PCLOB's key recommendation that the phone-records program be ended will be the primary focus. But as the debate moves forward, the critical question will be how to protect our privacy in an era of big data. The board's incisive findings provide a necessary roadmap.

Solvency – XO 12333

PCLOB has great potential to approach Executive Order 12333

Greene, 2015

(Robyn, *Comments to the Privacy and Civil Liberties Oversight Board Concerning Activities Under Executive Order 12333,* Open Technology Institute*)*

The first issue we urge PCLOB to review is the NSA's bulk and targeted collection activities under EO 12333. Bulk collection poses a serious threat to privacy, as it inherently results in the large---scale collection of the communications of millions of innocent Americans and people around the world. The procedures governing the NSA's acquisition, retention, search, dissemination, and use of those communications are not public. PCLOB should review the scale of incidental collection of U.S. person communications that results from bulk collection under EO 12333. It should also review and make recommendations to enhance the privacy protections provided by the minimization procedures that are applied to those collections. Additionally, it should review and publicly disclose the number of instances in which those communications have been searched for U.S. person information, and how many times that information has been used in any government proceeding, such as criminal investigations, including instances where parallel construction was employed to obscure the source of the information; judicial proceedings; and other civil, immigration, and regulatory proceedings. PCLOB should make similar inquiries into the NSA's targeted collection practices under EO 12333. Specifically, it should assess the adequacy of and make recommendations for additional safeguards of privacy protections conferred on U.S. person communications by targeting and minimization procedures, and policies governing their retention, use, and dissemination.

Solvency – Drones

PCLOB well equipped to engage drone surveillance.

Medine & Sweren-Becker, 2015

(David, Attorney Fellow for the Security and Exchange Commission & Eliza JD candidate at Harvard Law School and the Kennedy School of Government, 4/23/15, "The United States Needs a Drone Board", Defense One,http://www.defenseone.com/ideas/2015/04/oversight-targeted-killing-americans-overseas-new-model/110926)

In considering whether to create a new entity or have an existing one to carry out the duties of the Drone Board, we recommend that the Privacy and Civil Liberties Oversight Board (PCLOB) serve that role. The PCLOB is an independent agency established by the Implementing Recommendations of the 9/11 Commission Act of 2007. The bipartisan, five-member Board members serving staggered six-year terms, are appointed by the President and confirmed by the Senate. The PCLOB has several advantages over alternative executive branch entities to serve as the body that reviews the targeting of U.S. citizens. First, the PCLOB is already up and running. Neither Congress nor the President would have to create a new body. Second, the targeted killing of U.S. citizens who are affiliated with al Qaeda, ISIL, or other terrorist organizations falls precisely within the PCLOB's counterterrorism mandate. Third, the PCLOB is uniquely positioned as an independent Executive Branch agency, not bound by the President's policy direction, and has demonstrated its willingness to offer neutral and candid recommendations. Fourth, Board members and PCLOB staff already have Top Secret security clearances; the PCLOB regularly handles highly classified information and can review the relevant intelligence without additional bureaucratic hurdles. However, one reform would be necessary: in order to effectively address targeted killing cases, all five PCLOB members, not just the chairman, would need to serve in a full-time capacity.

Solvency – Racial Profiling

Although the TSA may participate in bad practices now, PCLOB reforms can solve

Livingston 14 (Lynne Livingston interviewing Robert McCaw the Government Affairs Department Manager for the Council on American-Islamic Relations, the nation's largest Muslim civil liberties and 15 advocacy organization.)

(7/23/14, PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD Public Meeting https://www.pclob.gov/library/20140723-Transcript.pdf)

Concerning profiling guidelines, CAIR recommends that PCLOB review guidelines on the use of race in federal law enforcement and by 6 federal law enforcement and national security agencies. DOJ and DHS guidelines are supposed to prohibit profiling but they've been inappropriately used to target Muslims in counterterrorism investigations and Latinos for immigration investigations. CAIR believes that the DOJ and DHS should revise existing guidelines banning the use of racial profiling to include nationality and religion as protected characteristics, as well as eliminate any loopholes that permit profiling at U.S. borders or for reasons of national security. Such a Board review should also target the Attorney General guidelines for domestic FBI operations, the AGG and FBI's domestic investigations and operation guideline, DIOG, which permit the FBI to engage in racial and ethnic profiling in certain contexts to initiate investigations and to use intrusive investigative techniques, absent of any suspicion or wrongdoing. A Board review should also be completed on how these guidelines in DIOG impact law enforcement practices in Muslim communities and others, and could help the Attorney General to better understand the harmful effects of these policies. Concerning the FBI and NSA spying on Muslim leaders, this past month CAIR joined a broad coalition of 45 organizations led by the ACLU in insisting that President Obama provide a full public accounting of surveillance practices of American Muslim leaders. According to new revelations by Glenn Greenwald and Murtaza Hussain, CAIR's own National Executive Director was among those U.S. Muslim leaders reported to be targeted by the FBI and NSA surveillance under FISA. Also among those leaders spied on was Faisal Gill, an American citizen, U.S. Navy veteran, and former Bush Administration DHS official. Of particular concern, Mr. Gill's nationality was marked unknown on a leaked FISA recapped document. Addressing FBI and NSA targeting of American Muslim leaders, CAIR stated it was an outrageous continuation of civil rights era surveillance of minority community leadership by government elements who see threats in all patriotic dissent. CAIR strongly recommends that PCLOB reviews these allegations to ensure that the government surveillance works within the bounds of law and Constitution.

Solvency – Commissions Expedite Policy Reform

Commissions solve political and issue complexity

Glassman and Straus, 2015 Mathew E. Glassman and Jacob R. Straus are analysts on Congress. (Mathew E. Glassman and Jacob R. Straus, "Congressional Commissions: Overview, Structure, and Legislative Considerations", Pg.7, 1/27/15, Congressional Research Service, https://www.fas.org/sgp/crs/misc/R40076.pdf)//ER

Complex policy issues may cause time management challenges for Congress. Legislators often keep busy schedules and may not have time to deal with intricate or technical policy problems, particularly if the issues require consistent attention over a period of time.24 A commission can devote itself to a particular issue full-time, and can focus on an individual problem without distraction. Complex policy issues may also create institutional problems because they do not fall neatly within the jurisdiction of any particular committee in Congress.26 By virtue of their ad hoc status, commissions may circumvent such issues. Similarly, a commission may allow particular legislation or policy solutions to bypass the traditional development process in Congress, potentially removing some of the impediments inherent in a decentralized legislature.27

A2: Lacks Authority

Existing mandate is sufficient the solve accountability

Grande, 2013

(Allison, senior reporter at Portfolio Media – citing multiple privacy experts, "Restored Privacy Board Lends Crucial Eye To Data Practices," *Law 360*, May 9, Online: http://www.constitutionproject.org/wp-content/uploads/2013/05/5.9.2013_Law360_SBF_PCLOBChair.pdf)

The executive order President Barack Obama signed in February specifically directs DHS to consult with PCLOB in producing an assessment of the privacy and civil liberties risks of the government's sharing of threat data with the private sector, and legislation being mulled in the U.S. Senate and House of Representatives envisions similar oversight roles for the board, according to Franklin. "It's even more important for the board to have this oversight role if we do get legislation, [which] presents an even greater risk to individual liberties because it is likely to exempt the sharing of information from the requirements of existing privacy laws in a way that an executive order can't do," she said. While Congress strengthened the board in 2007 by making it independent of the White House and giving it subpoena powers, experts noted that issues still remain regarding the authority of the fivemember board, which also includes U.S. Chamber of Commerce attorney Rachel Brand, former D.C. Circuit Chief Judge Patricia Wald, WilmerHale counsel Elisebeth Collins Cook and the Center for Democracy & Technology vice president for public policy James Dempsey. "There are legal constraints on what they can do since they are not an executing body," Fisher said. "What they can do is make assessments and insist on accountability, but they can't do it all themselves." But despite limitations, experts remain optimistic that the new oversight board will be both influential and effective in guarding against privacy and civil liberties abuses committed in the name of counterterrorism. "Having an oversight board may give more structure and discipline to some of the national security requests for information, and that's a good thing," Callahan said. "It will push everyone to take a fresh look at what the intelligence community is doing and help to ensure that it is doing the right thing."

A2: Lacks Authority

Commissions have the power to solve - can be authorized to access relevant tools and information and are required to hold public meetings

Glassman and Straus, 2015 Mathew E. Glassman and Jacob R. Straus are analysts on Congress. (Mathew E. Glassman and Jacob R. Straus, "Congressional Commissions: Overview, Structure, and Legislative Considerations", Pg. 17, 1/27/15, Congressional Research Service, https://www.fas.org/sgp/crs/misc/R40076.pdf)//ER

Most **congressional commissions are directed to hold public meetings** to discuss commission matters, usually at the call of the chair or the majority of the commission. In addition, most of these **congressional commissions are statutorily empowered to hold fact-finding hearings and take testimony from witnesses. Commissions are occasionally empowered to subpoena witnesses**. For example, the proposed Hurricane Katrina Disaster Inquiry Commission60 is authorized to issue subpoenas by agreement of the chair and vice chair, or by the affirmative vote of eight commission members.61 Additional statutory language provides for the enforcement of the subpoenas in federal court. Some commissions are empowered to secure information from federal agencies. For example, the proposed Hurricane Katrina Disaster Inquiry Commission would be authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the government, information, suggestions, estimates, and statistics ... [e]ach department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information ... upon request made by the chairman.62In addition, Congress occasionally directs specific executive branch agencies to assist a commission in the completion of its work. **Commissions may** also **be given the following powers: the authority to contract with public agencies and private firms**, the authority to **use the mail**s **in the same manner as departments and agencies** of the United States, and the authority **to accept gifts and donations**.

A2: Recommendations not enacted

PCLOB will be effective at causing the USFG to curtail surveillance – unique knowledge over policies, top secret clearance, and congressional backing.

Grande, 2013

(Allison, senior reporter at Portfolio Media – citing multiple privacy experts, "Restored Privacy Board Lends Crucial Eye To Data Practices," *Law 360*, May 9, Online: http://www.constitutionproject.org/wp-content/uploads/2013/05/5.9.2013_Law360_SBF_PCLOBChair.pdf)

In finally confirming a long-dormant privacy board's chair Tuesday, the U.S. Senate restored to full strength an oversight mechanism that industry watchers say will change the way both the public and private sectors gather and share information, despite the board's lack of resources and binding authority. Following a nearly two-year delay, the Senate in a 53-45 vote divided along party lines confirmed former WilmerHale partner David Medine to head the Privacy and Civil Liberties Oversight Board, which was last staffed in 2008 and is tasked with providing a check on the government's use and sharing of data for national security purposes. While the Senate had confirmed the four other part-time members in August, Republicans had blocked the critical appointment of Medine — the only full-time member who has the power to appoint and fix compensation for staff that will enable the board to carry out its functions — because of concerns about his views on national security statues like the Patriot Act. But with Tuesday's confirmation, the board can begin to use its subpoena powers to obtain elusive information about how the government is using its statutory authority to investigate national security threats since the 9/11 terrorist attacks. "The PCLOB can now get to full work investigating the rampant secret law of the Obama administration, the government's use of national security letters and many of the other core privacy problems that continue to fester behind closed doors that the administration has been reluctant to open up," Electronic Frontier Foundation policy analyst and legislative assistant Mark M. Jaycox told Law360 on Thursday. At a March meeting, the four active members identified three areas of initial interest: 2008 amendments to the Foreign Intelligence Surveillance Act that allow the government to intercept international communications without individual warrants; authority recently given to the National Counterterrorism Center to request and hold large volumes of data on individuals for up to five years; and an order issued in February that charges the board with assessing the government's information-sharing practices for cybersecurity purposes. "The very existence of many of these national security programs is classified or little is known, so having members of an independent board have the security clearance to look at the privacy and civil liberties issues raised by them and make sure that appropriate safeguards are incorporated is critical," the Constitution Project's senior counsel Sharon Bradford Franklin, who attended the board's March meeting, said. The board's oversight activities are likely to have a significant impact not just on the way that the government uses the troves of data it collects to protect the country from terrorism, but also on how the private sector handles information that is routinely subject to government access requests. "While [the board] was created to have oversight over the federal government's activities, it's likely that some of the information-access questions it deals with will touch the private sector, such as the debate over what the appropriate standard is for accessing emails from third parties, and it's likely that the body could help guide some of the policy decisions of the administration in this area," Jenner & Block LLP privacy and information governance practice group chair and former U.S. Department of Homeland Security Chief Privacy Officer Mary Ellen Callahan said. While privacy professionals who work primarily in the commercial arena may be inclined to pay little attention to PCLOB because of its focus on government surveillance, this approach may be a mistake, according to Daniel Weitzner, director of the Decentralized Information Group at MIT's Computer Science and Artificial Intelligence Laboratory and former White House deputy chief technology officer for Internet policy. "The new PCLOB is in a unique position to examine the internal and classified activities of NCTC and other intelligence agencies to make sure that they are complying with relevant rules," Weitzner said in a post on the International

Association of Privacy Professionals' blog. "And more likely than not, the PCLOB may discover that existing laws are not quite up to the challenge posed by powerful new data analytic tools." A change in the law would not only have an impact on federal agencies, but also on companies that are using similar "big data" practices to discover and link sensitive information about individuals, Weitzner said. "As the PCLOB comes face-to-face with some of the more challenging questions of how to monitor privacy practices in new Big Data environments, the entire privacy community ought to be paying attention," he said.

A2: Recommendations not enacted

Commissions generate public interest – results in policy change.

Glassman and Straus, 2015 Mathew E. Glassman and Jacob R. Straus are analysts on Congress. (Mathew E. Glassman and Jacob R. Straus, "Congressional Commissions: Overview, Structure, and Legislative Considerations", Pg.8-9, 1/27/15, Congressional Research Service, https://www.fas.org/sgp/crs/misc/R40076.pdf)//ER

By establishing a commission, Congress can often provide **a highly visible forum for important issues** that might otherwise receive scant attention from the public.[38] Commissions often are composed of **notable public figures, allowing personal prestige to be transferred to policy solutions**.[39] Meetings and press releases from a commission may receive significantly more attention in the media than corresponding information coming directly from members of congressional committees. Upon completion of a commission's work product, public attention may be temporarily focused on a topic that otherwise would receive scant attention, thus increasing the probability of congressional action within the policy area.[40]

A2: Recommendations Ignored

PCLOB recommendations have historically been adopted so far.

Franklin, 2015

(Sharon Bradford, Executive Director of Privacy and Civil Liberties Oversight Board, 1/29/15, Fact Sheet: PCLOB Recommendations and Their Implementation, https://www.pclob.gov/newsroom/20150129.html)

In January and July of 2014, the Privacy and Civil Liberties Board issued detailed reports on two government intelligence surveillance programs. The first report addressed the NSA's bulk collection of telephone calling records under Section 215 of the USA PATRIOT Act, as well as the operations of the Foreign Intelligence Surveillance Court and transparency regarding surveillance. The second report addressed surveillance under Section 702 of the Foreign Intelligence Surveillance Act, which authorizes collection by the NSA, CIA, and FBI of the contents of communications of non-U.S. persons reasonably believed to be located outside the United States. Between the two reports, the Board made twenty-two recommendations to the President, Congress, and the Foreign Intelligence Surveillance Court to enhance the protection of privacy and civil liberties. The Board has now assessed how fully its recommendations have been adopted to date, and its conclusions are as follows: • Overall, the Administration has been responsive to the Board's input. The Administration has accepted virtually all recommendations in the Board's Section 702 report and has made substantial progress toward implementing many of them, while also accepting most of the recommendations in the Board's Section 215 report. • Most recommendations directed at the Administration are still in the process of being implemented, however, or have only been accepted in principle, without substantial progress yet made toward their implementation. We note that only six months have elapsed since the release of the Section 702 report, so there has been less time for implementation. • However, the Administration has not halted the NSA's Section 215 telephone records program, which it could do at any time without congressional involvement, but instead has continued the program, with modifications. At the same time, the Administration has supported legislation, which has not yet been enacted, to create a new system for government access to telephone records under Section 215. • Congress has not yet enacted legislation that would, consistent with the Board's recommendation, reform the operations of the Foreign Intelligence Surveillance Court. • The Administration has made substantial progress in implementing some of the Board's recommendations regarding transparency. • The Board has established a productive relationship with elements of the Intelligence Community and looks forward to working constructively with them on the implementation of its recommendations.

Accountability NB

1NC Net Benefit: Civic Engagement

Government transparency is key to civic engagement – well informed citizens are better equipped to participate in democratic deliberation about policy.

Schneier, 2013

(Bruce, Fellow at the Berkman Center for Internet & Society at Harvard Law School, "NSA Secrets Kill Our Trust," July 31, https://www.schneier.com/essays/archives/2013/07/nsa_secrets_kill_our.html)

Both government agencies and corporations have cloaked themselves in so much secrecy that it's impossible to verify anything they say; revelation after revelation demonstrates that **they've been lying to us regularly and tell the truth only when there's no alternative.** There's much more to come. Right now, the press has published only a tiny percentage of the documents Snowden took with him. And Snowden's files are only a tiny percentage of the number of secrets our government is keeping, awaiting the next whistle-blower. Ronald Reagan once said "trust but verify." That works only if we can verify. In a world where everyone lies to us all the time, we have no choice but to trust blindly, and we have no reason to believe that anyone is worthy of blind trust. It's no wonder that most people are ignoring the story; it's just too much cognitive dissonance to try to cope with it. This sort of thing can destroy our country. Trust is essential in our society. And if we can't trust either **our government** or the corporations that have intimate access into so much of our lives, society suffers. Study after study demonstrates the value of living in a high-trust society and the costs of living in a low-trust one. Rebuilding trust is not easy, as anyone who has betrayed or been betrayed by a friend or lover knows, but the path involves transparency, oversight and accountability. Transparency first involves coming clean. Not a little bit at a time, not only when you have to, but complete disclosure about everything. Then it involves continuing disclosure. No more secret rulings by secret courts about secret laws. No more secret programs whose costs and benefits remain hidden. Oversight involves meaningful constraints on the NSA, the FBI and others. This will be a combination of things: a court system that acts as a third-party advocate for the rule of law rather than a rubber-stamp organization, a legislature that understands what these organizations are doing and regularly debates requests for increased power, and vibrant public-sector watchdog groups that analyze and debate the government's actions. Accountability means that those who break the law, lie to Congress or deceive the American people are held accountable. The NSA has gone rogue, and while it's probably not possible to prosecute people for what they did under the enormous veil of secrecy it currently enjoys, we need to make it clear that this behavior will not be tolerated in the future. Accountability also means voting, which means voters need to know what our leaders are doing in our name. This is the only way we can restore trust. A market economy doesn't work unless consumers can make intelligent buying decisions based on accurate product information. That's why we have agencies like the FDA, truth-in-packaging laws and prohibitions against false advertising. In the same way, democracy can't work unless voters know what the government is doing in their name. That's why we have open-government laws. Secret courts making secret rulings on secret laws, and companies flagrantly lying to consumers about the insecurity of their products and services, undermine the very foundations of our society.

The impact is extinction – consolidation of political decisionmaking in elite hands increases the risk of every existential threat we face today.

Boggs, 1997

(Carl, "The Great Retreat: Decline of the Public Sphere in Late Twentieth-Century America" *Theory and Society*, Vol. 26, No. 6 (Dec., 1997), pp. 741-780)

The decline of the public sphere in late twentieth-century America poses a series of great dilemmas and challenges. Many ideological currents scrutinized here - localism, metaphysics, spontaneism, postmodernism, Deep Ecology - intersect with and reinforce each other. While these currents have deep origins in popular movements of the 1960s and 1970s, they remain very much alive in the 1990s. Despite their different outlooks and trajectories, they all share one thing in common: a depoliticized expression of struggles to combat and overcome alienation. The false sense of empowerment that comes with such mesmerizing impulses is accompanied by a loss of public engagement, an erosion of citizenship and a depleted capacity of individuals in large groups to work for social change. As this ideological quagmire worsens, urgent problems that are destroying the fabric of American society will go unsolved - perhaps even unrecognized - only to fester more ominously into the future. And such problems (ecological crisis, poverty, urban decay, spread of infectious diseases, technological displacement of workers) cannot be understood outside the larger social and global context of internationalized markets, finance, and communications. Paradoxically, the widespread retreat from politics, often inspired by localist sentiment, comes at a time when agendas that ignore or sidestep these global realities will, more than ever, be reduced to impotence. In his commentary on the state of citizenship today, Wolin refers to the increasing sublimation and dilution of politics, as larger numbers of people turn away from public concerns toward private ones. By diluting the life of common involvements, we negate the very idea of politics as a source of public ideals and visions.74 In the meantime, the fate of the world hangs in the balance. The unyielding truth is that, even as the ethos of anti-politics becomes more compelling and even fashionable in the United States, it is the vagaries of political power that will continue to decide the fate of human societies. This last point demands further elaboration. The shrinkage of politics hardly means that corporate colonization will be less of a reality, that social hierarchies will somehow disappear, or that gigantic state and military structures will lose their hold over people's lives. Far from it: the space abdicated by a broad citizenry, well-informed and ready to participate at many levels, can in fact be filled by authoritarian and reactionary elites - an already familiar dynamic in many lesserdeveloped countries. The fragmentation and chaos of a Hobbesian world, not very far removed from the rampant individualism, social Darwinism, and civic violence that have been so much a part of the American landscape, could be the prelude to a powerful Leviathan designed to impose order in the face of disunity and atomized retreat. In this way the eclipse of politics might set the stage for a reassertion of politics in more virulent guise - or it might help further rationalize the existing power structure. In either case, the state would likely become what Hobbes anticipated: the embodiment of those universal, collective interests that had vanished from civil society.75 The historic goal of recovering politics in the Aristotelian sense, therefore, suggests nothing less than a revitalized citizenry prepared to occupy that immense expanse of public space. Extension of democratic control into every area of social life requires insurgency against the charade of normal politics, since the persistence of normal politics is just another manifestation of anti-politics. If authentic citizenship is to be forged, then information, skills, and attitudes vital to political efficacy need to flourish and be widely distributed throughout the population, without this, "consciousness transformation" is impossible, or at least politically meaningless. A debilitating problem with the culture of anti-politics, however, is that it precisely devalues those very types of information, skills, and attitudes. At the same time, any process of repoliticization will have to be carried out in a context where the whole field of political activity has been fundamentally altered. One of the major effects of corporate colonization is what Ulrich Beck refers to as the "systemic transformation of the political" - the considerable loss of power in the centralized political system itself, severely reducing its capacity to plan, regulate, and intervene in effective ways. As Beck observes: "The concepts, foundations, and instruments of politics (and non-politics) are becoming unclear, open and in need of a historically new determination."76 Where the Hobbesian "solution" to fragmentation or extreme localism does not or cannot work owing to historical and

cultural traditions, the push toward decentralization may be irreversible. Many of the conventional functions of government will be more difficult to perform according to a model where strong leaders exercise more or less unchallenged authority. Hence a truly revitalized politics will have to be more open and collective, more decentralized, and more infused with civic virtues as the conditions favoring a single center of politics erode.

Impact: Poverty/Gender/Gov Accountabilty

Civic engagement key to reduce poverty, secure gender equality, and push back against government overstep.

Sharma, 2008

(Bhavana, "Voice, Accountability, and Civic Engagement: A Conceptual Overview", August 2008, http://www.undp.org/content/dam/undp/documents/partners/civil_society/publications/2008_UNDP_Voice-Accountability-and-Civic-Engagement_EN.pdf)

Civic engagement can be understood as the process whereby citizens or their representatives are able to engage and influence public processes, in order to achieve civic objectives and goals. Civic engagement contains a strong element of participation where stakeholders are active in decision making processes (Malik, and Waglé, 2002) The UNDP Human Development Report 1993 describes civic engagement as "a process, not an event, that closely involves people in the economic social, cultural and political processes that affect their lives." However, civic engagement can be distinguished from participation as it is specifically associated with efforts to establish channels of voice, **representation and accountability at the state level**. Thus, civic engagement is often seen as a tool for deepening democratic governance, through the channels of voice and accountability. Citizens become active participants insome state decision-making processes (and thereby exercising their right to a voice) as well as deepening accountability via a watchdog role by demanding a more transparent and responsive state, and the appropriate justifications for decisions and actions taken. As Korton puts it, "If sovereignty resides ultimately in the citizenry, their engagement is about the right to define the public good, to determine the policies by which they will seek that good, and to reform or replace those institutions that no longer serve." (Korton (1988) quoted in Malik and Waglé, 2002). Thus placing civic engagement in the context of governance highlights its role in deepening state-society relations through the channels of voice and accountability. By deepening democratic governance, civic engagement is seen as instrumental inachieving a range of other development goals, such as the MDGs (see box below) andpoverty reduction. Civic engagement, through increased voice and with a focus on accountability, has the potential to contribute to poverty reduction through more-pro-poor policy design, improved service delivery, and empowerment of groups previously denied a voice. Some accountability mechanisms have specifically been developed for use by poor populations and many focus on issues of priority importance to poor people (such as public health, education, water and sanitation services). However, constant effort is required to ensure that civic engagement effectively serve the priority needs of poor people, include mechanisms to overcome potential barriers to their effective participation and leadership in decision-making processes. Civic engagement and accountability can also have important gender implications.Women are systematically underrepresented in most civil society organisations, stateinstitutions and the government reducing their capacity to promote their own interests. Civic engagement that is focused on promoting the voices of the most marginalized groups in society should be bottom-up, inclusive and demand driven should enhance the ability of women to make their voices heard. A number of accountability tools focus on greater engagement of women, such as gender budgeting and gender disaggregated participatory monitoring and evaluation, have been specifically designed to address gender issues. Particularly in those public sectors of greatest importance to poor people,of which women constitute a significant part. Voice and accountability mechanisms also focus the attention of civic engagement on public sector reforms, by addressing the demand-side aspects of public service delivery,monitoring and accountability. Such mechanisms have proved particularly useful in the context of decentralisation, helping

to strengthen links between citizens and local-level governments and assisting local authorities and service-providers to become more responsive and effective. And finally, by monitoring government performance, demanding and enhancing transparency and exposing government failures and misdeeds, civic engagement can be a valuable tool in fighting corruption. Indeed it has been argued by some that the only true safeguard against public sector corruption is the active and on-going societal monitoring of government actions and the evolution of more open and participatory anticorruption institutions. The two boxes below provide examples of the operationalisation of voice and accountability.

A2: Transparency Insufficient

Transparency activates accountability – it's not just a passive release of information, but a tool that advocates can use to control public dialogue on policy.

Gurría, 2015

(Angel, OECD Secretary-General, "Openness and Transparency - Pillars for Democracy, Trust and Progress", June/24, OECD, http://www.oecd.org/fr/etatsunis/opennessandtransparency-pillarsfordemocracytrustandprogress.htm)

Openness and transparency are key ingredients to build accountability and trust, which are necessary for the functioning of democracies and market economies. Openness is one of the key values that guide the OECD vision for a stronger, cleaner, fairer world. This is why the OECD welcomes the launch of the Open Government Partnership today and the efforts led by Presidents Obama and Rousseff to promote government transparency, fight corruption, empower citizens and maximise the potential of new technologies to strengthen accountability and foster participation in public affairs. For 50 years, Openness has been a cornerstone of our mission to develop the best public policies in order to improve people's lives by promoting open markets and inclusive wealth. In fulfilling this mission we focused on "better policies for better lives" based on empirical evidence for such policies. Evidence is a product of correct and precise information. Our guiding working method is to share evidence-based knowledge, information and policy advice with governmental and non-governmental stakeholders, as well as with the public to prepare the ground for informed public policy decisions. Specific examples of knowledge sharing include, among others, the Global Forum for Transparency and Exchange of Information for Tax Matters, the OECD Anti-Bribery Convention, but also our country reviews as an example of peer learning. The OECD has been at the forefront of efforts to promote and protect the free flow of information. We believe this to be a fundamental human right. We also encourage efforts to protect personal data, the freedom of expression, and other rights. We have underpinned this with leading work on Open and Innovative Government. An "open" government is transparent, accessible to anyone, anytime, anywhere; and responsive to new ideas and demands. Governments and international organisations have to lead by example, aligning disclosure and dissemination procedures with modern information management practices. We are working to meet this imperative in four dimensions: First, the OECD has developed a range of instruments to help governments ensure that openness translates into concrete improvements in key activities of government. Instruments such as the Principles for Integrity in Public Procurement, the Best Practices for Budget Transparency, the Principles for Transparency and Integrity in Lobbying and the Guidelines for Managing Conflict of Interest in the Public Service -- not only help mitigate corruption risks but also improve efficiency and ultimately contribute to public trust. Guidance on support to building and using Public Financial Management systems in developing countries emphasises transparency in budget processes, and our guidance on using national procurement systems also emphasises building transparent systems in developing countries. We also compare public sector performance in health, education and many other policy areas across countries. Our work on the PISA for example, has had significant impact on education policy making by developing cross-country comparable indicators on education performance for the first time. This promotes accountability, discussion and participation of citizens. Second, e-Government, Internet-based technologies and applications will be crucial components for open, transparent and accessible governments. Therefore OECD Ministers adopted the Seoul Declaration at their meeting on the Future of the Internet Economy which highlighted the importance of an open Internet to help bolster the free flow of information, freedom of expression and protection of individual liberties. We also emphasized the need for governments to ensure that public sector information is made widely available. OECD governments have adopted a Recommendation on Public Sector Information which provides policy guidelines designed to improve access and increase use of public sector information through greater transparency, enhanced competition and more competitive pricing. Third, in the area of development co-operation, regular reviews of development partner (donor) countries ensure transparency with regard to their aid policies and practices as well as compliance with their commitments. Aid statistics that can be accessed and used by all provide information on what type of aid development partners provide, to whom and for what purpose. Fourth, on Anti-Corruption matters, we work with our members to promote greater transparency as a means to fight corruption. Currently we are working with partner developing countries to set up web-based reporting systems on corruption at country level. For example, our just released progress report on OECD members' performance with respect to their commitments on Stolen Asset Recovery shows clearly how much funding has been repatriated, how much has been frozen and highlights areas for improvement in this effort. We have also

produced guidelines to help governments fight bid-rigging and other types of collusion. We see our work as a public good and are committed to making information open and accessible. This is consistent with our mission and part of our mandate. We believe that an organisation like ours has a democratic duty to provide citizens with the information that allows them to understand the day's main issues. For us, openness also means that citizens should be able to use that information to shape policy. To put this commitment into practice, we work with multiple civil society actors, with business and trade unions (through BIAC and TUAC, who have an institutionalized advisory role to the OECD), public stakeholders (including in legislative branches), the global media and citizens in member and partner countries. We work to maximise the impact and dissemination of OECD knowledge by translating complex content into easily accessible products. We use new interactive and innovative instruments such as Your Better Life Index (www.oecdbetterlifeindex.org) to engage with citizens on issues of central concern to their lives, and empower them to feedback their opinions to their governments. The OECD wholeheartedly supports efforts to increase openness and transparency through the free flow of information and the sharing of knowledge.

A2: Transparency Insufficient

Transparency drives civic engagement – controversial data releases shape public discourse.

Leahy, 2015

(Patrick, Vermont Senator and long supporter of open government, "Transparency is key to good government," March, Deerfield Valley News, http://www.dvalnews.com/view/full_story/26530715/article-Transparency-is-key-to-good-government?)

Sunshine Week is a time to celebrate one of our nation's most basic values, the public's "right to know." Our very democracy is built on the idea that our government should not operate in secret. James Madison, a staunch defender of open government, whose birthday we celebrate each year during Sunshine Week, wisely noted that for our democracy to succeed, people "must arm themselves with the power knowledge gives." Transparency enables the American people to hold their government accountable. Pulling back the curtain on the workings of government agencies is not always popular and is certainly not without controversy. But it is often those moments of controversy that make clear why an open government is so vital. One of those moments was last year's hard-fought release of the executive summary of the Senate Intelligence Committee's torture report, which detailed the CIA's shocking use of torture during the Bush Administration. The release of this historic report was met with extreme opposition by those who wanted to keep in the dark a grim chapter in our history. But shedding light on the CIA's actions demonstrated to the world that America is different: We acknowledge our mistakes so that we can learn from them. That is why I encouraged and supported Senator Dianne Feinstein in her efforts to release the report's executive summary. And that is why I was appalled to learn of recent efforts to have the full report returned to the Senate, to keep it out of the hands of those in the executive branch who can learn from these mistakes and ensure that this never happens again. There are many partisan fights in the Congress, but one area where I have brokered bipartisan agreement over the years is in passing laws that strengthen and improve the Freedom of Information Act, also known as FOIA. First signed into law in 1966 by President Johnson, FOIA has become the foundation on which all our sunshine and transparency policies rest. It remains an indispensable tool for Americans to obtain information affecting public policy, consumer safety, the environment and public health. It is relied on by journalists, educators and historians to research not only important issues of the day, but significant moments in our history. It helps bring to light controversy and it promotes public discourse.

A2: Transparency Insufficient

Transparency increases public knowledge and democratic participation in policymaking.

PCLOB, 2014

(Privacy and Civil Liberties Oversight Board, "Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court," *PCLOB Report*, http://fas.org/irp/offdocs/pclob-215.pdf)

Transparency is one of the foundations of democratic governance. Our constitutional system of government relies upon the participation of an informed electorate. This in turn requires public access to information about the activities of the government. **Transparency supports accountability**. It is especially important with regard to activities of the government that affect the rights of individuals, where it is closely interlinked with redress for violations of rights. In the intelligence context, although a certain amount of secrecy is necessary, transparency regarding collection authorities and their exercise can increase public confidence in the intelligence process and in the monumental decisions that our leaders make based on intelligence products. In the aftermath of the Snowden disclosures, the government has released a substantial amount of information on the leaked government surveillance programs. Although there remains a deep well of distrust, these official disclosures have helped foster greater public understanding of government surveillance programs. However, to date the official disclosures relate almost exclusively to specific programs that had already been the subject of leaks, and we must be careful in citing these disclosures as object lessons for what additional transparency might be appropriate in the future.

A2: Government not responsive to civic engagement

Elected officials are susceptible to public opinion – they'll respond to engaged citizens.

Voltmer, 2008

(Katrin, Diploma in Sociology Free University Berlin, Germany, Dr. Phil. in Political Science, Free University Berlin, 14/11/08, Roles of the news media, The media, government accountability, and citizen engagement")

Government accountability. Even though all governments – whether democratic or authoritarian – have to deliver a minimum of public goods in order to avoid widespread social unrest electoral democracy provides strong institutional incentives for political officials to be accountable to their citizens. With periodic elections citizens have a powerful instrument in their hand to reward or punish a government for its performance. Since elections are the main mechanism to allocate power in democratic systems they link the self-interest of politicians with the requirement to act in the interest of the population. Or as the political scientist V.O. Key puts it, "the fear of loss of popular support powerfully disciplines the actions of governments".2 Yet whether or not voting can function as an effective mechanism to enforce government accountability depends on a complex set of both institutional and cultural conditions. Institutionally, the choice of electoral system, professionalism in public administration and the independence of the judiciary are crucial factors that affect the degree to which governments respond to public demands. Culturally, the ability and willingness of the citizens to engage in political life alongside the quality of public communication play an important part in strengthening the link between those in power and the citizenry

A2: Perm solves NB

The permutation codifies legal action before PCLOB findings are released – overshadows the public impact of their recommendations.

Masnick, 2014

(Mike, CEO and Editor of TechDirt + BusinessWeek Contributor, "President Obama Locking In Cosmetic NSA 'Reforms' Before Key Privacy Board Can Even Weigh In," *TechDirt,* Jan 16, Online: https://www.techdirt.com/articles/20140115/18345125891/president-obama-locking-cosmetic-nsa-reforms-before-key-privacy-board-can-even-weigh.shtml)

While so much attention has been paid to the special White House task force that was set up to look at the NSA situation, and the fact that President Obama is planning to announce his almost entirely cosmetic "reforms" for the NSA tomorrow, it seems that almost everyone has forgotten that there is an official Privacy and Civil Liberties Oversight Board (PCLOB) that is planning to give its own recommendations concerning the NSA's programs... only, it's after the President will have already announced his plans. Admittedly, it must be easy to forget about or ignore the PCLOB. As we discussed a year and a half ago, the federal government (under both Presidents Bush and Obama) left it entirely unstaffed for nearly five years. However, it does now exist and has also been investigating the NSA's programs and their impact on privacy and civil liberties. ¶ Earlier this month, the PCLOB announced that it will be releasing its findings... in late January or after February. In other words, the recommendations will be after the President has already announced his plans. It does sound like the PCLOB report will be fairly thorough -- there will be one focused on Section 215 of the PATRIOT Act (the bulk metadata collection), a report on how FISC works, and a final report on Section 702 of the FISA Amendments Act. Basically, three separate looks at the most controversial aspects of the NSA's activities. And all of them coming after the President has already made up his mind. ¶ Of course, while it might seem odd that the President would announce his plans just a few days before the government's official organization in charge of privacy and civil liberties announces its findings... it's not that odd if the whole point is to basically cut off any serious consideration of whatever they actually end up recommending. And, of course, you don't even have to be overly cynical to assume that's exactly what's happening.

Politics

CP Shields Politics

Commissions solve gridlock

Glassman and Straus, 2015 Mathew E. Glassman and Jacob R. Straus are analysts on Congress. (Mathew E. Glassman and Jacob R. Straus, "Congressional Commissions: Overview, Structure, and Legislative Considerations", Pg. 7-8, 1/27/15, Congressional Research Service, https://www.fas.org/sgp/crs/misc/R40076.pdf)//ER

Legislators seeking policy changes may be confronted by an array of political interests, some in favor of proposed changes and some against. When these interests clash, the resulting legislation may encounter gridlock in the highly structured political institution of the modern Congress.28 By creating a commission, Congress can place policy debates in a potentially more flexible environment, where congressional and public attention can be developed over time. Solutions to policy problems produced within the normal legislative process may also suffer politically from charges of partisanship.30 Similar charges may be made against investigations conducted by Congress.31 The **non-partisan or bipartisan character of most congressional commissions** may make **their findings and recommendations** less susceptible to such charges and **more politically acceptable to diverse viewpoints**. The bipartisan or nonpartisan arrangement can potentially **give their recommendations strong credibility**, both in Congress and among the public**, even** when dealing **with divisive issues** of public policy.32 Commissions may also give political factions space to negotiate compromises in good faith**,** bypassing the short-term tactical political maneuvers that accompany public negotiations.33 Similarly, **because commission members are not elected, they may be better suited to suggesting unpopular, but necessary, policy solutions**.34 **A commission may allow legislators to solve collective action problems**, situations in which all legislators individually seek to protect the interests of their own district, despite widespread agreement that the collective result of such interests is something none of them prefer. Legislators can use a commission to jointly "tie their hands" in such circumstances, allowing general consensus about a particular policy solution to avoid being impeded by individual concerns about the effect or implementation of the solution.35For example, in 1988 Congress established the Base Closure and Realignment Commission (BRAC) as a politically and geographically neutral body to make independent decisions about closures of military bases.36 The list of bases slated for closure by the commission was required to be either accepted or rejected as a whole by Congress, bypassing internal congressional politics over which individual bases would be closed, and **protecting individual Members from political charges that they didn't "save" their district**'s base.37

CP Shields Politics

Commissions are respected by the public and shield Congress from politics

Schwalbe, 2013

(Steve, Auburn University, "Independent Commissions: Their History, Utilization and Effectiveness," March 22, Weather Coalition, http://weathercoalition.org/sites/default/files/documents/2013/independent_commissions.pdf)

Commissions serve numerous purposes in the U.S. Government. Campbell cited three primary reasons for the establishment of federal independent commissions. First, they are established to provide expertise the Congress does not have among its own elected officials or their staffs. Next, he noted that the second most frequently cited reason by members of Congress for establishing a commission was to reduce the workload in Congress. Finally, they are formed to provide a convenient scapegoat to deflect the wrath of the electorate; i.e., "blame avoidance."18 Fisher found three advantages of regulatory commissions. First, commission members bring essential expert insights to a commission because the regulated industries are normally "complex and highly technical." Second, appointing commissioners for extended terms of full-time work allows commissioners to become very familiar with the technical aspects of an industry, through periodic contacts that Congress would not be able to accomplish. As a result of their tenure, varied membership, and shared responsibility, commissioners would be resistant to external pressures. Finally, regulatory commissions provide policy continuity essential to the stability of a regulated industry.19 What the taxpayers are primarily looking for from independent commissions are non-partisan solutions to current problems. A good example of establishing a commission to find non-partisan solutions is Congress regulating its own ethical behavior. University of Florida Professor Beth Rosenson researched this issue and concluded that authorizing an ethics commission may be "based on the fear of electoral retaliation if legislators do not take aggressive action to regulate their own ethics."20 Campbell noted that commissions perform several other functions besides providing recommendations to the President and Congress. The most common reason provided by analysts is that members of Congress generally want to avoid making difficult decisions that may adversely affect their chances for reelection. As he noted, "Incentives to avoid blame lead members of Congress to adopt a distinctive set of political strategies, such as 'passing the buck' or 'deflection'…."21 Another technique legislators use to avoid incurring the wrath of the voters is to schedule any controversial independent commissions for after the next election. Establish-ing a commission to research the issue and come up with recommendations after a preset period of time is an effective way to do that. The most clear-cut example demonstrating this technique is the timing of the BRAC commissions in the 1990s — all three made their base closure recommendations in non-election years (1991, 1993, and 1995). Even the next BRAC commission, established by the National Defense Authorization Act for Fiscal Year 2002, is not required to submit its base closure recommendations until 2005. Congress certainly is not the most efficient organization in the U.S.; hence, there are times when an independent commission is the more efficient and effective way to go. Law-makers are almost always short on time and information, which makes the option of delegating authority to a commission very appealing. Oftentimes, the expertise and necessary information is very costly for Congress to acquire. Commissions are generally the most inexpensive way for Congress to solve complex problems. From 1993-1997, Campbell found that 92 congressional offices introduced legislation that included proposals to establish ad hoc commissions.22

CP Shields Politics

PCLOB avoids political dilemma + provides political cover

The Fiscal Seminar, 2009

(The Fiscal Seminar is a group of scholars who discuss federal budget and fiscal policy issues under the auspices of The Brookings Institution and The Heritage Foundation, June, "THE POTENTIAL ROLE OF ENTITLEMENT OR BUDGET COMMISSIONS IN ADDRESSING LONG-TERM BUDGET PROBLEMS")

Unfortunately, the current political environment creates strong disincentives for individual politicians to tackle the tough choices required to put our fiscal house back in order. An appointed commission could offer an alternative mechanism through which to address these thorny but **critical issues by undertaking the heavy lifting of developing options and building the political consensus necessary to enact legislation**. As evidence of the popularity of this idea, over a dozen bills were introduced in the 110th Congress that would have created commissions to find politically and fiscally acceptable solutions for reforming entitlements, taxes, the budgeting process, or some combination of the three. This paper reviews some of the recent history of appointed commissions and discusses the issues surrounding their potential role in long-term federal budgeting. THE ROLE AND STRUCTURE OF COMMISSIONS The use of commissions or advisory councils has a long history in the United States. In the early 1900s, the National Monetary Commission examined the nation's distressed financial system and recommended establishing a central banking structure, a recommendation that was soon translated into the Federal Reserve System. From 1937 to 1996, Social Security policy-making was heavily influenced by the findings and recommendations of periodic advisory councils, including the National Commission on Social Security Reform (the Greenspan Commission) which helped to rescue the program from insolvency in 1983. The 1960s saw the Warren Commission investigate the assassination of President Kennedy and the Kerner Commission examine the causes of civil disorders. The Base Closure and Realignment Commission (BRAC) provided an effective mechanism over the past two decades for overcoming the political hurdles inhibiting the restructuring of U.S. defense facilities across the country. And the recent National Commission on Terrorist Attacks upon the United States (the 9/11 Commission) delved into the numerous facets of the 2001 terrorist attacks and potential changes in homeland security. Commissions can be used for a variety of purposes that suit the needs of the President or the Congress. **The role of some commissions is to develop a knowledge base about certain policies or problems free from the political machinations** that are an unavoidable part of the legislative process. They can also develop policy options that members of Congress and their staff have too little time or expertise to formulate. **They can serve as consensus-building vehicles from which members of Congress may garner political protection while addressing contentious issues**. At other times, commissions appear simply to serve as delaying measures that can be employed to defuse a political issue until a more opportune time for action develops. The best structure for a commission – i.e. its membership, duties, duration, voting rules, etc. – will often vary depending on that commission's purpose, and therefore on the nature of the problem that the commission is addressing, the state of scientific or analytical development of the topic, and the political sensitivity of the subject matter. Those factors may also influence the nature and the standing of the commission's recommendations. For example, in 1988, Congress established the National Commission on Acquired Immune Deficiency Syndrome (AIDS) to determine the dimensions of a new and rapidly spreading communicable disease, assess the degree of understanding about the disease, and lay out steps toward ultimately controlling and treating the disease. The commission focused on the science and largely ignored the potential politics surrounding the issue. In contrast, the Greenspan Commission provided a forum for developing a political compromise on a set of politically unsavory changes. In this case, the political parties shared a deep concern about the impending insolvency of the Social Security system but feared the exposure of promoting their own solutions. **The commission created political cover for the serious background negotiations that resulted in the ultimate compromise.** The structure of the commission reflected these concerns and was composed of fifteen members, with the President, the Senate Majority Leader, and the Speaker of the House each appointing five members to the panel.

CP Bipartisan

Bipartisan support for PCLOB

Ferrer, 2011

(Amy, Executive director of the American Philosophical Association, a bachelor's degree in women's studies and a master's degree in public policy and administration, 8/31/11, Bill of Rights Defensive Committee, http://www.bordc.org/blog/coalition-calls-obama-fill-privacy-and-civil-liberties-oversight-board)

Last week, a coalition of organizations led by the Constitution Project and including the Bill of Rights Defense Committee sent a letter to President Obama and several other high-ranking officials calling for the administration to fill vacancies on the Privacy and Civil Liberties Oversight Board. The letter reads, in part, In November 2009 and March 2010 many of the undersigned organizations wrote to the administration to express our concern over the lack of nominations to the Privacy and Civil Liberties Oversight Board (PCLOB). The urgency of our plea has increased. As you know, the 9/11 Commission recommended creating such a board, and Congress has enacted authorizing legislation. There is broad bipartisan support for this board to carry out its intended mission. However, without nominated and confirmed members to serve on this board, the PCLOB does not currently exist. Now, as we approach the 10th Anniversary of 9/11, it is more important than ever that we implement the 9/11 Commission's recommendation. Our continued fight for the security of our country must include measures to safeguard the liberty of its people. Several government reports, including the 9/11 Commission report and the administration's own Cybersecurity Review, have called for full implementation of the PCLOB to protect American's privacy and civil liberties against government intrusion. It is high time the president step up and follow those recommendations.

CP Popular

Popular with Public because they want increased government transparency

Stendebach, 2015

(Larry, the co-founder of a government transparency website that strives to deliver government data in a way that is useful to the people and help citizens interact with the government, develops the technology needed in modern politics, "Why Government Transparency is Important", United for Missouri, http://www.unitedformissouri.org/news/government-transparency-important-missouri)

The public certainly wants government transparency. In a recent study by the Association of Government Accountants (AGA), approximately 75% of participants surveyed said the availability of government financial management information continues to be very important to the public. The same survey found that 71% of people claimed would use transparent government financial data to make informed choices at the ballot box if it were provided to them. So with costs being low, citizens desiring transparency, and with the Internet as a platform, government has no excuse to keep shielding its fiscal business from public scrutiny. Elected officials and governments are public servants and services; they work for YOU and ME the taxpayer.

CP Generates Political Capital

Commission key to PC - Commissions build political capital through non-partisan consensus

Biggs, 2009

(Andrew, served at the Social Security Administration, as Associate Commissioner for Retirement Policy, Deputy Commissioner for Policy, and Deputy Commissioner of the agency, Feb-17-2009, "Rumors Of Obama Social Security Reform Commission," http://www.frumforum.com/rumors-of-obama-social-security-reform-commission/)

If, however, Obama wishes for a task force to build political momentum toward reform, he'll want a broader group. Based on my experience on the staff of President Bush's 2001 reform commission and work with the White House on reform in 1995, here are a few quick thoughts: First, to build any political momentum a working group should represent the reasonable spectrum of views on Social Security. Something like the DiamondOrszag reform proposal probably represents a reasonable bound on the left, as it retains the current program in pretty much its current form while making it sustainably solvent almost entirely through increased taxes. Something like the President's Commission's "Model Two" is a reasonable bound on the right, since it likewise makes the program sustainably solvent entirely by reducing benefits. There are folks on both the left and right whose views make it such that any reform compromise would be almost impossible – on the left, because many believe Social Security doesn't even face a deficit, and on the right because they believe that simply borrowing a few trillion dollars and investing it in personal accounts will fix the whole problem. Neither view is correct. It may be possible to get some folks further left on board by proposing auto-correction policies that only come into effect to the degree the system faces deficits; I discuss one option in this paper. If they're right that Social Security doesn't face any shortfall, nothing will change. One problem with President Bush's 2001 Commission was that it didn't represent the reasonable spectrum of beliefs on Social Security reform. This didn't make it a dishonest commission; like President Roosevelt's Committee on Economic Security, it was designed to put flesh on the bones laid out by the President. In this case, the Commission was tasked with designing a reform plan that included personal accounts and excluded tax increases. That said**, a commission** only **builds political capital toward enacting reform if it's seen as building a consensus through a process in which all views have been heard.** In both the 2001 Commission and the later 2005 reform drive, Democrats didn't feel they were part of the process. They clearly will be a central part of the process this time, but the goal will now be to include Republicans. Just as Republicans shouldn't reflexively oppose any Obama administration reform plans for political reasons, so Democrats shouldn't seek to exclude Republicans from the process. Second, a reform task force should include a variety of different players, including members of government, both legislative and executive, representatives of outside interest groups, and experts who can provide technical adavice and help ensure the integrity of the reforms decided upon. The 2001 Bush Commission didn't include any sitting Members of Congress and only a small fraction of commissioners had the technical expertise needed to make the plans the best they could be. A broader group would be helpful. Third, any task force or commission needs time. The 2001 Commission ran roughly from May through December of that year and had to conduct a number of public hearings. This was simply too much to do in too little time, and as a result the plans were fairly bare bones. There is plenty else on the policy agenda at the moment, so there's no reason not to give a working group a year or more to put things together.

Drones

NEG

Warrants PIC 1NC Shell

The United States federal government should implement a maximum duration of twenty four hours on drone operations and delete any superfluous data gathered from drone operations within a 30 day period.

Drone warrants & technology restrictions gut law enforcement effectiveness – limits on mission duration and data retention are sufficient to prevent a surveillance state.

McNeal '14 (Gregory McNeal - is a professor at Pepperdine University School of Law and a contributor to Forbes. He is an expert in law and public policy with a specific focus on security, technology and crime, November 2014, "Drones and Aerial Surveillance: Considerations For Legislators," *Brookings*)

To counter the threat of surveillance, privacy advocates have focused solely on requiring warrants before the use of drones by law enforcement. Such a mandate oftentimes will result in the grounding of drone technology in circumstances where law enforcement use of drones would be beneficial and largely non-controversial. For example, in light of the Boston Marathon bombing, police may want to fly a drone above a marathon to ensure the safety of the public. Under many bills, police would not be allowed to use a drone unless they had a warrant, premised upon probable cause to believe a crime had been or was about to be committed. This requirement exceeds current Fourth Amendment protections with regard to the reasonableness of observing activities in public places. What this means is that the police would need to put together a warrant application with sufficient facts to prove to a judge that they had probable cause. That application would need to define with particularity the place to be searched or the persons to be surveilled. All of this would be required to observe people gathered in a public place, merely because the observation was taking place from a drone, rather than from an officer on a rooftop or in a helicopter. In a circumstance like a marathon, this probable cause showing will be difficult for the police to satisfy. After all, if the police knew who in the crowd was a potential bomber, they would arrest those individuals. Rather, a marathon is the type of event where the police would want to use a drone to monitor for unknown attackers, and in the unfortunate event of an attack, use the footage to identify the perpetrators. This is precisely the type of circumstance where the use of drone could be helpful, but unfortunately it has been outlawed in many states. To make matters worse, this type of drone surveillance would pose little to no harms to privacy. A marathon is a highly public event, the event is televised, it takes place on streets where there are surveillance cameras and spectators are photographing the event. Moreover, in the states where drones have been banned (unless accompanied by a warrant), **the police have not been prohibited from using any other type of surveillance equipment** --- just drones. This technology centric approach has done little to protect privacy, but will certainly harm public safety, **depriv**ing **law enforcement of a tool that they could use to protect people.** While warrants are appealing to privacy advocates**, the enactment of overly broad restrictions on drone use can curtail non-invasive, beneficial uses of drones**. **Legislators should reject a warrant-based, technology centric approach** as it is unworkable and counterproductive. Instead, legislators should follow a property rights centric approach, coupled with limits on persistent surveillance, data retention procedures, transparency and accountability measures and a recognition of the possibility that technology may make unmanned aerial surveillance more protective of privacy than manned surveillance. This paper makes five core recommendations: Legislators should follow a property rights approach to aerial surveillance. This approach provides landowners with the right to exclude aircraft, persons, and other objects from a column of airspace extending from the surface of their land up to 350 feet above ground level. Such an approach may solve most public and private harms associated with drones. Legislators should craft simple, duration-based surveillance legislation that will limit the aggregate amount of time the government may surveil a specific individual. Such legislation can address the potential harm of persistent surveillance, a harm that is capable of being committed by manned and unmanned aircraft. Legislators should adopt data retention procedures that require heightened levels of suspicion and increased procedural protections

for accessing stored data gathered by aerial surveillance. After a legislatively determined period of time, all stored data should be deleted.

Legislators should enact transparency and accountability measures, requiring government agencies to publish on a regular basis information about the use of aerial surveillance devices (both manned and unmanned). Legislators should recognize that technology such as geofencing and auto-redaction, may make aerial surveillance by drones more protective of privacy than human surveillance.

2NC – No Warrants Key 2 Solve Intel DA

Warrant-free use and technological advances are core components of law enforcement

***note: this is a re-underlining of Reid evidence from the 1NC Crime Turn – don't read it twice!

Reid, 2014 (Melanie, Professor of Law at Lincoln Memorial University, "GROUNDING DRONES: BIG BROTHER'S TOOL BOX NEEDS REGULATION NOT ELIMINATION," *Journal of Law and Technology*, 20:3, Online: http://jolt.richmond.edu/index.php/grounding-drones-big-brothers-tool-box-needs-regulation-not-elimination/)

If state and federal legislators are successful and remain on a determined course to restrict application of drones, drone use may be severely limited, similar to what took place after the court decision on thermal imaging. After the Kyllo decision in which the Court held that thermal imaging constituted a search under the Fourth Amendment,[260] law enforcement was no longer able to use the technology to assist in building sufficient probable cause for a search warrant. Admittedly, thermal imaging allows law enforcement the ability to collect intelligence within private dwellings, i.e., locations where the owner has a reasonable expectation of privacy. Drone surveillance collects intelligence in public areas where there is no such expectation of privacy. Law enforcement needs a variety of investigatory tools that can be used without a warrant in order to gather enough facts for probable cause to justify search and arrest warrants. If government becomes significantly limited in its ability to collect information in a reasonable and impartial manner, the ability to investigate a complaint and determine if a crime has been committed will be hindered. Drone use is a reasonable, non-intrusive technique and should be one of those investigatory tools available to law enforcement agencies. Public safety requires that law enforcement have the ability to leverage every reasonable investigatory tool at its disposal to uphold the law and bring criminals to justice. Some techniques which are intrusive and infringe on privacy issues need to be closely monitored and regulated. [95] Public concern is understandable—thousands of drones from both the public and private sector will soon be accumulating a significant amount of information once FAA regulations are put in place by 2015. Drone technology is in its infancy stage. Future drones may be lighter, simpler, with longer flight times and have the ability to act/react to given situations based on software programming without human intervention. Previously, laws were passed to regulate new technology after its effects and impact on society were determined. In the case of drones, state and federal legislatures are attempting to get ahead of the curve and pass laws based on what drones can be expected to do in the future. I think we are getting ahead of ourselves. The drones of today are the same as aircraft and helicopters which are currently used to conduct aerial surveillance. There is no need to place greater restrictions on drones than regular aircraft. The unintended victims of such a law would be smaller law enforcement agencies that cannot afford their own aircraft or helicopter. Inexpensive drone technology would allow all law enforcement agencies to operate on a level playing field in the use of aerial surveillance for investigations.

2NC – No Warrants Key 2 Solve Intel DA

Warrants impede criminal investigation

Reid, 2014 (Melanie, Professor of Law at Lincoln Memorial University, "GROUNDING DRONES: BIG BROTHER'S TOOL BOX NEEDS REGULATION NOT ELIMINATION," *Journal of Law and Technology*, 20:3, Online: http://jolt.richmond.edu/index.php/grounding-drones-big-brothers-tool-box-needs-regulation-not-elimination/)

Law enforcement has a select group of investigatory tools it can use without triggering Fourth Amendment protections. Surveillance of suspects is one of the oldest tools that law enforcement has used to collect information and determine whether criminal activity is occurring. [160] It is one of the first steps of any criminal investigation. The idea that a warrant would be needed to surveil a suspect would effectively cripple any investigation before it even got off the ground. [51] Only a certain number of investigatory tools are given Fourth Amendment protection. If all investigatory tools were outside the Fourth Amendment, then it would be virtually impossible for law enforcement to ever gain probable cause to seek a warrant. Therefore, law enforcement requires methods and tools that are permissible under Fourth Amendment protections in order to allow for the collection of sufficient information to use as probable cause for an arrest, search, or warrant for other, more intrusive investigatory tools.

2NC – Tech Key 2 Solve Intel DA

Drones Warrants Protect the Public

Friesen 13 (Sarah, "Contrary to Popular Belief, Drones Not All Bad", April 18, 2013, http://dailysignal.com/2013/04/18/contrary-to-popular-belief-drones-not-all-bad/)

Last week, Politico published an article on America's misconception of drones, and why those misconceptions can, and should, be remedied. As technology advances, the ways in which it can be exploited grows. Drones are no exception. While steps need to be taken to ensure that privacy rights are protected from drone activities, the U.S. should not unnecessarily restrain such a valuable technology.¶ Today, the public has a negative perception of drones—to put it mildly. The connotation is generally that of Big Brother watching Americans going about their daily lives—all under the guise of keeping us "safe," of course. This is far from reality.¶ Drones do, in fact, provide many services that keep Americans safe.¶ Border patrol security¶ Emergency preparation and disaster response¶ Cargo delivery (private sector)¶ Maritime domain awareness¶ Environmental monitoring (flooding, dams, levees, etc.)¶ Law enforcement (pursuit or search and rescue)¶ Arguably, these are all things that need to be done. Drones provide a cheaper platform that keeps the pilot out of any potential danger. This raises the obvious question: If drones have good uses, then why do people think they are so bad?¶ Ellen Tauscher, former Undersecretary of State for Arms Control and International Security says that a big contributor to the problem is that "there are too many different names being used to describe the technology." Having so many names floating about only exacerbates an already confusing topic.¶ One of the many names for drones is "unmanned aerial vehicle." This is entirely inaccurate. Drones, like planes and helicopters, do have pilots, but they fly the drones remotely.¶ Another aspect of the confusion surrounding drones, according to Politico, is the secrecy that shrouds how the military uses them. It seems that this secrecy has led to speculation that has tainted the American public's view of drones in general, both military and non-military. America needs to ensure that guidelines for the domestic usage of drones are based on fact, not speculation.¶ Generally, drones can and should be regulated by the laws already in place dealing with aerial surveillance. This is the route that should be taken instead of requiring a warrant for drone usage in the U.S. This would not only severely restrict the effectiveness of drones but also **be a misapplication of the Fourth Amendment**.¶ The government and the private sector need to present a coherent and clear picture to the American people of what drones really are. If the public's inaccurate and negative perception of drones is not altered, it could influence policy to the point of depriving America of a truly valuable tool.¶

A2: Case is a DA

The aff impact claims are speculative at best – legislating warrant requirements off of half-baked public perception of drones is overkill, instead we should pursue minimal restrictions until the impacts of the technology can be accurately assessed.

McNeal '14 (Gregory McNeal - is a professor at Pepperdine University School of Law and a contributor to Forbes. He is an expert in law and public policy with a specific focus on security, technology and crime, November 2014, "Drones and Aerial Surveillance: Considerations For Legislators," *Brookings*)

The emergence of unmanned aerial vehicles in domestic skies raises understandable privacy concerns that require careful and sometimes creative solutions. The smartest and most effective solution is to adopt a property rights approach that does not disrupt the status quo. Such an approach, coupled with time-based prohibitions on persistent surveillance, transparency, and data retention procedures will create the most effective and clear legislative package. Legislators should reject alarmist calls that suggest we are on the verge of an Orwellian police state.[73] In 1985, the ACLU argued in an amicus brief filed in California v. Ciraolo that police observation from an airplane was "invasive modern technology" and upholding the search of Ciraolo's yard would "alter society's very concept of privacy." Later, in 1988, the ACLU argued in Florida v. Riley that allowing police surveillance by helicopter was "Orwellian" and "would expose all Americans, their homes and effects, to highly intrusive snooping by government agents..." In a different context in 2004 (before the advent of the iPhone) police in Boston were going to use Blackberry phones to access public databases (the equivalent of Googling). Privacy advocates decried the use of these handheld phones as "mass scrutiny of the lives and activities of innocent people," and "a violation of the core democratic principle that the government should not be permitted to violate a person's privacy, unless it has a reason to believe that he or she is involved in wrongdoing."[74] Reactionary claims such as these get the public's attention and are easy to make, but have the predicted harms come true? Is the sky truly falling? We should be careful to not craft hasty legislation based on emotionally charged rhetoric. Outright bans on the use of drones and broadly worded warrant requirements that function as the equivalent of an outright ban **do little to protect privacy or public safety** and in some instances **will only serve to protect criminal wrongdoing.** Legislators should instead enact legislation that maintains the current balance between legitimate surveillance and individuals' privacy rights. The best way to achieve that goal is to follow a property centric approach, coupled with limits on pervasive surveillance, enhanced transparency measures, and data protection procedures.

A2: Warrants key to Accountability

Requiring warrants is unnecessary – limitations on data collection and retention are sufficient to solve without destroying essential law enforcement tools.

***note: this is a re-underlining of Yang evidence from the 1NC Crime Turn – don't read it twice!

Yang 2014 [Douglas, J.D., Boston University School of Law, 2014 | "BIG BROTHER'S GROWN WINGS: THE DOMESTIC PROLIFERATION OF DRONE SURVEILLANCE AND THE LAW'S RESPONSE," The Boston University Public Interest Law Journal| 23 B.U. Pub. Int. L.J. 343]

The arrival of drones within United States airspace calls for the creation of a new judicial analysis and for the enactment of new bedrock principles in state and federal legislative bodies. Drone use should not be subject to a mere application of the current judicial framework because unmanned drones have the ability to negate the inherent weaknesses that current manned surveillance techniques possess, n211 much in the same way current surveillance techniques can perform tasks that previously required physical trespass.n212 Because drones are quieter, n213 smaller, n214 cheaper, n215 tireless, n216 and are more capable than traditional [*373] platforms of observation, n217 the legal standards by which they are tested must reflect these realities. Mere application of current law is inadequate because current law already struggles to keep up with technological change. n218 The legislature and Judiciary must not fall into Olmstead's trap of stubborn rigidity; these institutions must allow for "more flexibility to protect a broader concept of human dignity at a time when information technology [has] outstripped what property rights alone [can] protect." n219 Any new standard that courts and legislatures could reasonably be expected to apply must be grounded in law, reality, and logic. For the purposes of this Note's analysis, this Note will lay out a general proposition that **using a warrant-focused scheme incorrectly addresses the privacy problem that drones present**. Following this proposition, this Note will then recommend an alternative to the blanket **warrant** requirement for **drone** surveillance missions. B. Replacing the Blanket Warrant Requirement with Bright-Line Rules While popular among both state and federal legislative responses, [n220] compelling a government entity or agent to obtain a warrant before allowing most drone surveillances mission to take off prohibitively disadvantages government [*374] drone use because such a broad requirement imprecisely applies the blunt force of a warrant's power. Here, the inexact application of a broad restriction inevitably leads to an odd and unreasonable result: under a blanket warrant requirement scheme drones would be unable to perform, without a warrant, some of the same surveillance tasks from the same locations that helicopters and airplanes have been authorized to execute without warrants for decades. [n221] Society should not simply hamstring drone use because of its "fear that rapidly advancing science and technology is making [surveillance] more and more effective." [n222] Rather, there should balance a between legitimate government needs and society's privacy interest. Instead of employing a blanket warrant requirement that overly burdens drone use, legislatures should focus on bringing drones into parity with traditional forms of aerial surveillance, such as airplanes and helicopters. Rather than focus almost exclusively on methods applied, legislatures should also look to results attained: "what information does the government acquire as a result of making the observations?" [n223] This conception of privacy runs in tandem with the Supreme Court's line of opinions that look to the functional result of government action, including Justice Brandeis's dissent in Olmstead and the majority opinion in Katz. [n224] However, abandoning a blanket warrant requirement does not necessary entail abandoning warrants altogether; the following Six Rules for **Drone** Usage ("Rules") apply **warrant** requirements in certain situations and scenarios.

Behavior Pattern Recognition / TSA

NEG

Reform BPR 1NC Shell

The United States federal government should reform the Transportation Security Administration's use of Behavioral Pattern Recognition by instituting baseline staff hiring and training standards as well as enhanced training programs for Behavior Detection Officers.

Hiring and training reforms are key to revamp the US BPR program and solve for racial bias.

Cotton 15 (Transportation Security Specialist)

(Brent A., March 2015, "STRATEGIC IMPROVEMENTS TO TSA SPOT PROGRAM," *NAVAL POSTGRADUATE SCHOOL)*

The TSA SPOT program must continue to evolve, as it is one of the few layers that provide a real time threat assessment outside of the known technology countermeasures. Adversaries are constantly studying the TSA's countermeasures and are exploring mechanisms and concealment techniques to defeat them; however, it is far more difficult for terrorists to conceal their involuntary emotional, physiological, and physical responses that will occur while engaged in high-stakes deception. While the TSA should continue to pursue the basic corrective action needed to fulfill the GAO and OIG recommendations, it should also be considering the strategic direction of the SPOT program, including how to improve effectiveness and defensibility to make SPOT a legitimate, contributing, aviation security program. Considering creative solutions to complex problems aligns with the TSA's commitment to becoming a high performing organization. This most revealing part of this study is the inconclusive and controversial nature of the academic literature in this field. Essentially, no literature evaluating behavior detection in totality is available; the majority of the literature focuses on lie detection in an interview setting, or deception detecting with similar experiment conditions. Additionally, this study finds the academic literature in this field to be too dependent on studies using only trivial lies and unmotivated lie tellers as experiment conditions and test participants. Conclusions about SPOT should not be drawn from academic research relying on these conditions. While this field of study collectively acknowledges the limitations of the experiment conditions, more research in the field of high-stakes lies and deception detection in an airport environment is needed to make conclusive claims about TSA SPOT. Areas in which the literature is in general agreement are: 1) verbal and non-verbal cues to deception do exist, 2) no "Pinocchio's nose" telltale indicator of deception exists, 3) deception can be easier or more difficult to detect depending on the skill of the liar, 4) high-stakes lies may be easier to detect than trivial lies due to the powerful emotions associated with a motivated lie, 5) cues to deception may be more evident during personal lies, and 6) lie catchers can be trained to elicit indicators from liars by increasing their cognitive load. This study concludes that SPOT is a valuable layer of aviation security, but needs to be evolving with the academic research and enhancing their capabilities as more is learned about the science. The GAO, OIG, and now this thesis, have analyzed SPOT with similar findings. The strategic shifts recommended in this thesis align with the TSA's current efforts to become a more effective and efficient organization, and are intended to address the strategic gaps of the program. The TSA should consider major changes to SPOT to improve the security value and provide credibility and defensibility to this misunderstood program. A summary of the recommendations is provided as follows. • Establish an operational baseline performance metric for existing BDOs using arrests/prohibited item to referral ratio. • Develop hiring criteria based on a study of psychometric and other attributes of high performing BDOs. • Place additional hiring emphasis on candidates possessing program-enhancing characteristics, such as language skills and cultural competency/background. • Conduct all SPOT training at FLETC using established procedures. • Revise

SPOT curriculum to include explanation of TSA authority, cultural, political, and socioeconomic variables that affect a person's behavior, and how personal biases affect response to those variables. • Offer advanced training classes in areas that will add value at the checkpoint, as well as offer career advancement opportunities for the BDOs (by collecting and demonstrating proficiency in advanced training areas). • Collaborate with agencies training spy craft or undercover techniques to test BDOs covertly or overtly. It is imperative that the TSA continue to develop the SPOT program to maintain a threat agnostic and unpredictable layer difficult for adversaries to "game."

Solvency – Hiring Reforms

New hiring criteria would make BPR more successful in detecting and stopping terrorist threats

Cotton 15 (Transportation Security Specialist)

(Brent A., March 2015, "STRATEGIC IMPROVEMENTS TO TSA SPOT PROGRAM," *NAVAL POSTGRADUATE SCHOOL)*

A key to the success of the TSA's controversial SPOT program is to ensure that the workforce is comprised of the best possible candidates, ideally with aptitude for the task. A 2008 study on deception detection noted that the average person is slightly better than random at identifying when a person is lying or trying to deceive.93 However, the study also identified several groups that were much better at detecting deception than the average person. The groups included therapists, Secret Service agents, and other law enforcement types. The Secret Service agents were among the highest performing, presumably because of their training on scanning large crowds for non-verbal cues (similar to a BDO's function at an airport), and the low frequency of uncovering a plot or perpetrator (not predisposed to assuming a crime has been committed).94 Although other types of law enforcement did well, the commonality of frequently dealing with criminals may predispose them to a higher instance of type 1 errors (false positives). The study also noted that certain individuals had a "genius level" aptitude for detecting deception, which indicated the need to identify their common characteristics and use them to develop specific core competencies to be used as BDO qualifications.95 The TSA should conduct human factors aptitude research to include psychometric testing (using industry recognized methods, such as Myers-Briggs or similar) to determine which traits occur most frequently in highly skilled behavior assessment officers (not limited to the TSA BDOs, but should include officers from other government agencies or industries using similar techniques). For example, a Meyers-Briggs assessment measures psychological preferences in the form of four dichotomies: extraversion/introversion, sensing/intuition, thinking/feeling, and judging/perceiving to come up with a personality type.96 As an experiment, the TSA's human factors branch could select high performing BDOs (using some form of logical performance data as criteria, such as referral to arrest ratio) and administer the Meyers Briggs to determine what patterns are consistent in the psychological predispositions of high performing BDOs. If patterns emerge (such as strong marks toward sensing versus intuition, or thinking versus feeling), then the TSA can incorporate them into hiring criteria, or use it as a basis for further research or even custom aptitude test development. Additionally, a 2012 study in the Journal of Forensic Psychiatry and Psychology notes that research suggests certain characteristics, such as age, profession/experience, and handedness/hemispheric dominance, can play a role in deception detection aptitude.97 Attempting to find the most appropriate candidate for a job is not a new concept. The Department of Defense uses their armed forces vocational aptitude battery (ASVAB) to determine the vocational aptitude for new military recruits.98 While a basic aptitude test, the TSA should consider a similar model to find the best possible candidates for SPOT. Candidate selection is a key element for the effectiveness and consistency of the program moving forward, and finding candidates with appropriate aptitude should be a priority for the TSA. Hiring best qualified/prepared applicants based on psychometric assessment of aptitude and scientifically proven core competencies also provide much needed defensibility and credibility to the program, which is a major shift in strategic hiring practices for the TSA, and will likely be met with many hurdles, including union pushback.

Solvency – Hiring Reforms

Only the revisions through application of the psychometric assessment of aptitude and scientifically proven core competencies to the candidates is the only way to maintain the security of TSA

Cotton, 2015 (Brent A, Transportation Security Specialist, Transportation Security Administration, Arlington, VA B.S., University of West Florida, "*STRATEGIC IMPROVEMENTS TO TSA SPOT PROGRAM," March 2015)*

The TSA should conduct human factors aptitude research to include psychometric testing (using industry recognized methods, such as Myers-Briggs or similar) to determine which traits occur most frequently in highly skilled behavior assessment officers (not limited to the TSA BDOs, but should include officers from other government agencies or industries using similar techniques). For example, a Meyers-Briggs assessment measures psychological preferences in the form of four dichotomies: extraversion/introversion, sensing/intuition, thinking/feeling, and judging/perceiving to come up with a personality type.96 As an experiment, the TSA's human factors branch could select high performing BDOs (using some form of logical performance data as criteria, such as referral to arrest ratio) and administer the Meyers Briggs to determine what patterns are consistent in the psychological predispositions of high performing BDOs. If patterns emerge (such as strong marks toward sensing versus intuition, or thinking versus feeling), then the TSA can incorporate them into hiring criteria, or use it as a basis for further research or even custom aptitude test development. Additionally, a 2012 study in the Journal of Forensic Psychiatry and Psychology notes that research suggests certain characteristics, such as age, profession/experience, and handedness/hemispheric dominance, can play a role in deception detection aptitude.97 Attempting to find the most appropriate candidate for a job is not a new concept. The Department of Defense uses their armed forces vocational aptitude battery (ASVAB) to determine the vocational aptitude for new military recruits.98 While a basic aptitude test, the TSA should consider a similar model to find the best possible candidates for SPOT. Candidate selection is a key element for the effectiveness and consistency of the program moving forward, and finding candidates with appropriate aptitude should be a priority for the TSA. Hiring best qualified/prepared applicants based on psychometric assessment of aptitude and scientifically proven core competencies also provide much needed defensibility and credibility to the program, which is a major shift in strategic hiring practices for the TSA, and will likely be met with many hurdles, including union pushback. However, the TSA must be committed to solving the hard problems if it wants to maintain this layer of security.

Solvency – Training

Merge of the TSA developed BDOs with FLETC solves for laundry lists of impacts

Cotton, 2015 (Brent A, Transportation Security Specialist, Transportation Security Administration, Arlington, VA B.S., University of West Florida, "*STRATEGIC IMPROVEMENTS TO TSA SPOT PROGRAM," March 2015)*

According to TSA Deputy Administrator John Halinski, the TSA is in the process of centralizing most of their training into the Office of Training and Workforce Engagement (OTWE) to maintain and enhance the capabilities of TSA employees while providing a consistent training experience.102 To accomplish this goal, in April 2012, the TSA established a training presence at DHS's FLETC in Glynco, Georgia. Although a component of the DHS, FLETC is an inter-agency training organization that has trained more than 1,000,000 law enforcement officers from 91 different government agencies or partner organizations.103 FLETC's approach to instruction is to maintain "a mix of permanent, detailed, and recently retired staff (to) provide an appropriate balance of training expertise, recent operational experience, and fresh insight from the field."104 Not surprisingly, FLETC maintains a behavioral science division responsible for designing and administering courses in the many aspects of human behavior. One of the principal topics it addresses is interview skills for criminal investigators and law enforcement officers. Of the topics covered in these classes, several would be directly applicable to the BDO position including interviewing strength and weakness forum, eye accessing cues and behavioral baselines, question types to elicit admissions, subject elimination interviews (ruling out a threat), and cognitive interviews. While it will require dedication to collaboration, it fits perfectly into the TSA training strategy of providing a consistent professional experience to all TSA employees. The TSA will need to consider whether the entire training can be done at FLETC, or if it will still need a small course focused on CONOPS to be taught locally. Either way, the TSA can address some of the GAO and OIG's valid complaints regarding underperforming instructors and inconsistent BDO performance across the country. Additionally, the TSA will be able to leverage existing instructional design and instructor expertise on the topic while potentially building a new course that may be desirable to other agencies or countries. This strategic shift has other intangible benefits as well, such as creating an esprit de corps and sense of camaraderie amongst the workforce. It is no coincidence that the members of the armed forces have all attended a "basic training" after which their sense of accomplishment bonds them together and creates a sense of pride. The TSA can improve the effectiveness of the program by providing a more consistent training experience administered by professional instructors and practitioners at a highly respected educational institution. Leveraging the expertise and reputation of FLETC's 40-year law enforcement training heritage also provides credibility and defensibility to the program, as FLETC's credentials have never been in question. Additionally, the TSA may be able to re-focus existing BDO instructors by assigning them the lower-skill tasks of providing local update training or facilitating continuing education as necessary. While a major strategic shift for the SPOT program, it coincides perfectly with the agencies new effort to centralize training for consistency, while leveraging existing government resources.

Solvency – Training

Reformations of the BDO's basic training understanding how cultural, political, and socioeconomic variables provide the strong baseline for TSA.

Cotton, 2015 (Brent A, Transportation Security Specialist, Transportation Security Administration, Arlington, VA B.S., University of West Florida, "STRATEGIC IMPROVEMENTS TO TSA SPOT PROGRAM," March 2015)

Understanding how cultural, political, and socioeconomic variables impact passengers' appearance, behavior, and response to questioning, should be a major focus of SPOT training. While the BDOs will learn through experience over time what the specific cultures and reactions are at their airport, a strong baseline in cultural competency would be beneficial. One way to identify the differences between people and their behaviors is to understand the similarities. As an example of improving training content, the BDOs curriculum could focus on basic physiological/psychological elements, such as the six universal emotions as described by Dr. Paul Ekman. Dr. Ekman contends that all cultures respond similarly to the same basic human emotions, with the big six being anger, happiness, surprise, disgust, sadness, and fear (see Figure 5).105 An understanding of what all cultures have in common provides a valuable baseline for performing BDO duties.

A2: Case is a DA

Behavior Pattern Recognition models have been proven effective internationally – the issue is HOW the TSA implements the program. Reforms solve.

Zumwalt, 2013 [James, Lt. Col., U.S. Marines, retired, "Outside view: Putting TSA's SPOT program on the spot, http://www.upi.com/Top_News/Analysis/Outside-View/2013/07/23/Outside-View-Putting-TSAs-SPOT-program-on-the-spot/31441374552240/]

The Israeli aviation security model has been so successful that in the last 50 years, no terrorist has successfully hijacked or bombed an Israeli aircraft or a foreign aircraft departing from Israel. The 1986 Hindawi incident reveals how the Israeli security method trains personnel to weigh a range of factors so, even when telltale behavior isn't visible -- i.e., a bomb planted on an unwitting passenger -- detection is still possible. Nezar Hindawi, a Jordanian terrorist working for the Syrian government, took Anne-Marie Murphy -- an Irish housemaid -- as a lover. She became pregnant; he disappeared. Five months later, he suddenly reappeared, professing his love and desire to marry her. He told her to catch the next El Al flight to Tel Aviv, where his parents eagerly awaited her arrival. When a surprised but pleased Murphy said she needed to pack, Hindawi handed her a small bag for the trip, explaining he would follow on the next flight but she needed to depart quickly for hers. Murphy raced off to London's Heathrow airport. Her single carry-on bag was X-rayed and she was motioned on to El Al. (Despite domestic security, El Al always performs its own.) There, Murphy was asked questions for which her answers immediately raised concerns. Despite an uneventful X-ray of her carry-on bag, it was opened and a secret pocket discovered. Cut open, it held 3.3 pounds of the plastic explosive Semtex but no detonator. Re-examining the bag's contents, a small handheld calculator was found, an altimeter detonator hidden inside to effect a sympathetic detonation of the Semtex. Murphy's naivete could have cost 375 lives had it not been for alert security. Questions put to her included: Where she was going (responding, "To visit the Holy Land") and where she would stay (responding, "Hilton hotel"). Trained to focus on inconsistencies, security couldn't resolve, among other things, why a 5-month pregnant women would travel to Israel on vacation with a single carry-on bag and on a non-existent hotel she identified. Such security's success lies in interacting with all passengers -- asking pertinent questions -- to identify irresolvable issues and whether a passenger poses a threat. It is a process fine-tuned over the years, easily integrated into current international and domestic aviation security systems. It requires empowering trained employees to make decisions based not solely on automatic government regulations but individual passenger assessments. TSA's SPOT program, in force for five years, was recently criticized by the U.S. Department of Homeland Security's Inspector General for lacking an objective and strategic plan. A billion dollars spent to date to train 5 percent of TSA's workforce has yet to "ensure that passengers are screened objectively or show that SPOT is cost effective or worthy of expansion." U.S. Rep. Bennie G. Thompson, D-Miss., has put SPOT on the spot, seeking to prevent the waste of any more tax dollars for failing to improve aviation security. TSA has made some smart moves. It added to its course roster threat-oriented training focusing on security questioning and passenger threat assessment. This approach is important because it encourages decision-making based on a professional evaluation of the behavior, the story and the situation, regardless of the risk population to which the passenger belongs (old, young, frequent traveler or first-time traveler). "Chameleon Associates (which provides this training) represents the kind of approach and methods TSA, once created, should have immediately implemented," says Arik Arad, a leading aviation security specialist who consults with government and private aviation stakeholders. If only wielded effectively, SPOT could be "spot on" in improving aviation security. Right now, TSA appears lost in a process not fully understood, evidenced by claims of racial profiling. If performed correctly, SPOT isn't profiling suspects by race but conducting threat categorization to identify potential terrorists. SPOT is a methodology focusing on all passengers -- from point of airport roadside curb entry all the way to the boarding gate. Through interaction and security-related questions, passengers are identified for further screening to ensure a threat posed is dealt with effectively and respectfully -- ensuring unresolved passenger issues don't result in "criminal" treatment. Thus, anyone harboring ill intent is effectively dealt with before boarding the plane. An effective SPOT program incorporates two security elements, predictive screening and threat categorization identification, into

the passenger check-in process -- minimizing intrusive and timely screening procedures and increasing interaction with each and every passenger. Understanding and correctly identifying behavioral concerns is key to successful and efficient aviation security. TSA's Friday announcement of the threat posed by new "underwear bomber" technology makes this particularly urgent. There is a danger in eliminating the SPOT program, which actually only requires fine-tuning, to make it more effective. TSA may want to talk to behavioral "duty experts" about doing so.

A2: BPR Inherently Flawed

Advantages to SPOT o/w – here are 6 reasons why

Florence and Friedman '09 [Justin Florence – Associate in O'Melveny & Myers LLP - J.D. @Yale Law School - M.A Harvard University, Robert Friedman – Associate in Venable LLP – J.D. Georgetown University, 12/27/2009, "PROFILES IN TERROR: A LEGAL FRAMEWORK FOR THE BEHAVIORAL PROFILING PARADIGM," http://www.georgemasonlawreview.org/wp-content/uploads/2014/03/17-2_FlorenceandFriedman.pdf]

First, and most fundamentally, behavioral profiling provides an additional layer of security and another opportunity for homeland security officials to identify potential threats. That is to say, the appropriate question is not whether behavioral profiling is superior to other layers of security— such as hardened cockpit doors, baggage screening, and metal detectors— but rather, whether it enhances security when used in addition to those programs. Second, a core lesson of 9/11 is that it is people, not particular tools, weapons, or objects that pose the greatest threat. The simple box-cutters used as weapons by the 9/11 hijackers are no longer allowed through security, but surely cunning terrorists can devise suitable alternatives if they wish to perpetrate violence on an airplane. Whether through plastic knives, liquid explosives, or blunt objects, it seems unlikely that screening objects alone can eliminate the risk of terrorism. As a TSA spokesman put it, "[s]omewhere out there the needle in the haystack is a bad guy. If our behavior detection officer's [sic] give us better odds of finding that needle, we're going to use every tool we can while protecting the rights and privacy of passengers."70 Behavioral profiling is not the only aviation security tactic that focuses on people—watchlists serve the same function. But again, behavioral profiling can be used in addition to watchlists, and, given the numerous problems with watchlists,71 behavioral profiling may well be more effective. At a minimum, behavioral profiling focuses on the actual individual in question, not just a name. Third, compared to subjecting all passengers to high scrutiny (as the Israeli model does), targeted behavioral profiling along the lines of SPOT is a more efficient use of resources. SPOT allows TSA officials to focus only on particular individuals for more intensive questioning, maximizing the effectiveness of available resources. Fourth, and similarly, behavioral profiling is far less burdensome and invasive for individuals than would be a questioning of every single traveler, as in the Israeli model.72 If the United States were to adopt that approach, passengers would face lengthy delays and be forced to reveal extensive information about themselves. From the standpoint of passenger convenience and air travel expediency, the SPOT program seems to benefit from two important attributes. Because SPOT is based on visually observable behavioral cues, the program is executed through non-intrusive means and effective implementation does not require conducting physical searches. And unlike mandatory baggage screening procedures which apply to all passengers and create delays, long lines, and increased hassle, enforcing SPOT does not necessitate stopping every passenger who walks through the airport. For an air travel population that already registers a strong distaste for TSA and the burdens of aviation security, the less intrusive the passenger impact, the more likely the public will tolerate a security measure.73 Moreover, in passing a law to implement the recommendations of the 9/11 Commission, Congress included a provision directing TSA to reduce the average security-related delays in airports to less than ten minutes— which certainly could not be achieved were every passenger interviewed.74 Fifth, behavioral profiling need not involve any explicit racial or ethnic profiling. This has several advantages. It has a security value, in that it does not permit an individual to evade detection merely because he or she does not have a racial or ethnic appearance that seems to signal a terrorist. Law enforcement experts generally contend that observing an individual's behavior is far more valuable than profiling based on race or ethnicity alone.75 Further, this type of profiling is likely to improve public support for and confidence in the program, by lending it additional legitimacy. Sixth, anecdotal evidence suggests behavioral profiling can yield results. In a recently publicized incident, a BDO identified five men in a security screening line at Washington D.C.'s Dulles International Airport whose behavior seemed suspicious. TSA immediately notified the Metropolitan Washington Airports Authority Police Department. Subsequent questioning revealed that all five passengers had entered the U.S. illegally and possessed likely-fraudulent identification.76 Some of the publicly available results of SPOT also include: identification of a passenger carrying surveillance photos of high-risk buildings and bridges; interception of a man wearing several layers of clothing with wires extending from his sleeves to a black box he was carrying; and the detection of several passengers who were sitting separately but making clandestine signs to one another, while pretending not to know each other, and who later admitted to being paid $5,000 to travel between airports and observe security.77 And recently, a Jamaica-bound passenger aroused the suspicion of BDOs, who, working in conjunction with the Orlando Police Department, the Orange County Bomb Squad, and the Federal Bureau of Investigation, uncovered everything needed to make a bomb in the passenger's checked bag.78 In sum, behavioral profiling has the potential to provide more effective security, at a lower cost, with less disruption of innocent people, than other counter-terrorism screening techniques. As new research into human behavior develops alongside emerging technologies, security officials will have the power and ability to profile more people in more places in more different ways.

The behavioral profiling paradigm offers the promise of better security alongside more liberty and less hassle for travelers.

A2: No Solve Crime/Terrorism NB

TSA Reform is Key to Effective Security Measures

Kaplan 09(Eben, "Target for Terrorists: Post 9/11 Aviation Security", Sept 7, 2006, Council on Foreign Relations, http://www.cfr.org/border-and-port-security/targets-terrorists-post-911-aviation-security/p11397)

Some critics say that by focusing so heavily on screening passengers, security officials have left aircraft vulnerable to attack in other areas. Foremost among these, experts say, is air cargo security. In addition to carrying travelers' baggage, the lower deck of many airliners holds a sizeable amount of airfreight. Though 100 percent of passengers' checked luggage is required to be screened for explosives, according to a Congressional Research Service report (PDF), only a small portion of the air cargo is ever inspected.¶ Others criticize the ease with which airline and airport employees bypass security checkpoints when entering secure areas. Some experts have called for the use of biometric identification for such access. There are also concerns over the potential of an attack by terrorists using a shoulder-fired anti-aircraft missile: In 2002 terrorists fired such a missile at an Israeli charter jet as it took off from Mombasa, Kenya. The Department of Homeland Security has commissioned prototypes of anti-missile systems but it remains unclear when, if ever, such systems will be implemented. ¶ Despite the heightened focus on passenger screening, it too remains a magnet for criticism. At a hearing of the House Committee on Transportation and Infrastructure, John Mica (R-FL), chairman of the Subcommittee on Aviation, lamented, "The TSA's current baggage screening system continues to show no ability to adapt or keep pace with the ever-changing demands of the aviation industry. At the same time that the patchwork system is getting bogged down by its own inefficiencies, there is growing evidence that it does not even afford us more effective security screening." More advanced technologies could improve screening procedures, but the deployment of new devices has been slow. ¶ As for prescreening passengers, Shanks says, "In principle it's a good idea, but in practice it doesn't always turn out that way." The watch lists compared with passenger manifests are just lists of names. Ordinary passengers with names similar to ones on the list have at times been stopped, and Shanks says there's little to stop a terrorist from creating a false identity. Homeland Security Secretary Michael Chertoff seems to agree. In an August 29 Washington Post op-ed, he called for screening measures that would allow U.S. officials access to such data as passengers' cell phone numbers.¶ One approach, called behavior pattern recognition (BPR), uses behavior clues to identify potential terrorists during passenger screening. Rafi Ron, former director of security at Tel Aviv's Ben Gurion airport and now a security consultant working with the TSA to implement BPR programs at U.S. airports, says if BPR is widely implemented it will "add a very important security layer to our aviation [system]." The technique involves first identifying passengers exhibiting suspicious behavior, such as wearing heavy clothing on a warm day, excessive sweating, or using a pay phone in areas with cell phone reception. Individuals identified in this way are then selected for targeted interviews with a law enforcement officer who is trained to detect signs that a passenger is concealing something. Ron describes these interviews as "friendly conversations;" most are only a few minutes long. The vast majority of the passengers questioned like this are allowed to continue on their travels; the few passengers who arouse an officer's suspicions are subjected to an hour-long interrogation and search. Naccara, who has used BPR at Logan Airport for three and a half years, says it works "extremely well."¶ The TSA is testing BPR under a program called Screening Passengers by Observation Technique, or SPOT. Ron says that while no terrorists have been netted, several criminals have been arrested. Yet the process is not foolproof: Shoe-bomber Richard Reid was targeted for an interview by a security guard before boarding a flight from Paris to Miami. The conversation aroused the guard's suspicions, who referred Reid to French law enforcement for further questioning scrutiny. French officials, Ron says, did not properly search Reid, who was wearing a bomb during the entire interrogation.¶ Implementing advanced technology has been widely touted as a means of improving airport security. There are a number of new technologies that may eventually be incorporated into the screening process. These include:¶ Backscatter X-rays can trace the contours of a person's body and reveal any hidden objects, such as non-metallic weapons, plastic explosives, or drugs. Some critics argue these devices reveal too much and are an invasion of privacy, though filters can be added to protect a passengers' modesty.¶ Trace-detection portals or "puffers" can be used to detect explosive residue on a passenger by blowing small bursts of air at the person being screened. These puffs are designed to dislodge molecules from a person's body or clothing, and the air is sucked into a filter and analyzed for suspicious

substances. The same method may be used on luggage.¶ Quadrupole Resonance Scanning is a way of identifying materials packed in passengers' baggage. A scanner bombards a passenger's suitcase with radio waves and examines the wavelengths of the energy emitted by the contents of the bag. This method has been used to detect some 10,000 different substances. ¶ Polygraphs, or lie detectors, as they often called, have long been used in other settings, but in 2006, the TSA began testing a polygraph-like system for passenger screening. In this new system, passengers enter a booth, place one hand on a sensor, and answer a series of questions on a touch screen. The sensor measures such things as blood pressure, pulse, and sweat levels, analyzing them to determine if the person is lying. ¶ While improved techniques and advanced technology can certainly help to make air travel safer, there is no magic bullet. "There will always be vulnerabilities," Naccara says, "We should never be satisfied; we should always be looking for improvements."¶ Do other countries have the same security measures as the United States?¶ No. Specific security measures vary from country to country. General standards for minimum security measures are dictated by the International Civil Aviation Organization (ICAO), but those standards are not always met. Even if foreign airports are screening 100 percent of passengers' baggage, as the ICAO requires, Shanks says, "Other countries may be using technology that is not the best." This might explain how in August 2006, a U.S. college student boarded a plane in Argentina with explosive powder and a stick of dynamite in his checked bag.¶ Some countries have security measures that surpass those of the United States. Tel Aviv's airport is widely regarded as the safest in the world. There, airport officials interview every single passenger using the same BPR techniques that are currently being tested in the United States. Interviewing 100 percent of the passengers, Ron says, "has proven to be more effective than any other aviation security measure," but cultural and legal obstacles have prevented implementation of such a program in the United States.¶

A2: No Solve Crime/Terrorism

Effectiveness cannot be measured on number of terrorists caught

Cotton 15 (Transportation Security Specialist) (Brent A., March 2015, "STRATEGIC IMPROVEMENTS TO TSA SPOT PROGRAM," *NAVAL POSTGRADUATE SCHOOL)* SPOT = Screening Passengers by Observation Techniques

The GAO notes that the SPOT program has not caught a single terrorist, which indicates that the program is not an effective anti-terrorist tactic. As a simple bullet point, the claim is certainly accurate, but taken in context may not be indicative of a lack of effectiveness. No known plots or attack attempts against domestic aviation have occurred since 9/11, which means no relevant data is available from which to draw conclusions about the effectiveness of any aviation countermeasure or program. Additionally, all TSA security programs (and most other domestic anti-terrorism programs) are operating in the same environment. Given the low frequency of terrorist attacks originating in the United States,success cannot be measured by the number of terrorists captured. By this logic, the United States should also stop inspecting luggage and persons at the airport and borders, since no terrorists have been captured using these methods. The logic used by the GAO is akin to saying that a designated hitter in a baseball game is ineffective because he got zero hits in the game. It may be true that he did not get a single hit, but that data point is not sufficient to draw conclusions about his performance. To assess his effectiveness, it is also essential to know how many at bats the hitter attempted. In both cases (SPOT and the baseball player) the data alone does not provide sufficient backing from which to draw conclusions about effectiveness. The low frequency of terrorist attacks (or lack of data) makes it difficult for either the GAO or TSA (really all of the DHS) to understand the effectiveness of anti-terrorist programs. However, it may be that SPOT and other security programs are providing an intangible level of deterrence, which makes aviation an unattractive terrorism target due to the adversaries' reduced likelihood of success, whether real or perceived.

A2: Statistics Prove BPR Useless

SPOT only needs more statistics in order to make a successful process

Cotton 15 (Transportation Security Specialist) (Brent A., March 2015, "STRATEGIC IMPROVEMENTS TO TSA SPOT PROGRAM," *NAVAL POSTGRADUATE SCHOOL)* SPOT = Screening Passengers by Observation Techniques

A combination of claims that SPOT needs to 1) establish a method to measure performance of the BDOs, and 2) establish data input controls to ensure the accuracy of data, which leads this study to conclude that SPOT has a strategic metric issue. Collecting data with sufficient accuracy can be easily addressed operationally, but must be done before any data can be used and analyzed to indicate effectiveness. However, the larger problem is that SPOT needs to establish metrics that, when analyzed, would be indicative of performance. The lack of fidelity into SPOT performance has led the GAO to withhold budget from SPOT, but worse than that, suggests that the TSA may not actually know how effective the program is. The TSA can demonstrate that SPOT regularly identifies criminals at the checkpoint, those intending to commit or in the act of committing a crime, such as smuggling, kidnapping, human trafficking, child pornography, etc. (see Figure 3). It is indicative of some success since persons engaged in high-stakes deception will react predictably to the fear of discovery. Unfortunately, it is not possible to obtain a true P(d) (using criminal identification as proxy data) because it is not possible to also know how many persons actively engaged in criminal or deceptive behavior have passed through the system without being caught. It is impossible to prove the negative, which makes it impossible to obtain a true P(d), and complicates the analysis for both the GAO and TSA. Suggestions on how to understand and begin measuring effectiveness are included in Chapter V.

NB: Ptx

Reform popular – elimination not

Port, 2012 [Rob, editor of SayAnythingBlog.com. In 2011 he was a finalist for the Watch Dog of the Year from the Sam Adams Alliance and winner of the Americans For Prosperity Award for Online Excellence. In 2013 the Washington Post named SAB one of the nation's top state-based political blogs, and named Rob one of the state's best political reporters, "We Don't Need to Reform the TSA, We Need To Get Rid of the TSA, https://sayanythingblog.com/entry/we-dont-need-to-reform-the-tsa-we-need-to-get-rid-of-the-tsa/#authorInfo]

According to Politico, political ire aimed at the rubber-gloved freedom fondlers at the TSA runs the gamut from libertarian-leaning Republicans to liberal Democrats. It seems like just about everybody is upset with the TSA, and political ideology has nothing to do with it. So in an environment like that you'd think the TSA would be headed for the chopping block, but you'd be wrong. There are a lot of plans to reform the TSa. Republican Rep. Marsha Blackburn wants to stop the TSA from wearing uniforms that make them look like police officers. Democrat Senator Chuck Schumer wants to fund "passenger advocates" who would act as liaisons between travelers and TSA agents. Republican Rep. Paul Broun wants the head of the TSA to resign. And there are a myriad of calls for studies into how the TSA does its job, not to mention the health hazards of the scanners used by the agency. But one thing nobody is talking about is eliminating the agency altogether. Why? Probably because after a decade in existence, there are simply too many special interests making a good living from the TSA. Whether it's labor unions gaining many dues-paying members from among the ranks of the federal TSA employees or contractors raking in big bucks to supply the TSA with their security equipment, **it all adds up to a lot of political clout**.

Welfare

States CP

1NC

Text: The fifty states of the United States should eliminate their surveillance of recipients of mean-tested public benefits.

State-designed welfare programs spill upwards – 1996 reform proves

O'Connor, 2004 (Brendan, "A Political History of the American Welfare System: When Ideas Have Consequences," Rowman & Littlefield, p. 112)

Using the immediate pre-Reagan period as a baseline, a 1985 Urban Institute Report found the following reductions in social spending during Reagan's first term: AFCD, 14.5 perfect; food stamps, 13.8 percent; social service and community service block grants, 23.5 perfect and 37.1 percent, respectively; while spending for general employment training was cut by 38.6 percent (Greenberg, 1985: 191-192). These cuts represented a major arrest in the welfare spending trends that had developed since the establishment of the great society programs. Although Reagan could not abolish any of the major welfare programs, his administration changed the face of the American welfare system. It halted the expansion of welfare services, cut expenditures, and through Reagan's "New Federalism," it decentralized power to the fifty states in a number of areas. This decentralization of decision making about welfare policy and administration was a necessary forerunner to subsequent significant retrenchments. It allowed for the development of the welfare waiver programs under which states like Wisconsin and Mississippi developed new programs that represented significant departures from the federal welfare system. These pilot programs, in turn, became the basis for a new welfare system adopted in 1996 (Cammisa, 1998: 106).

Solvency

States solve better – more attuned to local constituents' needs

Carleson 03, senior fellow at the Free Congress Foundation for Education and Research. He served Ronald Reagan as welfare director for the State of California. (Robert B, "States Handled Welfare Reform, So Why Not Use Them Again," March 3, *humanevents.com,* http://humanevents.com/2003/03/03/states-handled-welfare-reform-so-why-not-use-them-again/)

The Congress is about to reauthorize for at least five more years the hugely successful welfare reform of 1996 with some useful changes proposed by President Bush. When it was about to be enacted in 1996 its opponents such as Sen. Daniel Patrick Moynihan (D.-N.Y.) and the Urban Institute predicted that ". . . within a year there will be a million children starving in the streets," and that states will ". . . race to the bottom." We who were proposing the historic reform challenged our opponents to name the governor, legislators, and states that would send their poor children to the streets to starve. Well, it is nearly seven years later and children are not starving in the streets, the nation's family welfare rolls have been cut in half and most mothers are supporting themselves and their children. The states have proven that they can do the job if given the responsibility. No other country in the world has as its basis a government that was established by independent states and has grown by adding states with the same authority as the original 13. Each state has a chief executive, and a legislature elected by its citizens and a court system responsible to its people. They have power to raise taxes and pass all laws not in conflict with the Constitution. They are close to the people and are in a much better position to determine need, enforce work requirements, and determine disability. So let's use them to follow up on family welfare reform by giving them the authority, responsibility and financial incentive to reform the other major welfare programs. These programs are: Medicaid, food stamps, and the Supplemental Security Income Program for the Disabled (SSID). All are open-ended entitlement programs and contain much waste fraud and abuse. Solution for Medicaid Medicaid should not be confused with Medicare. Medicaid provides health care for welfare families and for persons who are on welfare because of their age or disability and have little or no income. Medicare is a health care insurance program for the employed or retired after they reach the age of 65 or become disabled. They have contributed to Medicare throughout their working life with mandatory withholdings from their wages. Medicare is administered by the federal government. Medicaid is administered by the states and paid for by an open-ended federal-state matching program. The governors are screaming for increased federal matching for Medicaid spending. This would be the worst way to go. Federal matching simply causes more, not less, state spending since the more the state spends the more federal money flows in. The solution, as with family welfare, is to replace Medicaid with finite block grants to the states so that the states will have a financial incentive to ensure that waste is reduced or eliminated. Federal mandates should be removed or reduced to give states the ability to design systems to meet their individual needs. The money they save will stay in the state as a reserve against bad times or be used for other necessary state health needs. Controlling Food Stamps The food stamp program is worse. The federal government pays the full cost of food stamps and the states administer the program, paying half of the administrative costs. There is no incentive to eliminate fraud and abuse, since all the money saved is federal money and it costs the state money to administer anti-fraud and waste programs. In addition the federal government sets eligibility standards and benefit levels that may not be synchronized with state standards for their family cash welfare programs. The food industry strongly defends the food stamp program, but we can continue to print the food stamps. Instead of being an open-ended entitlement program for individuals, it should be replaced with finite block grants of stamps to the states, with eligibility and benefit requirements set by the state as they do now with family welfare. Instead of sending a check, the federal government can deposit a truckload of food stamps each month in the state and let the state decide how to distribute them. The savings from the fraud and abuse that is eliminated stays within the state, giving the state a strong incentive to see that the stamps go only to those who need them. Ending SSID Fraud The third program to be reformed as we did with the family welfare program is SSID (Supplemental Security Income Program for the Disabled). This is the program for people who are too disabled to work and have little or no income. In 1971 when I was welfare director for Gov. Reagan in California, the states still administered this program. I found that throughout California non-disabled people were being admitted to the welfare rolls as disabled. It was particularly bad in the Haight- Ashbury District of San Francisco where long-haired hippy doctors were issuing papers declaring their hippy friends disabled. We started a complete review of the cases throughout the state and cleaned the rolls. In 1973, however, the Nixon Administration moved SSID from state to federal administration with some states adding supplements to the federal grants. Knowing when someone is actually disabled and the degree of disability is difficult at best, but certainly cannot be done accurately at the national level. The requirement is that disability must be expected to last for at least a year, but in many instances disability

ends and the persons remain on the rolls. It has been reported that, indeed, some states have been moving their family welfare recipients to the federal disability rolls when in fact the people are not truly incapable of supporting themselves. In addition, SSID recipients are automatically eligible for Medicaid, for which the states are financially obligated to pay half the cost. The states were handling this program quite well until it was removed from them in 1973, and it should be block-granted to them, just as was done with family welfare. Much of the fraud and abuse can be detected and eliminated by the states and their counties, which are much closer to the people than the federal government. The money saved can stay within the state to be used for other pressing needs for disabled people. . We have proven that by ending the individual entitlement nature of family welfare and replacing it with finite block grants the states have been responsible and rolls have plummeted and thousands of families are self supporting. The dire predictions of opponents of welfare reform that the states would "rush to the bottom" and that a million children would be starving in the streets did not happen because states are responsible and care about the welfare of their people. Now that that argument is over, we should build on this success by doing the same with the three remaining welfare entitlement programs. It could be made voluntary for each state, but states that do not take it should receive no additional federal funding. Any governors or state legislators who do not accept the challenge would be sending a message to its voters that they are afraid to accept the responsibility. I am sure that other citizens more willing and able to do so would contest them in the next election.

States avoid the compromises inevitable in Congress

Tracinski 2015 (senior writer at The Federalist. He studied philosophy at the University of Chicago and for more than 20 years has written about politics, markets, and foreign policy)

(Robert, 6/1/15, "7 Way To Roll Back The Welfare State," *The Federalist, http://thefederalist.com/2015/06/01/7-way-to-roll-back-the-welfare-state/)*

Part of the reason we have such a bloated welfare state is because every decision in Congress has to be a compromise between "blue state" politicians who want more and more and more government and "red state" politicians who usually claim they want less. Hence my modest proposal that we kick these decisions back down to the state level, which is where they were always intended to be. This is not a foolproof solution, because we'll still occasionally get local handouts like ObamaCow. But the general idea is that we can let New York and California set up more generous welfare states—if they want to pay for them. And they should let the hinterland scale back welfare. Then the states can compete to see whose approach is more successful and how many people vote with their feet for the small government model. Even now, the results on this are encouraging, with low-tax, low-regulation states experiencing huge increases in population.

In the absence of reform, federal welfare will collapse

Mitchell, 2013 Dan Mitchell, Ph.D (in economics), is a Senior Fellow at the Cato Institute who specializes in fiscal policy, particularly tax reform, international tax competition, and the economic burden of government spending. He also serves on the editorial board of the *Cayman Financial Review.* (Dan Mitchell, "Decentralization and Federalism Is the Libertarian Way to Determine Whether a Basic Income Is Practical or Desirable", 12/18/13, *December Columns,* http://www.libertarianism.org/people/dan-mitchell)//ER

Mitchell argues against a national basic income, suggesting instead that federalism may provide a better solution to the problems of the current welfare state. Some libertarians argue that the state should provide a minimum basic income, mainly because this approach would be preferable to the costly and bureaucratic amalgamation of redistribution programs that currently exist. It's hard to disagree with **the** notion that the **current system is a failure**. The Cato Institute's Michael Tannerhas produced a searing indictment (http://object.cato.org/sites/cato.org/files/pubs/pdf/PA694.pdf) of the modern welfare state, pointing out that **more than $1trillion is spent every year on redistribution programs** for the ostensible purpose of alleviating economic hardship, yet (or more likely **as a result)the poverty rate is at an all-**

time high. Perhaps one reason poverty remains high is that such programs make leisure more attractive than work, as painstakingly illustrated (http://danieljmitchell.wordpress.com/2013/08/20/mirror-mirror-on-the-wall-which-states-provide-the-most-handouts-of-all/)inastudyproducedbyTannerandCharlesHughes.DECEMBER18,2013COLUMNS Moreover, **welfare programs create very high implicit marginal tax rates** (http://danieljmitchell.wordpress.com/2012/07/13/a-picture-of-how-redistribution-programs-trap-the-less-fortunate-in-lives-of-dependency/), making it very difficult for poor people to improve their living standards by engaging in additional productive behavior. **It's almost as if the system was designed to create permanent dependency**. So it's very understandable that well-meaning folks want to dismantle the current approach and try something new. The basic income certainly has the merit of being a big, bold idea. And advocates of the basic income can cite some very iconic libertarian figures who support at least some version of their approach, including Milton Friedman (http://www.amazon.com/Capitalism-Freedom-Fortieth-Anniversary-Edition/dp/0226264211), Friedrich Hayek(http://www.amazon.com/Law-Legislation-Liberty-Volume-Political/dp/0226320901),and Charles Murray(http://www.amazon.com/In-Our-Hands-Replace-Welfare/dp/0844742236).But if we're going to launch a very difficult battle to radically reshape well-entrenched bureaucracies and long-standing policies in DC, it seems reasonable to ask whether there might be a better road to Rome. There are several very practical and compelling reasons to be skeptical about the basic income proposal. The first concern is that **a guaranteed basic income may simply replace one form of government-financed dependency for another.** An economy's output is a function of the quality and quantity of labor and capital that are productively deployed. **That's** an argument for reducing the size of welfare state in order to encourage more work. But it's **no**t an **argument for creating a lump-sum form of redistribution.** That being said, a well-designed basic income presumably will not have the punitive implicit tax rates on those who decide to engage in productive behavior. Moreover, the army of bureaucrats who monitor and over see the current system wouldn't be necessary (though skeptics understandably wonder whether politicians actually would shrink the federal work force even if redistribution programs were axed). The second concern revolves around the question of durability. More specifically, there's no guarantee that politicians in the future won't re-create the current panoply of programs that the basic income is supposed to replace. The political incentives that existed when those programs were first created, after all, presumably would remain in a world where people get a pre-determined amount of cash from the government. This is largely speculative, to be sure. Interest groups would have an incentive to lobby for the creation of new programs with targeted beneficiaries. But perhaps the general public would understand that **even one new handout would be the first step on a slippery slope leading back to something akin to the current system**. A third concern is that the basic income may become overly generous, particularly in a fiscal system where a relatively small slice of the population pays an overwhelming share of the tax burden. In that kind of regime, there would be an incentive for a majority of voters to increase the amount of redistribution. It's unknown whether this would happen. Simply stated, the few experiments that might teach us about incentives with a system of basic income have been too limited to draw any firm conclusions. For those who want to review that literature, Jim Manzi (http://www.nationalreview.com/corner/259761/against-negative-income-tax-jim-manzi#!)has a good summary showing less-than-robust evidence for a basic income and Megan McArdle (http://www.bloomberg.com/news/2013-12-04/four-reasons-a-guaranteed-income-won-t-work.html)raises some very practical objections to the concept. Proponents of the basic income surely would respond by arguing that voters would understand that they were taxing themselves and thus be reluctant to make the basic income too large. The final concern, at least for many libertarians, is that **the federal government shouldn't be in the business of redistributing income**. The Constitution, for instance, does not list food stamps, welfare, housing subsidies, or Medicaid as enumerated powers of Congress in Article I, Section VIII. Supporters of the basic income surely would respond by stating that it's too late to make that argument. Limits on the role of government largely evaporated during the 1930s and it's pointless–even though perhaps intellectually satisfying–to make such arguments today.

A2 States Cause Poverty

Federalism creates variety in state policies--spurs innovation in welfare systems

Mitchell, 2013 Dan Mitchell, Ph.D (in economics), is a Senior Fellow at the Cato Institute who specializes in fiscal policy, particularly tax reform, international tax competition, and the economic burden of government spending. He also serves on the editorial board of the *Cayman Financial Review.* (Dan Mitchell, "Decentralization and Federalism Is the Libertarian Way to Determine Whether a Basic Income Is Practical or Desirable", 12/18/13, *December Columns,* http://www.libertarianism.org/people/dan-mitchell)//ER

The bottom line for advocates is that anything would be better than the current system, so why not try something new? They're right, but there's actually a better way of approaching the issue. Why not take all income-redistribution programs, put them into a single block grant, and then **transfer** the **money–and responsibility–to state governments**? In an ideal world, the block grant would gradually diminish so that states would be responsible for both the collection and disbursement of all monies related to welfare. But that's a secondary issue. **The** main **benefit of this federalist approach is that you stop the Washington-driven expansion of the welfare state and you trigger the creation of 50 separate experiments on how best to provide a safety net.** Some states might choose a basic income. Others might retain something very similar to the current system. Others might try a workfare-based approach, while some could dream up new ideas that wouldn't stand a chance in a one-size-fits-all system run out of Washington, DC. **And as states adopted different systems, they could learn from each other about what works and what doesn't work**. And since it's easier to influence decisions that are closer to home**,** taxpayers at the state level almost certainly would have more ability to impact what happens with their money. Moreover, there's actually some evidence that this approach is practical. **The 1996 welfare reform** legislation isn't a perfect analogy, but the core feature of that law was the elimination of a national entitlement and the **provision** of a block grant **so that states could decide** (with some strings attached) **how to deal with poverty**. By most measures, the 1996 reform **was a success**, with Ron Haskins of the Brookings Institution explaining (http://www.brookings.edu/research/testimony/2006/07/19welfare-haskins) that it resulted in lower levels of welfare dependency and reductions in child poverty. This isn't to say the 1996 law was ideal. The advantage of a comprehensive federalist approach is that policy experts can push states to experiment with different policies. And given the vast differences between various American states, it's almost guaranteed that there will be lots of diversity. LIBERTARIANISM.org(/) This **diversity** not only **will inform policymakers about what works and what doesn't work**. It also will satisfy the libertarian desire to get Washington out of the business of income distribution, **while** presumably **producing a system that** actually **does a better job of helping the less fortunate escape government dependency**. In other words, **all the advantages of the basic income plan without the potential system-wide downsides**

A2 Theory

It's real-world – fifty state policies is comparatively better than one federal policy

Mitchell 13, top expert on tax reform and supply-side tax policy at the Cato Institute (Daniel J, "Instead of a Government-Guaranteed Income, How About a Plan to End the Washington Welfare State?" December 21, *finance.townhall.com*, http://finance.townhall.com/columnists/danieljmitchell/2013/12/21/instead-of-a-governmentguaranteed-income-how-about-a-plan-to-end-the-washington-welfare-state-n1766795/page/full)

I agree, but only sort of. I like the idea of radical reform, but I think there's a better road to Rome. It's called federalism. The bottom line for advocates is that anything would be better than the current system, so why not try something new? They're right, but there's actually a better way of approaching the issue. Why not take all income-redistribution programs, put them into a single block grant, and then transfer the money – and responsibility – to state governments? Here's my argument for decentralization and federalism. In an ideal world, the block grant would gradually diminish so that states would be responsible for both the collection and disbursement of all monies related to welfare. But that's a secondary issue. The main benefit of this federalist approach is that you stop the Washington-driven expansion of the welfare state and you trigger the creation of 50 separate experiments on how best to provide a safety net. Some states might choose a basic income. Others might retain something very similar to the current system. Others might try a workfare-based approach, while some could dream up new ideas that wouldn't stand a chance in a one-size-fits-all system run out of Washington, DC. And as states adopted different systems, they could learn from each other about what works and what doesn't work. And since it's easier to influence decisions that are closer to home, taxpayers at the state level almost certainly would have more ability to impact what happens with their money.

Courts CP Negative

1NC Shells

ASPEC

Failure of the 1AC plan text to specify its agent kills negative ground and debateability –government power is divided into 3 branches.

Rotunda, professor of law at the University of Illinois, **2001 [**Richard, 18 Const. Commentary 319, "THE COMMERCE CLAUSE, THE POLITICAL QUESTION DOCTRINE, AND MORRISON", l/n, (m7,06)]

No one denies the importance of the Constitution's federalist principles. Its state/federal division of authority protects liberty - both by restricting the burdens that government can impose from a distance and by facilitating citizen participation in government that is closer to home. n8 Chief Justice Rehnquist, for the majority, agreed. The "Framers crafted the federal system of government so that the people's rights would be secured by the division of power." n9 The Framers of our Constitution anticipated that a self-interested "federal majority" would consistently seek to impose more federal control over the people and the states. n10 Hence, they created a federal structure designed to protect freedom by dispersing and limiting federal power. They instituted federalism [*321] chiefly to protect individuals, that is, the people, not the "states qua states." n11 **The Framers** sought to protect liberty by creating a central government of enumerated powers. They **divided power** between the state and federal governments, and they further divided power **within the federal government by splitting it among the three branches** of government, **and** they further divided the legislative power (the power that the Framers most feared) by splitting it between **two Houses** of Congress. n12

A. Aff conditionality – They can change their plan after hearing our strategy. This is uniquely bad because the plan is the only locus for negative arguments and preparation and is an independent voter.

B. Policy relevant education – when activists and lobbyists approach the government they have to pick which branch to approach. This is especially true on this topic because the implementation of surveillance policies vastly differs depending on which branch is used. Agents of surveillance can circumvent legislative decisions about individual surveillance programs while judicial decisions shut down all surveillance programs that violate a certain right. This is also a reason that their solvency evidence should detail which agent the aff uses.

C. Kills 1NC Strategy – Can't determine implementation without determining the agent. Not only are our DA links hurt, but the ability to have a competitive CP is lost because textual competition is the key basis for the community.

D. It's not what they do, but what they justify. Even if you think there is no in round abuse, they justify a worse model of debate. However, there is in round abuse because we couldn't read our sweet agent counterplans and agent based DAs since the aff had the possibility of no-linking out of them.

Generic Surveillance 1NC

The United States Supreme Court should [insert plan here].

Courts most Effective Actor in Curtailing Domestic Surveillance

Richards 13 (Neil M. May 20. Professor of Law at Washington University in St. Louis. "The Dangers of Surveillance" http://harvardlawreview.org/2013/05/the-dangers-of-surveillance/)

But as the chilling-effects doctrine has demonstrated, courts have managed to balance threats to free speech against competing government interests. Moreover, because the general details of government surveillance programs should be public, courts and litigants will have more information with which to assess the effects of surveillance. And even when publication of the details of surveillance might threaten ongoing investigations, such details could be released either under seal to the litigants or shared with the court. **Courts have a wide variety of tools to manage the flow of confidential information that litigation inevitably produces, and they would be well suited to such a task**. Such tasks may be difficult and require judgment, but that is the job of courts. The alternative to grappling with the civil-liberties threats that surveillance poses is to ignore those threats altogether, to face the prospect of rendering widespread government surveillance unreviewable and uncheckable. Democratic societies can do better than that. V. CONCLUSION The challenge to our law posed by the Age of Surveillance is immense. The justifications for surveillance by public and private actors are significant, but so too are the costs that the rising tide of unfettered surveillance is creating. Surveillance can sometimes be necessary, even helpful. But unconstrained surveillance, especially of our intellectual activities, threatens a cognitive revolution that cuts at the core of the freedom of the mind that our political institutions presuppose. Therefore, surveillance must be constrained by legal and social rules. The technological, economic, and geopolitical changes of the past twenty years have whittled away at those rules, both formally on their substance (for example, the Patriot Act and the expansion of National Se- 2013] THE DANGERS OF SURVEILLANCE 1965 curity Letter jurisdiction) and in practice (for example, the pressure that the technological social practices of the Internet have exerted on privacy). By thus recognizing the harms of surveillance and crafting our laws accordingly, we can obtain many of its benefits without sacrificing our vital civil liberties or upending the power balance between individuals on the one hand and companies and governments on the other.

XO 12333 1NC

The United States Supreme Court should amend Executive Order 12333 pursuant to the discontinuation of domestic elements of the Signal Intelligence Enabling Project of the National Security Agency.

Courts solve – backdoors that collect data are unconstitutional

Nakashima 5/7 [Nakashima, Ellen, national security reporter, "NSA program on phone records is illegal, court rules" Washington Post, https://www.washingtonpost.com/world/national-security/appeals-court-rules-nsa-record-collection-violates-patriot-act/2015/05/07/c4fabfb8-f4bf-11e4-bcc4-e8141e5eb0c9_story.html May 7, 2015]

A federal appeals **court ruled Thursday that the National Security Agency's collection of** millions of **Americans' phone records violates the** USA Patriot Act, marking the first time an appellate panel has weighed in on a controversial surveillance program that has divided Congress and ignited a national debate over the proper scope of the **government's spy powers**. In a blistering 97-page opinion**, a unanimous three-judge panel** of the U.S. Court of Appeals for the 2nd Circuit overturned a lower court and **determined that the government had stretched the meaning of the statute to enable "sweeping surveillance" of Americans' data in "staggering" volumes**. The ruling comes as Congress begins a contentious debate over whether to reauthorize the statute that underpins the NSA program or let it lapse. The court did not issue an injunction ordering the program to stop. The NSA's mass collection of phone records for counterterrorism purposes — launched after the Sept. 11, 2001, terrorist attacks — was revealed by former agency contractor Edward Snowden in June 2013. The revelation sparked outrage but also steadfast assertions by the Obama administration that the program was authorized by statute and deemed legal by a series of federal surveillance court judges. But the judicial rulings had taken place in secret until the Snowden leaks forced disclosure of once-classified opinions. Under the program, the NSA collects "metadata" — or records of times, dates and durations of all calls — but not call content. The government has argued that huge volumes of records — being collected from U.S. phone companies each day and stored in a database — are relevant to counterterrorism investigations because any record could later prove critical in identifying terrorism suspects. A series of judges on the secretive Foreign Intelligence Surveillance Court have agreed. **The appeals court**, however, **said "such an expansive concept of 'relevance' is unprecedented and unwarranted.**" In the ruling, written by Judge Gerard E. Lynch, the panel noted that **the government never "attempted to identify to what particular 'authorized investigation' " the data of all Americans' phone calls would be relevant.** "At its core," the panel said, "the approach boils down to the proposition that essentially all telephone records are relevant to essentially all international terrorism investigations." Saying **the collection has amounted to "an unprecedented contraction of the privacy expectations of all Americans,**" the court said the government's interpretation of the law would also allow for the bulk collection and storage of data associated with Americans' financial records, medical records, and e-mail and social-media communications. With the statute scheduled to expire June 1, a bipartisan coalition of lawmakers in the House and Senate is seeking to renew it with modifications that sponsors say will enable the NSA to get access to the records it needs while protecting Americans' privacy. The bill, the USA Freedom Act, is poised to pass the House next week. Meanwhile, Senate Majority Leader Mitch McConnell (R-Ky.) and the chairman of the Senate Intelligence Committee, Richard Burr (R-N.C.), have introduced a bill to maintain the program. But if that passes, the government will have to persuade the Supreme Court to reverse the 2nd Circuit decision in order to keep the program from ending. The court decision drew sharp responses from some Republicans on the Senate floor Thursday. "According to the CIA, had these authorities been in place more than a decade ago, they would have likely prevented 9/11," McConnell said. He said the USA Freedom Act would not "keep us safe or protect our privacy." Meanwhile the bill's sponsors — Sens. Patrick J. Leahy (Vt.), who is the ranking Democrat on the Judiciary Committee, and Mike Lee (R-Utah) — issued a statement saying: "Congress should not reauthorize a bulk collection program that the court has found to violate the law. We will not consent to any extension of this program." FBI Director James B. Comey told reporters that if Congress lets the statute, known as Section 215 of the Patriot Act, expire, the FBI will lose a useful tool. "But," he said, if that was to happen, "we press on." Administration officials have indicated they are likely to support the bipartisan legislation. But the American Civil Liberties Union and a coalition of groups on the left and the right are pushing to let the statute simply lapse, on grounds that it would end the NSA bulk collection while leaving in place adequate powers for the government to pursue terrorism cases. The appeals court, noting the impending deadline for the program, declined to grant a preliminary injunction to stop the NSA from collecting the ACLU's call records. "In light of the asserted national security interests at stake, we deem it prudent to pause to allow an opportunity for debate in Congress that may (or may not) profoundly alter the legal landscape," Lynch wrote. The ACLU, the plaintiff in the case, cheered the decision. "**This decision is a resounding victory for the rule of law," said**

ACLU staff attorney **Alex Abdo**, who argued the case before the panel in September. "**For years, the government secretly spied on millions of innocent Americans based on a shockingly broad interpretation of its authority. The court rightly rejected the government's theory that it may stockpile information on all of us in case that information proves useful in the future.**" White House officials said Thursday that they were evaluating the decision and declined to comment further. "The president has been clear that he believes we should end the Section 215 bulk telephony metadata program as it currently exists by creating an alternative mechanism to preserve the program's essential capabilities without the government holding the bulk data," said Edward Price, a National Security Council spokesman. "We continue to work closely with members of Congress from both parties to do just that, and we have been encouraged by good progress on bipartisan, bicameral legislation that would implement these important reforms." The ruling has scrambled the terms of the debate, strengthening the hand of those who want changes that go further than those called for in the USA Freedom Act, said civil liberties advocates. "The people who supported the current version of USA Freedom should start asking for more, because we can get more now," said Jennifer Granick, director of civil liberties at Stanford Law School's Center for Internet and Society. David O'Neil, a former acting head of the Justice Department's Criminal Division, said the ruling "seriously upsets the apple cart three weeks before the sunset." The issue is one that has split lower courts. The U.S. District Court for the District of Columbia held in December 2013 that the program was probably unconstitutional. The appeals court for the District has not yet ruled on that appeal. In its ruling, the U.S. Court of Appeals for the 2nd Circuit said it need not address the plaintiffs' claims that the NSA program violated their First and Fourth amendment rights, because the panel had already concluded the program was unlawful. The court rejected the government's argument that Congress ratified the program by twice reauthorizing Section 215, noting that many members and the public were unaware of how the legislation was being interpreted. It also rejected the government's argument that the ACLU lacked standing to challenge the program. Thursday's ruling was "sweeping and unambiguous," said Michael Sussmann, a former Justice Department official who is now a partner at Perkins Coie practicing surveillance law. "As the deadline quickly approaches, this is a bombshell that forces everyone to reconsider the political fault lines."

Empirics prove - the Supreme Court has the authority to strike parts/all of an Executive Order.

Strohman 08, [Kirk Strohman, LLC, *Executive Orders: The Power of the President's Pen*, Oregon Law Reviev, Vol. 87, No. 1, http://www.thelegality.com/2008/12/11/executive-orders-the-power-of-the-presidents-pen/]

In two more recent cases, the presidents' orders were rejected for conflicting with current law. In 1995, President Clinton signed Executive Order 12954 requiring executive agencies to withhold contracts from employers replacing striking employees. Secretary of Labor Reich was ordered to set specific regulations so that replacement workers, who were presumably less efficient, would not execute government contracts, resulting in higher costs of goods or services. Several organizations sued for injunctive relief arguing that the order violated the National Labor Relations Act (NLRA). The Court of Appeals for the District of Columbia held that Congress passed the NLRA with the intent that certain labor relations would be unregulated. Since the Clinton E.O. was regulatory by its nature, the NLRA – a legislative act of Congress – preempted the E.O. (the government did not seek Supreme Court review of the decision).ə Ten years later, the Supreme Court struck down an executive order from President Bush that ordered the Secretary of Defense to convene military commissions to try foreign enemy combatants detained at Guantanamo Bay. In Hamdan v. Rumsfeld, nearly five years after Bush signed the order, the Court found that the procedures of the order violated the Uniform Code of Military Justice and Article 3 of the Geneva Convention. This case was different from prior E.O. cases because Congress had indirectly supported the order. Congress passed the Detainee Treatment Act of 2005, intending to prevent the Supreme Court from hearing any cases brought by Guantanamo detainees. Nevertheless, the Court found a basis for jurisdiction to hear the case and struck down the order.

Bitcoin 1NC

The United States Supreme Court should substantially curtail the United States Treasury's regulatory domestic surveillance of digital currencies.

Courts Created Financial Security Surveillance and They Can reverse them

Nojeim 99 (April 20. Gregory T. SENIOR COUNSEL AND DIRECTOR, FREEDOM, SECURITY AND TECHNOLOGY PROJECT. "FINANCIAL PRIVACY, REPORTING REQUIREMENTS UNDER THE BANK SECRECY ACT" https://www.aclu.org/report/financial-privacy-reporting-requirements-under-bank-secrecy-act)

The Supreme Court ruled in United States v. Miller, 425 U.S. 435 (1976) that individuals do not have a "reasonable expectation of privacy" under the Fourth Amendment in financial records pertaining to them but maintained by a bank in the normal course of business. See also California Bankers Assoc. v. Shultz, 416 U.S. 21 (1974) (upholding the then limited reporting requirements of the Bank Secrecy Act. ACLU was a plaintiff in this case).∂ Unfortunately, with limited exceptions including the Right to Financial Privacy Act20 enacted in 1978 in response to these court rulings, Congress has consistently limited rather than expanded financial privacy. Indeed, one might rightfully conclude that in recent years, much more attention has been paid to efficiency in reporting and in expanding law enforcement use and access to that which is reported, than to protecting the privacy of the underlying personal transactions, and ensuring that information about innocent transactions is not turned over to the government. The time has come to reassess this course. ∂ In 1992 Congress amended the Bank Secrecy Act to authorize the Treasury Department to adopt the Suspicious Activity Reporting requirements.21 In essence, it gave the Treasury Department a blank check to require reporting of any "suspicious transaction relevant to a possible violation of law or regulation."22 At the same time, Congress completely insulated financial institutions from civil liability for reporting their customers as "suspects" to the government, and Congress barred financial institutions from telling their customers that their bank had spied on them by reporting their transactions. ∂ The Right to Financial Privacy Act is riddled with loopholes, including one very large loophole to accommodate financial institution reporting under the Bank Secrecy Act.23 Though the Right to Financial Privacy Act contemplates that notice will be given customers when financial records are transferred from one federal agency to another24 notice is not given when Suspicious Activity Reports are furnished by FinCEN to law enforcement officials. In terms of financial privacy, this is a sorry state of affairs. ∂ Members of Congress could take a number of steps to enhance financial privacy: ∂ First, instead of urging bank regulators to issue Know Your Customer regulations, creating more incentives for financial institutions to file more Suspicious Activity Reports25 and extending Suspicious Activity Reporting requirements to more businesses, Congress should legislate to ensure that "Know Your Customer" is excised once and for all from all Bank Secrecy Act compliance manuals and procedures.

Facial Recognition 1NC

The United States Supreme Court should end the use of facial recognition in United States domestic surveillance.

Courts can end Facial Recognition and solve better than the aff because they can spillover

Lynch 12 (Jennifer. July 18. Staff Attorney with the Electronic Frontier Foundation. "What Facial Recognition Technology Means for Privacy and Civil Liberties" https://www.eff.org/files/filenode/jenniferlynch_eff-senate-testimony-face_recognition.pdf)

The Fourth Amendment's prohibition of unreasonable searches and seizures presents a baseline protection for governmental biometrics collection in the United States.82 Although there are significant exceptions to Fourth Amendment protections that may make it difficult to map to biometric collection such as facial recognition, 83 a recent Supreme Court case, U.S. v. Jones, 84 and a few other cases85 show that courts are concerned about mass collection of identifying information—even collection of information revealed to the public or a third party—and are trying to identify solutions. Cases like Jones suggest support for the premise that although we may tacitly consent to someone noticing our face or our movements when we walk around in public, it is unreasonable to assume that consent extends to our data being collected and retained in a database, to be subject to repeated searches for the rest of our lives. This is buttressed by important privacy research showing that even though people voluntarily share a significant amount of information about themselves with others online, they still consider much of this information to be private in that they don't expect it to be shared outside of the networks they designate.86 In United States v. Jones, 87 nine justices held that a GPS device planted on a car without a warrant and used to track a suspect's movements constantly for 28 days violated the Fourth Amendment. For five of the justices, a person's expectation of privacy in not having his movements tracked constantly—even in public—was an important factor in determining the outcome of the case.88 Justice Sotomayor would have gone even further, questioning the continued validity of the third-party doctrine (holding that people lack a reasonable expectation of privacy in data such as bank records that they share with a third-party such as the bank).89 She also recognized that: [a]wareness that the Government may be watching chills associational and expressive freedoms. And the Government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse.90 She questioned whether "people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on."91 The fact that several members of the Court were willing to reexamine the reasonable expectation of privacy test92 in light of newly intrusive technology could prove important for future legal challenges to biometrics collection. And some of the questions posed by the justices, both during oral argument and in their various opinions, **could be used as models for establishing greater protections for data like facial recognition that is both shared with a third party** such as Facebook **and gathered in public**.93

Drones 1NC

The United States Supreme Court should require warrants for all law enforcement operations utilizing drones, implement a maximum duration of twenty four hours on warranted operations, restrict sense-enhancing technology, and delete any superfluous data within a 30 day period.

Supreme Court's ruling on Dow Chemical Co. v. United States proves Supreme Court doesn't protect privacy rights from aerial surveillance.

Koerner 15 [Matther R. Koerner, Law Student at Duke University, "Drones and the Fourth Amendment: Redefining Expectations of Privacy", Duke Law Journal, Vol. 64, pages 1140-1142, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3801&context=dlj]

By contrast, courts have not extended the same guarantees afforded to the home and its curtilage to areas deemed analogous to an open field.71 Open fields are not required to be either open or fields in the literal sense, but they typically fall outside of the home's curtilage.72 Accordingly, an absence or insufficiency of the enumerated factors establishing the curtilage of a home would denote an open field.73 The Court has found, for example, that a barn was located in an open field, rather than the curtilage, because the barn was fifty yards from a fence surrounding the home and sixty yards from the home, the barn was not surrounded by a fence, the barn "was not being used for intimate activities of the home," and the resident of the home "did little to protect the barn area from observation by those standing in open fields."74 Open fields do not share the same setting for private activities and information that the Fourth Amendment protects from governmental intrusions.75 Thus, a person may not expect privacy in an open field, and the government's conduct generally would not constitute a search.76 ¶ In Dow Chemical Co. v. United States, 77 the Supreme Court considered whether the curtilage or open-fields doctrine applied to the open areas between buildings on a large industrial property.78 The U.S. Environmental Protection Agency (EPA) conducted warrantless, aerial surveillance of a two-thousand-acre facility owned by Dow Chemical.79 Finding that the extensive, scattered outdoor areas of the complex were neither precisely the curtilage nor an open field,80 the Court concluded that the complex was more similar to an open field.81 Therefore, the Fourth Amendment's guarantees did not extend to these areas, and the government's actions did not constitute a search.82 ¶ The Supreme Court has recently adapted this property-rights paradigm to investigations of the home that would traditionally fall outside the trespass doctrine because they do not complete a traditional, physical trespass. This adaptation, expounded in Kyllo v. United States, 83 has extended the property-rights paradigm to certain invasive technologies in order to shelter the Fourth Amendment's guarantees from modern technology.84 This paradigm will likely play a critical role in evaluating the constitutionality of many sophisticated technologies employed by drones. In Kyllo, a federal agent, investigating whether Danny Kyllo was growing marijuana plants using heat lamps inside his home, used a thermal-imaging device from a public roadway to determine if there was an elevated amount of heat emanating from the walls of the home.85 The Supreme Court considered whether the government's use of the thermal imager constituted an unreasonable search and, more generally, "what limits there are upon [the] power of technology to shrink the realm of guaranteed privacy."86 The majority held that when the government uses sense-enhancing technology to acquire details from within "the home that could not otherwise have been obtained without physical 'intrusion into a constitutionally protected area,'" then this conduct constitutes an unreasonable search when the technology "is not in general public use."87

Courts Solvency Advocates

Courts Solve Surveillance

Court regulations on mass surveillance are stable

Millhiser 15 (Ian Millhiser - Senior Fellow at the Center for American Progress Action Fund and the Editor of ThinkProgress Justice, "Federal Appeals Court Rules That The NSA's Massive Surveillance Program Is Illegal", http://thinkprogress.org/justice/2015/05/07/3656228/breaking-federal-appeals-court-rules-nsas-massive-surveillance-program-illegal/, May 7th 2015)

A unanimous panel of the United States Court of Appeals for the Second Circuit held on Thursday that the National Security Agency's sweeping database of U.S. phone calls is not authorized by federal law. The database, which the public learned about after Edward Snowden leaked a court order concerning the NSA's surveillance activities in 2013, is truly breathtaking in its scope. Snowden leaked an order directing to telephone company Verizon to produce "all call detail records or 'telephony metadata'' relating to Verizon communications within the United States or between the United States and abroad," and the federal government did not "seriously dispute" a claim that "all significant service providers in the United States are subject to similar orders." Though the database does not include the actual content of people's calls, the metadata held by the NSA does include "details about telephone calls, including, for example, the length of a call, the phone number from which the call was made, and the phone number called." The government claims that this law is authorized by a provision that was amended by the USA PATRIOT Act and subsequent laws which permits certain government officials to "make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities." Yet the law also requires the government to provide a special surveillance court with "a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) conducted [under guidelines approved by the Attorney General].'" The Second Circuit's opinion hones in on the word "relevant" to explain why this law does not authorize the NSA's enormous database. In this case, the court notes, "the parties have not undertaken to debate whether the records required by the orders in question are relevant to any particular inquiry." Rather, [t]he records demanded are all-encompassing; the government does not even suggest that all of the records sought, or even necessarily any of them, are relevant to any specific defined inquiry." This, the court explains, is not allowed: [T]he government takes the position that the metadata collected – a vast amount of which does not contain directly 'relevant' information, as the government concedes – are nevertheless 'relevant' because they may allow the NSA, at some unknown time in the future, utilizing its ability to sift through the trove of irrelevant data it has collected up to that point, to identify information that is relevant. We agree with appellants that such an expansive concept of 'relevance' is unprecedented and unwarranted. Later in its opinion, the court explains just how unusual it is for the government to seek such a sweeping authorization to gather data from a court. "Search warrants and document subpoenas typically seek the records of a particular individual or corporation under investigation, and cover particular time periods when the events under investigation occurred," the Second Circuit explains. Yet, "[t]he orders at issue here contain no such limits." Instead, [t]he metadata concerning every telephone call made or received in the United States using the services of the recipient service provider are demanded, for an indefinite period extending into the future. The records demanded are not those of suspects under investigation, or of people or businesses that have contact with such subjects, or of people or businesses that have contact with others who are in contact with the subjects – they extend to every record that exists, and indeed to records that do not yet exist, as they impose a continuing obligation on the recipient of the subpoena to provide such records on an ongoing basis as they are created. The government can point to no grand jury subpoena that is remotely comparable to the real-time data collection undertaken under this program. Earlier in the opinion, the court lays out some of the information that government officials could uncover with the information in the NSA's database. "[A] call to a single-purpose telephone number such as a 'hotline' might reveal that an individual is: a victim of domestic violence or rape; a veteran; suffering from an addiction of one type or another; contemplating suicide; or reporting a crime." Additionally, "[m]etadata can reveal civil, political, or religious affiliations; they can also reveal an individual's social status, or whether and when he or she is involved in intimate relationships." Though the opinion has clear implications for Americans' right to privacy, the court avoids the question of whether a program like the NSA's database, were it authorized by federal law, would actually be constitutional. In December of 2013, a federal district judge struck down the program on constitutional grounds, holding that "the evolutions in the Government's surveillance capabilities, citizens' phone habits, and the relationship between the NSA and telecom companies" have become "so thoroughly unlike those considered by the Supreme Court thirty-four years ago"

when the justices gave police broad authority to obtain telephone companies' metadata that those precedents can not be applied to the NSA's program. Though the Second Circuit, for its part, held that the NSA's database is illegal, it declined to halt the program immediately, noting that the federal law which allegedly authorizes the program is about to expire. "Allowing the program to remain in place for a few weeks while Congress decides whether and under what conditions it should continue is a lesser intrusion on appellants' privacy than they faced at the time this litigation began," the court explained. Thus, "[i]n light of the asserted national security interests at stake, we deem it prudent to pause to allow an opportunity for debate in Congress that may (or may not) profoundly alter the legal landscape."

Court decisions heavily applicable to technological surveillance

Phillips 13 (Michael Phillips, Law and Politics contributor – The New Yorker, "A New Legal Theory for the Age of Mass Surveillance", http://www.newyorker.com/tech/elements/a-new-legal-theory-for-the-age-of-mass-surveillance, December 10th, 2013)

Yesterday afternoon, a federal judge ruled that the National Security Agency's collection and storage of all Americans' telephone records was likely unconstitutional. The federal judge, George W. Bush appointee Richard J. Leon, declared that "the author of our Constitution, James Madison," would "be aghast" at the N.S.A.'s "almost Orwellian" surveillance. The ruling is the first public legal setback for the government's surveillance policy since the whistle-blower Edward Snowden's disclosures began in June. It challenges a stale thirty-year-old precedent, undermines a central legal rationale of the secret Foreign Intelligence Surveillance Act court, and nudges the law into the age of Internet-connected smartphones, G.P.S., and Big Data. The plaintiffs, who included conservative legal activist Larry Klayman, argued that the N.S.A.'s bulk telephony-metadata program violated the Constitution's prohibitions on unreasonable searches and seizures, their First Amendment rights to free speech and association, and their Fifth Amendment due-process rights, and even caused them emotional distress. They asked Leon to order the government to preliminarily halt the collection of phone records while their case progresses. To win that injunction, the plaintiffs had to accomplish three things: First, they had to show that they had the right to challenge the collection and review of the metadata. Then, they had to establish that they would suffer "irreparable harm" if the court did not order the government to stop. Finally, they had to show that they were "substantially likely" eventually to win their case on the merits of their constitutional argument. Leon ruled in the plaintiffs' favor on all three points, but said that, pending the government's appeal, he would not enforce the order to stop the N.S.A. program, because of the "significant national-security interests at stake." Having agreed with the plaintiffs that the program violated the Fourth Amendment, Leon refused to rule preliminarily on their other claims. In February, 2013, the Supreme Court turned away a similar challenge to N.S.A. surveillance, ruling that the parties in that case lacked standing. The plaintiffs were prominent lawyers, journalists, and human-rights activists who represented, interviewed, or otherwise had contact with suspected terrorists. The Supreme Court refused to hear the case, holding that the plaintiffs could not prove that they were subject to any surveillance at all. But now, thanks to Snowden's disclosures, Klayman's status as a Verizon customer was all it took. Leon ruled that being a Verizon customer is "strong evidence" that he had been subject to at least seven years of data surveillance and five years of that data's storage by the N.S.A. When the government suggested that Klayman lacked standing because Verizon considers itself immune to N.S.A.-related lawsuits and because its customers are just a small part of the program, Leon scoffed. "Omitting Verizon Wireless, A.T. & T., and Sprint from the collection would be like omitting John, Paul, and George from a historical analysis of the Beatles. A Ringo-only database doesn't make any sense." Leon left no doubt that he agreed it was "significantly likely" that the N.S.A. had violated the Constitution, and that the "loss of constitutional freedoms" caused Klayman "irreparable harm." "I cannot imagine a more 'indiscriminate' and 'arbitrary' invasion than this systematic and high-tech collection and retention of personal data on virtually every single citizen for purposes of querying and analyzing it without prior judicial approval," he wrote. "Surely, such a program infringes on 'that degree of privacy' that the founders enshrined in the Fourth Amendment." Leon even questioned the efficacy of the program, finding that the government could not show, even with its three strongest examples, any "indication that [the data collected was] immediately useful or that they prevented an impending attack." His footnotes were sharp-elbowed, too, noting sarcastically that the government's concession that the program is only "sometimes" useful was "candor as refreshing as it is rare." The core of Leon's opinion took aim at the 1979 precedent of Smith v. Maryland, which the government has relied upon in the secret FISA court to justify its broader surveillance programs. In Smith, the government captured the phone records of one man, a robbery suspect already known to the police, who was also suspected of making threatening calls to the victim of the robbery. The Supreme Court ruled that the government did not need a warrant to collect a list of the phone numbers that he had dialed because the suspect had no reasonable expectation of privacy for his phone records, which were held by the phone company. But as Patrick Di Justo has described (a point cited by Leon in his opinion), the data collected by today's bulk telephony-metadata surveillance is vastly different in scale and scope. Leon noted that, in the age of an Internet-connected smartphone in most citizens' pockets, the government and its computers have access to continuously updated location data and other information that the Supreme Court in 1979 would have looked upon as "the stuff of science fiction." "Put simply,

people in 2013 have an entirely different relationship with phones than they did thirty-four years ago," he wrote. "Records that once would have revealed a few scattered tiles of information about a person now reveal an entire mosaic—a vibrant and constantly updating picture of the person's life." In the face of this radical technological change, Leon argued that now is the time to cast this precedent aside. "When do present-day circumstances—the evolutions in the Government's surveillance capabilities, citizens' phone habits, and the relationship between the N.S.A. and telecom companies—become so thoroughly unlike those considered by the Supreme Court thirty-four years ago that a precedent like Smith simply does not apply? The answer, unfortunately for the Government, is now." The "mosaic" language comes from the 2010 circuit-court case United States v. Maynard. (As a Washington, D.C., circuit case, Maynard is the law of Leon's jurisdiction.) The Maynard ruling determined that the government may capture pieces of information that, when reviewed individually, are not invasions of privacy, but may constitute a search subject to a Fourth Amendment review when taken together. With this decision, Leon advanced the "mosaic theory" as a replacement for Smith. The immediate reaction from legal scholars has been mixed. Benjamin Wittes, of the Brookings Institution, wrote that "Leon makes a powerful case that times have changed since the Supreme Court decided Smith, which dealt with a pen-register device against a single suspect—and long before the era of Big Data and cell phones," but he suggested that the Supreme Court would be afraid of undermining a national-security program. "Are five justices really ready to shut down a major intelligence program that administrations of both parties have insisted represents a crucial line of defense against terrorism?" Wittes wrote. Wittes' colleague Paul Rosenzweig, of the Lawfare Institute, was similarly skeptical, finding the technological argument for dismissing Smith "rather unpersuasive." Fourth Amendment scholar Orin Kerr agreed, finding the attack on Smith "deeply unpersuasive," though he later clarified that he would strike down the N.S.A. program on other grounds. The skepticism toward overturning precedent reflects Supreme Court Chief Justice John Roberts's own relationship with stare decisis, the doctrine that courts should generally follow precedent. In his concurring opinion in the Citizens United campaign-finance case, Roberts presented his argument for when it would be appropriate to cast aside precedent: following it is not an "inexorable command" or "mechanical formula of adherence to the latest decision." After all, Roberts wrote, "if it were, segregation would be legal, minimum-wage laws would be unconstitutional, and the Government could wiretap ordinary criminal suspects without first obtaining warrants." Instead, Roberts argued that courts should overturn precedent when "the precedent's validity is so hotly contested that it cannot reliably function as a basis for decision in future cases, when its rationale threatens to upend our settled jurisprudence in related areas of law, and when the precedent's underlying reasoning has become so discredited that the Court cannot keep the precedent alive without jury-rigging new and different justifications to shore up the original mistake." To critics of the opinion such as Rosenzweig, the "passionate" Leon did not find a valid rationale to abandon Smith. But there is reason to believe that at least five Supreme Court justices might agree with Leon that "the time is now" to abandon stare decisis for Smith. In the 2012 Supreme Court case U.S. v. Jones, an unlikely mix of five justices, including conservative Justice Samuel Alito, suggested that it might be time for the law to change, establishing a reasonable right to privacy for the data and metadata created by our smartphone-charged, increasingly connected lives. In Jones, the Supreme Court held that attaching a G.P.S. device to a car to track its movements constitutes a search under the Fourth Amendment. Five of the justices, including Alito, suggested that the G.P.S. surveillance was a search because it violated citizens' reasonable expectations of privacy in their location, an expectation thrown into question by the new technology. "Technology can change those expectations [of privacy]," Alito wrote. "Dramatic technological change may lead to periods in which popular expectations are in flux and may ultimately produce significant changes in popular attitudes. New technology may provide increased convenience or security at the expense of privacy, and many people may find the trade-off worthwhile. And even if the public does not welcome the diminution of privacy that new technology entails, they may eventually reconcile themselves to this development as inevitable." Leon's treatment of Smith acknowledges our technological reality. We are enmeshed in a twenty-four-seven, cradle-to-grave "mosaic" of digital information. We carry our telephones everywhere. The applications nested within them are tiles of personal data, and we teach those applications more and more about ourselves. The executive branch will take its appeal to the Washington, D.C., circuit court, whose judges have previously shown a willingness to think creatively about our high-tech times. With his decision, Leon may press the N.S.A.—and the law—to come to terms with how we live now.

Judicial authority is key to check surveillance policy

Bickford 13 (David Bickford - undersecretary of state and legal director of the Security and intelligence agencies MI5 and MI6, "Leave surveillance to the judges", http://www.theguardian.com/commentisfree/2013/oct/11/mi5-public-open-mind-secrecy-security, October 11th, 2013)

Andrew Parker, the new MI5 chief, is right to be deeply worried by the Snowden revelations. The new availability of information on the web is opening up secrecy like a knife into an oyster. However, Anthony Glees, head of the centre for security and intelligence studies at Buckingham University, ignores the fact that secrecy in this country is overprotected and under-regulated when he suggests the Guardian should be prosecuted for putting this under the microscope. Britain has utterly failed to prepare itself for openness when dealing with politically sensitive issues such as terrorism, or the involvement of their secret agencies in the covert gathering of information. We rarely hear from the intelligence agencies' chiefs; and ministers glide over the threats, never explain their relationship with those agencies, and retain an obviously inadequate system for their supervision. As a result, as long as ministers continue to authorise the agencies' eavesdropping, surveillance, and informant approval, the public will believe there is an unhealthy relationship between them. That scepticism is made worse by the communications data bill's proposal that the agencies

themselves control their mining of communications data. Against this background it is hardly surprising that the Snowden revelations have not been met by the public antagonism one might expect when national security has been compromised. The government must regain the initiative. A first and necessary step is to leave the authorisation of eavesdropping, surveillance and informant approval to the judiciary. This would mean that applications to carry out such covert activities would have to be made by the agencies direct to a judge. This would reduce both the risk and the perception of collusion or political interference. Government may argue that all this is unnecessary as there is already adequate oversight of the agencies. It is true that oversight has improved now parliament itself is in charge of overseeing the agencies. However, that oversight is ex post facto and is, on the admission of former oversight committee chiefs, both inadequate and subject to political pressure. Moreover, it is no substitute for independent judicial authority. As a bonus, if judicial authority were given for telephone and electronic intercepts, evidence thus collected could be used to prosecute terrorists, as happens in the US. The current refusal of the UK government to use intercept evidence would then look even more unwise. This concept of judicial authority for intrusive covert surveillance is not new. Many jurisdictions adhere to it. In the French legal system, a judge supervises covert targeted operations and determines the civil rights balances involved. This way, both the public and the agencies are protected, and at any subsequent trial the evidential uncertainties have already been excluded. In the UK such a procedure would obviate the need for secret courts to determine civil proceedings and reassure the public that fair trials remain a baseplate of our society. It is a system that needs to be introduced to all the UK agencies' covert targeted operations. The government could then turn its attention to the vital job of informing the public. Unlike in the US, the British public do not get to see the intelligence agencies' chiefs grilled by the oversight committee, nor do they see those chiefs and the law enforcement agencies being interviewed together about their objectives and the tools they need to achieve them. The public have a right to see and hear this so that they can make up their own minds about the integrity of the leaders, the validity of their objectives, the need for the tools they use and whether the secrecy demanded is properly balanced. Unless government takes this debate seriously, the British public's need to know what the intelligence agencies are doing will continue to shatter secrecy – and terrorism and organised crime will benefit.

Surveillance policy presents opportunity for judicial independence – key to prevent tyranny

McCormack 14 (Wayne, E.W. Thode Professor of Law, University of Utah, "U.S. Judicial Independence: Victim in the "War on Terror," Washington and Lee Law Review, Volume 71, Issue 1, Winter 2014, http://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=4374&context=wlulr)

The "head in the sand" attitude of the U.S. Judiciary in the past decade is a rather dismal record that does not fit the high standard for judicial independence on which the American public has come to rely. Many authors have discussed these cases from the perspective of the civil rights and liberties of the individual.512 What I have attempted to do here is sketch out how the undue deference to the Executive in "time of crisis" has undermined the independent role of the Judiciary. Torture, executive detentions, illegal surveillance, and now killing of U.S. citizens, have escaped judicial review under a variety of excuses.513 To be clear, many of the people against whom these abuses have been levied are, or were, very dangerous if not evil individuals. Khalid Sheikh Muhamed and Anwar al-Aulaqi should not be allowed to roam free to kill innocent civilians. But hundreds of years of history show that there are ways of dealing with such people within the limits of restrained government without resort to the hubris and indignity of unreviewed Executive discretion. The turning of blind eyes by many, albeit not all, federal judges is a chapter of this history that will weigh heavily against us in the future No judge wants to feel responsible for the deaths of innocents. But direct responsibility for death lies with those who contribute to the act. Meanwhile, the judge has an ethical responsibility for abuses by government of which the Judiciary is a part. To illustrate the threat, one federal judge resigned from the secret FISA Court in "protest because the Bush administration was bypassing the court on warrantless wiretaps."514 To be fair, his public statement before Congress included the thought that the judges were independent but not making fully informed decisions.515 It makes sense that this courageous judge (who also ruled against the Government in a major Guantanamo case516) would extol the independence of the federal Judiciary, but perhaps those of us outside the club can be forgiven for seriously challenging his assessment. Meanwhile, critics are voicing the belief that recent appointments to the FISA Court will be even more deferential to the Executive.517 To repeat, there is nothing "new" in the killing of innocents for religious or political vengeance.518 This violence has always been with us and unfortunately will continue despite our best efforts to curb it. Pleas

for Executive carte blanche power are exactly what judicial independence was developed to avoid, and what many statements in various declarations of human rights are all about. The way of unreviewed Executive discretion is the way of tyranny.

Supreme Court has jurisdiction to reform surveillance policy

Williams 14 (Lauren C., tech reporter for ThinkProgress with an affinity for consumer privacy, cybersecurity, tech culture and the intersection of civil liberties and tech policy., How The Supreme Court Could Decide The Fate Of NSA Surveillance, http://thinkprogress.org/justice/2014/12/10/3601363/nsa-surveillance-ninth-circuit/)

An Idaho nurse is leading the latest charge against the Obama administration for the U.S. National Security Agency's dragnet phone data surveillance program. With legal help from the American Civil Liberties Union and the Electronic Frontier Foundation, neonatal intensive care nurse Anna Smith contested the government's spy programs Monday in the U.S. Court of Appeals for the Ninth Circuit. In Monday's oral argument for Smith v. Obama, Smith's attorney and husband, Peter Smith, asserted the government violated Smith's privacy by searching and collecting data that reveals intimate details about her and her family without her permission. Smith argued that each time the NSA's database was queried or restocked with new information violated the Fourth Amendment. Smith built his case's standing on the fact Verizon is America's top telecommunications provider and the NSA's program indiscriminately swept up swaths of customer data, which included and potentially revealed personal information about his wife's business and life. "When you can do the hops, and see the connections—you can see that Anna called her doctor, Anna called her mother…It can reveal a lot about a person. It can reveal relationships," Smith told the judges. The government's attorney, Thomas Byron, maintained the NSA could collect phone record information — call length, numbers called and when the call was made — without a warrant thanks to almost 50 years of legal precedent. In the 1970s, the Supreme Court ruled in Smith v. Maryland that phone records could be collected without a warrant. Judges Richard Tallman, Michael Hawkins, and Margaret McKeown drilled Smith with some skepticism on how the government's bulk collection of phone data was constitutionally different from the routine practice of monitoring an individual's phone activity over a set period, and whether one's privacy extends to data given to a third party such as a phone company. Tallman in particular seemed unconvinced that Smith was a victim of the dragnet surveillance, saying that Smith was merely speculating that Verizon Wireless' call records were in fact included in the program and Smith's records specifically were collected and stored. Smith's case is the third to reach the federal appellate courts since Edward Snowden's 2013 NSA revelations. The Second Circuit Court of Appeals in New York and the D.C. Circuit Court of Appeals are hearing similar cases that argue Fourth Amendment violations, as people don't know how revealing telephone metadata is. According to a metadata study, researchers were able to identify who made calls to and from organization that rely on confidentiality and anonymity, such as Alcoholics Anonymous, health clinics, divorce lawyers, pharmacies and gun stores. These cases have yet to be finalized, but depending on their outcome, the Supreme Court could end up deciding the constitutionality of the NSA's phone surveillance program. The Supreme Court tends to get involved in cases mainly where there's a split decision among federal appeals courts — in this case with some courts ruling in the government's favor and others against. But challenging the government has proven to be an uphill legal battle. Civil liberties activists' biggest obstacle is decades-old legal precedent. Smith v. Maryland established that law enforcement could collect the call records of an individual or small group of individuals suspected of a crime. The question is whether the sheer scale and volume of the NSA's metadata program, which was technologically impossible in 1979, is protected under that same ruling. Even if the legal standard wins out, the publicity of challenging the government's actions could have a positive effect down the line; showing that taking the government to task can be done. There have been past cases where despite proof of being targeted for surveillance, courts have ruled in favor of the government. The Al-Haramain Islamic Foundation sued the Bush Administration for illegally wiretapping the charity's leaders and lawyers based on a classified document accidentally disclosed in court documents. The court ruled in favor of the government because the information was classified. After news of the NSA's program broke, the legal fight went public two federal judges issued conflicting rulings on the legality of the NSA's program. Judge Richard Leon of the D.C. district court ruled that the systematic collection and storage of Americans' phone records breached the privacy protections afforded in the Fourth Amendment. A week later, New York's Southern District Court decided the program was legal. Those decisions are now being considered by appeals courts. Snowden's revelations inspired public calls to action for comprehensive reform of U.S. intelligence programs. But in the year since, there's been little movement toward policy changes. Obama rolled back some of the NSA's spying power earlier this year saying intelligence agencies could still collect phone records but couldn't store them, and accessing the database would be subject to a judge's approval. The House later passed a diluted version of a revised USA Freedom Act in May, causing tech companies, lobbyists, and privacy advocates to pull their support. The bill failed to muster enough support in the Senate, and its fate when Republicans take control next year is unclear. Meanwhile, a federal judge for the FISA court reauthorized the NSA's program Monday, keeping the NSA's controversial metadata program intact until February 27, 2015. The extension is the fourth since Obama promised to reform the program in January.

Courts are the preferable branch for surveillance

Slobogin 2015 [Christopher Slobogin, Milton Underwood Professor of Law, Vanderbilt University Law School, Pepperdine Law Review Volume 42 pg 517-548 http://pepperdinelawreview.com/wp-content/uploads/2015/04/Slobogin-Final.pdf]

Neither of these objections are sustainable from the political process perspective. Precisely **because of the** perceived **importance of national security, the legislative and executive branches often either act in collusion with one another or**, as illustrated earlier, **function in ways that undermine the other's prerogatives, with the result that both end up ignoring their constitutional obligations.**155 **Particularly when it comes to national security, courts should have the authority** to ensure that legislatures define the scope of permissible law enforcement and that law enforcement abide by appropriate rule-making mechanisms, a notion the Court has accepted in related national security contexts.156 **At the least**, these obligations should include procedures for assuring public accountability (such as notice-and- comment or other transparent rule-making processes), or, if that is not feasible, **some method of assuring accountability to the legislature**.157 Unfortunately, the perceived imperatives of the War on Terrorism have led both branches to short-circuit these requirements.158

Courts will remain active in resolving privacy violations

Bosset et al 2011 [Bosset, Eric C. et al privacy, data security and consumer protections lawyer, "PRIVATE ACTIONS CHALLENGING ONLINE DATA COLLECTION PRACTICES ARE INCREASING: ASSESSING THE LEGAL LANDSCAPE", Intellectual Property & Technology Law Journal, February 2011 https://www.cov.com/files/Publication/93f04099-eb59-4c35-bcb2-12a7557cae0b/Presentation/PublicationAttachment/33d4c9ef-b65d-4cae-9468-165927e4f9e1/Private%20Actions%20Challenging%20Online%20Data%20Collection%20Practices%20Are%20Increasing.pdf]

The wave of recent lawsuits against ISPs, publishers, and online advertising firms **is likely to continue as more sophisticated technologies for tracking commercial Web browsing activity raise new concerns about consumer privacy. Current federal and state statutes are**, at best, **blunt tools to regulate the rapidly changing environment of the Internet. Courts are appropriately hesitant to impose potentially huge statutory damages authorized under existing statutes** for conduct that provides demonstrable benefits to consumers—in the form of more relevant advertising or free Web content—while the corresponding risk to individual privacy is typically remote. It thus is not surprising that Congress is currently considering ECPA reform as well as comprehensive privacy legislation that would, in some circumstances, afford a private right of action to consumers whose personal information is collected without their consent. Similarly, the White House and federal agencies, such as the Federal Trade Commission and the Department of Commerce, are scrutinizing closely the data collection practices of entities operating online. These issues raise both important and competing public policy considerations that will only be worked out over time. In the meantime, **the courts are likely to remain an active forum for resolving these disputes**.

Lawsuits check the tech

Bosset et al 2011 [Bosset, Eric C. et al privacy, data security and consumer protections lawyer, "PRIVATE ACTIONS CHALLENGING ONLINE DATA COLLECTION PRACTICES ARE INCREASING: ASSESSING THE LEGAL LANDSCAPE", Intellectual Property & Technology Law Journal, February 2011 https://www.cov.com/files/Publication/93f04099-eb59-4c35-bcb2-12a7557cae0b/Presentation/PublicationAttachment/33d4c9ef-b65d-4cae-9468-

165927e4f9e1/Private%20Actions%20Challenging%20Online%20Data%20Collection%20Practices%20Are%20Increasing.pdf]

In the past decade, **the number and quality of online data collection technologies have increased. At first, these technologies were subject to scrutiny principally by regulators**, and industry responded by developing more robust privacy disclosures **concerning their use. More recently, these** next-generation **technologies** also **have been a topic of** heightened **interest from the press**—for example, an ongoing series in the Wall Street Journal2—**and have inspired a spate of putative class action lawsuits relating to online data collection,** alleging violations of various federal and state laws. Indeed, **the past few years have witnessed the rise of a privacy plaintiffs' bar that has sought to transform statutes principally intended to criminally penalize wiretapping and computer hacking into vehicles for consumer protection litigation**.

Courts are taking steps in 2015 to challenge surveillance

Farivar 1/1 [Cyrus Farivar, senior business editor, "If the Supreme Court tackles the NSA in 2015, it'll be one of these five cases" ars technica, January 1, 2015, http://arstechnica.com/tech-policy/2015/01/if-the-supreme-court-tackles-the-nsa-in-2015-itll-be-one-of-these-five-cases/1/]

But **consider two recent Supreme Court cases**: United States v. Jones (2012) and Riley v. California (2014). **Both were decided by** rare **unanimous opinions, and both indicate an awareness that modern tech has changed reasonable privacy.** Jones determined that law enforcement does not have the authority to place a GPS tracker on a suspect without a warrant. Meanwhile, the court found in Riley that law enforcement cannot search a person's phone incident to arrest without a warrant. **"[These cases] are strong signs that the Supreme Court is aware that rules that were created in a period of time when the court analyzed targeted surveillance do not blindly apply where the government is collecting huge quantities of information,"** Patrick Toomey, an attorney with the American Civil Liberties Union, told Ars.

Courts most Effective Actor in Curtailing Domestic Surveillance

Richards 13 (Neil M. May 20. Professor of Law at Washington University in St. Louis. "The Dangers of Surveillance" http://harvardlawreview.org/2013/05/the-dangers-of-surveillance/)

But as the chilling-effects doctrine has demonstrated, courts have managed to balance threats to free speech against competing government interests. Moreover, because the general details of government surveillance programs should be public, courts and litigants will have more information with which to assess the effects of surveillance. And even when publication of the details of surveillance might threaten ongoing investigations, such details could be released either under seal to the litigants or shared with the court. **Courts have a wide variety of tools to manage the flow of confidential information that litigation inevitably produces, and they would be well suited to such a task**. Such tasks may be difficult and require judgment, but that is the job of courts. The alternative to grappling with the civil-liberties threats that surveillance poses is to ignore those threats altogether, to face the prospect of rendering widespread government surveillance unreviewable and uncheckable. Democratic societies can do better than that. V. CONCLUSION The challenge to our law posed by the Age of Surveillance is immense. The justifications for surveillance by public and private actors are significant, but so too are the costs that the rising tide of unfettered surveillance is creating. Surveillance can sometimes be necessary, even helpful. But unconstrained surveillance, especially of our intellectual activities, threatens a cognitive revolution that cuts at the core of the freedom of the mind that our political institutions presuppose. Therefore, surveillance must be constrained by legal and social rules. The technological, economic, and geopolitical changes of the past twenty years have whittled away at those rules, both formally on their substance (for example, the Patriot Act and the expansion of National Se- 2013] THE DANGERS OF SURVEILLANCE 1965 curity Letter jurisdiction) and in practice (for example, the pressure that the technological social practices of the Internet have exerted on privacy). By thus recognizing the harms of surveillance and crafting our laws

accordingly, we can obtain many of its benefits without sacrificing our vital civil liberties or upending the power balance between individuals on the one hand and companies and governments on the other.

Arguing Intellectual Privacy Standards is Key to Correct Courts Decisions in Reducing Domestic Surveillance

Richards 13 (Neil M. May 20. Professor of Law at Washington University in St. Louis. "The Dangers of Surveillance" http://harvardlawreview.org/2013/05/the-dangers-of-surveillance/)

Intellectual-privacy theory therefore suggests a solution to the confusion that has plagued courts and others in dealing with whether surveillance programs create legally cognizable injuries. Despite often displaying an intuitive understanding that surveillance might be potentially harmful, courts have struggled to understand why. This absence of clarity has led to courts misunderstanding and diminishing privacy interests that conflict with other values. When faced with balancing a vague and poorly articulated privacy right against state interests such as the prevention of terrorist attacks, surveillance tends to win. Courts also make the mistake that the ACLU v. NSA court made and cast surveillance as solely a Fourth Amendment issue of crime prevention, rather than as one that also threatens intellectual freedom and First Amendment values of the highest order.92 Other decisions mirror the mistake of the Al-Haramain court in concluding that preventing secret surveillance is less important than inconveniencing the executive branch.93 Additionally, some courts can make the mistake that the Clapper Court made, refusing to recognize as justiciable harms the costly measures that people must adopt to shield their communications from government surveillance.94 Shadowy regimes of surveillance corrode the constitutional commitment to intellectual freedom that lies at the heart of most theories of political freedom in a democracy. Secret programs of wide-ranging intellectual surveillance that are devoid of public process and that cannot be justified in court are inconsistent with this commitment and illegitimate in a free society. My argument is not that intellectual surveillance should never be possible, but that when the state seeks to learn what people are reading, thinking, and saying privately, such scrutiny is a serious threat to civil liberties. Accordingly, meaningful legal process (that is, at least a warrant supported by probable cause) must be followed before the government can perform the digital equivalent of reading our diaries. But we must also remember that in modern societies, surveillance fails to respect the line between public and private actors. Intellectual privacy should be preserved against private actors as well as against the state. Federal prosecutions based on purely intellectual surveillance are thankfully rare, but the coercive effects of monitoring by our friends and acquaintances are much more common. We are constrained in our actions by peer pressure at least as much as by the state. Moreover, records collected by private parties can be sold to or subpoenaed by the government, which (as noted above) has shown a voracious interest in all kinds of personal information, particularly records related to the operation of the mind and political beliefs.

Courts are the preferable branch for surveillance

Slobogin 2015 [Christopher Slobogin, Milton Underwood Professor of Law, Vanderbilt University Law School, Pepperdine Law Review Volume 42 pg 517-548 http://pepperdinelawreview.com/wp-content/uploads/2015/04/Slobogin-Final.pdf]

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Courts Solve XO 12333

The Supreme Court has the authority to strike parts/all of an Executive Order.

Strohman 08, [Kirk Strohman, LLC, *Executive Orders: The Power of the President's Pen*, Oregon Law Reviev, Vol. 87, No. 1, http://www.thelegality.com/2008/12/11/executive-orders-the-power-of-the-presidents-pen/]

In two more recent cases, the presidents' orders were rejected for conflicting with current law. In 1995, President Clinton signed Executive Order 12954 requiring executive agencies to withhold contracts from employers replacing striking employees. Secretary of Labor Reich was ordered to set specific regulations so that replacement workers, who were presumably less efficient, would not execute government contracts, resulting in higher costs of goods or services. Several organizations sued for injunctive relief arguing that the order violated the National Labor Relations Act (NLRA). The Court of Appeals for the District of Columbia held that Congress passed the NLRA with the intent that certain labor relations would be unregulated. Since the Clinton E.O. was regulatory by its nature, the NLRA – a legislative act of Congress – preempted the E.O. (the government did not seek Supreme Court review of the decision).ð Ten years later, the Supreme Court struck down an executive order from President Bush that ordered the Secretary of Defense to convene military commissions to try foreign enemy combatants detained at Guantanamo Bay. In Hamdan v. Rumsfeld, nearly five years after Bush signed the order, the Court found that the procedures of the order violated the Uniform Code of Military Justice and Article 3 of the Geneva Convention. This case was different from prior E.O. cases because Congress had indirectly supported the order. Congress passed the Detainee Treatment Act of 2005, intending to prevent the Supreme Court from hearing any cases brought by Guantanamo detainees. Nevertheless, the Court found a basis for jurisdiction to hear the case and struck down the order.

The Supreme Court can and has struck down Executive Orders.

Skarda 11, [Erin Skarda, freelance journalist and editor, *Top 10 Government Showdowns*, Time Magazine, http://content.time.com/time/specials/packages/article/0,28804,2085383_2085381_2085430,00.html]

Harry S. Truman made his fair share of missteps throughout his presidency, but his decision to seize control of the steel industry during the Korean War forever marred his presidential legacy. Concerned over wartime inflation, the Truman Administration imposed wage-price controls for industries that were considered necessary for national defense. These controls led to an ongoing contract dispute between the Wage Stabilization Board and the United Steel Workers Union, which wanted to raise both wages and the price of steel to keep up with increased demand. Truman personally requested an end to the impasse, but terms could not be met by the deadline so the steel companies moved to strike. To prevent a delay in the production of weapons that were needed overseas, Truman ordered his Secretary of Commerce to seize the mills. The seizure angered the steel companies, which claimed that the move was illegal. The Supreme Court agreed. In the 1952 case of Youngstown Sheet & Tube Co. v. Sawyer — known as The Steel Seizure Case — the court made a landmark decision to limit the president's power to seize private property. As for the steelworkers, they went on strike anyway, and after 53 days, agreed to similar terms that the union had proposed almost four months earlier.

Courts Solve Data Collection

The courts are already taking steps to end bulk data collection

Nakashima 5/7 [Nakashima, Ellen, national security reporter, "NSA program on phone records is illegal, court rules" Washington Post, https://www.washingtonpost.com/world/national-security/appeals-court-rules-nsa-record-collection-violates-patriot-act/2015/05/07/c4fabfb8-f4bf-11e4-bcc4-e8141e5eb0c9_story.html May 7, 2015]

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The NSA's mass collection of phone records for counterterrorism purposes — launched after the Sept. 11, 2001, terrorist attacks — was revealed by former agency contractor Edward Snowden in June 2013. The revelation sparked outrage but also steadfast assertions by the Obama administration that the program was authorized by statute and deemed legal by a series of federal surveillance court judges. But the judicial rulings had taken place in secret until the Snowden leaks forced disclosure of once-classified opinions. Under the program, the NSA collects "metadata" — or records of times, dates and durations of all calls — but not call content. The government has argued that huge volumes of records — being collected from U.S. phone companies each day and stored in a database — are relevant to counterterrorism investigations because any record could later prove critical in identifying terrorism suspects. A series of judges on the secretive Foreign Intelligence Surveillance Court have agreed. **The appeals court**, however, **said "such an expansive concept of 'relevance' is unprecedented and unwarranted.**" In the ruling, written by Judge Gerard E. Lynch, the panel noted that **the government never "attempted to identify to what particular 'authorized investigation' " the data of all Americans' phone calls would be relevant.** "At its core," the panel said, "the approach boils down to the proposition that essentially all telephone records are relevant to essentially all international terrorism investigations." Saying **the collection has amounted to "an unprecedented contraction of the privacy expectations of all Americans,**" the court said the government's interpretation of the law would also allow for the bulk collection and storage of data associated with Americans' financial records, medical records, and e-mail and social-media communications. With the statute scheduled to expire June 1, a bipartisan coalition of lawmakers in the House and Senate is seeking to renew it with modifications that sponsors say will enable the NSA to get access to the records it needs while protecting Americans' privacy. The bill, the USA Freedom Act, is poised to pass the House next week. Meanwhile, Senate Majority Leader Mitch McConnell (R-Ky.) and the chairman of the Senate Intelligence Committee, Richard Burr (R-N.C.), have introduced a bill to maintain the program. But if that passes, the government will have to persuade the Supreme Court to reverse the 2nd Circuit decision in order to keep the program from ending. The court decision drew sharp responses from some Republicans on the Senate floor Thursday. "According to the CIA, had these authorities been in place more than a decade ago, they would have likely prevented 9/11," McConnell said. He said the USA Freedom Act would not "keep us safe or protect our privacy." Meanwhile the bill's sponsors — Sens. Patrick J. Leahy (Vt.), who is the ranking Democrat on the Judiciary Committee, and Mike Lee (R-Utah) — issued a statement saying: "Congress should not reauthorize a bulk collection program that the court has found to violate the law. We will not consent to any extension of this program." FBI Director James B. Comey told reporters that if Congress lets the statute, known as Section 215 of the Patriot Act, expire, the FBI will lose a useful tool. "But," he said, if that was to happen, "we press on." Administration officials have indicated they are likely to support the bipartisan legislation. But the American Civil Liberties Union and a coalition of groups on the left and the right are pushing to let the statute simply lapse, on grounds that it would end the NSA bulk collection while leaving in place adequate powers for the government to pursue terrorism cases. The appeals court, noting the impending deadline for the program, declined to grant a preliminary injunction to stop the NSA from collecting the ACLU's call records. "In light of the asserted national security interests at stake, we deem it prudent to pause to allow an opportunity for debate in Congress that may (or may not) profoundly alter the legal landscape," Lynch wrote. The ACLU, the plaintiff in the case, cheered the decision. "**This decision is a resounding victory for the rule of law," said** ACLU staff attorney **Alex Abdo**, who argued the case before the panel in September. "**For years, the government secretly spied on millions of innocent Americans based on a shockingly broad interpretation of its authority. The court rightly rejected the government's theory that it may stockpile information on all of us in case that information proves useful in the future.**" White House officials said Thursday that they were evaluating the decision and declined to comment further. "The president has been clear that he believes we should end the Section 215 bulk telephony metadata program as it currently exists by creating an alternative mechanism to preserve the program's essential capabilities without the

government holding the bulk data," said Edward Price, a National Security Council spokesman. "We continue to work closely with members of Congress from both parties to do just that, and we have been encouraged by good progress on bipartisan, bicameral legislation that would implement these important reforms." The ruling has scrambled the terms of the debate, strengthening the hand of those who want changes that go further than those called for in the USA Freedom Act, said civil liberties advocates. "The people who supported the current version of USA Freedom should start asking for more, because we can get more now," said Jennifer Granick, director of civil liberties at Stanford Law School's Center for Internet and Society. David O'Neil, a former acting head of the Justice Department's Criminal Division, said the ruling "seriously upsets the apple cart three weeks before the sunset." The issue is one that has split lower courts. The U.S. District Court for the District of Columbia held in December 2013 that the program was probably unconstitutional. The appeals court for the District has not yet ruled on that appeal. In its ruling, the U.S. Court of Appeals for the 2nd Circuit said it need not address the plaintiffs' claims that the NSA program violated their First and Fourth amendment rights, because the panel had already concluded the program was unlawful. The court rejected the government's argument that Congress ratified the program by twice reauthorizing Section 215, noting that many members and the public were unaware of how the legislation was being interpreted. It also rejected the government's argument that the ACLU lacked standing to challenge the program. Thursday's ruling was "sweeping and unambiguous," said Michael Sussmann, a former Justice Department official who is now a partner at Perkins Coie practicing surveillance law. "As the deadline quickly approaches, this is a bombshell that forces everyone to reconsider the political fault lines."

Courts have taken action on data collection

The Economist 5/13 [No author,"Edward Snowden in the Primaries", The Economist, May 13, 2015 http://www.economist.com/blogs/democracyinamerica/2015/05/nsa-and-courts]

Last week **a federal appeals court panel ruled that the NSA's indiscriminate hoovering of phone-call metadata**, first revealed by the leaks of Edward Snowden, **is not authorised** by the Patriot Act. The pertinent section of the anti-terror bill, Section 215, is set to expire on June 1st, so the 2nd Circuit's ruling comes at a opportune time for congressional opponents of the NSA's bulk data-collection programme. "How can you reauthorise something that's illegal?" asked Harry Reid, the Senate minority leader. "You can't. You shouldn't".

Courts have taken steps already to end data collection

Stempel 5/7 [Jonathan Stempel, Reuters privacy correspondent, Reuters May 7, 2015 http://www.reuters.com/article/2015/05/07/us-usa-security-nsa-idUSKBN0NS1IN20150507]

A U.S. spying program that systematically collects millions of Americans' phone records is illegal, a federal appeals court ruled on Thursday, putting pressure on Congress to quickly decide whether to replace or end the controversial anti-terrorism surveillance. Ruling on a program revealed by former government security contractor Edward Snowden, **the 2nd U.S. Circuit Court of Appeals in Manhattan said the Patriot Act did not authorize the National Security Agency to collect Americans' calling records in bulk**. Circuit Judge Gerard Lynch wrote for a three-judge panel that Section 215, which addresses the FBI's ability to gather business records, could not be interpreted to have permitted the NSA to collect a "staggering" amount of phone records, contrary to claims by the Bush and Obama administrations. **"Such expansive development of government repositories of formerly private records would be an unprecedented contraction of the privacy expectations of all Americans**," Lynch wrote in a 97-page decision. "We would expect such a momentous decision to be preceded by substantial debate, and expressed in unmistakable language. There is no evidence of such a debate." **The appeals court did not rule on whether the surveillance violated the U.S. Constitution**. It also declined to halt the program, noting that parts of the Patriot Act including Section 215 expire on June 1. Lynch said it was "prudent" to give Congress a chance to decide what surveillance is permissible, given the national security interests at stake. Enacted after the Sept. 11, 2001 attacks, the Patriot Act gives the government broad tools to investigate terrorism. Thursday's **decision voided a December 2013 ruling** in which U.S. District Judge William Pauley in Manhattan **found the NSA program lawful**. The appeals court sent the case back to him for further review

The courts are already taking steps to end bulk data collection

Nakashima 5/7 [Nakashima, Ellen, national security reporter, "NSA program on phone records is illegal, court rules" Washington Post, https://www.washingtonpost.com/world/national-security/appeals-court-rules-nsa-record-collection-violates-patriot-act/2015/05/07/c4fabfb8-f4bf-11e4-bcc4-e8141e5eb0c9_story.html May 7, 2015]

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Courts have taken steps already to end data collection

Stempel 5/7 [Jonathan Stempel, Reuters privacy correspondent, Reuters May 7, 2015 http://www.reuters.com/article/2015/05/07/us-usa-security-nsa-idUSKBN0NS1IN20150507]

A U.S. spying program that systematically collects millions of Americans' phone records is illegal, a federal appeals court ruled on Thursday, putting pressure on Congress to quickly decide whether to replace or end the controversial anti-terrorism surveillance. Ruling on a program revealed by former government security contractor Edward Snowden, **the 2nd U.S. Circuit Court of Appeals in Manhattan said the Patriot Act did not authorize the National Security Agency to collect Americans' calling records in bulk**. Circuit Judge Gerard Lynch wrote for a three-judge panel that Section 215, which addresses the FBI's ability to gather business records, could not be interpreted to have permitted the NSA to collect a "staggering" amount of phone records, contrary to claims by the Bush and Obama administrations. **"Such expansive development of government repositories of formerly private records would be an unprecedented contraction of the privacy expectations of all Americans**," Lynch wrote in a 97-page decision. "We would expect such a momentous decision to be preceded by substantial debate, and expressed in unmistakable language. There is no evidence of such a debate." **The appeals court did not rule on whether the surveillance violated the U.S. Constitution**. It also declined to halt the program, noting that parts of the Patriot Act including Section 215 expire on June 1. Lynch said it was "prudent" to give Congress a chance to decide what surveillance is permissible, given the national security interests at stake. Enacted after the Sept. 11, 2001 attacks, the Patriot Act gives the government broad tools to investigate terrorism. Thursday's **decision voided a December 2013 ruling** in which U.S. District Judge William Pauley in Manhattan **found the NSA program lawful**. The appeals court sent the case back to him for further review

Courts Solve Financial Surveillance

In the past, the Supreme Court has ruled on financial surveillance

Douglas 74, [William O. Douglas, Justice of the Supreme Court, *United States Supreme Court, CALIFORNIA BANKERS ASSN. v. SHULTZ, (1974) No. 72-985 Argued: January 16, 1974 Decided: April 1, 1974*, Find Law, http://caselaw.findlaw.com/us-supreme-court/416/21.html#t*]

The Bank Secrecy Act of 1970, which was enacted following extensive hearings concerning the unavailability of foreign and domestic bank records of customers thought to be engaged in illegal activities, authorizes the Secretary of the Treasury to prescribe by regulation certain bank recordkeeping and reporting requirements, the Act's penalties attaching only upon violation of the regulations thus prescribed. (Unless otherwise indicated, references below to the Act also include the accompanying regulations.) The Act is designed to obtain financial information having "a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." Title I of the Act requires financial institutions to maintain records of their customers' identities, to make microfilm copies of checks and similar instruments, and to keep records of certain other items. Title II requires the reporting to the Federal Government of certain foreign and domestic financial transactions. Title II, 231, requires reports of the transportation of currency and specified instruments exceeding $5,000 into or out of the country, exception being made, inter alia, for banks and security dealers. Section 241 requires individuals with bank accounts or other relationships with foreign banks to provide specified information on a tax return form. Section 221 delegates to the Secretary of the Treasury the authority to require reports of transactions "if they involve the payment, receipt, or transfer of United States currency, or such other monetary instruments as the Secretary may specify . . .," 222 providing that he may require such reports from the domestic financial institution involved, the parties to the transaction, or both, and 223 providing that he may designate financial institutions [416 U.S. 21, 22] to receive the reports. Under the implementing regulations only financial institutions must file reports with the Internal Revenue Service (IRS), and then only where the transaction involves the deposit, withdrawal, exchange, or other payment of currency exceeding $10,000. The regulations provide that the Secretary may grant exemptions from the requirements of the regulations. Suits were brought by various plaintiffs challenging the constitutionality of the Act, principally on the ground that it violated the Fourth Amendment, because when the bank makes and keeps records under compulsion of the Secretary's regulations it acts as a Government agent and thereby engages in a "seizure" of its customer's records. A three-judge District Court, though upholding the recordkeeping requirements of Title I of the Act and the foreign transaction reporting requirements of Title II, concluded that the domestic reporting provisions of Title II, 221-223, contravened the Fourth Amendment, and enjoined their enforcement. Three separate appeals were taken. In No. 72-985, the California Bankers Association, a plaintiff below, asserts that Title I's recordkeeping provisions violate (1) due process, because there is no rational relationship between the Act's objectives and the required recordkeeping and because the Act is unduly burdensome, and (2) rights of privacy. In No. 72-1196, a bank plaintiff, certain plaintiff depositors, and the American Civil Liberties Union (ACLU), also a plaintiff, as a depositor in a bank subject to the recordkeeping requirements and as a representative of its bank customer members, attack both the Title I recordkeeping requirements and the Title II foreign financial transaction reporting requirements on Fourth Amendment grounds; on Fifth Amendment grounds, as violating the privilege against compulsory self-incrimination; and on First Amendment grounds, as violating free speech and free association rights. In No. 72-1073, the Secretary asserts that the District Court erred in holding Title II's domestic financial transaction reporting requirements facially invalid without considering the actual implementation of the statute by the regulations -

Courts Created Financial Security Surveillance and They Can reverse them

Nojeim 99 (April 20. Gregory T. SENIOR COUNSEL AND DIRECTOR, FREEDOM, SECURITY AND TECHNOLOGY PROJECT. “FINANCIAL PRIVACY, REPORTING REQUIREMENTS UNDER THE BANK SECRECY ACT” https://www.aclu.org/report/financial-privacy-reporting-requirements-under-bank-secrecy-act)

The Supreme Court ruled in United States v. Miller, 425 U.S. 435 (1976) that individuals do not have a "reasonable expectation of privacy" under the Fourth Amendment in financial records pertaining to them but maintained by a bank in the normal course of business. See also California Bankers Assoc. v. Shultz, 416 U.S. 21 (1974) (upholding the then limited reporting requirements of the Bank Secrecy Act. ACLU was a plaintiff in this case).∂ Unfortunately, with limited exceptions including the Right to Financial Privacy Act20 enacted in 1978 in response to these court rulings, Congress has consistently limited rather

than expanded financial privacy. Indeed, one might rightfully conclude that in recent years, much more attention has been paid to efficiency in reporting and in expanding law enforcement use and access to that which is reported, than to protecting the privacy of the underlying personal transactions, and ensuring that information about innocent transactions is not turned over to the government. The time has come to reassess this course. ∂ In 1992 Congress amended the Bank Secrecy Act to authorize the Treasury Department to adopt the Suspicious Activity Reporting requirements.21 In essence, it gave the Treasury Department a blank check to require reporting of any "suspicious transaction relevant to a possible violation of law or regulation."22 At the same time, Congress completely insulated financial institutions from civil liability for reporting their customers as "suspects" to the government, and Congress barred financial institutions from telling their customers that their bank had spied on them by reporting their transactions. ∂ The Right to Financial Privacy Act is riddled with loopholes, including one very large loophole to accommodate financial institution reporting under the Bank Secrecy Act.23 Though the Right to Financial Privacy Act contemplates that notice will be given customers when financial records are transferred from one federal agency to another24 notice is not given when Suspicious Activity Reports are furnished by FinCEN to law enforcement officials. In terms of financial privacy, this is a sorry state of affairs. ∂ Members of Congress could take a number of steps to enhance financial privacy: ∂ First, instead of urging bank regulators to issue Know Your Customer regulations, creating more incentives for financial institutions to file more Suspicious Activity Reports25 and extending Suspicious Activity Reporting requirements to more businesses, Congress should legislate to ensure that "Know Your Customer" is excised once and for all from all Bank Secrecy Act compliance manuals and procedures.

Courts Solve Bitcoin

*This might be an aff answer card - Courts have the jurisdiction to regulate bitcoin

Bernard '15 (Robert Bernard, Law school graduate of Seton hall and practicing attorney, "Bitcoin: How Government Regulation Will Lead to a Brighter Future for the Online Currency," 2015, Seton hall Law Review, http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1679&context=student_scholarship Accessed: 7/30/15, Chase Elsner Utnif Cp Gripe)

A number of law review articles have addressed the legality of Bitcoin.32 Due to how novel Bitcoin is, it truly falls into a legal grey area. There are, however, a few laws the United States could possibly use to regulate Bitcoin. The most obvious argument would be to regulate Bitcoin through Congress' constitutional right to control currency.33 Even though this seems obvious, the Constitution says nothing about private parties making money.34 However, two federal statutes affect a private party from creating a currency: the Stamp Payments Act of 1862 and federal counterfeiting statutes.35 The purpose of the Stamp Payments Act of 1862 is to curb competition with federal currency.36 It states in part, "Whoever makes, issues, circulates, or pays out any note, check, memorandum, token, or other obligation for a less sum than $1, intended to circulate as money or to be received or used in lieu of lawful money of the United States," will be fined and/or jailed not more than six months.37 Bitcoin does not limit transactions to more than $1, and some argue that it is intended to compete with official currency.38 The stronger argument is that Bitcoins do not fall within the Stamp Payments Act.39 Congress goal of the Stamp Payment Act was to prevent competition with federal currency, and challenging Bitcoin would not further this goal.40 Bitcoin is only used over the internet where it competes with the likes of credit cards and PayPal.41 Secondly, the Stamp Payment Act was written long ago, and the instruments described were all physical, tangible instruments.42 A court would be cautious to apply the act to digital currency that Congress could not have envisioned.43 Even though one could argue that Congress need not have envisioned digital currency, the text reads, "or other obligations," and thus implies a textual reading that the Stamp Payment Act targets obligations.44 Most of the cases brought under the Act further this view.45 Bitcoin is not an obligation. It only has value due to individuals giving it value, not because anyone promised to give something in return for it.46 Furthermore, the Stamp Payments Act is 150 years old, courts began limiting its application right after it was passed and have not interpreted since 1899, and the availability of statutes that are a better fit to attack Bitcoin would discourage federal prosecutors from trying to use the Act against Bitcoin.47 Counterfeiting laws are another area people believe Bitcoin could face liability. A lot of this belief is based off the Liberty Dollar case.48 The basis for this opinion is grounded in common ideology that the Liberty Dollar's creator and many Bitcoin users share: fear of the Federal Reserve and belief that an inflation resistant currency would be better for the economy.49 This reasoning, however, is flawed because federal counterfeiting laws deal with coins and paper money resembling United States or foreign currency.50 Liberty Dollars were metal and paper currency backed by precious metals with the intention to be immune from inflation.51 The federal prosecutor focused on the similarity between the Liberty Dollar and official U.S. currency, which could confuse consumers.52 The government noted that the creator encouraged users to spend them, and encouraged business to issue them as change to unsuspecting customers.53 Additionally, the organization profited from this because the face value of the Liberty Dollar was higher then the value of their metal content.54 Rather than a political attack on their beliefs, it was a prosecution of fraud just like any regular counterfeiting operation.55 For that reason the case bears no bearing on Bitcoins. They in no way resemble U.S. currency, and are no threat to unsuspecting individuals.56 The Securities and Exchange Acts of 1933 and 1934 are a viable option to apply to Bitcoin. Congress passed these acts in wake of the Great Depression.57 As a result of the Depression it exposed the vast fluctuation in the price of securities due to market manipulation.58 Congress aim was to force conservative valuations, increase disclosure, and promote surveillance of fraud.59 Stocks, notes, commodities, and investment contracts are subject to the Securities and Exchange Acts.60 How these instruments are defined is important in determining whether or not Bitcoin will fall within the scope of the Securities and Exchange Acts. It is important to note that the definitions are supposed to be construed broadly to focus on real-world implications.61 A stock is "a

proportional part of a corporation's capital represented by the number of equal units owned, and granting the holder the right to participate in the company's general management and to share in its net profits or earnings."62 A note is "a written promise by one party to pay a money to another party or to bearer."63 A commodity is defined as "an article of trade or commerce…The term embraces only tangible goods, such as products or merchandise, as distinguished from services."64 A Bitcoin does not meet the definition of a "stock," "note," or "commodity." Unlike a "stock," an owner of a Bitcoin does not receive dividends or a right to share in profits.65 Furthermore, a Bitcoin owner does not hold voting rights.66 Although one may argue a Bitcoin represents a promise to pay, it is a settled amount, and thus does not meet the definition of a "note."67 Additionally, Bitcoin does not seem to meet the definition of a "commodity," because it is not a tangible good.68 Even though a further examination of a "commodity" may open an argument that Bitcoins act like a "commodity," because one can use it, sell it, or make contracts involving it like many other commodities, an analysis of an "investment contract" shows that Bitcoin has more features of an "investment contract" than a "commodity."69 Due to a better categorization as an "investment contract," it is unlikely Bitcoin would be categorized as a commodity.70 The broad phrase "investment contract" is the most likely category that would encompass a Bitcoin. In SEC v. W.J. Howey Co., the Supreme court interpreted an "investment contract" as "a contract, transaction or scheme whereby a person 1) invests his money in 2) a common enterprise and 3) is led to expect profits 4) soley from the efforts of the promoter or third party…"71 First, most people do purchase Bitcoins with money, rather than mine them.72 Second, the common enterprise could be the network of people who use their computer power to mine, update the ledger, and thus ensure the value of Bitcoins.73 This argument is furthered by pointing out that the as the value of Bitcoins increase, each person who holds them is better off.74 There is also a strong counter argument in the sense that the exchanges, current investment projects, and individuals holding Bitcoins in e-wallets, act independently of one another, rather than in a single profit-seeking investment scheme.75 Third, a strong argument exists that people do expect profits due to many Bitcoin holders belief that Bitcoin is inflation-resistant.76 There is a counter argument that some hold Bitcoins for fun; however, the stronger argument is that they are held for profit.77 Lastly, whether or not this profit is based solely on the efforts of the promoter could go either way.78 One could argue that the Bitcoin community relies on the efforts of miners.79 They could also argue that they do not because of Bitcoin's inherent value due to the limited supply.80 The broad scope of an "investment contract" is the best vehicle to bring Bitcoins into the jurisdiction of the Securities and Exchange Acts. As analyzed above, applying the definition to Bitcoins in the general poses problems. Recently, however, a federal court has shown how it is easier to categorize Bitcoins as an "investment contract" in the context of a specific investment scheme. In November 2011 Trendon Shavers advertised that he was in the business of selling Bitcoins through his Bitcoins Savings and Trust.81 He promised investors a 1% daily return on investment until the investor either withdrawal their funds, or Shavers was no longer profitable.82 Shavers collected 700,467 Bitcoins from investors— approximately $4.5 million during that time period.83 Investors who suffered losses lost around 263,104 Bitcoins— approximately $1.8 million at that time.84 The SEC asserted that Shavers defrauded and made misrepresentations to his investors.85 The question before the United States District Court for the Eastern District of Texas was whether Bitcoins were a security.86 By following the four part

definition laid out in SEC v. W.J. Howey Co., the court found that Bitcoins met the definition of an "investment contract" and thus a security.87 The magistrate judge opined that because Bitcoin can be used as money, that an investment of Bitcoin into Shavers fund was an investment of money.88 Next, the court examined whether there was a common enterprise.89 For a common enterprise, the Fifth Circuit requires some interdependence between the investors and promoter.90 This can be shown by a reliance on the promoter's expertise.91 The magistrate judge found a common enterprise because the investors relied on Shavers expertise in Bitcoin markets and local connections.92 Lastly, the court found that profits were expected from Shavers efforts.93 This case is important for a few reasons. As explained earlier, in general, it is hard to categorize Bitcoins as a stock, note, or investment contract. The broad definition of an investment contract is the best option, but there are strong arguments against that categorization when applying it to the overall Bitcoin economy. The Shavers court found that Bitcoins were an investment contract in Shavers' investment fund, not that Bitcoins in general are investment contracts.94 This shows that the context in which Bitcoins are important. It allows the government to regulate them based on the context in which they are used. The argument for Bitcoins as an investment contract was much stronger when applied to an investment fund. This is one option for the government as the popularity of Bitcoin grows and more funds, such as the Winkelvoss twin's current endeavor, are created. This still, however, leaves unregulated the vast majority of Bitcoins. Most Bitcoins are purchased through exchanges.95 If the government wants to curb the illegal activity and money laundering associated with Bitcoin, regulating the exchanges is the best place to start. The best mechanism to regulate this market is the Bank Secrecy Act and Money Laundering Control Act. The Bank Secrecy Act ("BSA") requires a "money services business" to register with FinCEN.96 The regulations stipulate that a "money services business" includes—but not limited to—check casher, dealers in foreign exchange, one who deals in travelers checks or money orders, money transmitter, and the United States Postal Service.97 The Money Laundering Control Act criminalizes money laundering.98 One who uses "dirty" money to conduct a financial transaction knowing the money is "dirty" and with the intent to promote illegal activity, and profit from the activity is in violation of the Act.99 Every law review article on the topic of Bitcoin addresses E-Gold's collapse at the hands of these laws.100 The site was charged under both laws.101 The charge against E-Gold shows how these laws often apply simultaneously: [T]he E-Gold operation provided digital currency services over the Internet through two sites: www.e-gold.com and www.Omnipay.com. Several characteristics of the E-Gold operation made it attractive to users engaged in criminal activity, such as not requiring users to provide their true identity, or any specific identity. The E-Gold operation continued to allow accounts to be opened without verification of user identity, despite knowing that "e-gold" was being used for criminal activity, including child exploitation, investment scams, credit card fraud and identity theft. In addition, E-Gold assigned employees with no prior relevant experience to monitor hundreds of thousands of accounts for criminal activity. They also participated in designing a system that expressly encouraged users whose criminal activity had been discovered to transfer their criminal proceeds among other "e-gold" accounts. Unlike other Internet payment systems, the E-Gold operation did not include any statement in its user agreement prohibiting the use of "e-gold" for criminal activity.102 E-Gold attempted to argue that a "money transmitting business" under the BSA only applied to a business that engages in a physical transfer of currency.103 The court disagreed.104 By referring to the plain language of statute it held that a "money transmitting service" is one that transacts not just actual currency, but also the value of that currency through a medium of exchange.105 Recently, FinCEN issued guidelines applying to virtual currency to clarify where they fall under the BSA.106 With regards to virtual currency, a "money services business" is: (1) administrator or exchanger that accepts and transmits virtual currency, or buys or sells virtual currency; (2) brokers and dealers of virtual currency; (3) mine and sell virtual currency for money or its equivalent.107 The definitions seem to be an attempt to cast a large web over the Bitcoin community including e-wallets, exchanges like Mt. Gox, and miners.108 This would require them to implement anti-money laundering procedures, keep records, and report suspicious transactions.109 FinCEN's guidance—in terms of legal authority—is, at most, persuasive. An agency's substantive rules create legal rights and obligations, and as such require notice and comment.110 Interpretive rules differ because they "merely advise the public of a statute's meaning or the manner in which it is to be applied."111 As part of the Guidance, FinCEN explicitly stated that the guidance is

interpretive.112 To further clarify, FinCEN noted at the bottom of the guidance, “This guidance explains only how FinCEN characterizes certain activities involving virtual currencies under the Bank Secrecy Act and FinCEN regulations. It should not be interpreted as a statement by FinCEN about the extent to which those activities comport with other federal or state statutes, rules, regulations, or orders.” 113 The deference a court gives to an agency’s interpretive rule varies greatly.114 Court’s will look at the agency’s care, consistency, expertise, and persuasiveness of their opinion.115 These considerations have resulted in court’s giving the agency’s interpretation great respect, but in other instances giving it nothing more than near indifference.116 Law enforcement already follows these guidelines.117 Homeland Security seized a company’s bank account that was transacting with Dwolla and Mt. Gox.118 The affidavit in support of the seizure alleged that the company was a money transmitting business unregistered with FinCEN.119 If law enforcement chooses to continue to enforce in this manner, exchanges and e-wallet providers will have to follow suit; because, as exemplified by E-Gold, if they do not register and knowingly process dirty money, make a profit from the transaction, and do nothing to stop the transaction, they are guilty under both the Bank Secrecy Act and the Money Laundering Control Act. Exchanges have heeded FinCEN’s advice. On June 27th, 2013 Mt. Gox officially registered with FinCEN.120 In May of that year announced that they would require users to verify their accounts in order to make currency deposits or withdrawals.121 More intriguing is that rather than enforce the regulations, FinCEN has reached out to about a dozen Bitcoin firms.122 These letters were sent to warn the firms that they may have to comply with anti-money laundering compliance regulations as money transmitters.123 The letters acknowledged that they operate in a “legal grey area,” but should err on the side of caution and comply.124 Some have complied, while others suspended business out of the fear of civil and criminal sanctions.125 One legal expert believes this is a sign that FinCEN is moving towards a new enforcement precedent of warning before taking action.126 Based on the legal options at the hands of the United States government, it seems clear that the BSA is the major means to regulate Bitcoin. The Security and Exchange Acts are viable options with regards to specific investment schemes, but the majority of Bitcoin use occurs at exchanges. FinCEN’s regulations are clear that they are attempting to regulate these mediums.

New York federal courts prove that courts have the ability to rule over bitcoin

Caraluzzo ’14 (Carlo Caraluzzo is a journalist for cointelegraph [leading news site dealing with bitcoins and other technology based news] 8/22/14, “US District Judge: “Bitcoin is Money”,” Coin telegraph, http://cointelegraph.com/news/112328/us-district-judge-bitcoin-is-money Accessed: 7/30/15, Chase Elsner, Utnif Cp Gripe)

The question of whether or not Bitcoin is money, property or a commodity took one step closer as a Federal judge ruled in the case of Robert Faiella, 54 and Charles Shrem, 24, that Bitcoin was money. This case is actually not the only ruling on the issue by US courts that called Bitcoin money. The judge did not agree with the defense's idea that Bitcoin was not money saying Bitcoin "clearly qualifies as 'money' or ‘funds.’” In this particular case, defendants were moving money through the Silk Road and the judge stated that since Bitcoin has a denominator of value (each Bitcoin is worth a specific amount of fiat currency), it can be used to make purchases of retail goods and services, meaning that it falls under the textbook definition of money. This decision means that both defendants will have to stand trial on September 22, 2014 in U.S. v. Faiella, U.S. District Court, Southern District of New York, No. 14-cr-00243. But the decision can also affect other cases as well, one of which the Bitcoin Foundation has filed an Amicus Curie Brief in the case. The problem might be that the arguments made by the Bitcoin Foundation and the defense team in this case are very similar to those just ruled on by the judge in the Faiella case in New York. The case in Florida is a bit different, however, than the New York case that was just ruled on. In Florida Pascal Reed was charged in March of 2014 with: “Unlawfully engaging in an unregistered money transmitter business without being exempt from registration in violation of Florida Statutes § 560.125(1) filed on May 14, 2014, which charges Reid with being an unauthorized money transmitter under Florida law.” This might seem like a

legal mouthful but the charges are very clear for Reid. Florida statutes clearly define what qualifies as a money transfer service. Reid, however, is also charged with money laundering as well in the first known state level criminal case involving buying and selling cryptocurrencies, although two other individuals were accused of similar activities back in February. The Bitcoin Foundation's brief addressed only the charges of being an unauthorized money transfer service but, if successful, it is likely that the money laundering charges will be dropped. The Foundation's argument is simple in that prosecutors are attempting to superimpose a law intended for fiat currencies on Bitcoin. The Foundation commented in on the matter on their website: "The foundation's position at its core is this: state prosecutors are improperly applying Florida statutes regulating "money service businesses" to individuals conducting peer-to-peer sales of bitcoins." Simply put, the laws that were made to regulate money exchanges should not apply to peer-to-peer asset transfers. The Foundation also argues that under FinCEN guidelines the retail use of Bitcoin is not considered a money transfer. The interesting thing about the amicus brief filed by the Bitcoin Foundation is that while it targets the fundamental unfairness of Reid's charges, Bitcoin does not and should not fall under guidelines developed for an entirely different monetary system. This does however contradict the argument made by the Bitcoin Foundation of Canada that Bitcoin was already regulated under existing law in a recently issued report. The ruling in New York, however, along with another case in Texas, in which Magistrate Judge Amos Mazzant of the Eastern District of Texas ruled that Bitcoin was money in April of 2013. The Internal Revenue Service has already ruled that Bitcoin is considered property for tax purposes, which creates a bookkeeping nightmare for anyone who owns Bitcoin, especially traders. If Bitcoin is considered money then transfers would be considered income and would be taxed at a slightly higher rate (10% vs. 7%). But we have at least two federal courts ruling that Bitcoin is money, which brings the Executive branch (IRS) directly into conflict with the Judicial branch and these issues are settled either by Legislation at a Federal level or by the Supreme Court.

Courts create the legal frameworks that determine the validity of bitcoin

Caraluzzo 14(Carlo Caraluzzo – The Coin Telegraph Column Editor, "Federal Courts Zeroing in on Bitcoin Definition", http://cointelegraph.com/news/112662/federal-courts-zeroing-in-on-bitcoin-definition, October 2nd 2014)

One of the most talked about issues with respect to Bitcoin and other cryptocurrencies is exactly how they are to be legally defined. The Internal Revenue Service has ruled that, for tax purposes, Bitcoin is not to be considered "money". While Bitcoin is commonly used as payment for goods and services and acts as a "denominator of value", the IRS ruled that Bitcoin is taxable as property, not money, simply because it is not considered "legal tender" by Federal and state governments. The US Senate held two different sets of hearings on Bitcoin and the Homeland Security and Governmental Affairs Committee of the Senate held hearings entitled, "Beyond Silk Road: Potential Risks, Threats, and Promises of Virtual Currencies". On the other side of the US Capital building the House of Representatives held hearings on the "Costs and Benefits of Small Business Bitcoin Use". While the Congress is grappling with the issue the courts have taken the lead in legally defining Bitcoin and virtual currencies. There have been three major cases involving this issue in the Federal Courts in 2014. The most well-known is case involving Charlie Shrem in which Shrem pleaded guilty to a lesser offense after having a business relationship with the Deep Web's Silk Road. Shrem and Robert Faiella were accused of selling Bitcoin to Silk Road users so that they could use the BTC to buy drugs, acting in effect as an illegal and unregistered money transmission service. In Texas Trendon T. Shavers was arrested for operating a "Ponzi Scheme" in which he promised investors a 7% weekly return on investment and then used the money to pay older investors their original investment and encourage further investments. Finally, Butterfly Labs was raided by Federal agents after the Federal Trade Commission discovered that the owners were engaging in the "systematic deception" of their customers. The Butterfly labs case is relatively new while the others have been on-going for months so the defense has not yet been properly mounted. But in the other two cases the defenses were remarkably similar. In both cases the primary defense was that since the IRS ruled that Bitcoin was not money then the regulations that were being used in the case were being misapplied. Defendants also claimed that to apply older regulations designed for fiat currencies to cryptocurrencies was essentially ex post facto. Under this legal principle newly created laws cannot be retroactively applied. In both of these cases the judge's opinions have been relatively consistent. In Shrem's case the US District Judge Jed S. Rakoff ruled that: "Bitcoin clearly qualifies as 'money' or 'funds,'" as the digital currency "can be easily purchased in exchange for ordinary currency, acts as a denominator of value, and is used to conduct financial transactions." Congress likely "designed the statute to keep pace

with evolving threats". In the Shaver's Ponzi scheme case the SEC argued successfully that the investments accepted by Shavers clearly met the definition of "securities" because they were in fact both investment contracts and notes. US Magistrate Amos L. Mazzant ruled that the investments constituted an "investment contract" because investors were putting in money and expecting a monetary return of a specific amount, adding that the expectation of return did not have to include cash value as long as there was value of some kind and that Bitcoin could be both money and property under the law. He also ruled against the defense that Bitcoin was not money under the IRS guidelines by first agreeing with Judge Rakoff and added that: "[T]he IRS Notice did not make any determinations about whether Bitcoins are money or not, only that for federal tax purposes, Bitcoins are to be treated as property". Judge Mazzant also said that FinCEN's guidelines further "demonstrates that virtual currencies, like Bitcoin, are being treated like money for purposes of federal regulation." He said that investors were unable to participate in Shaver's plan without surrendering a certain amount of Bitcoin with the expectation of a substantial return. The stakes involved in these decisions are enormous as legislatures, regulatory agencies and the courts wrestle with applying old laws to new technologies, a problem that is likely to continue for some time as some of these cases wend their way to the Supreme Court. There are criminal cases, sometimes with very long sentences, frozen assets, closed businesses and substantial fines. The fact that at least two of the lower courts have basically made identical rulings might make the high Court's job a bit easier but the pressure will surely be on for many years to come before the details are finally agreed upon by all parties.

Court regulations have applicability to digital currency

Elwell et al 15(Craig K. Elwell - Specialist in Macroeconomic Policy, M. Maureen Murphy - Legislative Attorney, Michael V. Seitzinger - Legislative Attorney "Bitcoin: Questions, Answers, and Analysis of Legal Issues", https://fas.org/sgp/crs/misc/R43339.pdf, January 28th 2015)

In order to provide some information on recent efforts by federal, state, and international authorities to study, monitor, or regulate digital currencies, this section of the report (1) identifies the clause in the U.S. Constitution giving power to Congress over money; (2) describes some of the recent federal, state, and international activities and studies dealing with digital money; and (3) identifies some of the federal laws that might be implicated or that have been used with respect to digital money. In providing this information, we have identified some federal statutes and regulatory regimes that may have some applicability to digital currency, although none contains explicit language to that effect or explicitly mentions currency not issued by a government authority. Some federal statutes, because of their broad coverage, are likely to be held by courts to apply in connection with digital currency. For example, courts are likely to hold that the federal criminal mail and wire fraud statutes apply to fraudulent schemes designed to result in monetary losses in connection with buying, selling, or trading digital currencies.25 Federal statutes providing consumer protection with respect to consumer financial transactions, however, such as the Truth in Lending Act26 and the Truth in Savings Act,27 include no language specifically referencing digital currency transactions.

Courts have subject matter jurisdiction over bitcoin

Fleming & Evans 13(William B. Fleming and Joseph Evans - GAGE SPENCER & FLEMING LLP Bitcoin column editors, "BITCOINERS IN THE COURT ROOM, PART I: GOVERNMENT OVERSIGHT", http://fordhamcorporatecenter.org/2013/08/20/bitcoiners-in-the-court-room-part-i-government-oversight/, August 20th 2013)

This series discusses recent private and government actions concerning Bitcoin which reveal that Bitcoin-related litigation and regulation is on the rise and lawyers are well-served to learn about the legal impact of this virtual currency phenomenon. Part I describes recent government actions and their impact on Bitcoin. Part II explores private actions involving Bitcoin. A. BITCOIN PRIMER For the uninitiated, the first question: what is Bitcoin? Bitcoin is a virtual currency which is tradeable and is used to purchase goods and services. Indeed, according to a Bloomberg article, Bitcoin "can be used to buy and sell a broad range of items – from cupcakes to electronics to illegal narcotics." Bitcoin was created in 2009 by a person or group using the name Satoshi Nakamoto. It is entered into circulation electronically through a process called "mining." Members of the Bitcoin network, typically referred to as "miners," are the ones who "mine" Bitcoin. Miners download free software and dedicate their computer server power to solve complex Bitcoin equations. If the miner's computer is the fastest and most powerful for a particular equation the miner is rewarded with Bitcoin. Videos and images are available online displaying massive super computers dedicated to maximizing Bitcoin production. Miners' computers are shown stuffed into basements with cooling systems employed to prevent the hardworking computers from overheating. Mining is not the only way for people to get their hands on Bitcoin; a huge secondary market has developed for Bitcoin trading on decentralized exchanges. Miners harvest Bitcoin supply and subsequently sell it over the exchanges structured by its founder, a process which fuels the

secondary market in the virtual currency and enables the general public to own it. Bitcoin is limited in supply. There are 21 million minable Bitcoins projected to be mined and circulated by 2140. The United States Government Accountability Office ("USGAO") reports that "[a]ccording to Bitcoin's peer-to-peer network generated statistics, as of May 1, 2013, approximately 11 million Bitcoins were in circulation." Trading in the currency has resulted in wild swings in its price. The USGAO reports that, while from May 2012 through February 2013 prices ranged between $5 and $20 per Bitcoin, prices in the ensuing three months reached as high as $237. In that same time period, the number of transactions per day ranged from approximately 8,000 to 70,000. On August 20, 2013, Mt. Gox, a Japanese corporation and the largest Bitcoin exchange in the world, shows one Bitcoin to be worth roughly $120. A controversial feature of Bitcoin usage is that users can easily remain anonymous. Bitcoin is stored in Bitcoin wallets, a series of numbers and letters linked to an IP address. Savvy internet users – the vast majority of Bitcoiners – have found relatively simple ways to hide their IP addresses making it quite difficult to trace a Bitcoin to its owner. As for Bitcoin millionaires, by April 2, 2013, 250 wallets existed that were each worth over $1 million. Since the owners' identities are not public, however, the number of $1 million wallets has no sure bearing on the actual number of Bitcoin millionaires since a solitary end user can hold multiple wallets. Thus, Bitcoin is a highly volatile, hard to trace, wholly digital currency, that can be earned, bought, sold and used to purchase goods and services. B. GOVERNMENT: BITCOIN REGULATION AND ENFORCEMENT Since Shavers ruled that Bitcoin investments are securities, the SEC and private litigants may be able to sue Bitcoiners under federal securities laws. Furthermore, Bitcoin regulation and litigation is heating up as indicated by the Shavers ruling, subpoenas and cease and desist letters from state regulators, a 2014 House of Representatives Appropriations Bill, a USGAO report, the seizure of bank accounts and online payment processor accounts of the largest Bitcoin exchange in the world, a U.S. Treasury Financial Crimes Enforcement ("FinCEN") Guidance and a supposed leaked FBI report. 1. Shavers: Bitcoin Investments Are Securities In the Eastern District of Texas, the SEC brought an enforcement action alleging fraud in connection with an alleged Bitcoin ponzi scheme under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act as well as under Section 5(a) and 5(c) of the Securities Act. According to the SEC, Shavers and Bitcoins Savings and Trust ("BTCST") solicited investors to invest in Bitcoin in return for interest payments of up to 7% weekly. The SEC alleged that Shavers told investors that his high margins and returns for investors were because of his ability to arbitrage the Bitcoin market, capitalizing on the different exchange rates offered by different exchanges in this nascent and still inefficient market.[1] The SEC alleged that defendants were engaged in a fraudulent ponzi scheme and paid certain investors interest and redeemed their underlying Bitcoin investment out of the investments of subsequent investors. In particular the SEC alleged the defendant Shavers acquired Bitcoin for "his personal use" and gave "preferential redemptions to friends and longtime BTCST investors." The Complaint claimed Shavers used Bitcoin message boards to solicit investors: "I don't move a single coin until the cash is in hand and I'm out of harms [sic] way (just incase :)). So risk is almost 0 . . . anything not covered is hedged or I take the risk personally . . . in the event there was a huge change in the market and I needed to personally cover the difference I am more than willing to do so . . . if my business is illegal then anyone trading coins for cash and back to coins is doing something illegal. :) ." Defendants moved to dismiss for lack of subject matter jurisdiction because "Bitcoins [are] not money, and [are] not part of anything regulated by the United States" and therefore were not covered by the federal securities laws. The Eastern District of Texas did not agree. The federal securities laws strictly regulate "securities." A "security" is "any note, stock, treasury stock, security future, security-based swap, bond . . . [or] investment contract . . ." In the case in the Eastern District of Texas, the issue was whether BTCST investments were "investment contracts." The court applied the Supreme Court's Howey test: an investment contract is any contract, transaction, or scheme involving (1) an investment of money, (2) in a common enterprise, (3) with the expectation that profits will be derived from the efforts of the promoter of a third party. The court found that the second and third prongs of the Howey test were satisfied because the SEC alleged a collective reliance on Shavers' expertise in Bitcoin markets to provide a promised daily interest which shows a common enterprise and an expectation of profit from his efforts. As to the first prong, the inquiry focused on the question whether Bitcoin is "money." The Eastern District of Texas answered a resounding yes. "It can be used to purchase goods or services, and as Shavers stated, used to pay for individual living expenses." The Court recognized that Bitcoin is limited to places that accept it, but that it can be exchanged for conventional currencies, so under the first prong – the investment of money – "Bitcoin is a currency or form of money, and investors wishing to invest in BTCST provided an investment of money." The Court concluded, "BTCST investments meet the definition of [an] investment contract, and as such, are securities. For these reasons, the Court finds that it has subject matter jurisdiction over this matter."

Bitcoin is viewed as unconstitutional

Bryans '14 (Danton Bryans, J.D. candidate 2014, Indiana University Maurer School of Law, 2014, "Bitcoin and Money Laundering: Mining for an Effective Solution ," http://ilj.law.indiana.edu/articles/19-Bryans.pdf Accessed: 7/30/15, Chase Elsner, Utnif Cp Gripe)

A. Constitutional Limits on Currency Although Bitcoin may frustrate AML efforts, discussion of solutions under current AML frameworks is unnecessary if Bitcoin is unconstitutional per se. Bitcoin might be seen as illegal because it attempts to assume powers expressly reserved to the federal government under the U.S. Constitution; however, Bitcoin likely falls outside of these powers. The U.S. Constitution reserves rights for the federal government to coin money for the nation,44 to regulate value of the nation's coin,45 to prosecute counterfeiters,46 and it prohibits states from coining money.47 However, the federal government appears to allow local currencies when there appears to be no likelihood of confusion with the nation's currency.48 Conversely, the federal government has prosecuted currencies that pass off as the nation's legitimate currency.49 Thus, as a purely digital currency, the likelihood that Bitcoin would be confused with the nation's federal currency is quite low.50 Although Congress could potentially restrict Bitcoin or other virtual currencies through legislative action, perhaps through its Commerce Clause powers,51 the clauses that relate to the coining of money should not render Bitcoin inherently illegal. B. Bitcoin's Image in the United States Bitcoin's image within the United States is polarized. Some view it as a tool used by criminals to commit crimes,52 whereas others view it as a tool for a legal system of currency that is free from unlawful government interference.53 Most notably, in 2011 Senators Charles Schumer and Joe Manchin denounced Bitcoin in a letter to U.S. Attorney General Eric Holder and the Drug Enforcement Administration (DEA) as "[t]he only method of payment" for an illegal Internet marketplace called Silk Road.54 More recently, an anonymous group claimed to steal copies of presidential candidate and former Massachusetts Governor Mitt Romney's tax records and threatened to release them to the public if the group did not receive $1 million worth of bitcoins.55 In addition to the specific uses of Bitcoin for illegal activities, some agencies examined Bitcoin for more general law enforcement concerns. A leaked U.S. Federal Bureau of Investigation (FBI) report from April 2012 examined the challenges created by Bitcoin for law enforcement.56 The report's summary notes that the FBI (1) has "medium confidence that, in the near term, cyber criminals will treat Bitcoin as another payment option alongside more traditional and established virtual currencies which they have little reason to abandon"57 and (2) has "low confidence, based on current user and vendor acceptance, that malicious actors will exploit Bitcoin to launder money."58 Although the report mentions several possible illegal uses for Bitcoin, including laundering money and trading illicit goods, the report never categorizes Bitcoin as inherently illegal. Although the FBI does not explain this lapse in the report, the most likely reason is that it may be used for other legitimate purposes. Just as a hundred dollar bill may buy a family's groceries or an addict's drugs, so too could a bitcoin buy both legal and illegal goods. Although some may use Bitcoin for illegal purposes, others see it as a viable alternative for private individuals to trade value. In essence, Bitcoin proponents see the virtual currency as either (1) an alternative currency or (2) a commodity.59 In the first view, the bitcoins are functionally equivalent to USD, EUR, or any other currency system.60 Alternatively, bitcoins act as commodities, similar to purchased goods.61 Under either theory, the use of bitcoins should be lawful.6 Bitcoin also gained some governmental acceptance at the state level. In July 2012, New Hampshire State Representative Mark Warden began accepting donations to his campaign through Bitcoin.63 Shortly thereafter, Vermont State Senate candidate Jeremy Hanson verified Bitcoin's use for donations to be acceptable with two Vermont offices before also accepting contributions through Bitcoin.64 Thus, it appears some politicians are willing to accept the system, at least when it comes to receiving contributions, and some state governments allow Bitcoin's use as well. Finally, on March 18, 2013, the Financial Crimes Enforcement Network ("FinCEN") issued interpretive guidance for applying FinCEN's regulations to virtual currencies.65 FinCEN primarily administers compliance with the Bank Secrecy Act (BSA), discussed in detail in Part IV of this Note.66 Though not identifying Bitcoin by name, FinCEN clearly meant to include Bitcoin under its "De-Centralized Virtual Currencies" section of the guidance.67 Some have viewed this as validating Bitcoin's legitimacy in the United States,68 but others disagree.69 Patrick Murck of the Bitcoin Foundation noted that FinCEN does not have authority to promulgate new rules without first going through the required notice and comment proceeding of the Administrative Procedures Act.70 Realistically, although FinCEN's acknowledgment of Bitcoin is promising, the guidance does little to clarify Bitcoin's legal status beyond the BSA.

Courts Solve Facial Recognition

Courts can end Facial Recognition and solve better than the aff because they can spillover

Lynch 12 (Jennifer. July 18. Staff Attorney with the Electronic Frontier Foundation. "What Facial Recognition Technology Means for Privacy and Civil Liberties" https://www.eff.org/files/filenode/jenniferlynch_eff-senate-testimony-face_recognition.pdf)

The Fourth Amendment's prohibition of unreasonable searches and seizures presents a baseline protection for governmental biometrics collection in the United States.82 Although there are significant exceptions to Fourth Amendment protections that may make it difficult to map to biometric collection such as facial recognition, 83 a recent Supreme Court case, U.S. v. Jones, 84 and a few other cases85 show that courts are concerned about mass collection of identifying information—even collection of information revealed to the public or a third party—and are trying to identify solutions. Cases like Jones suggest support for the premise that although we may tacitly consent to someone noticing our face or our movements when we walk around in public, it is unreasonable to assume that consent extends to our data being collected and retained in a database, to be subject to repeated searches for the rest of our lives. This is buttressed by important privacy research showing that even though people voluntarily share a significant amount of information about themselves with others online, they still consider much of this information to be private in that they don't expect it to be shared outside of the networks they designate.86 In United States v. Jones, 87 nine justices held that a GPS device planted on a car without a warrant and used to track a suspect's movements constantly for 28 days violated the Fourth Amendment. For five of the justices, a person's expectation of privacy in not having his movements tracked constantly—even in public—was an important factor in determining the outcome of the case.88 Justice Sotomayor would have gone even further, questioning the continued validity of the third-party doctrine (holding that people lack a reasonable expectation of privacy in data such as bank records that they share with a third-party such as the bank).89 She also recognized that: [a]wareness that the Government may be watching chills associational and expressive freedoms. And the Government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse.90 She questioned whether "people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on."91 The fact that several members of the Court were willing to reexamine the reasonable expectation of privacy test92 in light of newly intrusive technology could prove important for future legal challenges to biometrics collection. And some of the questions posed by the justices, both during oral argument and in their various opinions, **could be used as models for establishing greater protections for data like facial recognition that is both shared with a third party** such as Facebook **and gathered in public**.93

Courts can Solve Facial Recognition

Rosensept 11 (Jeffrey. 9/13. "Protect our right to Anonymity" Graduate of Yale Law School. CEO of the National Constitution Center in Philadelphia.http://www.nytimes.com/2011/09/13/opinion/protect-our-right-to-anonymity.html

IN November, the Supreme Court will hear arguments in a case that could redefine the scope of privacy in an age of increasingly ubiquitous surveillance technologies like GPS devices and face-recognition software. The case, United States v. Jones, concerns a GPS device that the police, without a valid warrant, placed on the car of a suspected drug dealer in Washington, D.C. The police then tracked his movements for a month and used the information to convict him of conspiracy to sell cocaine. The question before the court is whether this violated the Fourth Amendment to the Constitution, which prohibits unreasonable searches and seizures of our "persons, houses, papers, and effects." It's imperative that the court says yes. Otherwise, Americans will no longer be able to expect the same degree of anonymity in public places that they have rightfully enjoyed since the founding era. Two federal appellate courts have upheld the use of GPS devices without warrants in similar cases, on the grounds that we have no expectation of privacy when we are in public places and that tracking technology merely makes public surveillance easier and more effective. Photo Credit Edel Rodriguez But in a visionary opinion in August 2010, Judge Douglas H. Ginsburg, of

the United States Court of Appeals for the District of Columbia Circuit, disagreed. No reasonable person, he argued, expects that his public movements will be tracked 24 hours a day, seven days a week, and therefore we do have an expectation of privacy in the "whole" of our public movements.ə "Unlike one's movements during a single journey," Judge Ginsburg wrote, "the whole of one's movements over the course of a month is not actually exposed to the public because the likelihood anyone will observe all those movements is effectively nil."ə Judge Ginsburg realized that ubiquitous surveillance for a month is impossible, in practice, without technological enhancements like a GPS device, and that it is therefore qualitatively different than the more limited technologically enhanced public surveillance that the Supreme Court has upheld in the past (like using a beeper to help the police follow a car for a 100-mile trip).ə The Supreme Court case is an appeal of Judge Ginsburg's decision. If the court rejects his logic and sides with those who maintain that we have no expectation of privacy in our public movements, surveillance is likely to expand, radically transforming our experience of both public and virtual spaces.ə For what's at stake in the Supreme Court case is more than just the future of GPS tracking: there's also online surveillance. Facebook, for example, announced in June that it was implementing face-recognition technology that scans all the photos in its database and automatically suggests identifying tags that match images of a user's friends with their names. (After a public outcry, Facebook said that users could opt out of the tagging system.) With the help of this kind of photo tagging, law enforcement officials could post on Facebook a photo of, say, an anonymous antiwar protester and identify him.ə There is also the specter of video surveillance. In 2008, at a Google conference on the future of law and technology, Andrew McLaughlin, then the head of public policy at Google, said he expected that, within a few years, public agencies and private companies would be asking Google to post live feeds from public and private surveillance cameras all around the world. If the feeds were linked and archived, anyone with a Web browser would be able to click on a picture of anyone on any monitored street and follow his movements.ə To preserve our right to some degree of anonymity in public, we can't rely on the courts alone. Fortunately, 15 states have enacted laws imposing criminal and civil penalties for the use of electronic tracking devices in various forms and restricting their use without a warrant. And in June, Senator Ron Wyden, Democrat of Oregon, and Representative Jason Chaffetz, Republican of Utah, introduced the Geolocation Privacy and Surveillance Act, which would provide federal protection against public surveillance.ə Their act would require the government to get a warrant before acquiring the geolocational information of an American citizen or legal alien; create criminal penalties for secretly using an electronic device to track someone's movements; and prohibit commercial service providers from sharing customers' geolocational information without their consent — a necessary restriction at a time of increasing cellphone tracking by private companies.ə It's encouraging that Democrats and Republicans in Congress are coming together to preserve the expectations of anonymity in public that Americans have long taken for granted. Soon, liberal and conservative justices on the Supreme Court will have an opportunity to meet the same challenge.ə If they fail to rise to the occasion, our public life may be transformed in ways we can only begin to imagine.

Courts Solves Drones

Courts key to check drone search regulations

Thompson 13 (Richard M. Thompson II - Legislative Attorney, "Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses", http://www.a51.nl/storage/pdf/R42701.pdf, April 3rd 2013)

Applying the Fourth Amendment to drones requires application of the threshold question: was there a search? Again, this will depend on all the factors discussed above—the area of the search, the technology used, and whether society would respect the target's expectation of privacy in the place searched. If a reviewing court concludes that the drone surveillance was not a search, neither a warrant nor any degree of individualized suspicion would be required. If, however, the court concluded there was a search, then a court would ask whether a warrant is required, if one of the exceptions apply, and what level of suspicion, if any, is necessary to uphold the search. Unless a meaningful distinction can be made between drone surveillance and more traditional forms of government tracking, existing jurisprudence suggests that a reviewing court would likely uphold drone surveillance conducted with no individualized suspicion when conducted for purposes other than strict law enforcement. The Supreme Court has hesitated from interfering in what they see as the executive's function in protecting the health and safety of the American population. As Chief Justice Rehnquist noted in the Sitz, the Court does not want to transfer from politically accountable officials to the courts the decision as to which among reasonable alternative law enforcement techniques should be employed to deal with serious public danger.... [F]or purposes of Fourth Amendment analysis, the choice among such reasonable alternatives remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers.121 The Court may defer to law enforcement officials in the drone context also. There are countless instances where the government may seek to utilize drones for health and safety purposes that go beyond mere law enforcement. These may include firefighting, search and rescue missions, traffic safety enforcement, or environmental protection. If, on other hand, surveillance is conducted primarily to enforce the law, a warrant may be required, unless one of the exceptions to the warrant requirement applies.

Privacy changes are indeed possible when enacted through the supreme court

HILTNER 15 [PHILIP J. HILTNER, Judicial Law Clerk at Tuscola County Circuit Court, THE DRONES ARE COMING: USE OF UNMANNED AERIAL VEHICLES FOR POLICE SURVEILLANCE AND ITS FOURTH AMENDMENT IMPLICATIONS, WAKE FOREST JOURNAL OF LAW & POLICY, V 3:2, p.413-414, http://www.washingtontimes.com/news/2012/feb/7/coming-to-a-sky-near-you.]

First, change could come through judicial decision-making. Courts could decide to create new rules that limit the types of observations that may be made by UASs. The Supreme Court has already created reasonable protection for individuals inside the home. The Court may very well decide that individuals have a reasonable expectation of privacy from observations made only a few feet outside their windows or above their patios. However, if limitations on police UAS use are to come from the courts, change will likely be slow. If exponential growth can continue to be expected in the UAS market, police surveillance by UAS may become commonplace by the time such a case reaches the Supreme Court. As discussed above, there might be even less chance of constitutional protection as technological devices become a part of general public use.

Courts Solve

Benson 15 (5/20. Thor. Journalist. "5 Ways We Must Regulate Drones at the US Border" http://www.wired.com/2015/05/drones-at-the-border/)

"There are some long-standing court cases that basically extend the border 100 miles interior of the United States, sometimes even farther than that… but aerial surveillance isn't governed by the Fourth Amendment," Gregory McNeal, an associate professor of law at Pepperdine University, told me. In a Brookings Institute paper concerning drone surveillance, McNeal cites the 1986 U.S. Supreme Court case California v. Ciraolo that ruled warrantless surveillance by a small plane flying at an altitude of 1,000 feet was not a unreasonable search and seizure, because it was flying in "publicly navigable airspace." "There are no court cases that tell us drones should be treated differently," McNeal said. Basically, he says, agencies operating drones at the border could fly as far into the U.S. as they want.

Courts can Restrict Drone Usage

Thompson 13 (April 3. Richard M. Legislative Attorney. "Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses. https://www.fas.org/sgp/crs/natsec/R42701.pdf)

The Fourth Amendment to the United States Constitution safeguards Americans' privacy and prevents excessive government intrusion by prohibiting "unreasonable searches and seizures."7 Courts have long grappled with how to apply the text of this 18th century provision to 20th century technologies. Although the Supreme Court has the final say in the interpretation of the Fourth Amendment and other constitutional safeguards,8 Congress and, in many cases, the President are free to institute more stringent restrictions upon government surveillance operations.9 This report first explores the potential uses of drones in the domestic sphere by federal, state, and local governments. It then surveys current Fourth Amendment jurisprudence, including cases surrounding privacy in the home, privacy in public spaces, location tracking, manned aerial surveillance, and those involving the national border. Next, it considers how existing jurisprudence may inform current and proposed drone uses. It then describes the various legislative measures introduced in the 113th Congress to address the legal and policy issues surrounding drones. Finally, it briefly identifies several alternative approaches that may constrain the potential scope of drone surveillance.

Courts Can stop Drones

Bomboy 14(February 7. Scott. Professor at University of San Francisco. "A legal victory for drones warrants a Fourth Amendment discussion" http://blog.constitutioncenter.org/2014/02/a-court-victory-for-drones-warrants-a-fourth-amendment-discussion/)

Under present law, drones can be used without a search warrant. The FBI's current position on drones is that there is "no reasonable expectation of privacy" in areas of private property open to public view. That includes any portion of a yard or field that can be seen from public view. This thinking is based on Supreme Court rulings about manned aerial surveillance vehicles. If that wasn't scary enough to civil liberties groups, there are some judges who believe there is no reasonable expectation of privacy when windows are open to public view. Manhattan Judge Eileen Rakower actually ruled that artist Arne Svenson had a right to take pictures of his neighbors through their windows and sell the pictures as "art." The True Christian Heritage and Christian Ideals That Are Woven Into The Very Fabric Of The Constitution… By that legal logic, drones could be used to peer through windows without a warrant under current law. The Associated Press summed up the FBI's position best when it wrote, "The Agency also wrote that a warrant would not be needed because drones don't physically trespass on private property" – meaning, in theory, a drone flying an inch above the ground would not need a warrant to watch you. That's absolutely frightening given the advances in miniature drone technology. US Sen. Charles Grassley, R-Iowa, said earlier this summer that the "right of privacy is at stake" in the FBI's use of drones.

Supreme Court's ruling on Dow Chemical Co. v. United States proves Supreme Court doesn't protect privacy rights from aerial surveillance.

Koerner 15 [Matther R. Koerner, Law Student at Duke University, "Drones and the Fourth Amendment: Redefining Expectations of Privacy", Duke Law Journal, Vol. 64, pages 1140-1142, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3801&context=dlj]

By contrast, courts have not extended the same guarantees afforded to the home and its curtilage to areas deemed analogous to an open field.71 Open fields are not required to be either open or fields in the literal sense, but they typically fall outside of the home's curtilage.72 Accordingly, an absence or insufficiency of the enumerated factors establishing the curtilage of a home would denote an open field.73 The Court has found, for example, that a barn was located in an open field, rather than the curtilage, because the barn was fifty yards from a fence surrounding the home and sixty yards from the home, the barn was not surrounded by a fence, the barn "was not being used for intimate activities of the home," and the resident of the home "did little to protect the barn area from observation by those standing in open fields."74 Open fields do not share the same setting for private activities and information that the Fourth Amendment protects from governmental intrusions.75 Thus, a person may not expect privacy in an open field, and the government's conduct generally would not constitute a search.76 ¶ In Dow Chemical Co. v. United States, 77 the Supreme Court considered whether the curtilage or open-fields doctrine applied to the open areas between buildings on a large industrial property.78 The U.S. Environmental Protection Agency (EPA) conducted warrantless, aerial surveillance of a two-thousand-acre facility owned by Dow Chemical.79 Finding that the extensive, scattered outdoor areas of the complex were neither precisely the curtilage nor an open field,80 the Court concluded that the complex was more similar to an open field.81 Therefore, the Fourth Amendment's guarantees did not extend to these areas, and the government's actions did not constitute a search.82 ¶ The Supreme Court has recently adapted this property-rights paradigm to investigations of the home that would traditionally fall outside the trespass doctrine because they do not complete a traditional, physical trespass. This adaptation, expounded in Kyllo v. United States, 83 has extended the property-rights paradigm to certain invasive technologies in order to shelter the Fourth Amendment's guarantees from modern technology.84 This paradigm will likely play a critical role in evaluating the constitutionality of many sophisticated technologies employed by drones. In Kyllo, a federal agent, investigating whether Danny Kyllo was growing marijuana plants using heat lamps inside his home, used a thermal-imaging device from a public roadway to determine if there was an elevated amount of heat emanating from the walls of the home.85 The Supreme Court considered whether the government's use of the thermal imager constituted an unreasonable search and, more generally, "what limits there are upon [the] power of technology to shrink the realm of guaranteed privacy."86 The majority held that when the government uses sense-enhancing technology to acquire details from within "the home that could not otherwise have been obtained without physical 'intrusion into a constitutionally protected area,'" then this conduct constitutes an unreasonable search when the technology "is not in general public use."87

The courts should confront standards of privacy when dealing with drones.

Koerner 15 [Matther R. Koerner, Law Student at Duke University, "Drones and the Fourth Amendment: Redefining Expectations of Privacy", Duke Law Journal, Vol. 64, pages 1135-1136, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3801&context=dlj]

For these reasons, it is highly probable that courts will soon confront issues regarding the use of drones for domestic surveillance.30 This Note argues that when these issues arise, courts should apply the reasonable-expectation-of-privacy test expounded in Katz v. United States, 31 and, in doing so, expand on the subjective expectation-of-privacy requirement. This oft-neglected element of the two-pronged test provides critical analysis that is especially

relevant to cases involving drones. In further analyzing and clarifying the subjective-expectation requirement, courts should proceed in three steps. First, they should determine whether the surveilled person "exhibited an actual (subjective) expectation of privacy"—the threshold issue in order for the Fourth Amendment to apply.[32] Second, if the person held a subjective expectation of privacy, courts should evaluate the scope of that privacy expectation. And third, they should determine whether the person "expose[d] [information] to the 'plain view' of outsiders" and whether the evidence at issue fell within the scope of that exposure.[33]

Border Surveillance Solvency

Court decisions best attuned to border search activity

Thompson 13 (Richard M. Thompson II - Legislative Attorney, "Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses", http://www.a51.nl/storage/pdf/R42701.pdf, April 3rd 2013)

The Supreme Court has likewise acknowledged this federal interest in the borders, observing that "[t]he Government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border."73 Again, the touchstone in every Fourth Amendment case is whether the search is reasonable. 74 The Court observed in United States v. Montoya De Hernandez that "the Fourth Amendment balance of reasonableness is qualitatively different at the international border."75 "Routine searches," the Court continued, "are not subject to any requirement of reasonable suspicion, probable cause, or warrant."76 "Routine" searches have included pat downs for weapons or contraband,77 the use of drug sniffing dogs,78 and the inspection of luggage.79 By contrast, "non-routine" searches are those that go beyond a limited intrusion, and require the government official to have (at a minimum) "reasonable suspicion" of wrongdoing.80 Prolonged detentions,81 strip searches,82 and body cavity searches83 have all been considered non-routine searches. Unlike searches directly at the border, the Court has shown more reticence in granting law enforcement unfettered discretion to conduct searches near, but not directly at, the border. In Almeida-Sanchez v. United States, the defendant's vehicle was stopped and searched by U.S. Border Patrol agents 25 miles north of the U.S.-Mexico border.84 The agents had neither a warrant nor probable cause, nor even reasonable suspicion, to conduct the search. The government argued that the search was permissible under Section 287 of the Immigration and Nationality Act. A federal statute, the Court noted, cannot trump the Constitution. The Court refused to permit this suspicionless search, as it was conducted neither at the border nor at its "functional equivalent."85

The Supreme Court solves--- multiple issues of privacy violations are heading to the Supreme Court

Fakhoury 13 (Hanni Fakhoury - Senior Staff Attorney, "Finally, Some Limit to Electronic Searches at the Border", https://www.eff.org/deeplinks/2013/03/finally-some-limit-electronic-searches-border)

In an important new decision, the Ninth Circuit Court of Appeals created the first explicit limits on the government's ability to search electronic devices at the border. The court's decision in United States v. Cotterman (PDF) establishes that government agents must have "reasonable suspicion" before conducting a forensic examination of a computer at the border. In 2007, Howard Cotterman attempted to enter the United States from Mexico through the Lukeville port of entry in Arizona. Border agents detained Cotterman for 8 hours while they searched, without a warrant, two laptops and a digital camera he was carrying. Ultimately wanting to do a more invasive examination of the devices, the agents let Cotterman enter the U.S. but held onto his electronic devices and took them 170 miles away to Tucson, where they continued their warrantless search for two days. Ultimately the agents found child pornography on the computers and Cotterman was arrested and indicted. The trial court suppressed the evidence, finding the warrantless search violated the Fourth Amendment. The government appealed to a three judge panel of the Ninth Circuit who reversed (PDF), finding the search valid under the government's broad authority to search at the border without a warrant or any individualized suspicion. Cotterman asked for the entire Ninth Circuit to review the case en banc. Together with the National Association of Criminal Defense Lawyers, we filed an amicus brief (PDF) asking the court to review this dangerous precedent, which it agreed to do last summer. At issue was just how far the "border search doctrine" extends. The Fourth Amendment requires government searches to be "reasonable" and that typically means a warrant is required before the government can search. But at the border, the Supreme Court explained in United States v. Ramsey that searches are reasonable "pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country." That means at the border, no warrant or even individualized suspicion is necessary for the government to search. While the Supreme Court has hinted that this broad search authority may have limits, it has never explicitly said what those limits are other than to find body cavity searches require "reasonable suspicion" that the traveller is carrying contraband in her body, and noting that especially "destructive" or "offensive" searches

may not be allowed. What these terms mean, however, has never been explained by the high court. And while even the Ninth Circuit itself has proclaimed the border is not an "anything goes" zone, it has previously approved of expansive computer searches in United States v. Arnold. As a result of this broad searching authority, the border has become a place where electronic privacy rights are often surrendered as a cost of entering into the country. Unsurprisingly, that's exactly how the government wants it. Just weeks ago, the Department of Homeland Security issued a Civil Rights/Civil Liberties Impact Assessment on border searches of electronic devices. The report is secret — and the ACLU is suing to get it under the FOIA — but an executive summary (PDF) was released publicly. Unsurprisingly, DHS wants to retain the power to search and seize electronic devices without any suspicion of wrongdoing because even that modest requirement "would be operationally harmful without concomitant civil rights/civil liberties benefits." Thankfully, the Ninth Circuit rejected this. "A person's digital life ought not be hijacked simply by crossing a border" it wrote. Even if DHS doesn't want a "reasonable suspicion" standard for electronic searches at the border, it's now stuck with one in the Western United States (PDF), including along the Mexico-U.S. border in California and Arizona. In explaining its rationale, the Ninth Circuit noted that in the past a person could only pack a limited amount of their things in a suitcase with them before travelling abroad. But with advances in technology, people are now storing vasts amount of their personal information — data like contacts, emails, text messages, photos, financial records — on portable devices like smartphones, laptops and tablets. "It is as if a search of a person's suitcase could reveal not only what the bag contained on the current trip, but everything it had ever carried." A "reasonable suspicion" standard for forensic searches ensured travellers wouldn't be subject to a "computer strip search" every time they crossed the border. This is the first time a court has placed a limit on the government's ability to search an electronic device at the border. Cotterman does leave open one important question: what is a "forensic examination?" Does it include invasive computer searches, done with trained professionals who mirror and image the entire contents of a computer, including deleted information? Or does it also include more superficial searches, such as an officer turning on a cell phone and quickly skimming through a list of contacts or text messages? We'd like to see it include both of these types of searches. Even the simple act of scrolling through a contact list or IM chat is invasive, and shouldn't be done without some indication that criminal activity is occurring. After establishing this new rule, the court turned to determining whether officers had "reasonable suspicion" to examine Cotterman's computer. "Reasonable suspicion" means an agent has specific and articulable facts demonstrating a reasonable likelihood that criminal activity is occurring. Importantly, the court found the isolated act of password protecting files or an entire hard drive did not support a finding of "reasonable suspicion." But the rest of its "reasonable suspicion" analysis leaves much to be desired. It found "reasonable suspicion" existed because Cotterman (1) had a 15-year-old prior conviction for a sex offense; (2) travelled abroad frequently; (3) was returning from a country known for "sex tourism," Mexico; and (4) had a "collection of electronic equipment." These facts capture a large number of people and, we think, don't rise to the level of particularized suspicion legally sufficient under the law. That's why we'd prefer the more stringent "probable cause" standard, which requires law enforcement to show it is more likely than not that evidence of a crime will be found in the place to be searched. But ultimately, Cotterman is a step in the right direction towards ensuring our historic Fourth Amendment protections keep pace with modern technological advances, and an important decision in the growing challenges to the government's border search powers. It's doubtful this will be the last judicial word on the case. Cotterman's lawyer has already indicated he will likely seek Supreme Court review. And while Professor Orin Kerr has speculated that the government may not be able to seek Supreme Court review, you can be sure they're unhappy with this decision and would welcome a chance to have the high court review the case. In the meantime, people crossing the border in the Ninth Circuit's jurisdiction can breathe a small sigh of relief that their electronic privacy can't be violated as easily as it was before. And for everyone, be sure to check out our guide to protecting your electronic privacy at the border.

The Supreme Court solves border surveillance--- key to clear up disagreements in lower courts

Freiwald 9 (Susan Freiwald – BA Harvard University JD, "ELECTRONIC SURVEILLANCE AT THE VIRTUAL BORDER", http://www.olemiss.edu/depts/ncjrl/pdf/ljournal09Freiwald.pdf)

Perhaps surprisingly, the question of exactly how the Fourth Amendment regulates foreign intelligence surveillance of U.S. Persons remains unanswered by the Supreme Court. Though some decisions issued in the period after Keith and before passage of FISA assumed that the President's power over foreign affairs included the right to conduct warrantless surveillance for foreign intelligence purposes, others questioned that proposition.138 In a recent case issued by the Foreign Intelligence Surveillance Court of Review ("FISCR"), which met for the first time to consider whether the FISC had properly

found amendments made by the Patriot Act to violate the Fourth Amendment, the FISCR opined that the constitutional question about how the Fourth Amendment regulates foreign intelligence surveillance remained unresolved both before and after it issued its decision.139 The FISCR's decision addressed whether FISA's procedures adequately ensured that agents did not follow FISA standards in cases more properly pursued as law enforcement investigations regulated by the Wiretap Act.140 The FISCR concluded that the statute satisfied the Fourth Amendment, even though the new provisions permit agents to follow FISA procedures whenever significant purpose of the investigation is to gather foreign intelligence information. Before the Patriot Act amendments, agents had to show that the primary purpose, instead of a significant purpose, was to gather foreign intelligence information.141 The FISCR's decision has generated significant criticism in academia, and a federal district court has specifically rejected it.142 In Mayfield v. United States, the district court in Oregon held FISA, as amended, to be facially invalid under the Fourth Amendment because the provisions too easily permitted the executive branch to deprive a U.S. Person of full Fourth Amendment rights without a sufficient showing of probable cause.143 Whether or not the Mayfield court's analysis stands up to review, the court addressed the conditions under which executive branch agents may exile U.S. Persons and expressed concern about the adequacy of the executive's showing.144 Both the FISCR and Mayfield opinions considered whether FISA's procedures provided adequate judicial oversight of the executive's showing to justify exile. Both illustrated that the decision to exile a person has significant implications for that person's rights, and that the exiling process itself must meet constitutional standards. However, both cases may rarely, if ever, be replicated, because of the difficulties involved in challenging exiling decisions.145

Empirically the Supreme Court has been crucial in determining the constitutionality of actions at the border

Robb 78 (Gary Robb – Attorney, "WARRANTLESS BORDER SEARCHES: CROSSING THE BOUNDARY OF UNREASONABLENESS", file:///C:/Users/Jonah/Downloads/19STexLRev265.pdf)

The above series of questions probably had a great deal to do with the government's decision to drop its appeal. 7 The case was dismissed pursuant to Supreme Court Rule 60.72 In all likelihood the government lawyers feared that the authority of federal officials to search at the border would be severely curtailed, and rather than risk an iron-clad standard they opted to step out and fight the battle, instead, on the lower court level. The "probable cause equal entry" rule that has, defacto, existed since 1789 was in danger for the first time in United States v. Johnson. No other case since Johnson has come to the Supreme Court which raised the question of the constitutionality of a "border search" at the border. The Court has granted certiorari, however, to cases involving roving border patrol searches and "temporary checkpoint" searches, an area now to be examined. In Almeida-Sanchez v. United States,73 the constitutionality of "roving border searches" was in question. Almeida-Sanchez was a Mexican citizen with a valid work permit to justify his presence in the United States. As he was traveling on a public highway about twenty-five miles north of the Mexican border, he was stopped by a roving Border Patrol unit.74 Despite his possession of the permit, the agents proceeded to search the vehicle and discovered 162 pounds of marijuana. The Court of Appeals for the Ninth Circuit affirmed his conviction, reiterating the trial court's decision not to exclude the marijuana as evidence. The Supreme Court granted certiorari.7 " The government contended that Section 287(a) of the Immigration and Nationality Act which provides for warrantless searches of vehicles ''within a reasonable distance from any external boundary of the United States" justified the search and seizure of the marijuana. Justice Stewart, writing for the Court, scolded the government in stating simply that"... no act of Congress can authorize a violation of the Constitution."7 Finding no warrant and no probable cause, a 5-4 majority77 held the search to be in violation of the Fourth Amendment The effect of the decision severely eroded the power of customs officials to conduct "roving" inland border searches." The Court felt obliged to strike down "random searches" not conducted at the border with the effect that "the one-hundred mile zone is now like any other area inside the national boundaries; the agents must have probable cause to stop and search automobiles."79 Quoting Chief Justice Taft, the Court said that "those lawfully within the country, entitled to use the public highways, have a

right to free passage without interruption or search . . .,"s Though by no means bestowing Taft's "free passage" right, the Court, by having finally granted certiorari and deciding a "border search" case, at last recognized that a sizable constitutional question was in need of resolution.

NSA Courts Solvency

Courts Key to Reversing Legal Justifications that allow for Mass NSA Surveillance

Gallagher 13 (Ryan. 9/17 Journalist who reports on surveillance, security, and civil liberties. http://www.slate.com/blogs/future_tense/2013/09/17/claire_eagan_fisc_how_surveillance_court_ruled_the_nsa_s_domestic_snooping.html)

The secret court that oversees NSA surveillance has declassified documents that reveal for the first time the legal justification for the spy agency's daily collection of virtually all Americans' phone records.ð On Tuesday, a previously top-secret opinion and order signed off by Foreign Intelligence Surveillance Court Judge Claire Eagan was published. The opinion, dated Aug. 29, shows how the court decided to deem the NSA's mass collection of domestic phone records constitutional and in line with section 215 of the Patriot Act, which allows the government to secretly grab so-called "business records." The NSA's operation of a vast database storing metadata on millions of calls made by Americans daily was first revealed by the Guardian in June, based on documents leaked by former NSA contractor Edward Snowden. The release of the court opinion and order on the phone records program comes after a declassification review of the secret legal files was conducted, primarily due to the huge backlash prompted by Snowden's leaks.ð The opinion shows that the court is relying on a Supreme Court case from 1979 to conclude that the bulk collection of phone records is not a violation of the Fourth Amendment, which protects against unreasonable searches and seizures. In Smith v. Maryland, at issue was the warrantless monitoring of a robbery suspect's phone calls. The Supreme Court judges in Smith found that the monitoring was permissible because "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties" and that they doubted "people in general entertain any actual expectation of privacy in the numbers they dial." Grounded in the same logic, the newly released FISC opinion states:ð In sum, because the application at issue here concerns only the production of call detail records or "telephone metadata" belonging to a telephone company, and not the contents of communications, Smith v. Maryland compels the conclusion that there is no Fourth Amendment impediment to the collection. Furthermore, for the reasons stated in [REDACTED] and discussed above, this Court finds that that the volume of records being acquired does not alter this conclusion.ð Aside from the bizarre redaction here, which appears to have censored a crucial detail for inexplicable reasons, the reliance on Smith v. Maryland is contentious. The 1979 case concerned the monitoring of a single individual, already a criminal suspect, for a period of only a few days. The NSA's metadata program involves the daily mass collection of billions of phone records from millions of Americans not suspected of committing any crime. These records can be mined using sophisticated software that draws relationships between people, and they can be used to conduct retrospective surveillance of people dating back several years. This raises constitutional questions that were simply not a consideration in the Maryland case more than three decades ago.ð Notably, the opinion also indicates that no company that was ordered to turn over the bulk metadata has challenged its legality in the court, despite having the ability to do so. ð The publication of the legal documents will add fuel to the already simmering debate about the phone records program, which several lawmakers have blasted since it was revealed in June. According to the ACLU, there are at least 19 NSA-related bills are pending in Congress, with some of them aimed at reforming and effectively shutting down the phone records database in its current form. Last week, separately released documents about the phone records program showed how the NSA had unlawfully violated court rules governing the use of the database, while providing the court false information about how it was being operated for a period of almost three years.

Shielding

Shields the pres from Public

Even in today's no restraint society, the court has remained immune from the public

Burton, 2004 [Adam Burton, graduate of Georgetown University Law Center, PAY NO ATTENTION TO THE MEN BEHIND THE CURTAIN: THE SUPREME COURT, POPULAR CULTURE, AND THE COUNTERMAJORITARIAN PROBLEM, UMKC Law Review, 73:53, Fall 2004 JWS]

At any rate**, by the 1990s, restraint in popular culture had all but evaporated**. **In the most obvious example, the salivating media devoured and propagated the most lascivious details of the allegations put forth in the Starr Report, and President Clinton's sexual practices became a staple of popular culture, inspiring countless Saturday Night Live sketches**, Monica Lewinsky Halloween costumes (complete with stained blue dress), n92 and Monica internet fan pages, n93 to name only a few indicators of popular culture's obsession with the story. That the most intimate details of the President's encounters, and not merely the simple fact of the encounters, could be revealed in the government's official reports is a testament to the lack of regard that our popular culture holds for the privacy of public figures. While the degree of detail might have been thought of as excessive and in poor taste in earlier times, and may have inspired sympathy for the President's situation and repulsion for his attackers, the architects of the Starr Report calculated that exposing the salacious minutiae of the President's sex acts would fascinate the American public in the age of Jerry Springer. n94 And **the new tools of information technology were quickly utilized to allow the public to satisfy its desire to know**. In addition to garnering widespread [*66] television coverage, the Starr Report was available on the Internet within minutes of its official publication. n95 **The Clinton-Lewinsky scandal is the most obvious example of the exposure of the private life of a political figure, but by no means the only one. Exposure is not limited to circumstances of scandal, sexual or otherwise**. Even before the Lewinsky scandal, the private lives of the Clintons were subject to scrutiny; an audience member at a 1992 campaign speech famously asked the future President what style of underwear he preferred. n96 The inspection of the Clintons was not limited to the family's patriarch. Chelsea's braces garnered unwanted attention, even inspiring a scene in the film Beavis and Butt-Head Do America. n97 In the same vein, the arrest of President Bush's daughter, Jenna, for underage drinking also generated headlines n98 and is manifest in expressions of popular culture. n99 **How has the Supreme Court fared in an age of no restraint? If the Court's power is, as in Oz, equivalent to mystery, n100 what are the implications of this culture of exposition to the Court's ability to maintain its distance from the public, and therefore its institutional clout?** Or, if, as in Frankfurter's estimation, the Court's authority rests on its "moral sanction," can the Court retain its aura of moral righteousness when purveyors of popular culture pander to public tastes, coveting scandal, eager to expose and exaggerate the deficiencies of any public figure? **The Court has, even in our age, remained largely immune from attack in the avenues of mass visual popular culture**. Novelists and journalists have, at times, closely scrutinized, if not excoriated, the Justices and the Court as a whole. n101 Bob Woodward and Scott Armstrong examined the inner workings of the Berger Court in their best-selling non-fiction book The Brethren, n102 in which the Justices [*67] were depicted as a body of men who engaged in petty politics not only to advance their policy preferences, but also to gratify their personal jealousies. n103 Edward Lazarus published a similar tell-all expos6 of the Rehnquist Court in Closed Chambers. n104 However, **the Court as an institution has generally remained below the radar of representational popular culture and the more general audience it attracts, except in extraordinary circumstances, after which it again fades into relative obscurity.** As I will show below, the Court's decisions sometimes frame the background of fictional productions exploring controversial social issues, such as abortion or capital punishment, and the Court has as such been portrayed as a tangential "character," sometimes without ever actually "appearing" on-screen. n105 The **Court itself**, however, **rarely is depicted as a subject worthy of exploration: The real Justices rarely appear on television, in the national media, or in fictitious representation. The lack of publicity can be explained in part by the Court's protection of its anonymity. Thus, "no American institution has so . . . controlled the way it is viewed by the public," n106 although that control is neither absolute nor complete.**

The Courts are protective of the president on his decisions regardless of popularity

Federal Judicial Center, No Date

[*History of the Federal Judiciary*; http://www.fjc.gov/history/home.nsf/page/talking_ji_tp.html; Accessed on 7/31/15]

A central principle of **the United States system of government holds that judges should be able to reach decisions free from political pressure.** The **framers of the Constitution shared a commitment to judicial independence, and** they **organized the new government to ensure that federal judges would have a proper measure of independence from the executive and legislative branches. The Constitution guaranteed that judges would** serve "during good behavior" and would **be protected** from any reduction in their salaries**, thus preventing removal by a President who opposed their judicial philosophy and congressional retaliation against unpopular decisions.** These twin foundations of judicial independence were well established in the British judicial system of the eighteenth century and had been enacted by many of the new state constitutions following independence from Great Britain. But **the constitutional outline for the judiciary also ensured that the court system would always be subject to the political process and thus to popular expectations. The Constitution's provision for "such inferior courts as the Congress may from time to time ordain and establish," granted the legislative branch the most powerful voice in deciding the structure and jurisdiction of the nation's court system. The appointment of judges by the President**, with the advice and consent of the Senate, **further ensured that important aspects of the judiciary would be part of the political process. The inherent tension between provisions for judicial** independence and the elected branches' **authority to define the court system has led to recurring debates on judicial tenure and the federal courts' jurisdiction.**

Shields political capital

Court decisions shield presidents' political capital

Altmann 07(Jennifer Greenstein Altmann - assistant editor at the Princeton Weekly Bulletin, "Pillars or politicos? Whittington examines high court justices", http://www.princeton .edu/main/news/archive/S18/17/72G06/?section=featured, June 18, 2007)

In his new book, "Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court and Constitutional Leadership in U.S. History," Whittington argues that in recent years the court has become the key player in an important political tussle: Who has the final say in constitutional matters? Whittington asserts that the court has become the final arbiter, but that status did not result from a power grab by the court. Its power, remarkably, has come from politicians, who have pushed onto the court the responsibility for making final rulings on constitutional matters because, paradoxically, it benefits the politicians. "Presidents are mostly deferential to the court," said Whittington. "They have pushed constitutional issues into the courts for resolution and encouraged others to do the same. That has led to an acceptance of the court's role in these issues." It seems counterintuitive that politicians would want to defer to the court on some of the most high-stakes decisions in government, but Whittington has found that they do so because the court often rules in the ways that presidents want — and provides politicians with the political cover they need. In 1995, the Clinton administration faced a proposal from the Senate to regulate pornography on the Internet. The president thought the bill was unconstitutional, but he didn't want to risk appearing lenient on such a hot-button issue right before he was up for re-election, Whittington said. Clinton signed the legislation with the hope that the Supreme Court would strike it down as unconstitutional, which it later did.

Shields Politicians

Courts shield politicians from political backlash

Whittington 07(Keith E. Whittington, William Nelson Cromwell Professor of Politics at Princeton University and currently director of graduate studies in the Department of Politics, 2007, "Political foundations of judicial supremacy", http://press.princeton.edu/titles/8427.html)

An active and independent Court can assume the blame for advancing constitutional commitments that might have electoral costs. The relatively obscure traceability chain between elected officials and judicial action allows coalition members to simultaneously achieve certain substantive goals while publicly distancing themselves from electoral responsibility for the Court and denouncing it for its actions. Elected officials have an incentive to bolster the authority of the courts precisely in order to distance themselves from the responsibility for any of its actions. As long as the Court is acting in concert with basic regime commitments, and thus not imposing serious electoral or policy costs on pother affiliated political actions, it may enjoy substantial autonomy in interpreting those commitments.

Courts allow politicians to avoid controversial issues

Solum 05(Lawrence Solum, Professor of Law at Loyola Law School in Los Angeles, "Legal Theory Lexicon 047: The Counter-Majoritarian Difficulty" 6-19-2005 http://lsolum.typepad.com/legal_theory_lexicon/2005/06/legal_theory_le_1.html)

There is another side to this story. There may be reasons why elected politicians prefer for the Supreme Court to "take the heat" for some decisions that are controversial. When the Supreme Court acts, politicians may be able to say, "It wasn't me. It was that darn Supreme Court." And in fact, the Supreme Court's involvement in some hot button issues may actually help political parties to mobilize their base: "Give us money, so that we can [confirm/defeat] the President's nominee to the Supreme Court, who may cast the crucial vote on [abortion, affirmative action, school prayer, etc.]." In other words, what appears to be counter-majoritarian may actually have been welcomed by the political branches that, on the surface, appear to have been thwarted.

Courts rulings shield congress members from political blame

Evensky 07(Jerry Evensky, Professor of Economics Syracuse University, 2007, " Adam Smith's Moral Philosophy", http://www.und.edu/instruct/weinstei/jrweinstein%20-%20The%20Wealth%20of%20Nations%20and%20Universal%20Opulence%20-%20Evensky%20Review.pdf)

The question of why Congress has tended to devolve quasi-legislative powers to agencies and the courts remains. Plainly, institutional politics has become quite complex. Some commentators argue that members of Congress often use the agencies and the courts to avoid difficult choices and political blame. Members, according to this view, often are unable or unwilling to resolve their differences so they give up and leave legislation ambiguous or include contradictory provisions, a practice which sometimes leaves interested parties no option but to take the matter to court. Other observers note that Congress and the courts have largely been willing allies in the expansion of the federal bench into the legislative arena. Unwilling to trust agency regulators under Republican administrations. Democratic majorities in Congress repeatedly turned to the courts to help put teeth into increasingly complex and detailed legislation in the 1970s and 1980s. Yet other analysts emphasize the influence of interest groups to whom Congress and the president are responding when they approve legislation. Each of these interpretations seems to fit at least some major legislation. Members of Congress have certainly tried to use the courts when they have lacked the political support to secure policy goals through legislation. As just discussed, failed efforts by members to enforce the War Powers Resolution in the courts show the limits of enticing the courts to resolve political controversies. But Congress's tendency to draw the courts into the policy arena also reflects the cumbersome nature of legislating under divided government. Unable to procure favorable outcomes from regulators, members of Congress and organized groups have deliberately sought the assistance of the courts in battling administrations.

Court decisions facilitate policymaking without endangering political support

Miller and Barnes 04(Mark Miller, Associate Professor of Government Clark University, Making Policy, Making Law, Jeb Barnes, Assistant Professor of Political Science at the University of Southern California,http://books.google.com/books?id=cuE9Ee5KU5IC&pg=PA68&lpg=PA68&dq=%22reverence+that+the+american+public+extends+to+the+judicial+branch%22&source=bl&ots=7C6lAB5VOz&sig=hbmeL9Lkl6qajHlNhn3kAHQX_Os&hl=en&ei=k0JnSszmAomnlAf1m63dDA&sa=X&oi=book_result&ct=result&resnum=1)

ln the 1960s, the conventional wisdom among political scientists came to be that the ' federal courts in general and the U.S. Supreme Court in particular are protected from the most deadly of congressional attacks by the high respect and reverence that the American public extends to the judicial branch. ln the early 1960s, Murphy and Pritchett argued that "courts are protected by their magic; only rarely can a hand be laid on a judge without a public outcry of sacrilege" (Murphy and Pritchett 1961, 554-55). ln the late 1960s, Nagel continued this theme when he argued that milder forms of attacks on specific decisions of the Supreme Court had more chance of passing in Congress than did more frontal attacks (Nagel 1969, 277). Others argue that many in Congress actually prefer that the federal courts hand down decisions on extremely divisive issues (see, e.g., Dahl 1957; Bickel 1962; Graber 1993). As Graber explains this line of reasoning, °'Mainstream politicians may facilitate judicial policymaking in part because they have good reason to believe that the courts will announce those policies they privately favor but cannot openly endorse without endangering their political support" (1993, 43). Schubert (1960) and Miller (1995) have argued that the presence of so many lawyers in Congress also protects the courts from serious institutional attacks. Harry Stumpf summarizes this line of scholarship when he writes, "Tbe prestige or sacrosanctity argument in Congress is used and used with some effectiveness in protecting the judiciary against anti-Court legislative reaction" (Stumpf 1965, 394).

Courts shield legislators from political backlash

Whittington 07(Keith E. Whittington, William Nelson Cromwell Professor of Politics at Princeton University and currently director of graduate studies in the Department of Politics, 2007, "Political foundations of judicial supremacy", http://press.princeton.edu/titles/8427.html)

Effective political leaders find the means for achieving the policy results that they want while protecting legislators from any political backlash that might result from those policies (and

insuring that legislators reap any political rewards that might result). As Doug Arnold has explained, voters can only hold legislators accountable for their past performance if their can follow a "traceability chain" between the actions of the legislator and policy outcomes. When the policy is a popular one, legislators strive to "strengthen" the traceability chain (they engage in highly visible position taking). When the policy is unpopular, they take steps to "weaken" or "break" it. Coalition leaders can manipulate the timing of unpopular votes, for example, so that legislators need not cast too many at once or too close to an election. They can avoid putting the unpopular actions of individual legislators on record. They can bundle legislative proposals so as to avoid separate votes on unpopular items. They can create complex and indirect mechanisms for implementing unpopular policies, such as automatic cost-of-living increases for congressional salaries. They can delegate unpopular policy decisions to others, such as bureaucrats or special commissions, allowing legislators to avoid blame themselves while shifting blame to others. Position taking is fundamentally about taking actions without policy consequences. In order to take an electorally advantageous position, politicians need only posture, not achieve results. Legislators on the losing side of an issue still score political points with their constituents by taking the "right" stance, even if the policy outcome goes against the preferences of the voters. Because legislators also have policy preferences of their own, as well as longer-term concerns about how voter attitudes might be affected by real events, they cannot simply take the electorally popular position. Sometimes legislators believe taxes need to be raised despite voter hostility. If legislators could simply posture without consequence, then they could always vote against taxes, but their responsibility for policy outcomes constrains their position taking. The more pivotal a legislator's vote becomes to determining policy outcomes, then the more the value of the substantive policy outcome must be weighed against the value of the position taking. When legislators know that a president will veto a given piece of legislation, for example, they may be free to vote in favor of it in order to satisfy constituents (or perhaps, some particular group of constituents). When the threat of a presidential veto is removed, however, legislators may be forced to switch their own votes in order to prevent an undesired bill from becoming law.Independent and active judicial review generates position-taking opportunities by reducing the policy responsibility of the elected officials. They may vote in favor of a bill that they personally dislike secure in the knowledge that it will never be implemented. State statutes regulating abortion after the Roe decision, for example, were often pure symbolism, though they could also play a more productive role in pressing the Court to refine its doctrine or in filling in the lacuna left by the judicial decisions.

Theory Cards

Congress not enforced

Congress decisions are not enforced – NSA proves

Wilson R. **Huhn 2007**

(Wilson R. Huhn, Professor and Associate Director of the Constitutional Law Center at The University of Akron School of Law, Congress Has the Power to Enforce the Bill of Rigths Against the Federal Government; Therefore FISA Is Constitutional and the President's Terrorist Surveillance Program Is Illegal, Volume 12, Issue 2, Article 6, pages 537-538, http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1075&context=wmborj)

The principal point of this Article is that Congress has plenary authority to enforce the Bill of Rights against the federal government. Although this precept is a fundamental one, neither the Supreme Court nor legal scholars have articulated this point in clear, simple, and direct terms. The Supreme Court does not have a monopoly on the Bill of Rights. Congress, too, has constitutional authority to interpret our rights and to enforce or enlarge them as against the actions of the federal government**. Congress exercised its power to protect the constitutional rights of American citizens when it enacted the Foreign Intelligence Surveillance Act (FISA),** the federal law that requires the government to obtain a warrant from a special court before engaging in electronic eavesdropping for the purpose of obtaining foreign intelligence. **In spite of this law,** the National Security Agency has conducted a program of **warrantless surveillance** called the Terrorist Surveillance Program. The Attorney General made a nuanced and unique argument in support of the Terrorist Surveillance Program. He suggested that wiretapping for foreign intelligence is more central to the role of the President than it is to the role of Congress, and therefore FISA, the federal statute which requires the President to obtain warrants, is unconstitutional. In response to that argument, this Article contends that Congress has the power to enforce the Bill of Rights against the federal government and that FISA does represent an exercise by Congress of one of its core functions-to protect the rights of American citizens. The Attorney General also contended that FISA was amended by the Authorization for Use of Military Force (AUMF), adopted September 18, 2001. This point has been addressed by other legal scholars, and drawing upon their work, this Article identifies six principal reasons why the AUMF cannot be construed as either repealing or suspending the warrant requirements of FISA. Finally, the Attorney General argued that FISA is unconstitutional under a broad reading of executive power called the theory of the "unitary executive." This Article contends that this theory was rejected by the four great Justices of the Roosevelt Court, Hugo Black, William Douglas, Felix Frankfurter, and Robert Jackson, in the case of Youngstown Sheet & Tube v. Sawyer. Justice Jackson, in particular, eloquently argued that the President is subject to the rule of law. This Article also suggests that the opinion of Anthony Kennedy in Clinton v. City of New York is relevant. In that case, Justice Kennedy made "individual liberty" the centerpiece of the separation of powers analysis. The Article concludes that both the rule of law and individual liberty are served by upholding the constitutionality of FISA.

Courts are Enforced

The Executive branch obeys rulings from the Supreme Court.

Denniston 11, [Lyle Denniston, Legal Journalist, *Constitution Check: Can the president ignore Supreme Court rulings?,* Constitution Daily, http://blog.constitutioncenter.org/2011/10/constitution-check-can-the-president-ignore-supreme-court-rulings/]

Presidents in general have tended to see it as their duty to obey Supreme Court rulings, and, at times, even to enforce them. For example, President Dwight Eisenhower called out the military in 1957 to enforce the Supreme Court's order to racially integrate the Little Rock, Ark., public schools. Eisenhower told the nation: "Whenever normal agencies prove inadequate to the task and it becomes necessary for the Executive Branch of the Federal Government to use its powers and authority to uphold Federal Courts, the President's responsibility is inescapable." The Gingrich comment might be understood in a way that he did not explicitly mention: as an argument in favor of allowing each of the three branches of the government to decide for itself what the limits of the Constitution are as they apply specifically to that branch's powers. A year after the Little Rock crisis, the Supreme Court reinforced the duty to desegregate those schools and others in the Deep South. In doing so, it issued what is probably its most fervent claim to have the last word on the Constitution's meaning. Citing Marbury v. Madison (1803) and its comment that it is the judiciary that is to "say what the law is," the Court in the Cooper case remarked that the Marbury decision "declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution…[That] is a permanent and indispensable feature of our constitutional system." Although Abraham Lincoln, before he became president, was already deeply troubled about the Supreme Court's Dred Scott decision enforcing slavery, he said in a Springfield, Ill., speech within weeks after that ruling in 1857: "We think [the Court's] decisions on constitutional questions, when fully settled, should control, not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution." Candidate Gingrich has made clear that his suggestion that the Supreme Court be ignored was aimed, in its most vigorous form, at two decisions by the Justices: the 2004 decision in Hamdan v. Rumsfeld striking down President George W. Bush's military commission plan for Guantanamo detainees, and its 2008 decision in Boumediene v. Bush, allowing Guantanamo detainees a constitutional right to challenge their detention in a federal habeas corpus court. President Bush, though unhappy with both, offered no resistance to either. The Gingrich comment might be understood in a way that he did not explicitly mention: as an argument in favor of allowing each of the three branches of the government to decide for itself what the limits of the Constitution are as they apply specifically to that branch's powers. That is called the theory of "departmentalism," and it can be traced all the way back to Thomas Jefferson. It is plain, though, that the current Supreme Court does not accept that theory, and that, of course, is at the heart of Mr. Gingrich's complaint.

CIRCUMVENTION

Yes Circumvention

Megan/Jonathan/Sukriti/Anshul/Joanna/Eric

Federal

President

Executive will circumvent the NSA- FDR wire tapping proves

Katyal and Caplan 08 ("The Surprisingly Stronger Case for the Legality of the NSA Surveillance Program: FDR Precendent, http://scholarship.law.georgetown.edu /cgi/viewcontent.cgi?article=1058&context=fwps_papers, accessed 7-15-2015, EHS MKS)

This Article explains why **the legal case** for the recently disclosed **National Security Agency surveillance program turns out to be stronger than what the Administration has advanced.** In defending its action, **the Administration overlooked the details surrounding one of the most important periods of presidentially imposed surveillance in wartime—President Franklin Delano Roosevelt's (FDR) wiretapping and his secret end-run around both the wiretapping prohibition enacted by Congress and decisions of the United States Supreme Court.** In our view, the argument does not quite carry the day, but it is a much heftier one than those that the Administration has put forth to date to justify its NSA program. The secret history, moreover, serves as a powerful new backdrop against which to view today's controversy. In general, **we believe that compliance with executive branch precedent is a critical element in assessing the legality of a President's actions during a time of armed conflic**t. **In the crucible of legal questions surrounding war and peace, few judicial precedents will provide concrete answers. Instead, courts will tend to invoke the political question doctrine or other prudential canons to stay silent; and even in those cases where they reach the merits, courts will generally follow a minimalist path.** For these and other reasons, the ways in which past Presidents have acted will often be a more useful guide in assessing the legality of a particular program, **as Presidents face pressures on security unimaginable to any other actor outside or inside government**. At the same time as Presidents realize these pressures, they are under an oath to the Constitution, and so the ways in which they balance constitutional governance and security threats can and should inform practice today

Executive has circumvented Surveillance- no proof it wont happen again

Eric **Sandberg-Zakian** 20**11** (L/N-Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 491, "Beyond Guantanamo: Two Constitutional Objections to Nonmilitary Preventive Detention", Covington & Burling, LLP, Washington, D.C. J.D. Yale Law School, 2010. B.A. Yale University, 2007, Accessed 7/15/15, EHS MKS)

At home, no less than abroad, **the state turned its massive resources to preventing terrorist attacks**. Just **months after September 11th**, for example, **Congress had already overhauled the federal government's counterterrorism powers with the USA PATRIOT Ac**t, [n41] the Department of Justice had announced that it would shift its focus from crime prosecution to terrorism prevention, [n42] and President George W. **Bush** had **ordered the National Security Agency to conduct electronic surveillance of certain U.S. persons without first obtaining a court order, circumventing the Foreign Intelligence Surveillance Act**. [n43] Congress continued its restructuring of the executive branch's national security wing, creating the Department of [*501] Homeland Security in 2002 n44 and the Office of the Director of National Intelligence in 2005. n45

Obama circumvents all the time- 7 specific times

Amy **Payne** 20**14 (**"7 Times Obama Ignored the Law to Impose His Executive Will, February 14, 2014, http://dailysignal.com/2014/02/14/7-times-obama-ignored-law-impose-executive-will/, Accessed 7/15/15, EHS MKS)

President Obama—the imperial President, the "I've got a pen and I've got a phone" President who can't wait to show us his "year of action"—once vowed to do exactly the opposite. The biggest problems that we're facing right now have to do with George Bush trying to bring more and more power into the executive branch and not go through Congress at all. And that's what I intend to reverse when I'm President of the United States of America. That was candidate Obama back in 2008. This comment somehow slipped under the radar for the past few years and resurfaced this week. Proving the absurdity of this campaign promise, Heritage's legal experts have put together a list of seven illegal actions the Obama Administration has taken in the President's unilateral drive for executive power. **If it seems like there should be more than seven, you're on to something**. It's more complicated than you think to tell what's illegal or unconstitutional when it comes to presidential power. Heritage's Elizabeth Slattery and Andrew Kloster explain: While it might not be possible to define in all instances precisely when an action crosses the line and falls outside the scope of the President's statutory or constitutional authority, what follows is a list of

unilateral actions taken by the Obama Administration that we think do cross that line. **1. Delaying Obamacare's employer mandate** The Administration announced that Obamacare won't be implemented as it was passed, so employers with 50 or more employees don't have to provide the mandated health coverage for at least another year (and longer if they play their cards right). Slattery and Kloster observe that "The law does not authorize the President to push back the employer mandate's effective date." **2. Giving Congress and their staffs special taxpayer-funded subsidies for Obamacare** It was uncomfortable for Members of Congress when they realized that, through Obamacare, they had kicked themselves and their staffs out of the taxpayer-funded subsidies they were enjoying for health coverage. But the Administration said no problem and gave them new subsidies. In this case, "the Administration opted to stretch the law to save Obamacare—at the taxpayers' expense." 3. **Trying to fulfill the "If you like your plan, you can keep it" promise—after it was broken** When Americans started getting cancellation notices from their insurance companies because Obamacare's new rules were kicking in, the President's broken promise was exposed. He tried to fix things by telling insurance companies to go back to old plans that don't comply with Obamacare—just for one year. Slattery and Kloster note that "The letter announcing this non-enforcement has no basis in law." **4. Preventing layoff notices from going out just days before the 2012 election** There's a law that says large employers have to give employees 60 days' notice before mass layoffs. And layoffs were looming due to federal budget cuts in 2012. But the Obama Administration told employers to go against the law and not issue those notices—which would have hit mailboxes just days before the presidential election. The Administration "also offered to reimburse those employers at the taxpayers' expense if challenged for failure to give that notice." **5. Gutting the work requirement from welfare reform** The welfare reform that President Bill Clinton signed into law in 1996 required that welfare recipients in the Temporary Assistance for Needy Families program work or prepare for work to receive the aid. The Obama Administration essentially took out that requirement by offering waivers to states, even though the law expressly states that waivers of the work requirement are not allowed. "Despite [the law's] unambiguous language, the Obama Administration continues to flout the law with its 'revisionist' interpretation," write Slattery and Kloster. **6. Stonewalling an application for storing nuclear waste at Yucca Mountain** This was another case where the Administration simply refused to do what was required by law. An application was submitted for nuclear waste storage at Yucca Mountain, but "Despite the legal requirement, the Obama Administration refused to consider the application." **7. Making "recess" appointments that were not really recess appointments** Slattery and Kloster explain that "In January 2012, President Obama made four 'recess' appointments to the National Labor Relations Board (NLRB) and Consumer Financial Protection Bureau, claiming that, since the Senate was conducting only periodic pro forma sessions, it was not available to confirm those appointees." The catch: The Senate wasn't in recess at the time. Courts have since struck down the appointments, but the illegitimate appointees already moved forward some harmful policies.

Executive circumvented FISA once- no proof that it won't happen again

NYT 07 ("Spies, Lies and FISA", October 14 2007, http://www.nytimes.com/2007/10/14/opinion/14sun1.html?_r=0, Accessed 7/16/15)

As Democratic lawmakers try to repair a deeply flawed bill on electronic eavesdropping, the White House is pumping out the same fog of fear and disinformation it used to push the bill through Congress this summer. President Bush has been telling Americans that any change would deny the government critical information, make it easier for terrorists to infiltrate, expose state secrets, and make it harder "to save American lives." There is no truth to any of those claims. No matter how often Mr. Bush says otherwise, there is also no disagreement from the Democrats about the need to provide adequate tools to fight terrorists. The debate is over whether this should be done constitutionally, or at the whim of the president. The 1978 Foreign Intelligence Surveillance Act, **or FISA, requires a warrant to intercept international communications involving anyone in the United States**. A secret court has granted these warrants quickly nearly every time it has been asked. **After 9/11, the Patriot Act made it even easier to conduct surveillance, especially in hot pursuit of terrorists.** But that was not good enough for the Bush team, which was determined to use the nation's tragedy to grab ever more power for its vision of an imperial presidency. Mr. **Bush ignored the FISA law and ordered the National Security Agency to intercept phone calls and e-mail between people abroad and people in the United States without a warrant, as long as "the target" was not in this country. The president did not announce his decision**. He allowed a few lawmakers to be briefed but withheld key documents. **The special intelligence court was in the dark until The Times disclosed the spying in December 2005.** Mr. **Bush still refused to stop. He claimed that FISA was too limiting for the Internet-speed war against terror.** But he never explained those limits and rebuffed lawmakers' offers to legally accommodate his concerns. This year, **the administration found an actual problem with FISA: It requires a warrant to eavesdrop on communications between foreigners that go through computers in the United States**. It was a problem that did not exist in 1978, and it had an easy fix. But Mr. Bush's lawyers tacked dangerous additions onto a bill being rushed through Congress before the recess. When the smoke cleared, Congress had fixed the real loophole, but also endorsed the idea of spying without court approval. It gave legal cover to more than five years of illegal spying. Fortunately, the law is to expire in February, and some Democratic legislators are trying to fix it. House members have drafted a bill, which is a big improvement but still needs work. The Senate is working on its bill, and we hope it will show the courage this time to restore the rule of law to American surveillance programs. There are some red lines, starting with the absolute need for court supervision of any surveillance that can involve American citizens or others in the United States. The bill passed in August allowed the administration to inform the FISA court about its methods and then issue blanket demands for data to communications companies without any further court approval or review. The House bill would permit the government to conduct surveillance for 45 days before submitting it to court review and

approval. (Mr. Bush is wrong when he says the bill would slow down intelligence gathering.) After that, ideally, the law would require a real warrant. If Congress will not do that, at a minimum it must require spying programs to undergo periodic audits by the court and Congress. The administration wants no reviews. Mr. Bush and his team say they have safeguards to protect civil liberties, meaning surveillance will be reviewed by the attorney general, the director of national intelligence and the inspectors general of the Justice Department and the Central Intelligence Agency. There are two enormous flaws in that. The Constitution is based on the rule of law, not individuals; giving such power to any president would be un-American. And this one long ago showed he cannot be trusted. Last week, The Times reported that the C.I.A. director, Gen. Michael V. Hayden, is investigating the office of his agency's inspector general after it inquired into policies on detention and interrogation. This improper, perhaps illegal investigation sends a clear message of intimidation. We also know that the F.B.I. has abused expanded powers it was granted after 9/11 and that the former attorney general, Alberto Gonzales, systematically covered up the president's actions with deliberately misleading testimony. **Mr. Bush says the law should give immunity to communications companies that gave data to the government over the last five years without a court order. He says they should not be punished for helping to protect America, but what Mr. Bush really wants is to avoid lawsuits that could uncover the extent of the illegal spying he authorized after 9/11.** It may be possible to shield these companies from liability, since the government lied to them about the legality of its requests. But the law should allow suits aimed at forcing disclosure of Mr. Bush's actions. It should also require a full accounting to Congress of all surveillance conducted since 9/11. And it should have an expiration date, which the White House does not want. Ever since 9/11, we have watched Republican lawmakers help Mr. Bush shred the Constitution in the name of fighting terrorism. We have seen Democrats acquiesce or retreat in fear. It is time for that to stop.

The executive can circumvent via national security letters

Sanchez 15

(Julian Don't (Just) Let the Sun Go Down on Patriot Powers, May 29, 2015, http://motherboard.vice.com/read/dont-just-let-the-sun-go-down-on-patriot-powers)

Also permanent are National Security Letters or NSLs, which allow the FBI to obtain a more limited range of telecommunications and financial records without even needing to seek judicial approval. Unsurprisingly, the government loves these streamlined tools, and used them so promiscuously that the FBI didn't even bother using 215 for more than a year after the passage of the Patriot Act. Inspector General reports have also made clear that the **FBI is happy to substitute NSLs for 215 orders** when even the highly accommodating FISC manages a rare display of backbone. In at least one case, when the secret court refused an application for journalists' records on First Amendment grounds, the Bureau turned around and **obtained the same data** using National Security Letters.

The president fails –trumanites write their own orders

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

Put differently, the question whether the President could institute a complete about-face supposes a top-down policy-making model. The illusion that presidents issue orders and that subordinates simply carry them out is nurtured in the public imagination by media reports of "Obama's" policies or decisions or initiatives, by the President's own frequent references to "my" directives or personnel, and by the Trumanites own reports that the President himself has "ordered" them to do something. But true top-down decisions that order fundamental policy shifts are rare.369 The reality is that when the President issues an "order" to the Trumanites, the Trumanites themselves normally formulate the order.370 The Trumanites "cannot be thought of as men who are merely doing their duty. They are the ones who determine their duty, as well as the duties of those beneath them. They are not merely following orders: they give the orders."371 They do that by "entangling"372 the President. This dynamic is an aspect of what one scholar has called the "deep structure" of the presidency.373 As Theodore Sorensen put it,

"Presidents rarely, if ever, make decisions—particularly in foreign affairs—in the sense of writing their conclusions on a clean slate . . . . [T]he basic decisions, which confine their choices, have all too often been previously made."374

Justice Douglas, a family friend of the Kennedys, saw the Trumanites' influence first-hand: "In reflecting on Jack's relation to the generals, I slowly realized that the military were so strong in our society that probably no President could stand against them."375 As the roles of the generals and CIA have converged, the CIA's influence has expanded—aided in part by a willingness to shade the facts, even with sympathetic Madisonian sponsors. A classified, 6,000-word report by the Senate Intelligence Committee reportedly concluded that the CIA was "so intent on justifying extreme interrogation techniques that it blatantly misled President George W. Bush, the White House, the Justice Department and the Congressional intelligence committees about the efficacy of its methods."376 "The CIA gets what it wants," President Obama told his advisers when the CIA asked for authority to expand its drone program and launch new paramilitary operations.377

Sometimes, however, the Trumanites proceed without presidential approval. In 1975, a White House aide testified that the White House "didn't know half the things" intelligence agencies did that might be legally questionable.378 "If you have got a program going and you are perfectly happy with its results, why take the risk that it might be turned off if the president of the United States decides he does not want to do it," he asked.379 Other occasions arise when Trumanites in the CIA and elsewhere originate presidential "directives"—directed to themselves.380 Presidents then ratify such Trumanite policy initiatives after the fact.381 To avoid looking like a bystander or mere commentator, the President embraces these Trumanite policies, as does Congress, with the pretense that they are their own.382 To maintain legitimacy, the President must appear to be in charge. In a narrow sense, of course, Trumanite policies are the President's own; after all, he did formally approve them.383 But the policies ordinarily are formulated by Trumanites—who prudently, in Bagehot's words, prevent "the party in power" from going "all the lengths their orators propose[]."384 The place for presidential oratory, to the Trumanites, is in the heat of a campaign, not in the councils of government where cooler heads prevail.385

The idea that presidential backbone is all that is needed further presupposes a model in which the Trumanites share few of the legitimacy conferring features of the constitutional branches and will easily submit to the President. But that supposition is erroneous. Mass entertainment glorifies the military, intelligence, and law enforcement operatives that the Trumanites direct. The public is emotionally taken with the aura of mystery surrounding the drone war, Seal Team Six, and cyber-weapons. Trumanites, aided by Madisonian leaks, embellish their operatives' very real achievements with fictitious details, such as the killing of Osama bin Laden386 or the daring rescue of a female soldier from Iraqi troops.387 They cooperate with the making of movies that praise their projects, like Zero Dark Thirty and Top Gun, but not movies that lampoon them, such as Dr. Strangelove (an authentic F-14 beats a plastic B-52 every time).388 Friendly fire incidents are downplayed or covered up.389 The public is further impressed with operatives' valor as they are lauded with presidential and congressional commendations, in the hope of establishing Madisonian affiliation.390 Their simple mission—find bad guys and get them before they get us—is powerfully intelligible. Soldiers, commandos, spies, and FBI agents occupy an honored pedestal in the pantheon of America's heroes. Their secret rituals of rigorous training and preparation mesmerize the public and fortify its respect. To the extent that they are discernible, the Trumanites, linked as they are to the dazzling operatives they direct, command a measure of admiration and legitimacy that the Madisonian institutions can only envy.391 Public opinion is, accordingly, a flimsy

check on the Trumanites; it is a manipulable tool of power enhancement. It is therefore rarely possible for any occupant of the Oval Office to prevail against strong, unified Trumanite opposition, for the same reasons that members of Congress and the judiciary cannot; a non-expert president, like a non-expert senator and a non-expert judge, is intimidated by expert Trumanites and does not want to place himself (or a colleague or a potential political successor) at risk by looking weak and gambling that the Trumanites are mistaken. So presidents wisely "choose" to go along.

The president can't control drone policy

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

The drone policy has been a case in point. Nasr has described how the Trumanite network not only prevailed upon President Obama to continue its drone policy but succeeded in curtailing discussion of the policy's broader ramifications:

When it came to drones there were four formidable unanimous voices in the Situaton Room: the CIA, the Office of the Director of National Intelligence, the Pentagon, and the White House's counterterrorism adviser, John Brennan. Defense Secretary Robert Gates . . . was fully supportive of more drone attacks. Together, Brennan, Gates, and the others convinced Obama of both the urgency of counterterrorism and the imperative of viewing America's engagement with the Middle East and South Asia through that prism. Their bloc by and large discouraged debate over the full implications of this strategy in national security meetings.392

Executive Branch - Generic

Government officials will continue surveillance regardless and even if <INSERT PIAN ACTOR> stops surveillance, other agencies are capable of replacing that actor

Bernstein, 2015

(Leandra is an author for a world renowned news organization called Sputnik. The article cites a former FBI agent disclosure. "Former FBI agent: Government Likely to Continue Domestic Surveillance" http://sputniknews.com/us/20150703/1024143850.html#ixzz3fsjk9IPBhttp://sputniknews.com/us/20150703/1024143850.htmlFormer Date Accessed- 7/14/15. Anshul Nanda.)

Federal Bureau of Investigation agent Coleen Rowley **claims** that the **US government will likely continue its pattern of domestic surveillance**.¶ WASHINGTON (Sputnik), Leandra Bernstein — The US government will likely continue its pattern of domestic surveillance following the Monday court ruling to temporarily extend bulk data collection, whistleblower and former Federal Bureau of Investigation agent Coleen Rowley told Sputnik.¶ "I think, **if the past is any predictor of the future,** that U**S government officials will find yet another way around any legal restrictions** to continue their 'Total Information Awareness' project," Rowley said.¶ On Monday, the **Foreign Information Surveillance Act (FISA) Court issued a ruling upholding the National Security Agency (NSA) to continue bulk collection of metadata**, a program that was supposed to be ended with the passage of the USA Freedom Act in May 2015.¶ The ruling was based on a motion filed by civil libertarian groups demanding an immediate end to the metadata collection program, which was deemed unconstitutional by a US federal appeals court in May 2015.¶ Asked what the Monday ruling means for the future of government surveillance reform, Rowley stated, "I think the Judge [Michael Mosman] probably answered this in his 'Plus ca change, plus c'est la meme chose' [the more things change, the more they stay the same] quote."¶ The new portion of the classified files published by The Intercept now reveals how easily it can be done: "as easy as typing a few words in Google."¶ © FLICKR/ DON HANKINS¶ NSA Spies Can Hack Any Computer in 'A Few Mouse Clicks'¶ The FISA decision to take advantage of the five-month period to continue mass surveillance did not come as a surprise "based on the past record of illegal government spying," Rowley explained.¶ The FISA Court authorizes surveillance carried out by the US intelligence community. The Court is permitted to operate in secret, due to the classified activity it oversees.¶ Following the September 11, 2001 terrorist attacks, the George W. Bush administration proposed the implementation of a massive data-mining program called the Total Information Awareness.¶ The program was **developed by the Department of Defense research agency to be capable of analyzing private communications, commercial transactions and other data domestically and abroad in order to identify and classify potential terrorist threats**.¶ While the program was never officially implemented, **multiple programs across the intelligence community accomplished a similar effect**, as was revealed in classified documents leaked by NSA whistleblower Edward Snowden in 2013.¶ Read more: http://sputniknews.com/us/20150703/1024143850.html#ixzz3fsinxkHH

Agencies circumvent power that was given to them through the Congress all the time

Ackerman, 2015

(Spencer Ackerman is an editor/ reporter for the US News in New York. Full Date: June 1, 2015. "Fears NSA will seek to undermine surveillance reform; Privacy advocates are wary of covert legal acrobatics from the NSA similar to those deployed post-9/11 to circumvent congressional authority" http://www.lexisnexis.com/hottopics/lnacademic/. Date Accessed- 7/15/15. Anshul Nanda)

Privacy advocates fear the **National Security Agency** will attempt to **weaken new restrictions** on the **bulk collection of Americans' phone and email records with a barrage of creative legal wrangles**, as the first major reform of US surveillance powers in a generation looked likely to be a foregone conclusion on Monday.¶ Related: Bush-era surveillance powers expire as US prepares to roll back NSA power¶ The USA Freedom Act, a bill banning the NSA from collecting US phone data in bulk and compelling disclosure of any novel legal arguments for widespread surveillance before a secret court, has already been passed by the House of Representatives and on Sunday night the Senate voted 77 to 17 to proceed to debate on it. Between that bill and a landmark recent ruling from a federal appeals court that rejected a longstanding government justification for bulk surveillance, civil libertarians think they stand a chance at stopping attempts by intelligence lawyers to undermine reform in secret.¶ Attorneys for the intelligence agencies react scornfully to the suggestion that they will stretch their authorities to the breaking point. Yet reformers remember that such legal tactics during the George W Bush administration allowed the NSA to shoehorn bulk phone records collection into the Patriot Act.¶ Rand Paul, the Kentucky senator and Republican presidential candidate who was key to allowing sweeping US surveillance powers to lapse on Sunday night, warned that NSA lawyers would now make mincemeat of the USA Freedom Act's prohibitions on bulk phone records collection by taking an expansive view of the bill's definitions, thanks to a pliant, secret surveillance court.¶ "**My fear, though, is that the people who interpret this work at a place known as the rubber stamp factory, the Fisa [court]**," Paul said on the Senate floor on Sunday.¶ Paul's Democratic ally, Senator Ron Wyden, warned the intelligence agencies and the Obama administration against attempting to unravel NSA reform.¶ "My time on the **intelligence committee has taught me to always be vigilant for secret**

interpretations of the law and new surveillance techniques that Congress doesn't know about," Wyden, a member of the intelligence committee, told the Guardian.¶ "Americans were rightly outraged when they learned that **US intelligence agencies relied on secret law to monitor millions of law-abiding US citizens.** The **American people are now on high alert for new secret interpretations of the law, and intelligence agencies and the Justice Department would do well to keep that lesson in mind."**¶ The USA Freedom Act is supposed to prevent what Wyden calls " secret law ". It contains a provision requiring congressional notification in the event of a novel legal interpretation presented to the secret Fisa court overseeing surveillance.¶ Yet in recent memory, the **US government permitted the NSA to circumvent the Fisa court entirely. Not a single Fisa court judge was aware of Stellar Wind, the NSA's post-9/11 constellation of bulk surveillance programs**, from 2001 to 2004.¶ Energetic legal tactics followed to fit the programs under existing legal authorities after internal controversy or outright exposure. When the **continuation of a bulk domestic internet metadata collection program risked the mass resignation of Justice Department officials in 2004**, an internal NSA draft history records that attorneys found a different legal rationale that " essentially gave NSA the same authority to collect bulk internet metadata that it had ".¶ After a New York Times story in 2005 revealed the existence of the bulk domestic phone records program, attorneys for the US Justice Department and NSA argued, with the blessing of the Fisa court, that Section 215 of the Patriot Act authorized it all along - precisely the contention that the second circuit court of appeals rejected in May.¶ Despite that recent history, veteran intelligence attorneys reacted with scorn to the idea that **NSA lawyers will undermine surveillance reform.** Robert Litt, the senior lawyer for director of national intelligence, James Clapper, said during a public appearance last month that creating a banned bulk surveillance program was " not going to happen ".¶ "The whole notion that NSA is just evilly determined to read the law in a fashion contrary to its intent is bullshit, of the sort that the Guardian and the left - but I repeat myself - have fallen in love with. The interpretation of 215 that supported the bulk collection program was creative but not beyond reason, and it was upheld by many judges," said the former NSA general counsel Stewart Baker, **referring to Section 215 of the Patriot Act.**¶ This is the **section that permits US law enforcement** and **surveillance agencies to collect business records and expired at midnight,** almost two years after the whistleblower Edward Snowden revealed to the Guardian that the Patriot Act was secretly being used to justify the collection of phone records from millions of Americans.¶ With one exception, the judges that upheld the interpretation sat on the non-adversarial Fisa court, a body that approves nearly all government surveillance requests and modifies about a quarter of them substantially. The exception was reversed by the second circuit court of appeals.¶ Baker, speaking before the Senate voted, predicted: "I don't think anyone at NSA is going to invest in looking for ways to defy congressional intent if USA Freedom is adopted."¶ The USA Freedom Act**, a compromise bill, would not have an impact on the vast majority of NSA surveillance**. **It would not stop any overseas-focused surveillance program, no matter how broad in scope, nor would it end the NSA's dragnets of Americans' international communications authorized by a different law**. Other bulk domestic surveillance programs, like the one the **Drug Enforcement Agency operated, would not be impacted.**¶ The rise of what activists have come to call "bulky" surveillance, like the "large collections" of Americans' electronic communications records the FBI gets to collect under the Patriot Act, continue unabated - or, at least, will, once the USA Freedom Act passes and restores the Patriot Act powers that lapsed at midnight on Sunday.¶ Related: FBI used Patriot Act to obtain 'large collections' of Americans' data, DoJ finds¶ That collection, recently confirmed by a largely overlooked Justice Department inspector general's report, points to a slipperiness in shuttering surveillance programs - one that creates opportunities for clever lawyers.¶ The Guardian revealed in 2013 that Barack Obama had permitted the NSA to collect domestic internet metadata in bulk until 2011. Yet even as Obama closed down that NSA program, the Justice Department inspector general confirms that by 2009, the **FBI was already collecting the same "electronic communications" metadata under a different authority.**¶ It is unclear as yet how the **FBI transformed that authority, passed by Congress** for the collection of "business records", into large-scale collection of Americans' email, text, instant message, internet-protocol and other records. And a **similar power to for the FBI gather domestic internet metadata, obtained through non-judicial subpoenas called "National Security Letters"**, also exists in a different, non-expiring part of the Patriot Act.¶ Jameel Jaffer, the deputy legal director of the ACLU, expressed confidence that the second circuit court of appeals' decision last month would effectively step into the breach. The panel found that legal authorities permitting the collection of data "relevant" to an investigation cannot allow the government to gather data in bulk - setting a potentially prohibitive precedent for other bulk-collection programs.¶ "We don't know what kinds of bulk-collection programs the government still has in place, but in the past it's used authorities other than Section 215 to **conduct bulk collection of internet metadata, phone records, and financial records. If similar programs are still in place, the ruling will force the government to reconsider them, and probably to end them**," said Jaffer, whose organization brought the suit that the second circuit considered.¶ Julian Sanchez, a surveillance expert at the Cato Institute, was more cautious.¶ "The second circuit ruling establishes that a 'relevance' standard is not completely unlimited - it doesn't cover getting hundreds of millions of people's records, without any concrete connection to a specific inquiry - but doesn't provide much guidance beyond that as to where the line is," Sanchez said.¶ "I wouldn't be surprised if the government argued, in secret, that nearly anything short of that scale is still allowed, nor if the same Fisa court that authorized the bulk telephone program, in defiance of any common sense reading of the statutory language, went along with it."¶

Curtailing surveillance in specific areas will just cause agencies to literally surveil areas outside/around it- mosque surveillance tactics prove

Goldman et. al, 12

(Adam and Matt are editors for the Associated Press. "NYPD Defends Tactics Over Mosque Spying; Records Reveal New Details On Muslim Surveillance." http://www.huffingtonpost.com/2012/02/24/nypd-defends-tactics-over_n_1298997.html. Date Accessed- 7/13/15. Anshul Nanda)

NEW YORK -- **The New York Police Department targeted Muslim mosques with tactics normally reserved for criminal organizations**, according to newly obtained police documents that showed police collecting the **license plates of worshippers, monitoring them on surveillance cameras and cataloging sermons** through a network of informants.¶ The documents, obtained by The Associated Press, have come to light as the **NYPD fends off criticism of its monitoring of Muslim student groups and its cataloging of mosques and Muslim businesses in nearby Newark, N.J.**The NYPD's spokesman, Paul Browne, forcefully defended the legality of those efforts Thursday, telling reporters that its officers may go wherever the public goes and collect intelligence, even outside city limits.¶ The new documents, prepared for Police Commissioner Raymond Kelly, show how the NYPD's roster of **paid informants monitored conversations and sermons inside mosques. The records offer the first glimpse of what those informants, known informally as "mosque crawlers," gleaned from inside the houses of** worship.¶ For instance, when a Danish newspaper published inflammatory cartoons of Prophet Muhammad in September 2005**, Muslim communities around the world erupted in outrage. Violent mobs took to the streets in the Middle East.** A Somali man even broke into the cartoonist's house in Denmark with an ax.¶ In New York, thousands of miles away, it was a different story. Muslim leaders preached peace and urged people to protest lawfully. Write letters to politicians, they said. Some **advocated boycotting Danish products, burning flags and holding rallies**.¶ All of that was permissible under law and protected by the First Amendment to the Constitution. All was reported to the **NYPD by its mosque crawlers and made its way into police files for Kelly.**¶ "Imam Shamsi **Ali brought up the topic of the cartoon, condemning them.** He announced a rally that was to take place on Sunday (02/05/06) near the United Nations. He asked that everyone to attend if possible and reminded everyone to keep their poise if they can make it," one report read.¶ At the Muslim Center of New York in Queens, the report said, "Mohammad Tariq Sherwani led the prayer service and urged those in attendance to participate in a demonstration at the United Nations on Sunday."¶ **When one Muslim leader suggested planning a demonstration**, one of the people involved in the discussion about how to get a permit was, in fact, working for the NYPD.¶ **"It seems horrible to me that the NYPD is treating an entire religious community as potential terrorists**," said civil rights lawyer Jethro Eisenstein, who reviewed some of the documents and is involved in a decades-old class-action lawsuit against the police department for spying on protesters and political dissidents.¶ The **lawsuit is known as the Handschu case, and a court order in that case governs how the NYPD may collect intelligence**.¶ Eisenstein said the documents prove the NYPD has violated those rules.¶ "This is a flat-out violation," Eisenstein said. "This is a smoking gun."¶ Browne, the NYPD spokesman, did not discuss specific investigations Thursday but told reporters that, because of the Handschu case, the NYPD operates under stricter rules than any other department in the country. He said police do not violate those rules.¶ His statements were intended to calm a controversy over a 2007 operation in which the NYPD mapped and photographed all of Newark's mosques and eavesdropped on Muslim businesses. Newark Mayor Cory Booker said he was never told about the surveillance, which he said offended him.¶ Booker and his police director accused the NYPD of misleading them by not revealing exactly what they were doing. Had they known, they said it never would have been permitted. But Browne said Newark police were told before and after the operation and knew exactly what it entailed.¶ Kelly, **the police commissioner, and Mayor Michael Bloomberg have been emphatic that police only follow legitimate leads of criminal activity and** do not **conduct preventive surveillance in ethnic communities**.¶ Former and current law enforcement officials either involved in or with direct knowledge of these programs say they did not follow leads. The officials spoke on condition of anonymity because they were not authorized to discuss the secret programs. But the documents support their claims.¶ The effort highlights one of the most difficult aspects of policing in the age of terrorism. Solving crimes isn't enough; police are expected to identify would-be terrorists and move in before they can attack.¶ There are no universally agreed upon warning signs for terrorism. Terrorists have used Internet cafes, stayed in hostels, worked out at gyms, visited travel agencies, attended student groups and prayed at mosques. So the NYPD monitored those areas. In doing so, they monitored many innocent people as they went about their daily lives.¶ Using plainclothes officers from the squad known as the Demographics Unit, police swept Muslim neighborhoods and catalogued the location of mosques. The ethnic makeup of each congregation was logged as police fanned out across the city and outside their jurisdiction, into suburban Long Island and areas of New Jersey.¶ "African American, Arab, Pakistani," police wrote beneath the photo of one mosque in Newark.¶ Investigators looked at mosques as the center of Muslim life. All their connections had to be known.¶ David Cohen, the **NYPD's top intelligence officer, wanted a source inside every mosque within a 250-mile radius of New York,** current and former officials said. **Though the**

officials said they never managed to reach that goal, documents show the NYPD successfully placed informants or undercovers - sometimes both - **into mosques from Westchester County, N.Y.**, to New Jersey.¶ The NYPD used these sources to get a sense of the sentiment of worshippers whenever an event generated headlines. The goal, former officials said, was **to alert police to potential problems before they bubbled up**.¶ Even when it was clear there were no links to terrorism**, the mosque informants gave the NYPD the ability to "take the pulse" of the community,** as Cohen and other managers put it.¶ When New York Yankees pitcher Cory Lidle and his flight instructor were killed on Oct. 11, 2006, when their small plane crashed into a Manhattan high-rise apartment, fighter planes were scrambled. Within hours the FBI and Homeland Security Department said it was an accident. Terrorism was ruled out.¶ Yet for days after the event, the NYPD's mosque crawlers reported to police about what they heard at sermons and among worshippers.¶ (View the PDF documents on Danish cartoons, mosque targeting and summaries of plane crash.)¶ At the Brooklyn Islamic Center, a confidential informant "noted chatter among the regulars expressing relief and thanks to God that the crash was only an accident and not an act of terrorism," one report reads.¶ "The worshippers made remarks to the effect that `it better be an accident; we don't need any more heat,'" an undercover officer reported from the Al-Tawheed Islamic Center in Jersey City, N.J.¶ In some instances, th**e NYPD put cameras on light poles and trained them on mosques, documents show. Because the cameras were in public space, police didn't need a warrant to conduct the surveillance.**¶ **Police also wrote down the license plates of cars in mosque parking lots, documents show. In some instances, police in unmarked cars outfitted with electronic license plate readers would drive down the street and record the plates of everyone parked near the mosque, former officials recalled.¶ "They're viewing Muslims like they're crazy.**

Intelligence Community will coopt reform

Greenwald, 2014

(Glenn is a constitutional Lawyer and an author of a best selling book on politics and Law called No Place to Hide. " Congress is Irrelevant on Mass surveillance. Here is what matters instead.". https://firstlook.org/theintercept/2014/11/19/irrelevance-u-s-congress-stopping-nsas-mass-surveillance/. Date Accessed- 7/15/15. Anshul Nanda)

there is a real question about whether the defeat of this bill is good, bad, or irrelevant. To begin with, it **sought to change only one small sliver of NSA mass surveillance (domestic bulk collection of phone records under section 215 of the Patriot Act) while leaving completely unchanged the primary means of NSA mass surveillance,** which takes place under section 702 of the FISA Amendments Act, based on the lovely and quintessentially American theory that all that matters are the privacy rights of Americans (and not the 95 percent of the planet called "non-Americans").¶ There were some mildly positive provisions in the USA Freedom Act: the placement of "public advocates" at the FISA court to contest the claims of the government; the prohibition on the NSA holding Americans' phone records, requiring instead that they obtain FISA court approval before seeking specific records from the telecoms (which already hold those records for at least 18 months); and reducing the agency's "contact chaining" analysis from three hops to two. One could reasonably argue (as the ACLU and EFF did) that, though **woefully inadequate**, the bill was a net-positive as a first step toward real reform, but one could also reasonably argue, as Marcy Wheeler has with characteristic insight, that the **bill is so larded with ambiguities and fundamental inadequacies that it would forestall better options and advocates for real reform should thus root for its defeat.**¶ When pro-privacy members of Congress first unveiled the bill many months ago, it was actually a good bill: real reform. But the White House worked very hard— in partnership with the House GOP—to water that bill down so severely that what the House ended up passing over the summer did more to strengthen the NSA than rein it in, which caused even the ACLU and EFF to withdraw their support. The Senate bill rejected last night was basically a middle ground between that original, good bill and the anti-reform bill passed by the House.¶ * * * * *¶ All of that illustrates what is, to me, **the most important point from all of this: the last place one should look to impose limits on the powers of the U.S. government is . . . the U.S. government. Governments don't** walk around **try**ing **to figure out** how **to limit their own power,** and that's particularly true of empires.**¶** The **entire system in D.C. is designed at its core to prevent real reform**. This **Congress is not going to enact anything resembling fundamental limits on the NSA's powers of mass surveillance**. Even if it somehow did, this **White House would never sign it**. Even if all that miraculously happened, the fact that the **U.S. intelligence community** and National Security State **operates with no limits** and no oversight **means** they'd easily **co-opt the entire reform process**. **That's what happened after the eavesdropping scandals of the mid-1970s led to the establishment of congressional intelligence committees and a special FISA "oversight" court**—the committees were instantly captured by putting in charge supreme servants of the intelligence community like Senators Dianne Feinstein and Chambliss, and Congressmen Mike Rogers and "Dutch" Ruppersberger, while the court quickly became a rubber stamp with subservient judges who operate in total secrecy.

No checks on executive abuses

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

National security policy in the United States has remained largely constant from the Bush Administration to the Obama Administration. This continuity can be explained by the "double government" theory of 19th-century scholar of the English Constitution Walter Bagehot. As applied to the United States, Bagehot's theory suggests that U.S. national security policy is defined by the network of executive officials who manage the departments and agencies responsible for protecting U.S. national security and who, responding to structural incentives embedded in the U.S. political system, operate largely removed from public view and from constitutional constraints. The public believes that the constitutionally-established institutions control national security policy, but that view is mistaken. Judicial review is negligible; congressional oversight is dysfunctional; and presidential control is nominal. Absent a more informed and engaged electorate, little possibility exists for restoring accountability in the formulation and execution of national security policy.

The dual government system guarantees circumvention

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

The Obama Administration has also continued, and in some ways expanded, Bush-era surveillance policies. For example, the Obama Administration continued to intercept the communications of foreign leaders; 26 further insisted that GPS devices may be used to keep track of certain citizens without probable cause or judicial review27 (until the Supreme Court disapproved28); continued to investigate individuals and groups under Justice Department guidelines re-written in 2008 to permit "assessments" that require no "factual basis" for FBI agents to conduct secret interviews, plant informants, and search government and commercial databases;29 stepped up the prosecution of government whistleblowers who uncovered illegal actions,30 using the 1917 Espionage Act eight times during his first administration to prosecute leakers (it had been so used only three times in the previous ninety-two years);31 demanded that businesses turn over personal information about customers in response to "national security letters" that require no probable cause and cannot legally be disclosed;32 continued broad National Security Agency ("NSA") homeland surveillance;33 seized two months of phone records of reporters and editors of the Associated Press for more than twenty telephone lines of its offices and journalists, including their home phones and cellphones, without notice;34 through the NSA, collected the telephone records of millions of Verizon customers, within the United States and between the United States and other countries, on an "ongoing, daily basis" under an order that prohibited Verizon from revealing the operation;35 and tapped into the central servers of nine leading U.S. internet companies, extracting audio and video chats, photographs, emails, documents, and connection logs that enable analysts to track foreign targets and U.S. citizens.36 At least one significant NSA surveillance program, involving the collection of data on the social connections of U.S. citizens and others located within the United States, was initiated after the Bush Administration left office.37 These and related policies were formulated and carried out by numerous high- and mid-level national security officials who served in the Bush Administration and continued to serve in the Obama Administration.38 Given Senator Obama's powerful criticism of such policies before he took office as President, the question,39 then, is this: Why does national security policy remain constant even when one President is replaced by another who as a candidate repeatedly, forcefully, and eloquently promised fundamental changes in that policy? I. Bagehot's Theory of Dual Institutions A disquieting answer is provided by the theory that Walter Bagehot suggested in 1867 to explain the evolution of the English Constitution.40 While not without critics, his theory has been widely acclaimed and has generated significant commentary.41 Indeed, it is something of a classic on the subject of institutional change generally, and it foreshadowed modern organizational theory.42 In brief, Bagehot's notion was as follows. Power in Britain reposed initially in the monarch alone. Over the decades, however, a dual set of institutions emerged.43 One set comprises the monarchy and the House of Lords.44 These Bagehot called the "dignified" institutions—dignified in the sense that they provide a link to the past and excite the public imagination.45 Through theatrical show, pomp, and historical symbolism, they exercise an emotional hold on the public mind by evoking the grandeur of ages past.46 They embody memories of greatness. Yet it is a second, newer set of institutions— Britain's "efficient" institutions—that do the real work of governing.47 These are the House of Commons, the Cabinet, and the Prime Minister.48 As Bagehot put it: "[I]ts dignified parts are very complicated and somewhat imposing, very old and rather venerable; while its efficient part . . . is decidedly simple and rather modern . . . . Its essence is strong with the strength of modern simplicity; its exterior is august with the Gothic grandeur of a more imposing age."49 Together these institutions comprise a "disguised republic"50 that obscures the massive shift in power that has occurred, which if widely understood would create a crisis of public confidence.51 This crisis has been averted because the efficient institutions have been careful to hide where they begin and where the dignified institutions end.52 They do this by ensuring that the dignified institutions continue to partake in at least some real governance and also by ensuring that the efficient institutions partake in at least some inspiring public

ceremony and ritual.53 This promotes continued public deference to the efficient institutions' decisions and continued belief that the dignified institutions retain real power.54 These dual institutions, one for show and the other for real, afford Britain expertise and experience in the actual art of governing while at the same time providing a façade that generates public acceptance of the experts' decisions. Bagehot called this Britain's "double government."55 The structural duality, some have suggested, is a modern reification of the "Noble Lie" that, two millennia before, Plato had thought necessary to insulate a state from the fatal excesses of democracy and to ensure deference to the golden class of efficient guardians.56 Bagehot's theory may have overstated the naiveté of Britain's citizenry. When he wrote, probably few Britons believed that Queen Victoria actually governed. Nor is it likely that Prime Minister Lord Palmerston, let alone 658 members of the House of Commons, could or did consciously and intentionally conceal from the British public that it was really they who governed. Big groups keep big secrets poorly. Nonetheless, Bagehot's enduring insight—that dual institutions of governance, one public and the other concealed, evolve side-by-side to maximize both legitimacy and efficiency—is worth pondering as one possible explanation of why the Obama and Bush national security policies have been essentially the same. There is no reason in principle why the institutions of Britain's juridical offspring, the United States, ought to be immune from the broader bifurcating forces that have driven British institutional evolution. As it did in the early days of Britain's monarchy, power in the United States lay initially in one set of institutions—the President, Congress, and the courts. These are America's "dignified" institutions. Later, however, a second institution emerged to safeguard the nation's security. This, America's "efficient" institution (actually, as will be seen, more a network than an institution) consists of the several hundred executive officials who sit atop the military, intelligence, diplomatic, and law enforcement departments and agencies that have as their mission the protection of America's international and internal security. Large segments of the public continue to believe that America's constitutionally established, dignified institutions are the locus of governmental power; by promoting that impression, both sets of institutions maintain public support. But when it comes to defining and protecting national security, the public's impression is mistaken. America's efficient institution makes most of the key decisions concerning national security, removed from public view and from the constitutional restrictions that check America's dignified institutions. The United States has, in short, moved beyond a mere imperial presidency to a bifurcated system—a structure of double government—in which even the President now exercises little substantive control over the overall direction of U.S. national security policy. Whereas Britain's dual institutions evolved towards a concealed republic, America's have evolved in the opposite direction, toward greater centralization, less accountability, and emergent autocracy.

Executive Branch – Circumvent Courts

The Judicial Branch is possibly the worst actor for the plan- it endorses to liberty destroying theories

Greenwald, 2014

(Glenn is a constitutional Lawyer and an author of a best selling book on politics and Law called No Place to Hide. " Congress is Irrelevant on Mass surveillance. Here is what matters instead.". https://firstlook.org/theintercept/2014/11/19/irrelevance-u-s-congress-stopping-nsas-mass-surveillance/. Date Accessed- 7/15/15. Anshul Nanda)

U.S. court proceedings. A U.S. federal judge already ruled that the NSA's domestic bulk collection program likely violates the 4th Amendment**, and in doing so,** obliterated many of the government's underlying justifications**. Multiple cases are now on appeal, almost certainly headed to the Supreme Court. None of this was possible in the absence of Snowden disclosures.¶ For a variety of reasons,** when it comes to placing real limits on the NSA, I place almost as little faith in the judiciary as I do in the Congress and executive branc**h. To begin with**, the Supreme Court is dominated by five right-wing justices on whom the Obama Justice Department has repeatedly relied to endorse their most extreme civil-liberties-destroying theories**. For another, of all the U.S. institutions that have completely abdicated their role in the post-9/11 era, the** federal judiciary has probably been the worst, the most consistently subservient to the National Security State. **Courts have no power over agencies**

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

Normally, of course, courts proceed in public, hear arguments from opposing counsel, and issue opinions that are available for public scrutiny. Not so with the FISC. All of its proceedings are closed to the public.298 The adversarial system integral to American jurisprudence is absent. Only government lawyers appear as counsel, unanswered by any real or potential adverse party.299 The FISC has pioneered a two-tiered legal system, one comprised of public law, the other of secret law. FISC opinions—even redacted portions of opinions that address only the FISC's interpretation of the constitutional rights of privacy, due process, or protection against unreasonable search or seizure—are rarely available to the public.300 Nancy Gertner, a former federal judge in Massachusetts, summed up the court: "The judges that are assigned to this court are judges that are not likely to rock the boat . . . . All of the structural pressures that keep a judge independent are missing there. It's one-sided, secret, and the judges are chosen in a selection process by one man."301 The Chief Judge of the FISC candidly described its fecklessness. "The FISC is forced to rely upon the accuracy of the information that is provided to the Court," said Chief Judge Reggie B. Walton. "The FISC does not have the capacity to investigate issues of noncompliance, and in that respect the FISC is in the same position as any other court when it comes to enforcing [government] compliance with its orders."302 The NSA's own record proved him correct; an internal NSA audit revealed that it had broken privacy rules or overstepped its legal authority thousands of times since 2008.303

The judiciary, in short, does not have the foremost predicate needed for Madisonian equilibrium: "a will of its own."304 Whatever the court, judges normally are able to find what appear to the unschooled to

be sensible, settled grounds for tossing out challenges to the Trumanites' projects. Dismissal of those challenges is couched in arcane doctrine that harks back to early precedent, invoking implicitly the courts' mystical pedigree and an aura of politics-transcending impartiality. But challenges to the Trumanites' projects regularly get dismissed before the plaintiff ever has a chance to argue the merits either before the courts or, sometimes more importantly, the court of public opinion. Try challenging the Trumanites' refusal to make public their budget 305 on the theory that the Constitution does, after all, require "a regular statement and account of the receipts and expenditures of all public money";306 or the membership of Members of Congress in the military reserve307 on the theory that the Constitution does, after all, prohibit Senators and Representatives from holding "any office under the United States";308 or the collection of phone records of the sort given by Verizon to the NSA on the theory that the law authorizing the collection is unconstitutional.309 Sorry, no standing, case dismissed.310 Try challenging the domestic surveillance of civilians by the U.S. Army311 on the theory that it chills the constitutionally protected right to free assembly,312 or the President's claim that he can go to war without congressional approval313 on the theory that it is for Congress to declare war.314 Sorry, not ripe for review, case dismissed.315 Try challenging the introduction of the armed forces into hostilities in violation of the War Powers Resolution.316 Sorry, political question, non-justiciable, case dismissed.317 Try challenging the Trumanites' refusal to turn over relevant and material evidence about an Air Force plane accident that killed three crew members through negligence,318 or about racial discrimination against CIA employees,319 or about an "extraordinary rendition" involving unlawful detention and torture.320 Sorry, state secrets privilege, case dismissed Sometimes the courts have no plausible way of avoiding the merits of national security challenges. Still, the Trumanites win. The courts eighty years ago devised a doctrine—the "non-delegation doctrine"—that forbids the delegation of legislative power by Congress to administrative agencies.322 Since that time it has rarely been enforced, and never has the Court struck down any delegation of national security authority to the Trumanite apparatus.323 Rather, judges stretch to find "implied" congressional approval of Trumanite initiatives. Congressional silence, as construed by the courts, constitutes acquiescence.324 Even if that hurdle can be overcome, the evidence necessary to succeed is difficult to get; as noted earlier,325 the most expert and informed witnesses all have signed nondisclosure agreements, which prohibit any discussion of "classifiable" information without pre-publication review by the Trumanites. As early as 1988, over three million present and former federal employees had been required to sign such agreements as a condition of employment.326 Millions more have since become bound to submit their writings for editing and redaction before going to press. And as the ultimate trump card, the Trumanites are cloaked in, as the Supreme Court put it, "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress."327 The basis of their power, the Court found, is, indeed, not even the Constitution itself; the basis of Trumanite power is external sovereignty—the membership of the United States in the community of nations, which confers extra-constitutional authority upon those charged with exercising it.328

FISA Rubber Stamps

The FISA court is just a rubber stamp – Only rejected .03% of requested warrants in the past 33 years

Eichelberger 13 (Erika Eichelberger is a reporter in Mother Jones' Washington bureau. She has also written for The Nation, The Brooklyn Rail, and Tom Dispatch, "FISA Court Has Rejected .03 Percent Of All Government Surveillance Requests", Mon Jun. 10, 2013 1:30 PM EDT, http://www.motherjones.com/mojo/2013/06/fisa-court-nsa-spying-opinion-reject-request)

After last week's revelations extensive National Security Agency surveillance of phone and internet communications, **President Barack Obama made it a point to assure Americans that, not to worry**, there is plenty of oversight of his administration's snooping programs. **"We've got congressional oversight and judicial oversight," he said Friday, referring in part to the Foreign Intelligence Surveillance Court (FISC),** which was created in 1979 to oversee Department of Justice requests for surveillance warrants against foreign agents suspected of espionage or terrorism in the United States. **But the FISC has declined just 11 of the more than 33,900 surveillance requests made by the government in 33 years, the Wall Street Journal reported Sunday. That's a rate of .03 percent, which raises questions about just how much judicial oversight is actually being provided.** ¶ **"The FISA system is broken," Marc Rotenberg**, executive director of the Electronic Privacy Information Center, **told the Journal. "At the point that a FISA judge can compel the disclosure of millions of phone records of US citizens engaged in only domestic communications, unrelated to the collection of foreign intelligence…there is no longer meaningful judicial review."**¶ But according to Timothy Edgar, a top privacy lawyer at the Office of the Director of National Intelligence and the National Security Council under Bush and Obama, it's not quite as simple as the FISC rubber stamping nearly every application the government puts in front of it. ¶ The reason so many orders are approved, he said, is that the Justice Department office that manages the process vets the applications rigorously... [S]o getting the order approved by the Justice Department lawyers is perhaps the biggest hurdle to approval. "The culture of that office is very reluctant to get a denial," he [told the Journal].¶ Still, **the entire process is closed. The FISC court hears evidence for surveillance applications presented solely by the Department of Justice. The court does not have to release its opinions or any information regarding such hearings**.¶ In February, Sens. Dianne Feinstein (D-Calif.), Jeff Merkley (D-Ore.), Ron Wyden (D-Ore.), and Mark Udall (D-Colo.), wrote a letter to the FISC asking the court to consider releasing portions of its opinions to the public by "writing summaries of its significant interpretations of the law in a manner that separates the classified facts of the application under review from the legal analysis, so as to enable declassification." After the revelations on the spying programs last week, Sen. Al Franken called the same thing. ¶ In response to the senators' letter, the FISA court's presiding judge, Reggie B. Walton, said in March that it would be very difficult to release summaries of the court's opinions to the public, because the legal analysis in most opinions is "inextricably intertwined" with classified information. ¶ This post has been corrected. A commenter pointed out that a previous version stated that the FISA court has rejected .0003 percent of all government surveillance requests. The correct percentage is .03. Apologies for the bad math.

FISA freely allows and renews NSA programs regardless of how controversial they are

VOLZ 15 (DUSTIN VOLZ is a reporter for the National Journal, "NSA Spying Wins Another Rubber Stamp", February 27, 2015, http://www.nationaljournal.com/tech/nsa-spying-wins-another-rubber-stamp-20150227 - JD)

A federal court has again renewed an order allowing the National Security Agency to continue its bulk collection of Americans' phone records, a decision that comes more than a year after President Obama pledged to end the controversial program.¶ **The Foreign Intelligence Surveillance Court approved this week a government request to keep the NSA's mass surveillance of U.S. phone metadata operating until June 1, coinciding with when the legal authority for the program is set to expire in Congress.¶ The extension is the fifth of its kind since Obama said he would effectively end the Snowden-exposed program as it currently exists during a major policy speech in January 2014**. Obama and senior administration officials have repeatedly insisted that they will not act alone to end the program without Congress.¶ "While the administration waits for the Congress to act, it has continued to operate the program with ... important modifications in place," White House press secretary Josh Earnest said in a statement released late Friday.¶¶ **More than a year's worth of efforts to reform the NSA stalled last year, as the Senate came two votes short of advancing the USA Freedom Act in November. The measure failed to overcome a filibuster by Republicans, many of whom warned any limitation imposed on the NSA could bolster terrorist groups like the Islamic State.¶** It is widely expected that lawmakers will reintroduce versions of the Freedom Act in the new Congress, but no bill has emerged so far. Core parts of the post-9/11 Patriot Act will sunset on June 1, including Section 215, which grants the NSA legal authority to conduct its controversial dragnet surveillance program.¶ Amid the congressional inaction, **the FISA Court has now renewed the NSA's most controversial spying program five times**—in March, June, September, December and now February—since Obama delivered his pledge to end it in its current form.¶ "Congress has a limited window before the June 1 sunset to enact legislation that would implement the President's proposed path forward for the telephony metadata program, while preserving key intelligence authorities," Earnest said in his statement. "The administration continues to stand ready to work with the Congress on such legislation and would welcome the opportunity to do so."¶ **Some NSA critics and even some lawmakers, such as Rep. Adam Schiff, the top Democrat on the House Intelligence Committee, have called for Obama to end the program unilaterally.¶** The intelligence community, under Obama's direction, has implemented some changes to how it stores and collects U.S. and foreign communications data, but privacy advocates have repeatedly insisted those tweaks are not enough.¶ It remains unclear if there is a path forward for substantial NSA reform in Congress, leaving surveillance critics to worry lawmakers may ultimately pass a clean reauthorization of the Patriot Act.

The FISA court passes warrants without a second thought and can be circumvented by the executive branch – Bush Administration empirically proves

Greenwald 13 (Glenn Greenwald is a fomer columnist on civil liberties and US national security issues for the Guardian. An ex-constitutional lawyer, he was until 2012 a contributing writer at Salon. He is the author of How Would a Patriot Act? (May 2006), a
critique of the Bush administration's use of executive power, "The bad joke called 'the FISA court' shows how a 'drone court' would work", Friday 3 May 2013, http://www.theguardian.com/commentisfree/2013/may/03/fisa-court-rubber-stamp-drones)

From the start, the Fisa court was a radical perversion of the judicial process. It convened in total secrecy and its rulings were classified. The standard the government had to meet was not the traditional "probable cause" burden imposed by the Fourth Amendment but a significantly diluted

standard. **There was nothing adversarial about the proceeding**: only the Justice Department (DOJ) was permitted to be present, but not any lawyers for the targets of the eavesdropping request, who were not notified. Reflecting its utter lack of real independence, the court itself was housed in the DOJ.¶ And, and was totally predictable, **the court barely ever rejected a government request for eavesdropping. From its inception, it was the ultimate rubber-stamp court, having rejected a total of zero government applications -** zero **- in its first 24 years of existence, while approving many thousands. In its total 34 year** history - from 1978 through 2012 - **the Fisa court has rejected a grand total of 11 government applications, while approving more than 20,000.**¶ Despite how obedient and compliant this court always was, **the Bush administration decided in late 2001 that it would have its National Security Agency** (NSA) **intercept the calls and emails of Americans without bothering to obtain the Fisa court approval required by the criminal law, claiming** - with a straight face - **that complying with the law was "too cumbersome" in the age of Terrorism.** Once this lawbreaking was revealed by the New York Times in late 2005, the response from the DC political class was not to punish the responsible government officials for their lawbreaking, but rather to enact a new law (called the Fisa Amendments Act of 2008) that, in essence, simply legalized the warrantless eavesdropping scheme of the Bush administration.¶ **That new Fisa law vested vast new surveillance powers in the US government to spy on the communications of Americans without the annoyance of obtaining permission from the Fisa court.** It **requires warrants from the Fisa court only in the narrowest of circumstances: the ones most susceptible to abuse**. Although candidate Obama pretended to have serious concerns about the law (when he voted for it) and vowed to rein in its excesses, his administration last year demanded the renewal of this law with no reforms, and Congress, on a fully bipartisan basis, complied.¶ One of the provisions of the new Fisa law requires the DOJ annually to disclose to Congress the number of eavesdropping applications it files and the number approved and rejected by the Fisa court. Earlier this week, that disclosure was provided to Senate Majority Leader Harry Reid for the year 2012, and this is what it reported:¶ fisc¶ Public domain¶ Let's repeat that: **"of 1,789 applications, the FISA court did not deny any applications in whole or in part."** What fantastic oversight (1789 is, ironically, the year the Constitution was ratified). **The court did "modify" 40 of those applications - less than 3% - but it approved every single one. The same was true of 2011, when the DOJ submitted 1,676 applications and the Fisa court, while modifying 30, "did not deny any applications in whole, or in part".**

The FISA court is nothing but a rubber stamp – they even circumvent the supreme court

Masnik 14 (Mike is the founder and CEO of Floor64 and editor of the Techdirt blog." FISA Court Rubber Stamps Continued Collection Of Metadata On Every Single Phone Call", Oct 11th 2013, https://www.techdirt.com/articles/20131011/16065524845/fisa-court-rubber-stamps-continued-collection-metadata-every-single-phone-call.shtml)

This won't come as a huge surprise, I would imagine, but the telephony metadata dragnet collection that has to be renewed every few months "expired" today and was promptly reapproved by the FISA court, because "fuck you, that's why." That's not quite what they said, but consider it the bureaucratic-speak equivalent, coming from the Director of National Intelligence:¶ Previously on several occasions, the Director of National Intelligence declassified certain information about this telephony metadata collection program in order to provide the public with a more thorough and balanced understanding of the program. Consistent with his prior declassification decision and in light of the significant and continuing public interest in the telephony metadata collection program, DNI Clapper has decided to declassify and disclose publicly that the government filed an application with the Foreign Intelligence Surveillance Court seeking renewal of the authority to collect telephony metadata in bulk, and that the

court renewed that authority. ¶ The administration is undertaking a declassification review of this most recent court order. ¶ Of course, it's true that **last month, the previous order rubber-stamping this approval was declassified and revealed. Even though the same thing has been rubber stamped every few months for at least the past seven years, this time there was an attempt at a full justification for why it made sense**. **Of course, since it was a one-sided situation, without any adversarial hearing or opinion, it allowed the FISA court to make up its own rules and completely contradict the Supreme Court** (to whom it's supposed to listen). It seems highly doubtful that the eventual declassified version of this rubber stamp will be any different than the last one. ¶ Of course, in the last three months, **we've also learned that this program of collecting data on every phone call in the US has been necessary to stop precisely zero attacks in the US** -- but it did apparently lead them to a taxi driver sending some money to some not very nice people in Somalia. And, because of that, the NSA gets to keep track of everyone's phone calls. As has been explained repeatedly, **this seems to go against not just the spirit and intended purpose of the 4th Amendment, but the plain language of that same Amendment. But, the FISA court has earned its rubber stamp reputation for a reason, and apparently it's not about to give up on it.**

AT: Public Accountability Solves

Less surveillance means diminished public accountability

Marc **Rotenberg** 20**02** [Marc Rotenberg is an Executive Director, Electronic Privacy Information Center (EPIC), and Adjunct Professor, Georgetown University Law Center. Former Counsel, Senate Judiciary Committee (Senator Patrick Leahy). "Symposium: Modern Studies in Privacy Law PRIVACY AND SECRECY AFTER SEPTEMBER 11"June 2002. Minnesota Law Review. 86 Minn. L. Rev. 1115 JC]

One of the consequences of the expanded secrecy is clearly that public accountability is diminished. This has consequences both large and small. **In the context of electronic surveillance** undertaken pursuant to the new powers created by the USA PATRIOT Act, **it means that targets of government** searches who might previously have been notified that they were subject to government **surveillance will not be so told**. n49 **It** [*1126] **means that public reporting of the use of surveillance authority by federal investigators will be less detailed and less useful than reports on similar activities in the past.** And on large open questions, like who was responsible for the dissemination of deadly anthrax spores in the nation's capital in mid-October, **the government can continue to make representations about the status of the case with little opportunity for the public to probe the government's claims because information associated with the investigation remains secret.**

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What we have witnessed since September 11 is both the diminishment of personal privacy and the expansion of government secrecy. Now this is a significant development that bears some exploration however we may feel about the specific steps taken in the wake of September 11. It is my aim at this point to look more closely at the interplay of these two trends and to see if the traditions in privacy law help us understand the transformation taking place since September 11. Should it surprise us that as personal privacy is diminished, government secrecy expands? We can begin with the observation of some commentators that **there is a tradeoff between** privacy and transparency or **privacy and openness.** According to this view **privacy stands in opposition to these values, and we may give up some privacy to gain greater public accountability.** The communitarian scholar Amitai Etzioni, for example, has argued that **privacy must be balanced against competing interests.** n51 Since September 11 Etzioni has endorsed a number [*1127] of proposals to expand **surveillance**, including adoption of a National ID card and new airport screening procedures. n52 It is Etzioni's view that these **measures will promote public safety and reduce the risk of future terrorist acts**. n53 David Brin, author of The Transparent Society, argued in similar fashion that **privacy should give way to other social interests, particularly the need for greater openness and transparency that characterizes democratic society.** n54 Brin has also argued since September 11 for greater tracking and monitoring procedures.

AT: Civil Suits Solve

Civil Suits ineffective against telecom companies

Mike **Wagner**, 20**09** [Mike Wagner, AB, Villanova University; JD, The George Washington University. Mike Wagner is an associate in the Washington office of Covington & Burling LLP, where he counsels government contractors on issues arising at all phases of the public procurement process and handles complex white collar investigations involving allegations of fraud and corruption. Prior to joining Covington, he served as a law clerk on the U.S. Court of Appeals for the Third Circuit and the U.S. District Court for the District of Maryland. A graduate of GW Law, he was an Articles Editor on the George Washington Law Review and received the 2010 Scribes Law Review Writing Award for best student-written article. November 2009, "Warrantless Wiretapping, Retroactive Immunity, and the Fifth Amendment". The George Washington Law Review, 78 Geo. Wash. L. Rev. 204. JC]

Although he could not have known it at the time, **Klein**'s observations and subsequent decision to blow the whistle on his employer would soon make him the star witness in a class-action suit **filed against AT&T for its role in the government's warrantless domestic surveillance program**. n8 **This action, brought pursuant to a federal statutory provision authorizing civil suits against any person who engages in warrantless wiretapping**, **n9 appeared poised to provide a measure of relief to those U.S. citizens subjected to such government surveillance. The FISA Amendments Act of 2008** ("FISAA"), n10 **however**, an unprecedented law granting retroactive immunity from civil suit to telecommunications providers like AT&T, **effectively eliminates this claim and others like it**. n11 This Note argues that Congress should amend FISAA to remove its retroactive grant of immunity because it unconstitutionally infringes on the rights guaranteed in the Fifth Amendment of the Consitution. First, FISAA violates the Fifth Amendment's Due Process Clause n12 because it retroactively abrogates [*206] a right of action which had already accrued to a claimant. Second, FISAA contravenes the Fifth Amendment's Takings Clause n13 by eliminating accrued tort claims without providing just compensation.

Civil suits are empirically ineffective against federal officers

Mike **Wagner**, 20**09** [Mike Wagner, AB, Villanova University; JD, The George Washington University. Mike Wagner is an associate in the Washington office of Covington & Burling LLP, where he counsels government contractors on issues arising at all phases of the public procurement process and handles complex white collar investigations involving allegations of fraud and corruption. Prior to joining Covington, he served as a law clerk on the U.S. Court of Appeals for the Third Circuit and the U.S. District Court for the District of Maryland. A graduate of GW Law, he was an Articles Editor on the George Washington Law Review and received the 2010 Scribes Law Review Writing Award for best student-written article. November 2009, "Warrantless Wiretapping, Retroactive Immunity, and the Fifth Amendment". The George Washington Law Review, 78 Geo. Wash. L. Rev. 204. JC]

Carr v. United States, [n103] another case rejecting a due process challenge to a law immunizing a defendant from tort liability, is likewise unpersuasive because it too involved a case in which the prospective elimination of a cause of action. The plaintiff in Carr, **a federal employee**, was injured in a car accident due to the driving of his colleague, also a federal employee, in 1965. [n104] The plaintiff **initiated a civil suit against his co-worker, but the Federal Drivers' Act of 1961 abrogated any civil suits against federal employees acting within the scope of their employment and substituted the United States in their place.** [n105] The plaintiff challenged the abrogation of his cause of action as a violation of the Fifth Amendment's Due Process Clause, but the Fourth Circuit rejected this argument: "The accident occurred over four years after the enactment of the Drivers Act. Therefore, ... [the plaintiff] had no interest entitled to constitutional protection." [n106] Just as in Ducharme, due process concerns were not implicated because the plaintiff's cause of action, which accrued after the adoption of the immunity provision, was abrogated prospectively by statute. This distinction is crucial to understanding why the laws were upheld in Ducharme and Carr but not in Ettor or Richmond Screw. **In light of this precedent, the**

importance of determining whether FISAA acts retroactively or prospectively is plain. If the causes of action eliminated by FISAA had accrued prior to its passage, then FISAA would operate retroactively and the plaintiffs' property would be eligible for due process protections. Because tort actions generally accrue at the time of injury, [n107] the cause of action in the suits abrogated by FISAA accrued when the NSA, with the help of AT&T and other telecommunications firms, began improperly monitoring the plaintiffs' telephone and Internet lines soon after the September 11 **[*220]** attacks. [n108] Thus, as Professor Anthony Sebok explains, by the time Congress passed FISAA several years later, the plaintiffs' claims had already vested.

FBI Fusion Centers

Generic – No Regulations

Fusion centers guarantee profiling will continue post-plan

Constitution Project '12 The Constitution Project (8/15/12, The Constitution Project, "RECOMMENDATIONS FOR FUSION CENTERS", http://www.constitutionproject.org/pdf/fusioncenterreport.pdf)

2. Reports of Political, Racial and Religious Profiling

Despite these constitutional principles, there have been numerous anecdotal reports of incidents in which fusion centers have targeted individuals in the United States for surveillance and investigation based solely on beliefs and characteristics that are protected by the First and Fourteenth Amendments. Although federal guidance to fusion centers cautions against profiling, these incidents demonstrate that significant additional guidance, training and oversight are crucial to ensure that fusion centers and other law enforcement agencies do not engage in racial, religious and political profiling.41

Recent **reports from across the country bear testament to the potential for problematic profiling at fusion centers, particularly regarding bulletins and intelligence reports circulated by fusion centers.** These are a few examples:

• **The** February 2009 "**Prevention Awareness Bulletin," circulated by a Texas fusion center, described Muslim lobbying groups as "providing an environment for terrorist organizations to flourish**" and warned that "the threats to Texas are significant."

The bulletin called on law enforcement officers to report activities such as Muslim "hip hop fashion boutiques, hip hop bands, use of online social networks, video sharing networks, chat forums and blogs."42

• A Missouri-based fusion center issued a February 2009 report describing support for the presidential campaigns of Ron Paul or third party candidates, possession of the iconic "Don't Tread on Me" flag and anti-abortion activism as signs of membership in domestic terrorist groups.43

• **The Tennessee Fusion Center listed a letter from the American Civil Liberties Union (ACLU) to public schools on its online map of "Terrorism Events and Other Suspicious Activity." The letter had advised schools that holiday celebrations focused exclusively on Christmas were an unconstitutional government endorsement of religion.**44

• **The Virginia Fusion Center's 2009 Terrorism Risk Assessment Report described student groups at Virginia's historically black colleges as potential breeding grounds for terrorism and characterized the "diversity" surrounding a military base as a possible threat**.45

Fusion centers do what they want

German and Stanley '7, German is on the Policy Counsel for National Security, ACLU Washington Legislative Office; Stanley is the Public Education Director, ACLU Technology and Liberty Program (December 2007, Michael German and Jay Stanley, American Civil Liberties Union, "WHAT'S WRONG WITH FUSION CENTERS?," https://www.aclu.org/files/pdfs/privacy/fusioncenter_20071212.pdf)

Ambiguous Lines of Authority. The **participation of agencies from multiple jurisdictions in fusion centers allows the authorities to manipulate differences in federal, state and local laws to maximize information collection while evading accountability and oversight through the practice of "policy shopping**."

Private Sector Participation . **Fusion centers are incorporating private-sector corporations** into the intelligence process, breaking down the arm's length relationship that protects the privacy of innocent Americans who are employees or customers of these companies, and increasing the risk of a data breach.

Military Participation . **Fusion centers are involving military personnel** in law enforcement activities in troubling ways.
Data Fusion = Data Mining . Federal fusion center guidelines encourage whole sale data collection and manipulation processes that threaten privacy.
Excessive Secrecy . **Fusion centers are hobbled by excessive secrecy, which limits public oversight**, impairs their ability to acquire essential information and impedes their ability to fulfill their stated mission, bringing their ultimate value into doubt.

Their inherently local nature makes regulation impossible

O'Neil '8 political science graduate student at the University of California Los Angeles (UCLA) Previously, iobhan served as the analyst for domestic security and intelligence at the Congressional Research Service (CRS). She spent five years working in homeland security serving as the deputy chief of the Intelligence Bureau of the New Jersey Office of Homeland Security and Preparedness (OHSP) (April 2008, Siobhan, Homeland Security Affairs, "The Relationship between the Private Sector and Fusion Centers: Potential Causes for Concern and Realities", https://www.hsaj.org/articles/134)
Given that **fusion centers are entities established by states and localities to serve their own law enforcement**, emergency response, and homeland security needs, and **compounded by the sensitivities associated with federalism, the federal government is in a difficult position of balancing its interests and respecting the local nature of fusion centers**. As such, t**he federal government has been understandably hesitant to place requirements on fusion centers.** Instead, federal **agencies have produced guidelines, which have not been compulsor**y, to include the National Strategy for Information Sharing and Fusion Center Guidelines. 8 While **these documents** address some of the tactical and operational concerns related to fusion centers, they **are often vague to a fault and fail to provide the comprehensive vision for fusion centers as part of the nation's homeland security posture.**
Failure to create a consensus on the role, structural requirements, and responsibilities for fusion centers is apt to increase the potential for ineffectiveness, which threatens the viability of fusion centers. If fusion centers fail to demonstrate their worth and strengthen and augment our nation's homeland security efforts, political support and external agency engagement with these centers is likely to decline. Moreover, potential civil liberties abuses could damage fusion centers' credibility and undermine their public support. It has rightfully been warned that even rumors of impropriety and civil liberties abuses associated with a single fusion center can cause irreparable damage to the reputation of all fusion centers nationwide. This would be unfortunate given the potential for fusion centers to provide public safety and homeland security benefits to both local communities and the nation.

Fusion centers aren't under federal jurisdiction—localities won't enforce rules

Price '13, Michael Price serves as counsel for the Brennan Center's Liberty and National Security Program (12/10/13, Michael Price, Brennan Center for Justice, "National Security and Local Police", https://www.brennancenter.org/publication/national-security-local-police)
The Brennan Center has identified three major reasons the system is ineffective:
Information sharing among agencies is governed by inconsistent rules and procedures that encourage gathering useless or inaccurate information. This poorly organized system wastes resources and also risks masking crucial intelligence.
As an increasing number of agencies collect and share personal data on federal networks, inaccurate or useless information travels more widely. Independent oversight of fusion centers is virtually non-existent, compounding these risks.

Oversight has not kept pace, increasing the likelihood that intelligence operations violate civil liberties and harm critical police-community relations.

According to a report by the Government Accountability Office, 95 percent of suspicious activity reports are not even investigated by FBI. This is unsurprising. In the past, police departments shared information only when there was 'reasonable suspicion' of criminal activity. This time-tested standard ensured that police were focused on real threats and not acting on their own biases or preconceptions. But with this crucial filter removed after the attacks of 9/11, almost any behavior — from photographing a landmark, to stretching in the park, to attending a mosque — can be viewed as potentially suspicious, reported, and shared with thousands of other government agencies. It is impractical to sift through and follow up on every report, so important information can easily fall through the cracks. In some instances, the practice has also undermined community trust in the police, which is an essential element of domestic counterterrorism.

Efforts by the federal government to address this oversight gap have been half-hearted. **The system is not under federal government control. Federal funds simply flow to state legislatures, which then allocate them as they see fit — no questions asked**. **State and local governments** have **rarely stepped into the breach**, allowing **intelligence activities to go unchecked and unsupervised.**

Black Lives Matter/Profiling

Fusion centers view Black colleges as "hotbeds for extremists"

Ford '9, Black Agenda report executive director (4/29/2009, Glen Ford, Black Agenda Report, "Black Colleges Profiled as Suspected Havens for "Extremists"", http://www.blackagendareport.com/content/black-colleges-profiled-suspected-havens-%E2%80%9Cextremists%E2%80%9D)

Black Colleges Profiled as Suspected Havens for "Extremists"

A Black Agenda Radio commentary by Glen Ford

"**The Fusion Center appears to believe that Black colleges are by definition hotbeds of militancy and rebellion."**

Those deep thinkers in the Homeland Security Department are paying good money for some very bad advice on what constitutes a threat to American society. An inkling of the kind of madness that passes for research at Homeland Security, is provided by a recent report to the Virginia State Police. The report, which emanates from the basement offices of something called the Virginia **Fusion Center, claims that "a wide variety of terror or extremist groups" have ties to the Hampton Roads region of the state. Specifically, the report claims that the area's two historically Black universities are virtual magnets for terrorists and "extremists" – as are the two Black universities in the Richmond area.**

For those who are familiar with the four schools – Norfolk State University, Hampton University, Virginia State University in Petersburg and Virginia Union University in Richmond – the very thought of them as havens for "extremist" politics is laughable. Political action is not what these schools are known for. And that's too bad. But th**e Fusion Center, whoever they are, appears to believe that Black colleges are by definition hotbeds of militancy and rebellio**n. I wish that were true, but it's not. It appears **the researchers at Virginia's Fusion Center believe** that **Black institutions are inherently suspect. The Homeland Security Department is paying these guys millions of dollars a year to give vent to their own racist paranoia – and to sic the political bloodhounds on a bunch of apolitical Black students.**

"**The presumption seems to be that dangerous people are not white, and white people are not dangerous**."

The **creeps at the Fusion Center see security dangers in diversity, which they believe creates special national security perils.** The Hampton Roads region of Virginia has attracted a wide diversity of population from all parts of the globe. **The Fusion Center report says, "While the vast majority of these individuals are law-abiding, this ethnic diversity also affords terrorist operatives the opportunity to assimilate easily into society, without arousing suspicion**." The statement reveals the screaming racist posing as a researcher. Clearly the report's authors believe that the safest communities, national security-wise, are those that are uniformly white and English-speaking. Presumably, in such surroundings it's hard for the "dangerous" people to hide in a crowd. The presumption seems to be that dangerous people are not white, and white people are not dangerous. White communities are the ones that need protecting, while the non-white or diverse communities represent some degree of danger.

This is pure racist crap, and dangerous stuff to have circulating among the police. The **logic of the Fusion Report, if taken seriously, would lead the State to aggressively infiltrate the student ranks at Black colleges**. They wouldn't discover much in the way of subversive anything, but it is in the nature of the spy to invent what he can't find.

Virginia's crackpot Fusion Center is one of at least 58 such idiot-tanks that have sprung up around the country since 9/11, at a cost of $250 million dollars in public funds. That quarter billion dollar investment has led to the discovery of a single fact: Some white people are not comfortable, in general, with diversity, and are still nervous as hell around Black people.

Fusion centers spy on black lives matter protests

BondGraham ’14 (4/15/15, Darwin, East Bay Express, “Counter-Terrorism Officials Helped Track Black Lives Matter Protesters”, http://www.eastbayexpress.com/oakland/counter-terrorism-officials-helped-track-black-lives-matter-protesters/Content?oid=4247605)

On December 9, 2014, at 4:48 p.m., **an internal email with the subject line, "Reminder for Tonight and this week: Do Not Advise Protesters That We Are Following Them on Social Media," circulated among dozens of California Highway Patrol commanders.** The message read: "A quick reminder ... as you know, our TLO [Terrorism Liaison Officers] officers are actively following multiple leads over social media." The note continued, "this morning, we found posts detailing protesters' interaction with individual officers last night. In the posts, protesters are stating that we (CHP) were claiming to follow them on social media. Please have your personnel refrain from such comments; we want to continue tracking the protesters as much as possible. If they believe we are tracking them, they will go silent."

In recent years, police agencies throughout the United States have scoured social media as part of criminal investigations. But the police are also watching social media to spy on political protesters, especially those they suspect will engage in acts of civil disobedience. **During the recent Black Lives Matter protests**, **local and state** police **agents monitored protesters on social media** and activist websites. Several hundred CHP emails obtained by the Expressshow that social media is now a key source of intel for the police when monitoring political protests.

But the emails raise serious questions, say civil libertarians and some of the activists whose posts were harvested as intel. How do police monitor social media? Do they store data or track particular people? Are agencies over-reacting and wasting resources? And why are counter-terrorism police involved?

The TLOs tasked by the CHP with monitoring Black Lives Matter protesters on social media are employed by different local agencies and serve as points of contact for matters regarding terrorism. The role was created after 9/11, and **the officers communicate through networks coordinated by fusion centers**, such as the Northern California Regional Intelligence Center, or NCRIC, which connects police agencies from Monterey County to the Oregon border.

"We don't know as much about the TLO program as we should," said Nadia Kayyali, an activist with the Electronic Frontier Foundation. "We don't know what their standards are, their policies with respect to limits and privacy."

"We are not the CHP," Matthew Hopkins the deputy commander of Cal STAC told me. "There are CHP officers in the center, but it's a task force environment. We assess threats. Transnational crime. Terrorism." Hopkins said Cal STAC is a fusion center like NCRIC, except that its main focus is assessing strategic threats to the state of California. Hopkins said he could not comment on any emails sent by his subordinate because he hasn't seen them.

"**They've built this big network and they have tremendous resources**," said @domainawareness about the involvement of fusion centers in monitoring the Black Lives Matter protests. "But **they don't have enough to do, so they're using this to watch political protesters. It's mission creep**."

said he is not surprised to see the extensive monitoring of social media by the police. "I come out of Act Up in NYC," said Petrelis. "The cops came to our meetings and they picked up all the lit.

Fusion centers rely on racial profiling

Cyril ’15 Staff writer for The Progressive (April 2015, Malkia Amala Cyril, The Progressive, “Black America's State of Surveillance”, http://www.progressive.org/news/2015/03/188074/black-americas-state-surveillance)

They will use **fusion centers**. Originally designed to increase interagency collaboration for the purposes of counterterrorism, these **have instead become the local arm of the intelligence community**.

According to Electronic Frontier Foundation, there are currently seventy-eight on record. **They are the clearinghouse for increasingly used "suspicious activity reports**"—described as "official documentation of observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity." These reports and other collected data are often stored in massive databases like e-Verify and Prism. As anybody who's ever dealt with gang databases knows**, it's almost impossible to get off a federal or state database, even when the data collected is incorrect or no longer true.**

Predictive policing doesn't just lead to racial and religious profiling—it relies on it. Just as stop and frisk legitimized an initial, unwarranted contact between police and people of color, almost 90 percent of whom turn out to be innocent of any crime, **suspicious activities reporting and the dragnet approach of fusion centers target communities of color.** One review of such reports collected in Los Angeles shows approximately 75 percent were of people of color.

This is the future of policing in America, and it should terrify you as much as it terrifies me. Unfortunately, it probably doesn't, because my life is at far greater risk than the lives of white Americans, especially those reporting on the issue in the media or advocating in the halls of power. One of the most terrifying aspects of high-tech surveillance is the invisibility of those it disproportionately impacts.

Islamaphobia

Fusion centers monitor lawful religious activity

Patel and Price '12 Faiza Patel serves as co-director of the Brennan Center's Liberty and National Security Program; Michael Price serves as counsel for the Brennan Center's Liberty and National Security Program (10/18/12, Faiza Patel, Michael Price, Brennan Center for Justice, "Fusion Centers Need More Rules, Oversight", https://www.brennancenter.org/analysis/fusion-centers-need-more-rules-oversight)

Instead of looking for terrorist threats, **fusion centers were monitoring lawful political and religious activity**. That year, **the Virginia Fusion Center described a Muslim get-out–the-vote campaign as "subversive." In 2009, the North Central Texas Fusion Center identified lobbying by Muslim groups as a possible threat**.

The DHS dismissed these as isolated episodes, but the two-year Senate investigation found that such tactics were hardly rare. It concluded that **fusion centers routinely produce "irrelevant, useless or inappropriate" intelligence that endangers civil liberties.**

None of their information has disrupted a single terrorist plot. These revelations call into question the value of fusion centers as currently structured. At a minimum, they underscore the need for greater oversight and clearer rules on what information fusion centers collect and disseminate.

Of course, effective information sharing is critical to national security. But as the Senate investigation demonstrates, there is little value in distributing information if it is shoddy, biased or simply irrelevant. When fusion centers feed such information into the echo chamber of federal databases, they only compound mistakes and clog the system.

The DHS has failed to create effective mechanisms or incentives for quality control. Instead, **fusion centers collect and share information according to their individual standards, which vary considerably.**

These rules often **permit information to flow to federal agencies that has no connection to criminal activity** — let alone terrorism. This creates the risk that intelligence networks will become saturated with poor or irrelevant information as well as lend undue credibility to inaccurate data. The Senate report showed that these risks are not just theoretical.

Fusion centers need explicit and consistent rules. The DHS should ensure that the information the centers collect and distribute is relevant, useful and constitutional by requiring them to show some reasonable suspicion that criminal activity is afoot.

This is not a particularly high bar to clear. The reasonable suspicion standard is familiar to every police officer. The requirement would serve as an important bulwark against privacy and civil rights violations, but it would also keep meaningless information out of the system.

Without such well-defined and familiar standards, as the Senate report demonstrates, fusion centers are left rudderless.

In addition, fusion centers must have active, independent oversight. While Congressional inquiries are important for exposing problems, the Senate should not have been the first governmental body to take a critical look at fusion centers.

At the state and local level, **there is often no mechanism to ensure that fusion centers are generating useful information or complying with the law**. At the federal level, the DHS is responsible for verifying that the data shared by fusion centers meet certain minimum standards. But **the DHS has delegated this responsibility to the centers themselves and has not conducted independent audits.**

DHS oversight has been so poor that the department could not even say how much money it has spent on fusion centers, estimating the cost at somewhere from $289 million to $1.4 billion.

Fusion centers guarantee profiling will continue post-plan

Constitution Project '12 The Constitution Project (8/15/12, The Constitution Project, "RECOMMENDATIONS FOR FUSION CENTERS", http://www.constitutionproject.org/pdf/fusioncenterreport.pdf)

2. Reports of Political, Racial and Religious Profiling

Despite these constitutional principles, there have been numerous anecdotal reports of incidents in which fusion centers have targeted individuals in the United States for surveillance and investigation based solely on beliefs and characteristics that are protected by the First and Fourteenth Amendments. Although federal guidance to fusion centers cautions against profiling, these incidents demonstrate that significant additional guidance, training and oversight are crucial to ensure that fusion centers and other law enforcement agencies do not engage in racial, religious and political profiling.41

Recent **reports from across the country bear testament to the potential for problematic profiling at fusion centers, particularly regarding bulletins and intelligence reports circulated by fusion centers.** These are a few examples:

• **The** February 2009 "**Prevention Awareness Bulletin," circulated by a Texas fusion center, described Muslim lobbying groups as "providing an environment for terrorist organizations to flourish**" and warned that "the threats to Texas are significant."

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Local Authorities/Citizens

General Local surveillance can break the law without consequence – they can they can cover it up with non disclosure agreements

Fenton 15 (Justin Fenton, who joined The Sun in 2005, has covered the Baltimore Police Department since 2008. His work includes an investigation into Cal Ripken Jr.'s minor league baseball stadium deal with his hometown of Aberdeen and a three-part series chronicling a ruthless con woman, "Baltimore Police used secret technology to track cellphones in thousands of cases", April 9, 2015, http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-stingray-case-20150408-story.html#page=1 -JD)

The Baltimore Police Department has used an invasive and controversial cellphone tracking device thousands of times in recent years while following instructions from the FBI to withhold information about it from prosecutors and judges, a detective revealed in court testimony Wednesday.¶ The testimony shows for the first time how frequently city police are using a cell site simulator, more commonly known as a "stingray," a technology that authorities have gone to great lengths to avoid disclosing.¶ The device mimics a cellphone tower to force phones within its range to connect. Police use it to track down stolen phones or find people.¶ Until recently, the technology was largely unknown to the public. Privacy advocates nationwide have raised questions whether there has been proper oversight of its use.¶ Baltimore has emerged in recent months as a battleground for the debate. In one case last fall, a city detective said a nondisclosure agreement with federal authorities prevented him from answering questions about the device. The judge threatened to hold him in contempt if he didn't provide information, and prosecutors withdrew the evidence.¶ The nondisclosure agreement, presented for the first time in court Wednesday, explicitly instructs prosecutors to drop cases if pressed on the technology, and tells them to contact the FBI if legislators or judges are asking questions.¶ Detective Emmanuel Cabreja, a member of the Police Department's Advanced Technical Team, testified that police own a Hailstorm cell site simulator — the latest version of the stingray — and have used the technology 4,300 times since 2007.¶ Cabreja said he had used it 600 to 800 times in less than two years as a member of the unit.¶ Nate Wessler, an attorney with the American Civil Liberties Union, said 4,300 uses is "huge number." He noted that most agencies have not released data.¶ The Florida Department of Law Enforcement says its officers have used the device about 1,800 times. Police in Tallahassee say they have used it more than 250 times; police in Tacoma, Wash., 170 times.¶ Former U.S. Judge Brian L. Owsley, a law professor at Indiana Tech, said he was "blown away" by the Baltimore figure and the terms of the nondisclosure agreement. "That's a significant amount of control," he said.¶ Agencies have invoked the nondisclosure agreement to keep information secret. At a hearing last year, a Maryland State Police commander told state lawmakers that "Homeland Security" prevented him from discussing the technology.¶ Wessler said the secrecy is upending the system of checks and balances built into the criminal justice system.¶ "In Baltimore, they've been using this since 2007, and it's only been in the last several months that defense attorneys have learned enough to start asking questions," he said. "Our entire judicial system and constitution is set up to avoid a 'just trust us' system where the use of invasive surveillance gear is secret."¶

Can't stop government data collection on companies – subpoena power can bypass the fourth amendment and violate the rights of Americans

KRAVETS 15 (David Kravets is a WIRED senior staff writer and founder of the fake news site TheYellowDailyNews.com. He's a dad of two boys and has been a reporter since the manual typewriter days, "We Don't Need No Stinking Warrant: The Disturbing, Unchecked Rise of the Administrative Subpoena", 08.28.12, http://www.wired.com/2012/08/administrative-subpoenas/ - JD)

But by law, utilities must hand over customer records — which include any billing and payment information, phone numbers and power consumption data — to the DEA without court warrants if drug agents believe the data is "relevant" to an investigation. So the utility eventually complied, after losing a legal fight earlier this month.¶ Meet the administrative subpoena (.pdf): With a federal official's signature, banks, hospitals, bookstores, telecommunications companies and even utilities and internet service providers — virtually all businesses – are required to hand over sensitive data on individuals or corporations, as long as a government agent declares the information is relevant to an investigation. Via a wide range of laws, Congress has authorized the government to bypass the Fourth Amendment — the constitutional guard against unreasonable searches and seizures that requires a probable-cause warrant signed by a judge.¶ In fact, there are roughly 335 federal statutes on the books (.pdf) passed by Congress giving dozens upon dozens of federal agencies the power of the administrative subpoena, according to interviews and government reports. (.pdf)¶ "I think this is out of control. What has happened is, unfortunately, these statutes have been on the books for many, many years and the courts have acquiesced," said Joe Evans, the utility's attorney.¶ Anecdotal evidence suggests that federal officials from a broad spectrum of government agencies issue them hundreds of thousands of times annually. But none of the agencies are required to disclose fully how often they utilize them — meaning there is little, if any, oversight of this tactic that's increasingly used in the war on drugs, the war on terror and, seemingly, **the war on Americans' constitutional rights** to be free from unreasonable government trespass into their lives.¶ That's despite proof that FBI agents given such powers under the Patriot Act quickly began to abuse them and illegally collected Americans' communications records, including those of reporters. Two scathing reports from the Justice Department's Inspector General uncovered routine and pervasive illegal use of administrative subpoenas by FBI anti-terrorism agents given nearly carte blanche authority to demand records about Americans' communications with no supervision.¶ When the 9th U.S. Circuit Court of Appeals, perhaps the nation's most liberal appeals court based in San Francisco, ordered Golden Valley to fork over the data earlier this month, the court said the case was "easily" decided because the records were "relevant" to a government drug investigation.¶ With the data the Alaska utility handed over, the DEA may then use further administrative subpoenas to acquire the suspected indoor-dope growers' phone records, stored e-mails, and perhaps credit-card purchasing histories – all to build a case to acquire a probable-cause warrant to physically search their homes and businesses.¶ But the administrative subpoena doesn't just apply to utility records and drug cases. Congress has spread the authority across a huge swath of the U.S. government, for investigating everything from hazardous waste disposal, the environment, atomic energy, child exploitation, food stamp fraud, medical insurance fraud, terrorism, securities violations, satellites, seals, student loans, and for breaches of dozens of laws pertaining to fruits, vegetables, livestock and crops.¶ Not one of the government agencies with some of the broadest administrative subpoena powers Wired contacted, including the departments of Commerce, Energy, Agriculture, the Drug Enforcement Administration and the FBI, would voluntarily hand over data detailing how often they issued administrative subpoenas.¶ The Drug Enforcement Administration obtained the power under the Comprehensive Drug Abuse Prevention and Control Act of 1970 and is believed to be among the biggest issuers of administrative subpoenas.¶ "It's a tool in the toolbox we have to build a drug investigation. Obviously, a much, much lower threshold than a search warrant," said Lawrence Payne, a DEA spokesman, referring to the administrative subpoena generically. Payne declined to discuss individual cases.¶ Payne said in a telephone interview that no database was kept on the number of administrative subpoenas the DEA issued.¶ But in 2006, Ava Cooper Davis, the DEA's deputy assistant administrator, told a congressional hearing, "The administrative subpoena must have a DEA case file number, be signed by the investigator's supervisor, and be given a sequential number for recording in a log book or computer database so that a particular field office can track and account for any administrative subpoenas issued by that office."¶ After being shown Davis' statement, Payne then told Wired to send in a Freedom of Information Act request, as did some of the local DEA offices we contacted, if they got back to us at all. "Would suggest a FOIA request to see

whether you can get a number of administrative subpoenas. Our databases have changed over the years as far as how things are tracked and we don't have access to those in public affairs unfortunately," Payne said in an e-mail.¶ He said the agency has "never" been asked how many times it issued administrative subpoenas.¶ Amy Baggio, a Portland, Oregon federal public defender representing drug defendants for a decade, said DEA agents "use these like a doctor's prescription pad on their desk." Sometimes, she said, they issue "hundreds upon hundreds of them" for a single prosecution — often targeting mobile phone records.¶ "They are using them exponentially more in all types of federal criminal investigations. I'm seeing them in every drug case now," Baggio said. "Nobody is watching what they are doing. I perceive a complete lack of oversight because there isn't any required."

SOD Surveillance uses illegal means to find suspects and can get away with it– This allows the DEA to circumvent existing laws

Ungar 13 (Rick Ungar in addition to the pages of Forbes.com, can be found me every Saturday morning on your TV arguing with my more conservative colleagues on "Forbes on Fox" on the Fox News Network and at various other times during the week serving as a liberal talking head on other Fox News and Fox Business Network shows. He also serves as a Democratic strategist with Mercury Public Affairs, "More Surveillance Abuse Exposed! Special DEA Unit Is Spying On Americans And Covering It Up", AUG 5, 2013, http://www.forbes.com/sites/rickungar/2013/08/05/more-surveillance-abuse-exposed-special-dea-unit-is-spying-on-americans-and-covering-it-up/ -JD)

As Americans sort through their feelings regarding the disclosure of the massive collection of metadata by the National Security Administration, we are now learning of what may be a far more insidious violation of our constitutional rights at the hands of a government agency.¶ Reuters is reporting that a secret U.S. Drug Enforcement Administration branch has been collecting information from "intelligence intercepts, wiretaps, informants and a massive database of telephone records" and disseminating the data to authorities across the nation to "help them launch criminal investigations of Americans."¶ In this case, the Americans who are being subjected to these investigations are suspected drug dealers.¶ The unit of the DEA that is conducting the surveillance is known as the Special Operations Division ("SOD") and is made up of a partnership of numerous government agencies including the NSA, CIA, FBI, IRS and the Department of Homeland Security.¶ While there are suggestions that elements of the program may be legal, there is obvious concern on the part of those running the program—a concern that has not prevented them from going ahead with the collecting and using of covertly gathered data—that the surveillance effort may not be entirely kosher. We know this to be true because, according to documents reviewed by Reuters, DEA agents are specifically instructed never to reveal nor discuss the existence and utilization of SOD provided data and to further "omit the SOD's involvement from investigative reports, affidavits, discussions with prosecutors and courtroom testimony. Agents are instructed to then use 'normal investigative techniques to recreate the information provided by SOD.'"¶ The last line of the directive is particularly disturbing.¶ By instructing agents to use "normal investigative techniques to recreate the information provided by SOD", law enforcement is being instructed to flat out lie when disclosing how they came across the tips or other information provided by SOD leading to an arrest. These agents are directed to give substance to the lie by fabricating a false source or method utilized to gain information leading to an arrest.¶ In law enforcement parlance, it is called "parallel construction."¶ Accordingly to a former federal agent, the SOD 'tip' system works as follows:¶ "You'd be told only, 'Be at a certain truck stop at a certain time and look for a certain vehicle.' And so we'd alert

the state police to find an excuse to stop that vehicle, and then have a drug dog search it."¶ When the SOD tip leads to an arrest, the agents then pretend that the drug bust was the surprise result of pulling the vehicle over as a routine traffic stop.¶ So secretive is the program, SOD requires that agents lie to the judges, prosecuting attorneys and defense attorneys involved in a trial of a defendant busted as a result of SOD surveillance—a complete and clear violation of every American's right to due process, even when that American is a low-life drug dealer.

Agencies

Despite a desire to maintain squo policies—security agencies will abide by the law

Glennon ’14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

The Trumanite network is as little inclined to stake out new policies as it is to abandon old ones. The Trumanites’ grundnorm is stability, and their ultimate objective is preservation of the status quo. The status quo embraces not only American power but the Trumanites’ own careers, which are steadily elevated by the conveyer belt on which they sit. Preoccupied as they are with cascading crises, swamped with memos and email and overwhelmed with meetings, Trumanites have no time to re-examine the cosmological premises on which policy is based.179 Their business is reacting, day and night. Working weekends and evenings is routine; theirs are 24/7 jobs180 that leave no time for pondering big pictures. They are caught up in tactics;181 larger ends are for memoirs. Reflecting on the “fail[ure] to take an orderly, rational approach” to Vietnam decisionmaking, Robert McNamara wrote that “we faced a blizzard of problems, there were only twenty-four hours a day, and we often did not have time to think straight.” 182 His successors encountered an equally frenetic environment.183 With the anger, frustration, emotion, and the mental and physical exhaustion induced in working long hours under crisis conditions, a pernicious but existing policy gradually comes to be seen as the least bad choice. The status quo is preserved by minimizing risks, which means no bold departure from the settled long-term policy trajectory. “Men who have participated in a decision,” as James Thomson succinctly put it, “develop a stake in that decision.”184 Slow is therefore best. The risk of embarrassment is lower in continuing a policy someone else initiated than in sponsoring one’s own new one. If the policy fails, the embarrassment is someone else’s.

Trumanites are therefore, above all, team players. They are disinclined to disagree openly. “The further up you go,” one prominent organization theorist put it, “the less you can afford to stick out in any one place.”185 As one seasoned adviser said, because “there is a real team concept and where money disputes are not usually the core, radically different views of the direction to be taken by an administration can cause serious trouble.”186 He advises that a “new president should take care that his key officials in foreign policy all have a roughly similar outlook on the world and America’s place in it.”187 Accordingly, once a policy is final, Trumanites rally readily round it, however much they might once have disagreed. Dissent shades into disloyalty and risks marginalization, particularly in a policy group with high esprit de corps. As Kissinger put it, “[s]erving the machine becomes a more absorbing occupation than defining its purpose.”188 Little credit is gained by advocating for an option that has earlier been rejected. Likelier than not, one’s superior, or his superior, was present at the creation of the policy and takes pride in its authorship. “In government it is always easier to go forward with a program that does not work,” David Halberstam wrote, “than to stop it altogether and admit failure.”189 Even those immersed in the policy-making process are often bewildered by its outcome. The Army chief of staff, Harold Johnson, could think of “no logical rationale” to explain the military’s continuing recommendations for incremental escalation of the U.S. war effort in Vietnam—even though the military had difficulty devising any persuasive strategy to produce victory.190

The Trumanites’ commitment is therefore to process rather than outcome. “It is an inevitable defect,” Bagehot wrote, that “bureaucrats will care more for routine than for results; or, as Burke put it, ‘that

they will think the substance of business not to be much more important than the forms of it.'"191 "Men so trained," he believed, "must come to think the routine of business not a means but an end—to imagine the elaborate machinery of which they form a part, and from which they derive their dignity, to be a grand and achieved result, not a working and changeable instrument."192 At a certain point, policy within such a system reaches critical mass, and its gravitational pull is too strong to escape even for political appointees, who are easily co-opted.193 "The vast bureaucratic mechanisms that emerge develop a momentum and a vested interest of their own," Kissinger wrote.194 "There is a trend toward autarky."195 There thus emerges, as Goldsmith put it, a "persistence in the interests and outlook of the national security leadership and especially of the national security bureaucracy."196

The intelligence agencies are separated from the rest of the government

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

Neil Sheehan205 reflected on why nothing would happen. Sheehan's Times colleague Halberstam recalled that Sheehan came away with one impression: that "the government of the United States was not what he had thought it was; it was as if there were an inner U.S. government, what he called 'a centralized state, far more powerful than anything else . . . . It had survived and perpetuated itself . . . . [I]t does not function necessarily for the benefit of the Republic but rather for its own ends, its own perpetuation; it has its own codes which are quite different from public codes.'"206

The Trumanite network has achieved, in a word, autonomy. 207 The maintenance of Trumanite autonomy has depended upon two conditions. The first is that the Madisonian institutions appear to be in charge of the nation's security. The second is that the Madisonian institutions not actually be in charge.

Intel agencies run the show—other institutions are just figureheads

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

Although the Madisonian institutions seem to be in charge and, indeed, to be possessed of power broad enough to remedy their own deficiencies, a close look at each branch of government reveals why they are not. A more accurate description would be that those institutions are in a state of entropy and have become, in Bagehot's words, "a disguise"—"the fountain of honour" but not the "spring of business."241 The Presidency, Congress, and the courts appear to set national security policy, but in reality their role is minimal. They exercise decisional authority more in form than in substance. This is the principal reason that the system has not, as advertised, self-corrected.242

Law Enforcement

Local law enforcement has been instructed to keep surveillance capabilities a secret

Ham 14

Mary Katherine Ham, an American journalist. She is Editor-at-Large of Hot Air, a contributing editor to Townhall Magazine, and a Fox News Channel contributor, "Most transparent administration ever telling local police to keep surveillance secret", *HOTAIR,* http://hotair.com/archives/2014/06/16/most-transparent-administration-ever-telling-local-police-to-keep-surveillance-secret/, 06/16/14//SRawal

This isn't a matter of an Obama administration official whispering in local law enforcement's ears or sending a vague memo. They've been actively interfering in public records requests and lawsuits: **The Obama administration has been quietly advising local police not to disclose details about surveillance technology they are using to sweep up basic cellphone data from entire neighborhoods,** The Associated Press has learned. Citing security reasons, **the U.S. has intervened in routine state public records cases and criminal trials regarding use of the technology.** This has resulted in **police departments withholding materials or heavily censoring documents in rare instances when they disclose any about the purchase and use of such powerful surveillance equipment.** Federal involvement in local open records proceedings is unusual. It comes at a time when President Barack Obama has said he welcomes a debate on government surveillance and called for more transparency about spying in the wake of disclosures about classified federal surveillance programs. As we know, **local law enforcement is well on its way to becoming baby military forces**, with MRAPs, riot gear galore, and firepower sometimes akin to the U.S. Marine Corps. Now, **we know they're becoming baby NSAs, and being just as secretive about it**. What I find most discouraging about this story is that, if **you can't get any clear idea from your local government about where and how it might be capable of spying on you, there is no chance you're going to get any answers from the feds.** And, if **we can't be assured that we can even have cellphone conversations without our information being dragnetted**, we're not really free at all. This seems a rather low bar.

Local surveillance can break the law without consequence – they can they can cover it up with non disclosure agreements

Fenton 15 (Justin Fenton, who joined The Sun in 2005, has covered the Baltimore Police Department since 2008. His work includes an investigation into Cal Ripken Jr.'s minor league baseball stadium deal with his hometown of Aberdeen and a three-part series chronicling a ruthless con woman, "Baltimore Police used secret technology to track cellphones in thousands of cases", April 9, 2015, http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-stingray-case-20150408-story.html#page=1 -JD)

The Baltimore Police Department has used an invasive and controversial cellphone tracking device thousands of times in recent years while following instructions from the FBI to withhold information about it from prosecutors and judges, a detective revealed in court testimony Wednesday.¶ The testimony shows for the first time how frequently city police are using a cell site simulator, more commonly known as a "stingray," a technology that authorities have gone to great lengths to avoid disclosing.¶ The device mimics a cellphone tower to force phones within its range to connect. Police use it to track down stolen phones or find people.¶ Until recently, the technology was largely unknown to the public. Privacy advocates nationwide have raised questions whether there has been proper oversight of its use.¶ Baltimore has emerged in recent months as a battleground for the debate. In one case last fall, a city detective said a nondisclosure agreement with federal authorities prevented him from answering questions about the device. The judge threatened to hold him in contempt if he didn't provide information, and prosecutors withdrew the evidence.¶ The nondisclosure agreement, presented for the first time in court Wednesday, explicitly instructs prosecutors to drop cases if pressed on the

technology, and tells them to contact the FBI if legislators or judges are asking questions.¶ Detective Emmanuel Cabreja, a member of the Police Department's Advanced Technical Team, testified that police own a Hailstorm cell site simulator — the latest version of the stingray — and have used the technology 4,300 times since 2007.¶ Cabreja said he had used it 600 to 800 times in less than two years as a member of the unit.¶ Nate Wessler, an attorney with the American Civil Liberties Union, said 4,300 uses is "huge number." He noted that most agencies have not released data.¶ The Florida Department of Law Enforcement says its officers have used the device about 1,800 times. Police in Tallahassee say they have used it more than 250 times; police in Tacoma, Wash., 170 times.¶ Former U.S. Judge Brian L. Owsley, a law professor at Indiana Tech, said he was "blown away" by the Baltimore figure and the terms of the nondisclosure agreement. "That's a significant amount of control," he said.¶ Agencies have invoked the nondisclosure agreement to keep information secret. At a hearing last year, a Maryland State Police commander told state lawmakers that "Homeland Security" prevented him from discussing the technology.¶ Wessler said the secrecy is upending the system of checks and balances built into the criminal justice system.¶ "In Baltimore, they've been using this since 2007, and it's only been in the last several months that defense attorneys have learned enough to start asking questions," he said. "Our entire judicial system and constitution is set up to avoid a 'just trust us' system where the use of invasive surveillance gear is secret."¶

Racist Police

The aff does nothing to solve local surveillance rooted in racism

APUZZO 15 (Matt Apuzzo is a reporter for the NYT, and Professor at Georgetown University, and reported for Associated Press and the Standard-Times, "Ferguson Police Routinely Violate Rights of Blacks, Justice Dept. Finds", MARCH 3, 2015, http://www.nytimes.com/2015/03/04/us/justice-department-finds-pattern-of-police-bias-and-excessive-force-in-ferguson.html?_r=0)

WASHINGTON — **Ferguson, Mo., is a third white, but the crime statistics compiled in the city over the past two years seemed to suggest that only black people were breaking the law.** They accounted for 85 percent of traffic stops, 90 percent of tickets and 93 percent of arrests. In cases like jaywalking, which often hinge on police discretion, blacks accounted for 95 percent of all arrests.¶ **The racial disparity in those statistics was so stark that the Justice Department has concluded in a report** scheduled for release on Wednesday **that there was only one explanation**: **The F**erguson **P**olice **D**epartment **was** routinely **violating the constitutional rights of its black residents.¶ The report,** based on a six-month investigation, **provides a glimpse into the roots of the racial tensions that boiled over in Ferguson last summer after a black teenager, Michael Brown, was fatally shot by a white police officer**, making it a worldwide flash point in the debate over race and policing in America. **It describes a city where the police used force almost exclusively on blacks and regularly stopped people without probable cause**. Racial bias is so ingrained, the report said, that Ferguson officials circulated racist jokes on their government email accounts.¶ In a November 2008 email, a city official said Barack Obama would not be president long because "what black man holds a steady job for four years?" Another email included a cartoon depicting African-Americans as monkeys. A third described black women having abortions as a way to curb crime.¶ **"There are serious problems here that cannot be explained away," said a law enforcement official** who has seen the report and spoke on the condition of anonymity because it had not been released yet.¶ Those findings reinforce what the city's black residents have been saying publicly since the shooting in August, that the criminal justice system in Ferguson works differently for blacks and whites. A black motorist who is pulled over is twice as likely to be searched as a white motorist, even though searches of white drivers are more likely to turn up drugs or other contraband, the report found.¶ Minor, largely discretionary offenses such as disturbing the peace and jaywalking were brought almost exclusively against blacks. When whites were charged with these crimes, they were 68 percent more likely to have their cases dismissed, the Justice Department found.¶ "I've known it all my life about living out here," Angel Goree, 39, who lives in the apartment complex where Mr. Brown was killed, said Tuesday by phone.¶ Many such statistics surfaced in the aftermath of Mr. Brown's shooting, but the Justice Department report offers a more complete look at the data than ever before. Federal investigators conducted hundreds of interviews, reviewed 35,000 pages of police records and analyzed race data compiled for every police stop.¶ The report will most likely force Ferguson officials to either negotiate a settlement with the Justice Department or face being sued by it on charges of violating the Constitution. Under Attorney General Eric H. Holder Jr., the Justice Department has opened more than 20 such investigations into local police departments and issued tough findings against cities including Newark; Albuquerque, N.M.; and Cleveland.¶ But the Ferguson case has the highest profile of Mr. Holder's tenure and is among the most closely watched since the Justice Department began such investigations in 1994, spurred by the police beating of Rodney King in Los Angeles and the riots that followed.¶ While much of the attention in Ferguson has been on Mr. Brown's death, federal officials quickly concluded that the shooting was simply the spark that ignited years of pent-up tension and animosity in the area. The Justice Department is expected to issue a separate report Wednesday clearing the police officer, Darren Wilson, of civil rights violations in the shooting.¶ **It is not clear what changes Ferguson could make that would head off a lawsuit.¶ The report calls for city officials to acknowledge that the police department's tactics have caused widespread mistrust and violated civil rights. Ferguson officials have so far been reluctant to do so**, particularly as relations between the city and Washington have grown strained.¶ Mr. Holder was openly critical of the way local officials handled the protests and the investigation into Mr. Brown's death, and declared a need for "wholesale change" in the police department. Ferguson officials criticized Mr. Holder for a rush to judgment and saw federal officials as outsiders who did not understand their city.¶

Local Police police surveillance easily turns into violence – the Aff cannot solve

FRIEDERSDORF 15 (Conor Friedersdorf is a staff writer at The Atlantic, where he focuses on politics and national affairs. He lives in Venice, California, and is the founding editor of The Best of Journalism, a newsletter devoted to exceptional nonfiction, "Few Conservatives Take Police Abuses Seriously", MAY 1, 2015, http://www.theatlantic.com/politics/archive/2015/05/few-conservatives-take-police-abuses-seriously/391886/)

Nearly a quarter century ago, the libertarian magazine Reason published an essay on civil unrest suffused with an insight that movement conservatism still hasn't grasped. Then-editor Virginia Postrel was writing in the wake of the Los Angeles riots of 1992. "What caused the riots?" she asked. "How do we prevent them from recurring?" She agreed with law-and-order voices of that era that a dearth of conscience and empathy were factors. "**Only people without empathy could drag people out of their cars and beat them within an inch of their lives**," she wrote. "**Only people without empathy could burn and loot the lives and dreams of their neighbors**." **But she went on to observe that a small criminal element preys on South Los Angeles every day whereas riots occur once in a generation**. Rottenness may have been necessary to explain the beating of Reginald Denny or the terror inflicted on small business owners, but it wasn't sufficient to explain such mayhem.¶**To turn rottenness into riots**, she argued, **another necessary condition was widespread rage**. "**Black Angelenos, black Americans, are very, very angry. Most did not riot; many saw their stores burn, their dreams explode, their lives suddenly get harder**," she wrote. "**Nor were all the rioters either black or angry: a plurality of looters arrested were Latino; many in Hollywood and downtown were white** ... But rage did fuel these riots, at least at the beginning. To violent people, the not-guilty verdicts—and the rage they engendered among the general public—provided a signal to riot, to converge at once on shops and passersby. Rage supplied cover for more venal motivations. And it spurred the political apologies for the rioters."¶As well, the attention paid to the riots gave the non-violent majority a chance to peacefully voice their rage. "If you listen to what those people are actually saying—often in loud and angry voic
es—you will not hear the cliches of pundits and politicians," she wrote. "The Great Society, pro or con, will not come up. Instead you will hear this: **The criminal justice system does not protect black Americans. It does not make their streets safe from violence. It does not rally to the side of black crime victims**. It sees black people only as criminals, never as citizens. It does not give them respect." **The LAPD was not the only contributing factor, but anyone hoping to understand the L.A. riots had to contend with the city's policing**.

Local law enforcement treats black lives matter like a terrorist threat

Johnson ’15 associate editor at AlterNet (4/29/15, Adam, Popular Resistance, “Government Treating #BlackLivesMatter Like A Terrorist Group”, https://www.popularresistance.org/government-treating-blacklivesmatter-like-a-terrorist-group/)

We learned in the wake of the Occupy Wall Street movement that **the government’s use of its anti-terror apparatus at a local and federal level was both routine and pervasive.** Thus far, the means with which similar practices have been used on #BlackLivesMatter have been subtly emerging — thanks in large part to some truly intrepid journalism — from across the country. Here is a recap of the five of the worst examples:

1. **NYPD** and FBI **uses counter-terror apparatus on #BlackLivesMatter New York.**

Though it was mostly taken for granted by those paying attention within the activists community, official recognition that the NYPD and its FBI Joint Terror Task Force were using their counter terror units on #BlackLivesMatter didn’t really come until a casual admission by the NYPD in the New York Post the day before the announcement of the Eric Garner verdict in December of last year:

“They wore me out, ” said one counterterror expert who monitored the protests. “Their ability to strategize on the fly is something we haven’t dealt with before to this degree.”

A few weeks later, the New York Post would again be the forum with which the NYPD would casually assert counter terror units were used on #BlackLivesMatter, this time in connection to an alleged assault on an NYPD officer: “Linsker was nabbed by members of the Joint Terrorism Task Force around 3:45 a.m., sources said.”

Alex Kane reported for Vice:

How the NYPD's Counterterrorism Apparatus Is Being Turned on Protesters

The police wearing the counterterrorism jackets at protests are perhaps the most palpable sign of the agency's transformation since 2001. Before 9/11 the NYPD had no counterterrorism bureau and the Intelligence Division focused its resources on gang activity. After the September 11 attacks, however, billions of dollars were poured into the department to counter the threat of terrorism, as a 2011 60 Minutes report showed. Critics of the NYPD's post-9/11 turn have been arguing that practices devoted to fighting terrorism have violated the Constitution.

Now, they say, the NYPD is unleashing its counterterrorism tools on activists against police brutality, conflating legitimate protest with the threat of terrorism.

2. California Highway Patrol used counterterror units to monitor #BlackLivesMatter in Bay Area.

A cache of emails revealed by Darwin BondGraham of the East Bay Expresstwo weeks ago **revealed the California Highway Patrol were using its anti-terrorism apparatus, including fusion centers like Northern California Regional Intelligence Center to monitor #BlackLivesMatter activists on social media**. As BondGraham would lay out:

An email sent on December 12 illustrates how counter-terrorism officials working out of fusion centers helped CHP monitor protesters. At 12:12 p.m. that day, Elijah Owen, a senior intelligence advisor with the California State Threat Assessment Center (Cal STAC) sent CHP officer Michael Berndl a copy of a protest flliercalling for a speak-out and march against the CHP the next day. "Just so it's on your folks' radar," wrote Owen. Cal STAC officers appear in other CHP emails as sources of information, or recipients of intel gathered by the Oakland Police Department, Alameda County Sheriff's Office, and other agencies.

Earlier this year, **the California Highway Patrol would also casually drop in the LA Times how they used fake twitter profiles to monitor protesters:**

Despite Wednesday's incident, Browne said he will continue to deploy plainclothes officers to gather intelligence from protesters. Officers have also been creating Twitter accounts, on which they don't identify themselves as police, in order to monitor planned demonstrations.

It's unclear to what extent these two approaches – using anti-terror apparatus to monitor #BlackLivesMatter social media and the use of fake online profiles to monitor #BlackLivesMatter-overlapped.

3. Massachusetts Counterterror **fusion centers were used to monitor #BlackLivesMatter protesters** in Boston.

Similarly, fusion centers were used to monitor #BlacklivesMatter protests in Massachusetts. As the ACLU's Kade Crockford noted last November:

Law enforcement officials at the Department of Homeland Security-funded "Commonwealth Fusion Center" spied on the Twitter and Facebook accounts of Black Lives Matter protesters in Boston earlier this week, the Boston Herald reports.

The reference to the so-called 'fusion' spy center comes at the very end of a news story quoting Boston protesters injured by police in Tuesday night's demonstrations, which was possibly the largest Ferguson related protest in the country the day after the non-indictment of Darren Wilson was announced.

The state police Commonwealth Fusion Center monitored social media, which provided "critical intelligence about protesters' plans to try to disrupt traffic on state highways," state police said.

Though it was buried at the end of the Boston Herald story, **the use of fusion centers – deliberately set up for the purposes of stopping terrorism – are, once again, being used to monitor peaceful domestic dissent.**

4. FBI Joint Terror Task Force was used to track #BlackLivesMatter Minnesota.

Just as with the California Highway Patrol, internal emails between local police departments and federal authorities revealed the extent to which the counter-terror apparatus was casually – and entirely turn-key – used on #BlackLivesMatter. The Intercept's Lee Fang revealed in March:

Why Was an FBI Joint Terrorism Task Force Tracking a BlackLives Matter protest?

Members of an FBI Joint Terrorism Task Force tracked the time and location of a Black Lives Matter protest last December at the Mall of America in Bloomington, Minnesota, email obtained by The Intercept shows

The email from David S. Langfellow, a St. Paul police officer and member of an FBI Joint Terrorism Task Force, informs a fellow task force member from the Bloomington police that "CHS just confirmed the MOA protest I was talking to you about today, for the 20th of DEC @ 1400 hours." CHS is a law enforcement acronym for "confidential human source."

In other words, these emails revealed that not only was the FBI using its Joint Terror Task Force – an entity that exploded post-9/11 in the name of fighting terrorism – but also using paid informants who were undercover posing as protestors. Once again, tactics and legal allowances created in the name of "stopping terrorism" are being used, without any oversight or public debate, on entirely peaceful domestic activism.

5. Emails reveal Missouri National Guard viewed Ferguson protestors as "enemy forces."

The most haunting revelation may just be the latest, from CNN:

Missouri National Guard's term for Ferguson protesters: 'Enemy forces'

As the Missouri National Guard prepared to deploy to help quell riots in Ferguson, Missouri, that raged sporadically last year, **the guard used highly militarized words such as "enemy forces" and "adversaries" to refer to protesters, according to documents obtained by CNN.**

CNN's use of military speak aside ("quell riots"), the report clearly shows those in charge viewed both rioter and protester alike as enemy combatants and Ferguson as a war zone.

What makes this, and the other above examples, so pernicious isn't just the use of anti-terror language, legal authority, and apparatuses on peaceful domestic activism, it's the entirely casual nature with which it's done. Beyond a few PR tweaks, there doesn't seem to be, in any of these internal documents, an ounce of doubt or hesitation as to whether or not using systems set up ostensibly to combat al-Qaeda should be so quickly turned on domestic activism. If all you have is a hammer, as the cliche goes, everything looks like a nail. We've given our hyper-militarized police and the FBI the hammer of coordinated mass surveillance, infiltration, and monitoring in the name of fighting a phenomenon that kills fewer people a year than bee stings, It was only a matter of time, therefore, that mass protests would begin to look like a nail in the eyes of our paranoid, over-equipped security officials.

Islamaphobia

Local Surveillance like the NYPD is Islamaphobic

Kane 13 (Alex Kane is an assistant editor for the news website Mondoweiss, which covers the Israel–Palestine conflict, and the World section editor at AlterNet. His work has also appeared in Salon, The Daily Beast's "Open Zion" blog, Vice, BBC Persian, +972 magazine, the Electronic Intifada, Extra!, and Common Dreams, Kane is citing the book "Enemies Within" by Matt Apuzzo and Adam Goldman, "Alex Kane on Enemies Within : Inside the NYPD's Secret Spying Unit and bin Laden's Final Plot Against America", October 24th, 2013, http://lareviewofbooks.org/review/raking-the-coals-islamophobia-surveillance-targeting-and-the-nypds-secret-spying-unit)

Like the NYPD, the FBI has used its own power to pressure Muslims into becoming informants in exchange for help. According to the American Civil Liberties Union, the FBI has told Muslim-Americans trapped abroad because of their inclusion on a no-fly list that they could get off easily — by spying on their own communities back home in the US. For all the oversight of the FBI — something the NYPD doesn't have to contend with — parts of the federal agency still view Muslims as targets for spying rather than partners in the fight against terrorism. Far from an aberration in America's post-9/11 landscape, the NYPD is merely the most extreme example of a law enforcement apparatus running roughshod over the rights of Muslim Americans.¶ What's also missing from Apuzzo and Goldman's otherwise excellent exposé of **the NYPD is the larger political context in which the spying took place**. **The NYPD's logic is Islamophobic at its core: all Muslims are deemed potential terrorists until they're proven not to be, an inversion of how law enforcement is supposed to work.** Yet there's little exploration of how Islamophobic discourse from the media and elected officials contribute to the implementation and acceptance of spying targeting Muslims.¶ In the same year that **Apuzzo and Goldman began reporting on the NYPD's Intelligence Division, New York Republican Peter King set up House hearings to probe "radicalization" among Muslim-Americans — a transparent attempt to cast aspersions on one particular community**. In 2010, anti-Muslim blogger Pamela Geller worked the national media into a frenzy over what was inaccurately labeled the "Ground Zero mosque." **King, Geller and other prominent figures who demonized Muslims directly after 9/11 opened up space for institutions with even more power, like the police, to move a discourse of bigotry into policies of bigotry**. **In an atmosphere where anti-Muslim sentiment largely went unchallenged, it's no surprise that hardly an eye was batted when the NYPD hired CIA officials to implement an intelligence collection program aimed at law-abiding citizens.¶** The book presents an undeniably damning portrait of the NYPD's surveillance operation. Now, it's up to the courts and lawmakers to decide whether these operations are legal or prudent. Three federal lawsuits are being pursued in reaction to Apuzzo's and Goldman's groundbreaking investigations. The next New York City mayor will have to grapple with the question of continuing or halting the spy operations. Judges and elected officials will have a documented record on which to look back to decide these weighty questions in the coming months: Enemies Within.¶

Surveillance is heavily biased– It is assumed that Muslims are terrorists

Khalek 14 (Rania Khalek is an independent journalist reporting on the underclass and marginalized communities, "How NSA Spying Impacts Muslim Communities and Cultivates Islamophobia", January 26, 2014, http://raniakhalek.com/2014/01/26/how-nsa-spying-impacts-muslim-communities-and-cultivates-islamophobia/ -JD)

RANIA KHALEK: That's a really good point that you make and I actually want you to touch on that a little bit more about how **the vilification and demonization of Muslims inside the United States and foreign has really been used to justify this type of mass surveillance and in some cases it seems to have worked. All you have to do is say terrorist, Islamic terrorism and people are like, oh okay**. Could you talk a little bit about that?¶ ABBAS: I agree

wholeheartedly that **the fear of Islam, the fear of Muslims, is a notion I think has been cultivated by policy choices at the federal level**. **The use of airport screenings, that inevitably cultivates and reflects the bias that people have against Muslims**, **has** I think **created space for an anti-Muslim movement to take root**. Right after September 11, you didn't have your Act for America's, your David Yerushalmi's, your Center for Security Policy's—**this well-organized, well-financed movement dedicated towards marginalizing Muslims and that gave rise to** essentially **an engine of generating ant-Muslim sentiment that creates this terrible and despicable cycle** where now you have the overt argument being made that Muslims are here in the United States to abrogate the US constitution, to overthrow the US government and replace it with Sharia law, which couldn't be further from the truth.¶ As the facts would have it, the American Muslim community is a well-educated, well-integrated and looking to continue to do so in the world. You can't identify an American Muslim radical voice in the United States, whereas if you go to Europe, you can find people that have a platform that say despicable objectionable things. In the US, that's just not the case.¶ But we still have in the US, which is really exporting anti-Muslim sentiment to other parts of the world especially Europe, we still have this fear of Islam that absolutely does give rise to justify these surveillance policies.¶ GOSZTOLA: So for people who are hearing this debate and they maybe think it's kind of abstract, we've been hearing people talk about collection of the information and then we've been hearing about how the information is stored. And right now when we're talking about the program under the Patriot Act, the Section 215 program, which is the bulk records collection of the phone records, it's all about who's going to hold it, who's going to store it, and it's kind of like we're not talking about the collection. I'd like you to talk about why the collection would be really bad and I think a thing you could address is how the collection of people's information in Muslim communities in New York is a huge deal for them and collecting that information is the beginning of the injustice.¶ ABBAS: Absolutely. What we know a lot about now regarding the NSA's surveillance programs is what is collected, some of the searching mechanisms that can be utilized to sift through the collected information. But what **we really get to see in more granular detail with the NYPD's specifically designed Muslim surveillance program is how indiscriminately collected information gets utilized and what people in positions of authority that can collect such information think is an appropriate use of taxpayer dollars.** And what we find is that **the NYPD thought it was absolutely worth taxpayer money to send their agents on camping trips of 19 and 20-year-old college students. They thought it was absolutely critical for them to map the Muslim community in Newark, New Jersey, and beyond, identifying every halal grocery store, every halal restaurant.** These things are laughable when we see them up close and in granular detail and just like the PCLOB board has determined itself, a board that was authorized by Congress years ago, that the sifting through everybody's information on an ongoing basis actually is not only objectionable in itself but it's not productive by any criteria.¶ So you have for instance James Clapper arguing that there's the 'piece of mind' quotients that is part of the benefit of their surveillance program because we're monitoring everything. At the very least we know that nothing is happening. But this mentality that gave rise to the NSA program is really the objectionable thing that needs to end because it gives rise to not only indiscriminate collection of information automatically through these telecommunications companies, but it's also given rise to a network of 15,000 FBI informants that have saturated the Muslim community across the country, that are sent to mosques without any type of criminal predicate just to collect information because there's a sense that that's where the problem. And that's the inevitable result of indiscriminate collection. It's always going to be the case that indiscriminate collection—in addition to not being productiv—will lead to despicable consequences.¶ And I'll end my answer here.¶ The saddest thing I've ever heard as a CAIR staff attorney, and I hear lots of sad things, was when **a young guy told me that when he goes to the mosque to pray, his mom warns him to be careful. And the mom warns him to be careful because there's an understanding based on experience that the mosque is likely filled with informants and infiltrators that are not there to make us any safer but there to extract information from innocent Americans by any means necessary.**¶

The Public

Project Vigilant allows the government to use private operatives' information on citizens

Blain 10

Loz Blain, one of Gizmag's most versatile contributors since 2007. Joining the team as a motorcycle specialist, he has since covered everything from medical and military technology to aeronautics, music gear and historical artefacts, 8-2-2010, "Surveillance: two rare glimpses into who's watching you, and how ," *GIZMAG*, http://www.gizmag.com/surveillance-whos-watching-and-how/15919//SRawal

Do yourself a favor and check out Glenn Greenwald's article at Salon.com, titled "Project Vigilant and the government/corporate destruction of privacy." In the article, he shows **how the United States government neatly sidesteps any legal restraints that might prevent it from gathering information on its citizens** – in this case, **by accepting dossiers from a network of private cyber-vigilantes that operates in near-total secrecy and with no accountability to mechanisms like the Privacy Act or the Freedom of Information Act. This group is comprised of as many as 500 operatives, some of whom have experience in data security and surveillance after leaving top-level positions at organizations like the U.S. Department of Justice, Homeland Security, the Pentagon, the NSA, the New York Stock Exchange**... a**nd they are exploiting loopholes in ISP contracts to mine data on every step you take online**. **Project Vigilant is just one further tool the U.S. government uses when it can't get what it wants** – let's not forget that as the 'War on Terror' escalated, the NSA showed through its warrantless wiretapping program that it believes that such **privacy laws as there are stopping the government from spying on its own citizens are at best flexible, or at worst to be completely ignored**. And it's not like the Obama administration has made amends in this regard – if anything, they've pushed the Bush agenda even further. So your **online communications – including your browsing history, forum participation, social networks, emails and transactions can all be considered to be laid bare on the table, tracked back to your real-world identity and locations, by whoever decides it's worth doing.**

The aff cannot stop Vigilantism – the people will still trigger the impact (SUBJECT TO CHANGE)

Eversley 15 (Melanie Eversley is a reporter on USA TODAY's Breaking News desk and one of the bloggers for On Deadline. Over the years, she has written about Congress, politics, civil rights and race relations, 9 dead in shooting at black church in Charleston, S.C., June 19, 2015, http://www.usatoday.com/story/news/nation/2015/06/17/charleston-south-carolina-shooting/28902017/)

CHARLESTON, S.C. — **Nine people have died in a shooting at a historic black church in Charleston, S.C., police said early Thursday morning**.¶ "I do believe this was a hate crime," Police Chief Gregory Mullen said.¶ **Eight people died on the scene at the Emanuel African Methodist Episcopal Church and one person was pronounced dead at a hospital**, Mullen said. **The suspect, who remains on the loose, is a white male about 21 years old, officials said**.¶ The shooting took place at about 9 p.m. ET on Wednesday. Charleston Police released photos of the suspect during a news conference that started at 6 a.m. ET Thursday, and said he left the scene in a black four door sedan. He is described as "armed and dangerous."¶ **Church members were shot as they took part in shot at bible study**, the NAACP said. Dot Scott, president of the Charleston NAACP, said a female survivor told family members that the gunman initially sat down in the church for a while before opening fire, the Post and Courier reported. Scott added that the gunman reportedly told the woman he was letting her live so she could tell others what happened.¶ **Among the dead was the state senator who was pastor of the church**, Democrat Clementa Pinckney, said South Carolina House Minority Leader Todd Rutherford, the Associated Press reported. Pinckney, 41, was married with two children and had served in the state Senate since 2000, according to online biographies.¶ People were taking part in a prayer meeting at the time of the incident, Mayor Joe Riley said during the press conference.¶ **"This is inexplicable," Riley said. "It is the most intolerable and**

unbelievable act possible ... The only reason someone could walk into church and shoot people praying is out of hate."¶Said Police Chief Mullen: **"This is a tragedy that no community should have to experience. It is senseless. It is unfathomable that someone would walk into a church when people are having a prayer meeting and take their lives."**

The aff doesn't solve the murderous acts of vigilantes – even the police can't stop them

CNN WIRE 15 (As a partner of KTLA, the CNN Wire service provides national and international coverage of breaking news, politics, health, finance, entertainment and more. The syndication network includes regional content from television stations and publications across the country, "4 Dead, Including 2 Teens, in South Carolina Shooting; 8-Year-Old Boy Injured", JULY 15, 2015, http://ktla.com/2015/07/15/4-dead-including-2-teens-in-south-carolina-shooting-8-year-old-boy-injured/)

Four people were found shot dead Wednesday in Orangeburg County, South Carolina, and authorities say they are looking for the person responsible.¶A boy, about 8 years old, was injured, Sheriff Leroy Ravenell told reporters. The child's condition was not immediately clear.¶**Ravenell said that authorities believe the shooting was an isolated event** and that they are "following some good leads."¶"We don't think that we have anybody in this area that's still out actively committing crimes," the sheriff said.¶**He vowed police would not rest until "we arrest the person that killed these individuals."**¶**Three of the four people killed were found inside a home, and have been identified**. They are Tamara Alexia Almeshia Perry, 14; Shamekia Tyjuana Sanders, 17; and Crystal Hutto, 28.¶**The fourth victim, a black adult male, was found deceased in the home's yard. All the victims suffered gunshot wounds.**¶**Police located a vehicle believed to be connected to that home earlier Wednesday, Ravenell said. It had been burned.**¶**The sheriff declined to answer a number of questions, citing an ongoing investigation.**¶**"We don't want this lingering out there with the public not knowing what's going on," he said.**¶

It is easy and cheap to surveil mobile communications—anyone can do it

Blain 10

Loz Blain, one of Gizmag's most versatile contributors since 2007. Joining the team as a motorcycle specialist, he has since covered everything from medical and military technology to aeronautics, music gear and historical artefacts, 8-2-2010, "Surveillance: two rare glimpses into who's watching you, and how ," *GIZMAG*, http://www.gizmag.com/surveillance-whos-watching-and-how/15919//SRawal

And if you were under the misapprehension that your mobile communications were any safer, Chris Paget's recent **demonstration of cellphone tower spoofing showed just how easy and inexpensive it is for anyone with the appropriate knowledge to intercept and record your private phone calls** as well. Paget's **device simply pretends to be a cellphone tower that delivers a closer and stronger signal than a real tower. Mobile phones automatically connect to the tower with the best signal, so they switch over to the spoofed tower, which quietly records the conversation and sends the information on to the real network. The user is completely unaware.** Worse still, the equipment Paget built for his demonstration, in which **dozens of audience members' phones were 'hijacked,' cost him less than US$1500** – most of which was for the laptop he ran the system through. More about the demonstration at Paget's blog. So **the ability to spy on your mobile conversations is now so cheap to attain that it's no longer the sole preserve of cashed-up government and law enforcement agencies – just about anyone can do it**. And it's a glimpse at the kind of capability the NSA and other agencies have almost certainly had since day one.

Businesses

Businesses sharing citizens' information with the government is a new privacy threat

Fang 15

Lee Fang, a journalist with a longstanding interest in how public policy is influenced by organized interest groups and money, 04/01/15, "How Big Business Is Helping Expand NSA Surveillance, Snowden Be Damned," Intercept, https://firstlook.org/theintercept/2015/04/01/nsa-corporate-america-push-broad-cyber-surveillance-legislation//SRawal

For all its appeal to corporations, **CISA represents a major new privacy threat to individual citizens. It lays the groundwork for corporations to feed massive amounts of communications to private consortiums and the federal government**, a scale of cooperation even greater than that revealed by Snowden. **The law also breaks new ground in suppressing pushback against privacy invasions**; in exchange for channeling data to the government, businesses are granted broad legal immunity from privacy lawsuits — potentially leaving consumers without protection if companies break privacy promises that would otherwise keep information out of the hands of authorities**. Ostensibly, CISA is supposed to help businesses guard against cyberattacks by sharing information on threats with one another and with the government. Attempts must be made to filter personal information out of the pool of data that is shared.** But **the legislation** — at least as marked up by the Senate Intelligence Committee — **provides an expansive definition of what can be construed as a cybersecurity threat, including any information for responding to or mitigating "an imminent threat of death, serious bodily harm, or serious economic harm," or information that is potentially related to threats relating to weapons of mass destruction, threats to minors, identity theft, espionage, protection of trade secrets, and other possible offenses. Asked at a hearing in February how quickly such information could be shared with the FBI, CIA, or NSA,** Deputy Undersecretary for Cybersecurity Phyllis Schneck replied, "fractions of a second." Questions persist on how to more narrowly define a cybersecurity threat, what type of personal data is shared, and which government agencies would retain and store this data. Sen. Ron Wyden, D-Ore., who cast the lone dissenting vote against CISA on the Senate Intelligence Committee, declared the legislation "a surveillance bill by another name." Privacy advocates agree. "**The lack of use limitations creates yet another loophole for law enforcement to conduct backdoor searches on Americans,"** argues a letter sent by a coalition of privacy organizations, including Free Press Action Fund and New America's Open Technology Institute. Critics also argue that CISA would not have prevented the recent spate of high-profile hacking incidents. As the Electronic Frontier Foundation's Mark Jaycox noted in a blog post, the JPMorgan hack occurred because of an "un-updated server" and prevailing evidence about the Sony breach is "increasingly pointing to an inside job." But **the intelligence community and corporate America have this year unified behind the bill.** For a look into the breadth of the corporate advocacy campaign to pass CISA, see this letter cosigned by many of the most powerful corporate interests in America and sent to legislators earlier this year. Or **another lette**r, reported in the Wall Street Journal**, signed by** "**general counsels of more than 30 different firms, including 3M and Lockheed Martin Corp."**

AT: Oversight

Oversight fails—Executive and agency interference—kills the signal

Sullivan ’14, Writer for the Associated Press, 3/19/14, Eileen Sullivan, Huffington Post, “CIA-Senate Accusations Complicate Oversight Of Surveillance Programs”, http://www.huffingtonpost.com/2014/03/19/cia-senate-surveillance_n_4995971.html

"We've set the balance between public disclosure and the need for secrecy by empowering the congressional intelligence committees," Robert Litt, general counsel of the office of the director of national intelligence, said Wednesday. Litt was speaking to a privacy oversight panel that has been reviewing some of the more controversial spy programs revealed last year. But that balance is suspect amid complaints that the executive branch interferes with Congress. Sen. Dianne Feinstein, D-Calif., the chair of the Senate Intelligence Committee and a longtime supporter of the NSA surveillance programs, has accused the government of this type of interference. Feinstein said the CIA interfered with and then tried to intimidate a congressional investigation into the agency's possible use of torture as it probed suspected terrorists after the Sept. 11 attacks. "This is kind of a raw example of how things can go wrong in congressional oversight," said David M. Barrett, a Villanova University professor who has studied the history of Congress and the intelligence community. "Congressional oversight of intelligence is going to be imperfect. It always is." Privacy advocates have been critical of the congressional oversight of the NSA programs, raising concerns that lawmakers are too close to the administration, hindering objective and effective oversight of the secret programs. "Even when Congress tries to do some oversight, they're thwarted by the administration," said Michelle Richardson of the American Civil Liberties Union. "I don't think the public has faith in congressional oversight anymore."

Congress has no idea what’s happening

Grayson ’13, the United States Representative for Florida's 9th congressional district, 10/25/13, Alan Grayson, “**Congressional oversight of the NSA is a joke. I should know, I'm in Congress**”, http://www.theguardian.com/commentisfree/2013/oct/25/nsa-no-congress-oversight

Pike's investigation initiated one of the first congressional oversight debates for the vast and hidden collective of espionage agencies, including the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), and the National Security Agency (NSA). Before the Pike Commission, Congress was kept in the dark about them – a tactic designed to thwart congressional deterrence of the sometimes illegal and often shocking activities carried out by the "intelligence community". Today, we are seeing a repeat of this professional voyeurism by our nation's spies, on an unprecedented and pervasive scale. Recently, the US House of Representatives voted on an amendment – offered by Representatives Justin Amash and John Conyers – that would have curbed the NSA's omnipresent and inescapable tactics. Despite furious lobbying by the intelligence industrial complex and its allies, and four hours of frantic and overwrought briefings by the NSA's General Keith Alexander, 205 of 422 Representatives voted for the amendment. Though the amendment barely failed, the vote signaled a clear message to the NSA: we do not trust you. The vote also conveyed another, more subtle message: members of Congress do not trust that the House Intelligence Committee is providing the necessary oversight. On the contrary, "**oversight" has become "overlook".** Despite being a member of Congress possessing security clearance, I've learned far more about government spying on me and my fellow citizens from reading media reports than I have from "intelligence" briefings. If the vote on the Amash-Conyers amendment is any indication, my colleagues feel the same way. In fact, one long-serving conservative Republican told me that he doesn't attend such briefings anymore, because, "they always lie". Many of us worry that Congressional Intelligence Committees are more loyal to the "intelligence community" that they are tasked with policing, than to the Constitution. And the House Intelligence Committee isn't doing anything to assuage our concerns. I've requested classified information, and further meetings with NSA officials. The House Intelligence Committee has refused to provide either. Supporters of the NSA's vast ubiquitous domestic spying operation assure the public that members of Congress can be briefed on these activities whenever they want. Senator Saxby Chambliss says all a member of Congress needs to do is ask for information, and he'll get it. Well I did ask, and the House Intelligence Committee said "no", repeatedly. And

virtually every other member not on the Intelligence Committee gets the same treatment. Recently, a member of the House Intelligence Committee was asked at a town hall meeting, by his constituents, why my requests for more information about these programs were being denied. This member argued that I don't have the necessary level of clearance to obtain access for classified information. That doesn't make any sense; every member is given the same level of clearance. There is no legal justification for imparting secret knowledge about the NSA's domestic surveillance activities only to the 20 members of the House Intelligence Committee. Moreover, how can the remaining 415 of us do our job properly, when we're kept in the dark – or worse, misinformed?

Checks from within the agencies fail

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

Indeed, intra-Trumanite checks have already been tried. When questions arose as to whether Justice Department lawyers inappropriately authorized and oversaw warrantless electronic surveillance in 2006, its Office of Professional Responsibility commenced an investigation—until its investigators were denied the necessary security clearances, blocking the inquiry.550 The FBI traditionally undertakes an internal investigation when an FBI agent is engaged in a serious shooting; "from 1993 to early 2011, FBI agents fatally shot about seventy 'subjects' and wounded about eighty others—and every one of those [shootings] was justified," its inspectors found.551 Following the NSA surveillance disclosures, President Obama announced the creation of an independent panel to ensure that civil liberties were being respected and to restore public confidence—a panel, it turned out, that operated as an arm of the Office of the Director of National Intelligence, which oversees the NSA.552 Inspectors general were set up within federal departments and agencies in 1978 as safeguards against waste, fraud, abuse, and illegality,553 but the positions have remained vacant for years in some of the government's largest cabinet agencies, including the departments of Defense, State, Interior, and Homeland Security.554 The best that can be said of these inspectors general is that, despite the best of intentions, they had no authority to overrule, let alone penalize, anyone. The worst is that they were trusted Trumanites who snored through everything from illegal surveillance to arms sales to the Nicaraguan contras to Abu Ghraib to the waterboarding of suspected terrorists. To look to Trumanite inspectors general as a reliable check on unaccountable power would represent the ultimate triumph of hope over experience.

Trumanites control congress

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

Like the courts, Congress's apparent power also vastly outstrips its real power over national security. Similar to the Trumanites, its members face a blistering work load. Unlike the Trumanites, their work is not concentrated on the one subject of national security. On the tips of members' tongues must be a ready and reasonably informed answer not only to whether the United States should arm Syrian rebels, but also whether the medical device tax should be repealed, whether and how global warming should be addressed, and myriad other issues. The pressure on legislators to be generalists creates a need to defer to national security experts. To a degree congressional staff fulfill this need. But few can match the Trumanites' informational base, drawing as they do on intelligence and even legal analysis that agencies often withhold from Congress. As David Gergen put it, "[p]eople . . . simply do not trust the Congress with sensitive and covert programs."344

The Trumanites' threat assessments,345 as well as the steps they take to meet those threats, are therefore seen as presumptively correct whether the issue is the threat posed by the targets of drone strikes, by weapons of mass destruction in Iraq, or by torpedo attacks on U.S. destroyers in the Gulf of Tonkin. Looming in the backs of members' minds is the perpetual fear of casting a career-endangering vote. No vote would be more fatal than one that might be tied causally to a cataclysmic national security breakdown. While the public may not care strongly or even know about many of the Bush policies that Obama has continued, the public could and would likely know all about any policy change—and who voted for and against it—in the event Congress bungled the protection of the nation. No member wishes to confront the "if only" argument: the argument that a devastating attack would not have occurred if only a national security letter had been sent, if only the state secrets privilege had been invoked, if only that detainee had not been released. Better safe than sorry, from the congressional perspective. Safe means strong. Strong means supporting the Trumanites.

Because members of Congress are chosen by an electorate that is disengaged and uninformed, Madison's grand scheme of an equilibrating separation of powers has failed, and a different dynamic has arisen.346 His design, as noted earlier,347 anticipated that ambition counteracting ambition would lead to an equilibrium of power and that an ongoing power struggle would result among the three branches that would leave room for no perilous concentration of power.348 The government's "several constituent parts" would be "the means of keeping each other in their proper places."349 But the overriding ambition of legislators chosen by a disengaged and uninformed electorate is not to accumulate power by prescribing policy for the Trumanites, as Madison's model would otherwise have predicted. Their overriding ambition is to win reelection, an ambition often inconsistent with the need to resist encroachments on congressional power. All members of Congress know that they cannot vote to prescribe—or proscribe—any policy for anyone if they lose reelection. It is not that Madison was wrong; it is that the predicate needed for the Madisonian system to function as intended—civic virtue—is missing.

As a result, Trumanite influence permeates the legislative process, often eclipsing even professional committee staff. Trumanites draft national security bills that members introduce. They endorse or oppose measures at hearings and mark-ups. They lobby members, collectively and one-on-one. Their positions appear on the comparative prints that guide members through key conference committee deliberations. Sometimes Trumanites draft the actual language of conference reports. They wait outside the chambers of the House and Senate during floor debates, ready on-the-spot to provide members with instant arguments and data to back them up. Opponents frequently are blind-sided. Much of this activity is removed from the public eye, leading to the impression that the civics-book lesson is correct; Congress makes the laws. But the reality is that virtually everything important on which national security legislation is based originates with or is shaped by the Trumanite network.

Conversely, congressional influence in the Trumanites' decisionmaking processes is all but nil. The courts have, indeed, told Congress to keep out. In 1983, the Supreme Court invalidated a procedure, called the "legislative veto," which empowered Congress to disapprove of Trumanite arms sales to foreign nations, military initiatives, and other national security projects.350 The problem with the concept, the Court said, was that it permitted Congress to disapprove of executive action without the possibility of a presidential veto.351 A legislative proposal thereafter to give the Senate Intelligence Committee the power to approve or disapprove covert actions was rejected, on the grounds that the Court had ruled out such legislative controls.352

Defenders of the process often claim that congressional oversight nonetheless works.353 How they can know this they do not say.354 Information concerning the oversight committees' efficacy remains tightly held and is seldom available even to members of Congress, let alone the general public. "Today," James Bamford has written, "the intelligence committees are more dedicated to protecting the agencies from budget cuts than safeguarding the public from their transgressions."355 Authorization too often is enacted without full knowledge of what is being approved.356 Even when intelligence activities such as the NSA surveillance are reported, meaningful scrutiny is generally absent.357 Members of oversight committees typically are precluded from making available to non-member colleagues classified information that is transmitted to the committees.358 This is true even if the activities in question are unlawful. Following the NSA surveillance leaks, for example, Senator Wyden said that he "and colleagues" believed that additional, unnamed "secret surveillance programs . . . go far beyond the intent of the statute."359 The Senate Armed Services Committee has "seemed generally clueless and surprised about the legal standard"360 applied by the Executive in construing the scope of its authority under the AUMF.361 The 9/11 Commission was unambiguous in its own conclusions concerning the reliability of congressional intelligence oversight; the word the Commission used to described it was "dysfunctional."362 The oversight committees' performance from the Iranian Revolution through the mining of Nicaraguan harbors,363 the Iran-Contra affair,364 NSA surveillance,365 and other similar episodes366 provides scant evidence to contradict the Commission's conclusion.

AT: Fiat

Even if laws are passed, the NSA will shift resources to other surveillance

Groll 6/4, Assistant editor for Foreign Policy (6-4-2015, Elias Groll, Foreign Policy, "Congress May Have Passed the Freedom Act, But Mass Surveillance Is Alive and Well", http://foreignpolicy.com/2015/06/04/congress-may-have-passed-the-freedom-act-but-mass-surveillance-is-alive-and-well/) EWimsatt

Onee useful way to think about the USA Freedom Act that President Barack Obama signed into law on Tuesday night is as a lightning-rod for the National Security Agency. By changing the way the NSA examines domestic phone records, the agency is now able to make the argument that it has undergone significant reforms in the aftermath of the Edward Snowden revelations. By giving up the authority to collect all American phone records, the agency has paid a small price — and gotten rid of a program that it had come to consider a burden, anyway — to keep its most important authorities intact.

Agencies get around the rules

Rosenthal 6/12, reporter at Mother Jones (6-12-2015, Max J. Rosenthal, Mother Jones, "America's secret surveillance court may be about to get a little less secret", http://www.motherjones.com/politics/2015/06/usa-freedom-act-fisa-court-transparency) EWimsatt

There are other procedural moves the government could use to limit what information is made public. The court could simply issue summaries of decisions that don't include their key parts, or the executive branch could heavily redact them. "In theory, the executive branch could comply with this part of the statute by redacting 99 percent—everything but one sentence, essentially—of an opinion," Goitein says.

She admits that specific tactic is unlikely—it would be an obvious and public skirting of the law's intent—but stresses that even though the law makes important progress in disclosure, there are still many loopholes that could cut down on how much the public will get to see.

"I think the history strongly suggests that the intelligence establishment will take every single little bit of rope it has," she says. "And then some."

There's no enforcement mechanism—and multiple legal justifications

Vladeck '6/1, professor of law at the American University Washington College of Law. (6/1/15, Stephen Vladeck, Foreign Policy, "Forget the Patriot Act – Here Are the Privacy Violations You Should Be Worried About", http://foreignpolicy.com/2015/06/01/section-215-patriot-act-expires-surveillance-continues-fisa-court-metadata/)

The government's defense, as we've come to learn, is flawed in two vital respects: First, as several since-disclosed opinions from the FISA Court have made clear, the government's minimization requirements under the 2008 statute were often too skimpy, allowing the retention and use of information that both the statute and the Fourth Amendment prohibit. Second — and perhaps more importantly — even where the minimization rules were legally sufficient, there have been numerous instances in which government officials violated them, with the FISA Court only discovering the abuses after they were voluntarily reported by Justice Department lawyers. As a result, the government collected and retained

a large volume of communications by U.S. citizens that neither Congress nor the Constitution allowed it to acquire.

More alarmingly, with regard to collection under Executive Order 12333, there isn't any similar judicial review (or meaningful congressional oversight), which means that it has entirely been up to the government to police itself. As State Department whistleblower John Napier Tye explained last summer, there is every reason to doubt that such internal accountability has provided a sufficient check. In his words, "Executive Order 12333 contains nothing to prevent the NSA from collecting and storing all … communications … provided that such collection occurs outside the United States in the course of a lawful foreign intelligence investigation."

To put the matter bluntly, whereas the Section 215 debate has addressed whether the government can collect our phone records, Executive Order 12333 and the 2008 FISA Amendments Act allow the government to collect a lot of what we're actually saying, whether on the phone, in our emails, or even to our search engines. There is no question that from a privacy perspective, these programs are far more pernicious than what's been pegged to Section 215.There is also no question that such collection raises even graver constitutional questions than the phone records program. Whereas there is an open debate over our expectation of privacy in the metadata we voluntarily provide to our phone companies, there's no doubt that we have an expectation of privacy in the content of our private communications.

Why, then, has all the fuss been around Section 215 and the phone records program, while the far more troubling surveillance authorities provided by Executive Order 12333 and the 2008 FISA Amendments Act have flown under the radar?

Part of it may be because of the complexities described above. After all, it's easy for people on the street to understand what it means when the government is collecting our phone records; it's not nearly as obvious why we should be bothered by violations of minimization requirements. Part of it may also have to do with the government's perceived intent. Maybe it seems more troubling when the government is intentionally collecting our phone records, as opposed to "incidentally" (albeit knowingly) collecting the contents of our communications. And technology may play a role, too; how many senders of emails know where the server is located on which the message is ultimately stored? If we don't realize how easily our communications might get bundled with those of non-citizens outside the United States, we might not be worried about surveillance targeted at them.

But whatever the reason for our myopic focus on Section 215, it has not only obscured the larger privacy concerns raised by these other authorities, but also the deeper lessons we should have taken away from Snowden's revelations. However much we might tolerate, or even embrace, the need for secret government surveillance programs, it is all-but-inevitable that those programs will be stretched to — and beyond — their legal limits. That's why it's important not only to place substantive limits upon the government's surveillance authorities, but also to ensure that they are subject to meaningful external oversight and accountability as well. And that's why the denouement of Section 215 debate has been so disappointing.

This should have been a conversation not just about the full range of government surveillance powers, including Executive Order 12333 and the 2008 FISA Amendments Act, but also about the role of the FISA Court and of congressional oversight in supervising those authorities. Instead, it devolved into an over-heated debate over an over-emphasized program. Congress has tended to a paper cut, while it ignored

the internal bleeding. Not only does the expiration of Section 215 have no effect on the substance of other surveillance authorities, it also has no effect on their oversight and accountability

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The surveillance data can come from foreign nations and the private sector

Carr 6/3, Senior Lecturer in International Politics and the Cyber Dimension at Aberystwyth University (6/3/2015, Madeline Carr, The Conversation, "US government clips NSA wings, but snooping is a global effort", http://theconversation.com/us-government-clips-nsa-wings-but-snooping-is-a-global-effort-42771)

The USA Freedom Act only applies to US citizens, which means the NSA is still free to gather meta data on citizens of other nations. Meanwhile, other governments are moving to hand greater powers to their intelligence services.

Watching you around the world

In the UK, for example, GCHQ operates a similar program to the NSA. In early 2015, a consortium of civil rights organisations took GCHQ before the Investigatory Powers Tribunal – a British court set up to hear complaints against the security services. The consortium argued that GCHQ's mass surveillance program – as well sharing the results of that program with the NSA – was an abuse of human rights law. The tribunal found in favour of GCHQ but the case is expected to proceed to the European Court of Human Rights in Strasbourg later this year.

Left as it is, GCHQ can help to alleviate problems that the NSA will face in collecting data on US citizens. As part of the "Five Eyes" intelligence sharing arrangement that includes the US, UK, Australia, New Zealand and Canada, GCHQ is perfectly positioned to collect and pass on communications data on US citizens that the NSA may be prevented from collecting itself.

What's more, in the wake of the British election, the UK government is seeking once again to implement a law known as the Snooper's Charter. This is essentially a data retention bill that would require telecommunications companies and internet service providers to hold onto the meta data (but not content) from their customers' emails, phone calls, texts and internet browsing for 12 months.

Meanwhile, in the weeks following the Charlie Hebdo attacks in Paris, France moved to introduce significantly strengthened data retention laws. Echoing the US response to the 9/11 terrorist attacks, French Prime Minister Manuel Valls suggested that an "extraordinary situation calls for extraordinary measures". This has implications for European negotiations over data protection laws which have been implemented to shield EU citizens from the NSA surveillance program.

Questions about the balance between privacy and security are ongoing and to some extent, they define the times. With increasing intensity, organisations have been racing to take advantage of personal data trail that we now generate online. There can be little doubt that this provides opportunities for use in law enforcement and intelligence.

It's worth remembering, though, that mass surveillance is not carried out by the NSA or the FBI or even GCHQ. It's carried out by private corporations such as Google and Facebook. Adequate oversight of the

way intelligence agencies access and use that data is extremely important but we have remarkably little oversight of the way private companies deal with our data. And in many cases, they operate with very little transparency themselves.

In February 2015, the Belgian Privacy Commission found that Facebook is acting in violation of European law. A few months later, Apple CEO Tim Cook launched an attack against the collection and monetisation of personal data saying that Silicon Valley businesses are "lulling their customers into complacency about their personal information".

And as for telcos and ISPs, those that don't already retain our data aren't acting out of ethical concerns – they don't keep the information because the expense of storage currently outweighs the commercial value of the data.

So while US citizens have reasons to celebrate about the USA Freedom Act, they should remember that the NSA has allies around the world who continue to collect data on both their own citizens – and those in the US.

The DEA bypasses its own oversight

Shackford 6/3, associate editor at Reason.com. (6/3/2015, Scott Shackford, Reason, "The DEA Bypasses Federal Oversight to Better Snoop on Us All", http://reason.com/blog/2015/06/03/the-dea-bypasses-federal-oversight-to-be)

It seems as though the Drug Enforcement Administration (DEA) has reversed this dynamic, all in the name of more easily snooping on people. USA Today has determined that the DEA has drastically increased its use of electronic surveillance over the past decade by deliberately bypassing its own federal oversight and turning to local prosecutors. The Department of Justice (DOJ) has tougher requirements to permit eavesdropping than states and local judges:

The DEA conducted 11,681 electronic intercepts in the fiscal year that ended in September. Ten years earlier, the drug agency conducted 3,394.

Most of that ramped-up surveillance was never reviewed by federal judges or Justice Department lawyers, who typically are responsible for examining federal agents' eavesdropping requests. Instead, DEA agents now take 60% of those requests directly to local prosecutors and judges from New York to California, who current and former officials say often approve them more quickly and easily.

Drug investigations account for the vast majority of U.S. wiretaps, and much of that surveillance is carried out by the DEA. Privacy advocates expressed concern that the drug agency had expanded its surveillance without going through internal Justice Department reviews, which often are more demanding than federal law requires.

Wiretaps — which allow the police to listen in on phone calls and other electronic communications — are considered so sensitive that federal law requires approval from a senior Justice Department official before agents can even ask a federal court for permission to conduct one. The law imposes no such restriction on state court wiretaps, even when they are sought by federal agents.

LINKS TO AFFS

DEA

Regardless of what the plan does- agencies i.e. the DEA will circumvent in order to catch high scale drug lords and control operations dependent upon surveillance

Heath, 2015

(Brad is an analyst for the News Company USA Today. Full Date: June 3, 2015. "Drug wiretaps triple in past decade; Agents take majority of requests to local prosecutors, judges." http://www.lexisnexis.com/hottopics/lnacademic/. Date Accessed- 07/15/15. Anshul Nanda)

The **U.S. Drug Enforcement Administration** more than **tripled** its **use of wiretaps** and **other types of electronic eavesdropping over the past decade**, **largely bypassing federal courts and Justice Department lawyers in the process,** newly obtained records show.¶ The **DEA conducted 11,681 electronic intercepts in the fiscal year that ended in September.** Ten years earlier, the drug agency conducted 3,394.¶ Most of that **ramped-up surveillance was never reviewed by federal judges or Justice Department lawyers,** who typically are responsible for examining federal agents' eavesdropping requests. Instead, **DEA agents now take 60% of those requests directly to local prosecutors and judges from New York to California**, who current and former officials say often are quicker to approve them.¶ **Drug investigations account for the vast majority of U.S. wiretaps, and much of that surveillance** is **carried out** by the **DEA**. Privacy advocates expressed concern that the drug agency had expanded its surveillance without going through internal Justice Department reviews, which often are more demanding than federal law requires.¶ Wiretaps -- which let the police listen in on phone calls and other electronic communications -- are considered so sensitive that federal law requires approval from a senior Justice Department official before agents can even ask a federal court for permission to conduct one. The law imposes no such restriction on state court wiretaps, even when they are sought by federal agents.¶ "That law exists to make sure that wiretap authority is not abused, that it's only used when totally appropriate," said Hanni Fakhoury, an attorney with the Electronic Frontier Foundation. "That's a burden. And if there's a way to get around that burden, the agents are going to try to get around it."¶ USA TODAY obtained the DEA's wiretapping statistics under the Freedom of Information Act. The figures include every order authorizing or extending electronic eavesdropping. Some orders could be counted more than once, if they include the collection of both voice calls and text messages, for example.¶ DEA Spokesman Joseph Moses said agents' increased use of wiretaps reflects "the proliferation of communication devices and methods" used by the drug traffickers. He said **wiretaps have been critical for agents to penetrate networks high-level traffickers use to control operations.**¶ The legal safeguards for wiretaps are supposed to be the same in both state and federal courts. To tap into communications, police must persuade prosecutors and a judge that they have probable cause to think that the communications will contain evidence of a crime, and that they have no other way to build their case. But how judges and prosecutors interpret those requirements can vary among jurisdictions.¶ "Within Justice, it was a rigorous standard," said Stephen T'Kach, a former lawyer in the Justice Department office responsible for approving wiretaps. "In the states, you have 50 different standards for what's going to be enough."¶ Moses said DEA agents were "making no attempt to circumvent federal legal standards and protections by instead pursuing state wiretap authorizations." Instead, he said, the **rapid growth of state-authorized eavesdropping reflects local prosecutors' increased willingness to take on complex wiretap investigations**, which often involve teams of local police and federal agents. At the same time, he said, some federal prosecutors "may be unable to support wire intercept investigations due to manpower or other resource considerations," so agents take their cases to state officials rather than see them dropped.¶ The DEA records do not indicate which state courts have approved the ramped-up surveillance, but state court records and statistics compiled by the federal courts' administrative office offer some indications.¶ For example, judges in the Los Angeles suburb of Riverside, Calif., authorized more wiretaps in 2013 than any other jurisdiction in the country and significantly more than any federal court, according to records compiled by the Administrative Office of the U.S. Courts.¶ The number of wiretaps approved there nearly doubled between 2013 and 2014, to 602, according to California's attorney general.¶ John Hall, a spokesman for Riverside County's district attorney, said he could not comment on whether the office had approved wiretaps for federal investigators because the applications often are sealed. Court records there show prosecutors submitted some wiretap applications at the request of the DEA.¶ State court judges in Buffalo and San Diego also approved DEA wiretap requests, according to court records.¶ "There was always some heartburn in Justice when DEA was going into state courts," T'Kach said. That was tempered, he said, because state wiretap laws must include all of the safeguards federal law requires, and there was no suggestion that evidence gathered through state-court wires was being thrown out of court later.¶ How often that happens is difficult to measure. Agents said many of the cases in which state judges authorize wiretaps end up being prosecuted in state courts, where challenges to wiretap evidence are less common.

Local governements are stopping the war on drugs- means cant solve through the national level

Ron **Paul 14** ("Ferguson: The War Comes Home", August 25, 2014 Monday, L/N- Farmington Daily Times (New Mexico), Accessed 7/16/15, EHS MKS)

America's attention recently turned away from the violence in Iraq and Gaza toward the violence in Ferguson, Missouri, following the shooting of Michael Brown. While all the facts surrounding the shooing have yet to come to light, the shock of seeing police using tear gas (a substance banned in warfare), and other military-style weapons against American citizens including journalists exercising their First Amendment rights, has started a much-needed debate on police militarization. **The increasing use of military equipment by local police is a symptom of growing authoritarianism**, not the cause. The cause is policies that encourage police to see Americans as enemies to subjugate, rather than as citizens to "protect and serve." This attitude is on display not only in Ferguson, but in the police lockdown following the Boston Marathon bombing and in the Americans killed and injured in "no-knock" raids conducted by militarized SWAT teams. One particularly tragic victim of police militarization and the war on drugs is "baby Bounkham." This infant was severely burned and put in a coma by a flash-burn grenade thrown into his crib by a SWAT team member who burst into the infant's room looking for methamphetamine. As shocking as the case of baby Bounkham is, no one should be surprised that empowering police to stop consensual (though perhaps harmful and immoral) activities has led to a growth of authoritarian attitudes and behaviors among government officials and politicians. **Those wondering why the local police increasingly look and act like an occupying military force should consider that the drug war was the justification for the Defense Department's "1033 program," which last year gave local police departments almost $450 million worth of "surplus" military equipment. This included armored vehicles and grenades like those that were used to maim baby Bounkham.** Today, **the war on drugs has been eclipsed by the war on terror as an all-purpose excuse for expanding the police state.** We are all familiar with how the federal government increased police power after September 11 via the Patriot Act, TSA, and other Homeland Security programs**. Not as widely known is how the war on terror has been used to justify the increased militarization of local police departments to the detriment of our liberty. Since 2002, the Department of Homeland Security has provided over $35 billion in grants to local governments for the purchase of tactical gear, military-style armor, and mine-resistant vehicles.** The threat of terrorism is used to justify these grants. However, the **small towns that receive tanks and other military weapons do not just put them into storage until a real terrorist threat emerges. Instead, the military equipment is used for routine law enforcement.** Politicians love this program because it allows them to brag to their local media about how they are keeping their constituents safe. Of course, the military-industrial complex's new kid brother, the law enforcement-industrial complex, wields tremendous influence on Capitol Hill. Even many so-called progressives support police militarization to curry favor with police unions. **Reversing the dangerous trend of the militarization of local police can start with ending all federal involvement in local law enforcement**. Fortunately, **all that requires is for Congress to begin following the Constitution, which forbids the federal government from controlling or funding local law enforcement. However, Congress will not restore constitutional government on its own**; the American people must demand that Congress stop facilitating the growth of an authoritarian police state that threatens their liberty.

Texas legislature is already solving in their state- Says national level is only hurting

Frank **Knaack 11** ("A Glimmer of Hope in Texas' Approach to the War on Drugs", JUNE 22, 2011 | 12:43 PM, https://www.aclu.org/blog/glimmer-hope-texas-approach-war-drugs, Accessed 7/17/15, EHS MKS)

June 2011 marks the 40th anniversary of President Richard Nixon's declaration of a "war on drugs" — a war that has cost roughly a trillion dollars, has produced little to no effect on the supply of or demand for drugs in the United States, and has contributed to making America the world's largest incarcerator. Throughout the month, check back daily for posts about the drug war, its victims and what needs to be done to restore fairness and create effective policy. **The federal government's failed "war on drugs" has had a devastating impact on Texas**. From the now infamous Tulia and Hearne drug arrest scandals, to the millions of dollars wasted through anti-drug trafficking programs, **Texas' drug policies have eroded our liberties and squandered our tax dollars**. But hope is not lost in Texas. While it's true that the state's close proximity to the horrific "war on drugs"-related violence in Mexico has fueled the adoption of some "we must surrender our liberty to ensure our security"-type legislation, there have been some positive changes as well. The cost of the "war on drugs" has forced our legislators to look at alternatives to incarceration for nonviolent drug offenders, and racial profiling scandals have forced needed changes in state laws governing criminal trials. While we cannot count on a smart drug policy in Texas anytime soon, a glimmer of hope is finally on the horizon. For starters, the need to rationally address Texas' massive corrections budget, in part fueled by the large number of inmates sentenced for nonviolent drug offenses, has led to a number of positive changes. The call for alternatives to incarceration, in Texas and across the country, has also benefited from "a growing belief among state lawmakers that prosecuting drug offenders aggressively often fails to treat their underlying addiction problems and can result in offenders cycling in and out of prisons for years." S**ince 2003, the Texas Legislature has passed a number of bills aimed at reducing the number of individuals incarcerated for nonviolent offenses, including drug offenses**. Instead of building new and costly prisons, **the legislature has increased the use of probation and provided increased funding for**

nonviolent offenders to attend residential and nonresidential treatment programs. And, as the numbers show, concerns about any coinciding decrease in public safety are unfounded: as Right on Crime pointed out, "**serious property, violent, and sex crimes per 100,000 Texas residents have declined 12.8 percent since 2003."** And there's more good news! In response to drug task force scandals in Tulia, Hearne, and elsewhere involving the falsifying of government records, witness tampering, fabricating evidence, stealing drugs from evidence lockers, selling drugs to children, and large-scale racial profiling, the Texas Legislature passed legislation that prohibits the conviction of people for drug offenses based solely on the word of an undercover informant. Many of the innocent individuals (mostly African-American men) in those cases were convicted based on testimony by sworn officers and informants with checkered pasts (to put it nicely). So, while we still face the old and discredited zero-sum security/liberty rhetoric, real **progress has been made in Texas to reduce the negative impact of the** 40 year-old "**war on drugs**" for all Texans. Thus, hope is not lost!

Can't stop government data collection on companies – subpoena power can bypass the fourth amendment and violate the rights of Americans

KRAVETS 15 (David Kravets is a WIRED senior staff writer and founder of the fake news site TheYellowDailyNews.com. He's a dad of two boys and has been a reporter since the manual typewriter days, "We Don't Need No Stinking Warrant: The Disturbing, Unchecked Rise of the Administrative Subpoena", 08.28.12, http://www.wired.com/2012/08/administrative-subpoenas/ - JD)

But by law, utilities must hand over customer records — which include any billing and payment information, phone numbers and power consumption data — to the DEA without court warrants if drug agents believe the data is "relevant" to an investigation. So the utility eventually complied, after losing a legal fight earlier this month.¶ Meet the administrative subpoena (.pdf): With a federal official's signature, banks, hospitals, bookstores, telecommunications companies and even utilities and internet service providers — virtually all businesses – are required to hand over sensitive data on individuals or corporations, as long as a government agent declares the information is relevant to an investigation. Via a wide range of laws, Congress has authorized the government to bypass the Fourth Amendment — the constitutional guard against unreasonable searches and seizures that requires a probable-cause warrant signed by a judge.¶ In fact, there are roughly 335 federal statutes on the books (.pdf) passed by Congress giving dozens upon dozens of federal agencies the power of the administrative subpoena, according to interviews and government reports. (.pdf)¶ "I think this is out of control. What has happened is, unfortunately, these statutes have been on the books for many, many years and the courts have acquiesced," said Joe Evans, the utility's attorney.¶ Anecdotal evidence suggests that federal officials from a broad spectrum of government agencies issue them hundreds of thousands of times annually. But none of the agencies are required to disclose fully how often they utilize them — meaning there is little, if any, oversight of this tactic that's increasingly used in the war on drugs, the war on terror and, seemingly, **the war on Americans' constitutional rights** to be free from unreasonable government trespass into their lives.¶ That's despite proof that FBI agents given such powers under the Patriot Act quickly began to abuse them and illegally collected Americans' communications records, including those of reporters. Two scathing reports from the Justice Department's Inspector General uncovered routine and pervasive illegal use of administrative subpoenas by FBI anti-terrorism agents given nearly carte blanche authority to demand records about Americans' communications with no supervision.¶ When the 9th U.S. Circuit Court of Appeals, perhaps the nation's most liberal appeals court based in San Francisco, ordered Golden Valley to fork over the data earlier this month, the court said the case was "easily" decided because the records were "relevant" to a government drug investigation.¶ With the data the Alaska utility handed over, the DEA may then use further administrative subpoenas to acquire the suspected indoor-dope growers' phone records, stored e-mails, and perhaps credit-card purchasing histories – all to build a case to acquire a probable-cause warrant to physically search their homes and businesses.¶ But the administrative subpoena doesn't just apply to utility records and drug cases. Congress has spread the authority across a huge swath of the U.S. government, for investigating everything from hazardous waste disposal, the environment, atomic energy, child exploitation, food stamp fraud, medical insurance fraud, terrorism, securities violations, satellites, seals,

student loans, and for breaches of dozens of laws pertaining to fruits, vegetables, livestock and crops.¶ Not one of the government agencies with some of the broadest administrative subpoena powers Wired contacted, including the departments of Commerce, Energy, Agriculture, the Drug Enforcement Administration and the FBI, would voluntarily hand over data detailing how often they issued administrative subpoenas.¶ The Drug Enforcement Administration obtained the power under the Comprehensive Drug Abuse Prevention and Control Act of 1970 and is believed to be among the biggest issuers of administrative subpoenas.¶ "It's a tool in the toolbox we have to build a drug investigation. Obviously, a much, much lower threshold than a search warrant," said Lawrence Payne, a DEA spokesman, referring to the administrative subpoena generically. Payne declined to discuss individual cases.¶ Payne said in a telephone interview that no database was kept on the number of administrative subpoenas the DEA issued.¶ But in 2006, Ava Cooper Davis, the DEA's deputy assistant administrator, told a congressional hearing, "The administrative subpoena must have a DEA case file number, be signed by the investigator's supervisor, and be given a sequential number for recording in a log book or computer database so that a particular field office can track and account for any administrative subpoenas issued by that office."¶ After being shown Davis' statement, Payne then told Wired to send in a Freedom of Information Act request, as did some of the local DEA offices we contacted, if they got back to us at all. "Would suggest a FOIA request to see whether you can get a number of administrative subpoenas. Our databases have changed over the years as far as how things are tracked and we don't have access to those in public affairs unfortunately," Payne said in an e-mail.¶ He said the agency has "never" been asked how many times it issued administrative subpoenas.¶ Amy Baggio, a Portland, Oregon federal public defender representing drug defendants for a decade, said DEA agents "use these like a doctor's prescription pad on their desk." Sometimes, she said, they issue "hundreds upon hundreds of them" for a single prosecution — often targeting mobile phone records.¶ "They are using them exponentially more in all types of federal criminal investigations. I'm seeing them in every drug case now," Baggio said. "Nobody is watching what they are doing. I perceive a complete lack of oversight because there isn't any required."

SOD Surveillance uses illegal means to find suspects and can get away with it– This allows the DEA to circumvent existing laws

Ungar 13 (Rick Ungar in addition to the pages of Forbes.com, can be found me every Saturday morning on your TV arguing with my more conservative colleagues on "Forbes on Fox" on the Fox News Network and at various other times during the week serving as a liberal talking head on other Fox News and Fox Business Network shows. He also serves as a Democratic strategist with Mercury Public Affairs, "More Surveillance Abuse Exposed! Special DEA Unit Is Spying On Americans And Covering It Up", AUG 5, 2013, http://www.forbes.com/sites/rickungar/2013/08/05/more-surveillance-abuse-exposed-special-dea-unit-is-spying-on-americans-and-covering-it-up/ -JD)

As Americans sort through their feelings regarding the disclosure of the massive collection of metadata by the National Security Administration, we are now learning of what may be a far more insidious violation of our constitutional rights at the hands of a government agency.¶ Reuters is reporting that a secret U.S. Drug Enforcement Administration branch has been collecting information from "intelligence intercepts, wiretaps, informants and a massive database of telephone records" and disseminating the data to authorities across the nation to "help them launch criminal investigations of Americans."¶ In this case, the Americans who are being subjected to these investigations are suspected drug dealers.¶ The unit of the DEA that is conducting the surveillance is known as the Special Operations Division ("SOD") and is made up of a partnership of numerous government agencies including the NSA, CIA, FBI, IRS and the Department of Homeland Security.¶ While there are suggestions that elements of the program may be legal, there is obvious concern on the part of those running the program—a concern that has not prevented them from going ahead with the collecting and using of covertly gathered data—that the surveillance effort may not be entirely kosher. We know this to be true because, according to documents reviewed by Reuters, DEA agents are specifically instructed never to reveal nor discuss the existence and utilization of SOD provided data and to further "omit the SOD's involvement from investigative reports, affidavits, discussions with prosecutors and courtroom testimony. Agents are

instructed to then use 'normal investigative techniques to recreate the information provided by SOD.'"¶ The last line of the directive is particularly disturbing.¶ By instructing agents to use "normal investigative techniques to recreate the information provided by SOD", law enforcement is being instructed to flat out lie when disclosing how they came across the tips or other information provided by SOD leading to an arrest. These agents are directed to give substance to the lie by fabricating a false source or method utilized to gain information leading to an arrest.¶ In law enforcement parlance, it is called "parallel construction."¶ Accordingly to a former federal agent, the SOD 'tip' system works as follows:¶ "You'd be told only, 'Be at a certain truck stop at a certain time and look for a certain vehicle.' And so we'd alert the state police to find an excuse to stop that vehicle, and then have a drug dog search it."¶ When the SOD tip leads to an arrest, the agents then pretend that the drug bust was the surprise result of pulling the vehicle over as a routine traffic stop.¶ So secretive is the program, SOD requires that agents lie to the judges, prosecuting attorneys and defense attorneys involved in a trial of a defendant busted as a result of SOD surveillance—a complete and clear violation of every American's right to due process, even when that American is a low-life drug dealer.

Movements against the state

The FBI has a history of surveiling black activists- no proof that they will stop post plan

NADIA KAYYALI 14 ("The History of Surveillance and the Black Community", FEBRUARY 13, 2014, https://www.eff.org/deeplinks/2014/02/history-surveillance-and-black-community, Accessed 7/16/15, EHS MKS)

February is Black History Month and that history is intimately linked with surveillance by the federal government in the name of "national security." Indeed, the history of surveillance in the African-American community plays an important role in the debate around spying today and in the calls for a congressional investigation into that surveillance. Days after the first NSA leaks emerged last June, EFF called for a new Church Committee. We mentioned that Dr. Martin Luther King, Jr., was one of the targets of the very surveillance that eventually led to the formation of the first Church Committee. This Black History Month, we should remember the many African-American activists who were targeted by intelligence agencies. Their stories serve as cautionary tales for the expanding surveillance state. The latest revelations about surveillance are only the most recent in a string of periodic public debates around domestic spying perpetrated by the NSA, FBI, and CIA. This spying has often targeted politically unpopular groups or vulnerable communities, including anarchists, anti-war activists, communists, and civil rights leaders. Government surveillance programs, most infamously the FBI's "COINTELPRO", **targeted Black Americans fighting against segregation and structural racism in the 1950s and 60s.** COINTELPRO, short for Counter Intelligence Program, was started in 1956 by the FBI and continued until 1971. The program was a systemic attempt to infiltrate, spy on, and disrupt activists in the name of "national security." While it initially focused on the Communist Party, in the 1960s its focus expanded to include a wide swathe of activists, with a strong focus on the Black Panther Party and civil rights leaders such as Dr. Martin Luther King, Jr. FBI papers show that in 1962 "the FBI started and rapidly continued to gravitate toward Dr. King." This was ostensibly because the FBI believed black organizing was being influenced by communism. In 1963 FBI Assistant Director William Sullivan recommended "increased coverage of communist influence on the Negro." However, the FBI's goal in targeting Dr. King was clear: to find "avenues of approach aimed at neutralizing King as an effective Negro leader," because the FBI was concerned that he might become a "messiah." The FBI subjected Dr. King to a variety of tactics, including bugging his hotel rooms, photographic surveillance, and physical observation of King's movements by FBI agents. The FBI's actions went beyond spying on Dr. King, however. Using information gained from that surveillance, the FBI sent him anonymous letters attempting to "blackmail him into suicide." The agency also attempted to break up his marriage by sending selectively edited "personal moments he shared with friends and women" to his wife. The FBI also specifically targeted the Black Panther Party with the intention of destroying it. They infiltrated the Party with informants and subjected members to repeated interviews. Agents sent anonymous letters encouraging violence between street gangs and the Panthers in various cities, which resulted in "the killings of four BPP members and numerous beatings and shootings," as well as letters sowing internal dissension in the Panther Party. The agency also worked with police departments to harass local branches of the Party through raids and vehicle stops. In one of the most disturbing examples of this, the FBI provided information to the Chicago Police Department that aided in a raid on BPP leader Fred Hampton's apartment. The raid ended with the Chicago Police shooting Hampton dead. The FBI was not alone in targeting civil rights leaders. The NSA also engaged in domestic spying that included Dr. King. In an eerily prescient statement, Senator Walter Mondale said he was concerned that the NSA "could be used by President 'A' in the future to spy upon the American people, to chill and interrupt political dissent."

Mann act

TVPA isn't going away- means the aff can't access solvency

DONNA M. HUGHES 08 ("Protecting trafficking victims", March 12, 2008 8:00 AM, http://www.nationalreview.com/article/223881/wilberforce-can-free-again-donna-m-hughes, Accessed 7/16/15, EHS MKS)

Protecting trafficking victims. The nation's most recent political sex scandal — New York governor Eliot Spitzer's involvement with a high-end call-girl ring — will doubtless provide much fodder for the late-night comedy shows. But American prostitution is no laughing matter: The victimization of women and girls, and sometimes men and boys, by pimps has been widely recognized throughout U.S. history. In the mid-1800s, Congress passed a law criminalizing the importation of aliens for prostitution. In the early 1900s as part of the first international movement against sex trafficking, Congress passed the Mann Act, a law criminalizing the act of transporting persons across state lines for the purpose of prostitution. In 2000, Congress passed the Trafficking Victims Protection Act (TVPA), making the pimping of persons under the age of 18, or pimping by means of fraud, force, or coercion, a serious federal felony. ("Pimping" is an informal term for what the TVPA 2000 calls "sex trafficking": "The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.") And in 2006, the Adam Walsh Child Protection and Safety Act created new federal anti-trafficking crimes and enhanced the penalties of the Mann Act. In December, the House of Representatives passed the William Wilberforce Trafficking Victims Protection Reauthorization Act by a vote of 405 to 2. The legislation modernizes and harmonizes existing federal laws against pimping to create a new set of criminal statutes, which will make the prosecution of sex-trafficking offenses easier and more efficient. It also creates a new international standard as a model for other countries. THE ANTI- ANTI-TRAFFICKING MOVEMENT Now the bill is in the Senate, where the same groups who opposed its passage in the House are rallying forces to derail it. Critics of the House-passed Wilberforce Act allege that it will "federalize" anti-trafficking efforts. The Washington Post claims it will send FBI agents on the "trail of pimps," and sources in the story claim it will cause all prostitutes to be considered victims of trafficking. Laurence E. Rothenberg, deputy assistant attorney general at the Office of Legal Policy, made a related charge before the House Judiciary Committee: "The federal government cannot prosecute every prostitution case." None of these objections holds water. In fact, FBI agents have been on the trail of pimps for decades, bringing down major prostitution rings and arresting sexual predators, particularly those that exploit children or work in organized networks. Last year, through the Department of Justice's Innocence Lost Initiative, which targets perpetrators of child sex trafficking, the FBI carried out 125 investigations that resulted in 308 arrests, 55 indictments, and 106 convictions of sex traffickers who exploited children. Most of these perpetrators were American pimps. Also, the reforms do not conflate pimping with prostitution. They target sexual predators — the recruiters and organizers of prostitution/sex trafficking operations who routinely brutalize and destroy the lives of young women and corrupt local communities. The proposed bill does not involve the federal government in non-pimping prostitution offenses. Sex-worker-rights groups and pimps, not surprisingly, also oppose the act. The Sex Workers Outreach Project and the Erotic Service Providers Union held a demonstration against the bill outside the office of Rep. Tom Lantos, the prime sponsor of the bill in the House before his death earlier this year. Most of the debate and misunderstanding of the Wilberforce Act is centered on the requirement of proving that "force, fraud, and coercion" compelled victims to engage in commercial sex acts. The TVPA "severe form of trafficking" statute requires the use of force, fraud, or coercion on an adult victim, while the Mann Act (the federal law against transporting a person across states lines for purposes of prostitution) does not require that the perpetrator to use force, fraud, or coercion. These statutes will be brought together in the criminal code to create two levels of sex trafficking: sex trafficking (without force, fraud, and coercion) and aggravated sex trafficking (with force, fraud, and coercion). Also, the Wilberforce Act will change the older Mann Act statute by eliminating its transportation-of-victims requirement — and substituting in the TVPA's "in or affecting interstate or foreign commerce" requirement. When transportation across state lines is not provable, prosecutors will no longer need to show brutality or acts of fraud, force, or coercion — such acts will increase the punishment of a pimp rather than being the sole basis of conviction. In addition, one of the biggest challenges to prosecuting cases of sex trafficking is getting victims to cooperate or testify against brutal pimps. These reforms will make it possible to bring multi-defendant cases against pimps. THE MESSAGE WE SEND When sex trafficking is a federal crime only when there is proof of force, fraud, coercion, or the exploitation of a minor, this encourages states in the U.S. and foreign governments to require high standards of proof for trafficking convictions. This type of law is supported by those favoring the legalization of prostitution. Currently, the TVPA sex-trafficking statute would be acceptable in the Netherlands, where prostitution is legal, because recruiting and exploiting women and men in prostitution is allowed as long as the victim can't prove that force, fraud, or coercion was used or the victim is not underage. By defining prostitute recruitment as sex trafficking, the Wilberforce Act will send a message that all pimping-related activities are illegal. In addition, the Wilberforce Act will create a new standard for the evaluation of countries' performance in combating sex trafficking. Called the "demand standard," countries will be assessed on whether they are making efforts to reduce the demand for commercial sexual activities. The Wilberforce Act doesn't introduce radical new laws, but

rather pulls together a century and a half of laws and approaches. It sets a new standard for the U.S. and a model for the world to oppose all forms of pimping. A broad coalition of groups recognizes the historic importance of this bill. In November, they organized a lobby day in the House that conveyed to members of Congress the passion and commitment with which they supported these measures. They are now preparing to campaign in the Senate to ensure the passage of this important bill.

Repealing the MANN act may solve on a national level but everyday surveillance of women doesn't stop post plan

Chemaly,14 ("Sexual Surveillance of Women is a Consequence of Conservative Norms, Not Liberal Social Mores" 11/13/2014 4:49 pm,http://www.huffingtonpost.com/soraya-chemaly/sexual-surveillance-of-women-is-a-consequence-of-conservative-norms_b_6141032.html, Accessed 7/16/15, EHS MKS)

We live in an increasingly voyeuristic culture that affects us all, but, it turns out that **girls and women are watched secretly, without their consent,** for male sexual pleasure, much more than most care to think about or admit. From girls and women who are being abused by spouses or fathers to women who have no idea at all who is watching them. **It happens to women in their apartments; in changing rooms; department store rest rooms; supermarket bathrooms; on public stairways and subway platforms; in sports arenas and locker rooms; in police stations and in classrooms while they teach**. Last Spring, a solider in the U.S. army faced charges for filming women cadets in showers. In July, Johns Hopkins Health System agreed to pay $190 million to 8,000 women and girls after it was revealed that a doctor, Dr. Nikita Levy, had filmed women during gynecological exams. He was a doctor there for 25 years. **He wore a pen-shaped camera and took more than 1,200 videos, including 62 cases involving minors.** During the same month, students at the University of Delaware, almost all female, were offered free counseling after it was revealed that male student had hidden video cameras in school bathrooms. He had more than **1,500 recordings**. Last month, a man in a café secretly set up a camera in a neighborhood restaurant's bathroom. Yesterday, it was a man arrested for secretly filming "people" on tanning beds in a Planet Fitness gym. Taken to another arena, what do people think non-consensual, invasive ultrasounds legally mandated for women by male-dominated state legislatures are**? These are pictures of women's bodies, taken against their will, for no good reason, in the exercise of traditional**, paternalistic male power. That these images are recategorized so that they are not considered coercive surveillance is a discriminatory slight of hand that comes with power. Betrayals like the one Freundel is charged with are particularly profound. As with cases involving sexual transgressions in the other conservative faiths, the military, schools and families, these intimate violations, perpetrated by a trusted authority figure, do particularly deep harm, not just to individuals, but to an entire community.

Women are surveyed in everyday life all the time- repealing the MANN act will do nothing to overcome the idea of the "male gaze"

AUTUMN **WHITEFIELD-MADRANO 13** ("I'll Be Watching You: NSA Surveillance and the Male Gaze", June 18, 2013, http://thenewinquiry.com/blogs/the-beheld/ill-be-watching-you-nsa-surveillance-and-the-male-gaze/, Accessed 7/17/15, EHS MKS)

I would give readers a quick 101 on the NSA surveillance scandal before I go on to make my point, but the fact is, I've got no facts. I saw the headlines, heard the occasional bits of cocktail party buzz, and saw a flurry of blog posts—which I skimmed at best, or skipped altogether—crop up in my RSS feed. And then, I shrugged. Apathy doesn't seem like the greatest reason to tune out of something that, intellectually and politically speaking, enrages me—or at least should enrage me, if rage were a rational response that arose upon provocation of our most deeply held beliefs. But there it is: In a country whose founding principles include freedom of expression, learning that the government is—what, reading our e-mails? listening to our phone conversations?—this citizen's response is meh. The longer this story has remained in the news, the

more bizarre my apathy seemed to me. Until it didn't. I began to wonder if the reason the NSA activities didn't upset me more on a visceral level, as opposed to an intellectual one, was that my default assumption of day-to-day experience was that I was being watched. Watched by Big Brother? Not so much. But being watched, observed, surveyed, seen? Yes. Welcome to what it's like to be a woman, gentlemen. Consider the headline of this excellent piece by Laurie Penny in New Statesman, spurred by the NSA revelations: If you live in a surveillance state for long enough, you create a censor in your head. It's an incisive, uncomfortable truth, and it's made all the more uncomfortable when coupled with one of my favorite passages from John Berger's Ways of Seeing: A woman must continually watch herself. … Whilst she is walking across a room or weeping at the death of her father, she can scarcely avoid envisaging herself walking or weeping. From earliest childhood she has been taught and persuaded to survey herself continually. … Men look at women. Women watch themselves being looked at. This determines not only most relations between men and women but also the relation of women to themselves. The surveyor of woman in herself is male: the surveyed female. Thus she turns herself into an object—and most particularly an object of vision: a sight. To conflate Penny and Berger: If you spend a lifetime housing your internal surveyor, you might not be terribly surprised when you find that there are external surveyors you hadn't considered. Not that women walk through our days consciously considering that men might be looking at us. In fact, that's part of the point: Being seen becomes such a default part of the way you operate that it ceases to be something you need to be actively aware of. Not that the cold slap of Hey, baby is ever so far away as to keep women truly unaware of the public dynamic surrounding gender. In urban areas (and plenty of non-urban areas too), we deal with street harassment so frequently that it begins to feel difficult to overestimate just how much we're actually being observed by passersby. The triumphant joke of the tinfoil-hat crowd rings frightfully true in the light of the NSA activities—just because you're paranoid, doesn't mean they're not after you—is yesterday's news to women. Am I actually being looked at—specifically by men, and specifically as a woman—every time I leave my house? Probably not. But the expectation or possibility of being seen has been there as long as I can remember. And the minute I think I've slipped out of the observation zone—by wearing a dowdy outfit that conceals my body, or simply by being in my own world for a moment—there's a catcall there to remind me that even if I'm not paranoid, that doesn't mean they're…not afterme (I hope!). But there, watching. I'm trying to think of how I'd process the news that our "for the people, by the people" government can invade our privacy anytime it damn well pleases, if I hadn't ever internalized the sensation of being observed. I imagine I'd be more surprised, for starters, but I also wonder if I'm asking the wrong question here. As humans, we love little more than to watch each other in a variety of ways (is TV anything other than controlled people-watching?). Men are observed too—differently than women are, but it's not like men are entirely unaware that they're being seen by others. Here I turn to Robin James, Ph.D., associate professor of philosophy at UNC Charlotte: "I'm thinking that (properly masculine, i.e. white, etc.) men experience surveillance in profoundly enabling ways," she wrote to me when I asked her to expand on a Twitter exchange we had. "[B]eing watched by someone who you know is your equal (that is, you watch them, they watch you in return) is what reaffirms both of your statuses as equals, as subjects, etc. If your gaze isn't returned in kind, that means you're not considered an equal, that you're not seen as a real member of society." All emphasis there is mine, and for a reason: The point isn't that women don't observe men, or that men don't observe one another, but that the quality of the gaze is different. I don't walk down the street and feel like I have less cultural weight than my male peers. But when you're 12—the age I was when I heard my first catcall from an adult man, and my young age here is hardly unusual—you do have less cultural weight, you do have less power. You learn early on to associate being observed for your femininity with powerlessness, and that's not an easy mind-set to shed. (Which is exactly why street harassment has long been an effective tool of oppression, but that's another story.) Broad strokes here: Men don't have that experience. Rather, they didn't until it came out that the National Security Agency—a greater power than virtually every man in the country—could watch you whenever they pleased. Here are a few of the things that may result for women from objectification, whether it comes from others or internally as a result of being objectified by others: Depression. Limiting one's social presence. Temporarily lowered cognitive functioning. (Of course, there are also suggestions that self-objectification may boost some women's well-being. Another day, another post.) When I look at these effects and compare them with where I'm at intellectually about the NSA privacy invasions—a shrinking of oneself versus righteous outward anger—I'm troubled. Would I feel more righteous anger if I hadn't learned to absorb, possibly to my personal detriment, the effects of objectification and tacitly accepted surveillance as something that just happens? And more importantly: Has the collective energy of women been siphoned into this realm, leaving us less energy for, as they say, leaning in? I'm not saying that just because women might be used to being watched by men means that we're inherently blasé about being watched by governmental bodies; in fact, I'm guessing some women are more outraged than they would be if they were male, even if they're not directly connecting that outrage with womanhood. (Also, I don't believe the male gaze to be wholly responsible for my indifferent reaction here; it's just the one that's relevant.) Let's also not forget that 56% of Americans deem phone surveillance as an acceptable counterterrorism measure. And I'm certainly not saying that we shouldn't be

concerned about the NSA revelations; we should. But not only are women more used to being watched, we also have a worldwide history of dealing with our governments jumping in where they don't belong. It feels invasive whether that space is our phone line or our uterus. It just might not feel all that surprising.

Zero day

BACKDOOR CARDS WORK FOR THIS TOO

Only businesses can solve—government solutions take too long

Spink Adrian Spink No date ("What are Java Zero-Day Attacks and How Can They Affect You?", NO DATE, http://www.findtheedge.com/general/what-are-java-zero-day-attacks-and-how-can-they-affect-you, accessed 7/16/15)

Secuity-Measures-NeededRecent months have seen a procession of Java zero-day attacks impact a wide variety of organisations. Simply put, zero-day attacks occur when a problem with a piece of software is discovered and exploited before the developer is even aware that there is an issue. Facebook, Apple, Twitter and Microsoft have all recently disclosed compromised computers, and many more firms have been hit but not gone public with the information. The very nature of a zero-day attack means your systems could be vulnerable in the period between the exploit being identified and the patch being deployed by Oracle, the owners of Java. It's unlikely we've seen the last of these exploits; Java's rich programming language wasn't designed for a hostile Internet environment, so it's likely more vulnerabilities will be uncovered. There are also many other products running on our desktops that could be susceptible to this style of attack, as has been shown by the recent Internet Explorer zero-day issues. Traditional anti-virus and perimeter security techniques do not offer complete protection – for this reason, organisations need to review their risk exposure, and plan their responses accordingly. So what practical advice can we offer: 1. Remove Java? While many security experts recommend the seemingly straightforward solution of disabling or removing Java from browsers, but this is not always practical. Some firms will be dependent on Java to run both internal and third party applications. For large organisations, the cost and logistics of ensuring Java is disabled for every browser may be prohibitive. Many browsers now offer the ability to control how Java is handled, however, and the latest version of Java has enhancements to the control panel settings that may offer you a solution with a little tweaking. 2. Maximise your end-point security Anti-virus solutions will protect you from the most common exploits once they have been identified, but it's even more important to ensure: You have full coverage across all your end-points Security updates are installed on all endpoints quickly You have 'zero-day' and 'Host Intrusion Prevention' features enabled 3. User Awareness Educating your users about the potential risks, and how to avoid phishing attacks, is a great way to reduce your exposure. 4. Protect your critical information assets In the longer term, 'advanced persistent threats' are likely to increase. Firms need to ask themselves – while making the assumption that their network will be breached at some point in the future – what additional measures could be taken to protect critical information assets in advance, and limit damage. Summary **Zero day attacks are inevitable**, so buisnessess need to take steps to protect their data and systems well ahead of time. It's tempting to put off thinking about these issues, but this is only likely to magnify the amount of damage caused if your system is targeted in the future.

NSA

Reforms fail – the NSA will circumvent

Greenwald 14 (Glenn, lawyer, journalist and author – he founded the Intercept and has contributed to Salon and the Guardian, named by Foreign Policy as one of the Top 100 Global Thinkers of 2013, "CONGRESS IS IRRELEVANT ON MASS SURVEILLANCE. HERE'S WHAT MATTERS INSTEAD", https://firstlook.org/theintercept/2014/11/19/irrelevance-u-s-congress-stopping-nsas-mass-surveillance/)

All of that illustrates what is, to me, the most important point from all of this: the last place one should look to impose limits on the powers of the U.S. government is . . . **the U.S. government**. Governments don't walk around trying to figure out how to limit their own power, and **that's particularly true of empires**. The entire system in D.C. is designed at its core **to prevent real reform**. This Congress is not going to enact anything resembling fundamental limits on the NSA's powers of mass surveillance. **Even if** it somehow did, this White House would never sign it. **Even if** all that miraculously happened, the fact that the U.S. intelligence community and National Security State **operates with no limits and no oversight** means they'd easily **co-opt the entire reform process**. That's what happened after the eavesdropping scandals of the mid-1970s led to the establishment of congressional intelligence committees and a special FISA "oversight" court—the committees were instantly captured by putting in charge supreme servants of the intelligence community like Senators Dianne Feinstein and Chambliss, and Congressmen Mike Rogers and "Dutch" Ruppersberger, while the court quickly became a **rubber stamp** with **subservient judges** who operate in total secrecy. Ever since the Snowden reporting began and public opinion (in both the U.S. and globally) began radically changing, the White House's strategy has been obvious. It's vintage Obama: **Enact something that is called "reform**"—so that he can give a pretty speech telling the world that he heard and responded to their concerns—but that in actuality changes almost nothing, **thus strengthening the very system he can pretend he "changed."** That's the same tactic as Silicon Valley, which also supported this bill: Be able to point to something called "reform" so they can trick hundreds of millions of current and future users around the world into believing that their communications are now safe if they use Facebook, Google, Skype and the rest. In pretty much every interview I've done over the last year, I've been asked why there haven't been significant changes from all the disclosures. I vehemently disagree with the premise of the question, which equates "U.S. legislative changes" with "meaningful changes." But it has been clear from the start that **U.S. legislation is not going to impose meaningful limitations on the NSA's powers of mass surveillance,** at least not fundamentally.

Private surveillance industry will continue post-plan

Mead, 2013

(Derek is an editor-in-chief for the Motherboard- a news company. "Mass Surveillance Is Big Business: Corporations Are as Good at Spying as Governments." http://motherboard.vice.com/blog/mass-surveillance-is-big-business-corporations-are-as-good-at-spying-as-governments. Date Accessed- 7/14/15. Anshul Nanda.)

Data is the currency of surveillance, and it's **not just the NSA and GCHQ looking to cash in**. As a newly released cache of **documents and presentation materials highlights, the private surveillance industry is booming**. More shocking is that many firms claim in their own corporate PowerPoints that they've got capabilities that rival that of the government giants.¶ The document trove, called the Surveillance Industry Index (SII) and released by Privacy International, and contains 1,203 documents from 338 companies in 36 countries, all of which detail surveillance technologies. Some advertised capabilities are astounding: A firm named Glimmerglass, which produces monitoring and repair equipment for undersea cables, touts in a brochure that its equipment enables "dynamic selection and distribution of signals for analysis and storage."¶ Another firm, Elaman, advertises its line of FinFisher IT intrusion products in another brochure. It reads like any other brochure for tech products, with Elaman stating that the "FinFisher product suite [aids] government agencies in collecting critical IT information from target computers." The system is designed for anyone to use, the company says; all users have to do is insert a USB dongle into a target computer and, after a "short period of time," it will "extract information like usernames and passwords, e-mails, files, and other critical system and network information from Windows systems."¶ **That private companies are developing advanced data-gathering and monitoring technology should come as no surprise**, especially **when the NSA's reliance on private contractors in the development of its own surveillance tech is well documented.** The surveillance industry, like many other sectors of the massive private industry that supports law enforcement and governments worldwide, is driving the state of the art forward. But what is surprising is how open the industry actually is.¶ **As Privacy International notes in its announcement of the SII, much of its documents are from its "collection of materials and brochures at surveillance trade shows around the world**," as well as information from Wikileaks and Omega Research Foundation. Surveillance companies are businesses, too, and like weapons manufacturers who try to drum up business at major weapons expos like Sofex, the surveillance industry has its fair share of trade shows and glossy, superlative-laden promo materials.¶ A screenshot from one linked document¶ Of course, that world isn't open to average consumers, which is why SII—and previously, Wikileaks' Spy Files, among others—is eye-opening. What's even more concerning than systems that guarantee "complete data inflow from all networks" is who's buying it. And while all the brochures I've read so far are careful to specify that surveillance tech is only for legal data collection, "legal" is a very fluid term worldwide.¶ **Governments have increasingly relied on data collection to hold onto pow**er, and as our own Meghan Neal detailed a few months ago, the surveillance needs of dictators continue to be served by American companies despite embargoes. During the Arab Spring, **surveillance and internet control were major tools used by governments to try to control dissent; most recently**, Sudan hit the internet kill switch in order to limit the spread of anti-government info online.¶ The **flip side of that control is preemptive surveillance and data collection.** And while data-driven law enforcement is currently in vogue in the West—a privacy battle all its own—the **capabilities available on the thriving private surveillance market are also available for regimes worldwide to crush encroachment in their power**.¶ There's a very good reason that the UN High Commissioner called privacy a human right earlier this year: The vast tools available to people with enough money and network access are more capable of accessing private information than ever before. And unless local laws say otherwise—what laws that haven't been circumvented or changed, that is—there's no oversight of what someone might monitor.¶ "**There is a culture of impunity permeating across the private surveillance market, given that there are no strict export controls on the sale of this technology**, as there on the sale of conventional weapons," Matthew Rice, a research consultant with Privacy International, told The Guardian. "This market profits off the suffering of people around the

world, yet it lacks any sort of effective oversight or accountability.¶ So when a company advertises that its technology can rip phone call content straight off a cell network, it's doing so with a sense of agnosticism. A firm might not sell tech to some guy off the street, but when a guy like Moammar Gadhafi wants to pick up a bunch of surveillance tech, foreign markets say yes.¶ Again, aside from economic embargoes and the like, the use of such technology is regulated by local laws, and spying on political rivals or everyday folks may be legal, depending on where it's used. It's a nice sentiment for firms looking to profit off of surveillance. But for private citizens worldwide, and especially those living under the most oppressive governments, the elimination of privacy is surely a dangerous trend.

Legislation limiting surveillance provides cover to continue surveillance- Freedom Act proves

Groll 15

Elias Groll, an assistant editor at Foreign Policy. A native of Stockholm, Sweden, he received his undergraduate degree from Harvard University, where he was the managing editor of The Harvard Crimson, "Congress May Have Passed the Freedom Act, But Mass Surveillance Is Alive and Well", *FOREIGN POLICY,* http://foreignpolicy.com/2015/06/04/congress-may-have-passed-the-freedom-act-but-mass-surveillance-is-alive-and-well/, 06/04/15//SRawal

One useful way to think about the USA Freedom Act that President Barack Obama signed into law on Tuesday night is as a lightning-rod for the National Security Agency. **By changing the way the NSA examines domestic phone records, the agency is now able to make the argument that it has undergone significant reforms in the aftermath of the Edward Snowden revelations**. **By giving up the authority to collect all American phone records, the agency has paid a small price — and gotten rid of a program that it had come to consider a burden, anyway — to keep its most important authorities intact**. The full measure of those powers were on prominent display in the New York Times on Thursday, when the paper reported that **the agency has expanded its "warrantless surveillance of Americans' international Internet traffic to search for evidence of malicious computer hacking**." **The NSA**, the paper reported, **has also partnered with the FBI to provide federal investigators with intelligence about computer intrusions carried out by foreign powers**, according to documents provided by Snowden. There is no evidence of outright wrongdoing in Thursday's reports, but they signal another expansion of the NSA's authorities to collect data on the Internet. Sen. Patrick Leahy, the Vermont Democrat and ranking member of the Judiciary Committee, said Thursday's report "underscores the critical importance of placing reasonable and commonsense limits on government surveillance in order to protect the privacy of Americans" and that "Congress should have an open, transparent and honest debate about how to protect both our national security and our privacy." Jonathan Mayer, a cybersecurity researcher, told the Times that FBI use of NSA data to combat cybercrime threatens to conflate the latter's intelligence gathering role with the former's law enforcement mandate. "That's a major policy decision about how to structure cybersecurity in the U.S. and not a conversation that has been had in public," he said. In short, the Times report, which was published in conjunction with ProPublica, reveals that **the NSA has directed some of its most powerful tools toward cracking down on state-sponsored hackers online. The agency now has the power to search the data streams it has access to for snippets of code and other identifying information to spot hackers and track their activities.** It is doing so by relying on one of its most important tools: Its position atop the global Internet infrastructure. **The NSA has risen to become the world's most powerful intelligence agency in no small part because a huge amount of the world's Internet traffic flows through the United States.** Fiber optic cables carry large amounts of Internet data from one part of the world to another, and when that traffic arrives in the United States, the NSA is there to have a look at it. Section 702 of the FISA Amendments Act governs parts of the NSA's relationship with U.S. telecommunications companies, and it is through such companies that the NSA is able to access enormous troves of data for terrorism and foreign intelligence purposes.

The NSA justifies increased surveillance based on secret law- impossible to stop circumvention

Ackerman 15

Spencer Ackerman, national security editor for Guardian US. A former senior writer for Wired, he won the 2012 National Magazine Award for Digital Reporting, 6-1-2015, "Fears NSA will seek to undermine surveillance reform," *Guardian*, http://www.theguardian.com/us-news/2015/jun/01/nsa-surveillance-patriot-act-congress-secret-law//SRawal

Privacy **advocates fear the National Security Agency will attempt to weaken new restrictions on the bulk collection of Americans' phone and email records with a barrage of creative legal wrangles**, as the first major reform of US surveillance powers in a generation looked likely to be a foregone conclusion on Monday. The USA Freedom Act, a bill banning the NSA from collecting US phone data in bulk and compelling disclosure of any novel legal arguments for widespread surveillance before a secret court, has already been passed by the House of Representatives and on Sunday night the Senate voted 77 to 17 to proceed to debate on it. Between that bill and a landmark recent ruling from a federal appeals court that rejected a longstanding government justification for bulk surveillance, civil libertarians think they stand a chance at stopping attempts by intelligence lawyers to undermine reform in secret. Attorneys for the intelligence agencies react scornfully to the suggestion that they will stretch their authorities to the breaking point**. Yet reformers remember that such legal tactics during the George W Bush administration allowed the NSA to shoehorn bulk phone records collection into the Patriot Act. Rand Paul, the Kentucky senator and Republican presidential candidate who was key to allowing sweeping US surveillance powers to lapse on Sunday night, warned that NSA lawyers would now make mincemeat of the USA Freedom Act's prohibitions on bulk phone records collection by taking an expansive view of the bill's definitions**, thanks to a pliant, **secret surveillance court**. "My fear, though, is that the people who interpret this work at a place known as the rubber stamp factory, the Fisa [court]," Paul said on the Senate floor on Sunday. Paul's Democratic ally, Senator Ron Wyden, warned the intelligence agencies and the Obama administration against attempting to unravel NSA reform. "**My time on the intelligence committee has taught me to always be vigilant for secret interpretations of the law and new surveillance techniques that Congress doesn't know about," Wyden, a member of the intelligence committee, told the Guardian. "Americans were rightly outraged when they learned that US intelligence agencies relied on secret law to monitor millions of law-abiding US citizens. The American people are now on high alert for new secret interpretations of the law, and intelligence agencies and the Justice Department would do well to keep that lesson in mind.**" The USA Freedom Act is supposed to prevent what Wyden calls "secret law". It contains a provision requiring congressional notification in the event of a novel legal interpretation presented to the secret Fisa court overseeing surveillance. Yet in recent memory, **the US government permitted the NSA to circumvent the Fisa court entirely. Not a single Fisa court judge was aware of Stellar Wind, the NSA's post-9/11 constellation of bulk surveillance programs, from 2001 to 2004**. Energetic legal tactics followed to fit the programs under existing legal authorities after internal controversy or outright exposure. When the continuation of a bulk domestic internet metadata collection program risked the mass resignation of Justice Department officials in 2004, **an internal NSA draft history records that attorneys found a different legal rationale that "essentially gave NSA the same authority to collect bulk internet metadata that it had"**

Body Cavity Searches

No Enforcement/Legal Redress

No enforcement in prisons—sexual violence allowed to continue
Buchanan 07

Kim Shayo Buchanan, Associate professor of Law and Gender Studies at USC Gould School of Law who specializes in constitutional law, international and comparative human rights law, prisoners' rights, reproductive rights, race, gender and sexuality, "Impunity: Sexual Abuse in Women's Prisons", *HARVARD LAW REVIEW,* http://www.law.harvard.edu/students/orgs/crcl/vol42_1/buchanan.pdf, Vol 42, 2007, pp. 44-48//SRawal

In the United States, **sexual abuse by guards in women's prisons is so notorious and widespread that it has been described as "an institutionalized component of punishment behind prison walls."**1 **Women in prisons2 across the United States are subjected to diverse and systematic forms of sexual abuse: vaginal and anal rape; forced oral sex and forced digital penetration; quid pro quo coercion of sex for drugs, favors, or protection; abusive pat searches and strip searches; observation by male guards while naked or toileting; groping; verbal harassment; and sexual threats**.3 Guards and prisoners openly joke about prisoner "girlfriends" and guard "boyfriends." Women prisoners become pregnant when the only men they have had contact with are guards and prison employees; often they are sent to solitary conªnement—known as "the hole"—as punishment for having sexual contact with guards or for getting pregnant.**4 Such open and obvious abuses would seem relatively easy for a prison administration to detect and prevent if it chose to do so**. **Prisons owe an afªrmative legal duty to protect their inmates against abuse.5 Congress and forty-four states have criminalized all sexual contact between guards and prisoners, regardless of consen**t.6 **Nonetheless, within women's prisons guards routinely commit serious sexual offenses against the women in their custody**. **Government administrators know that such abuse is occurring**7 and acknowledge their duty to prevent it.8 However, **they have generally neglected to do much about it**, as **most prisons have failed to adopt institutional and employment policies that effectively prevent or reduce custodial sexual abuse**.9 In most workplaces, an employee who had sex on the job would be ªred. In prison, **a report of custodial sexual abuse is more likely to result in punishment or retaliation against the prisoner than in disciplinary consequences for the guard.**10 **One might expect the law to furnish incentives for prisons to control such unlawful acts by their employees,** as it does for other civil defendants**. It does not**.11 Instead, as I demonstrate in this Article, a network of prison law rules—the Prison Litigation Reform Act of 1995 ("PLRA"),12 governmental immunities, and constitutional deference— work together to confer near-complete immunity against prisoners' claims. In the United States, both male and female prisoners are stereotyped as black;13 more than two thirds of women in U.S. prisons are African American or Latina.14 In this Article, I consider how the gendered racialization of women prisoners informs legal and institutional indifference to their treatment in prison. Like black women under slavery,15 **women in contemporary prisons are subjected to institutionalized sexual abuse, while the law refuses to protect them or provide redress.**

No enforcement of prison reform laws- video-taping strip searches and inadequate mental health services prove
Trounstine 14

Jean Trounstine, author/editor of five published books and many articles, professor at Middlesex Community College in Massachusetts, and a prison activist, 9-10-2014, "Videotaping Strip Searches in Jail Is Not Reform," *Truthout*, http://www.truth-out.org/opinion/item/26098-videotaping-strip-searches-in-jail-is-not-reform#//SRawal

Much has been written about Sheriff Michael J. Ashe of Hampden County as a heralded criminal justice reformer. Most recently the Massachusetts Attorney General candidate, Warren Tolman, claimed support of Ashe with these words,"Sheriff Ash**e has been a leader in the Commonwealth on finding ways to rehabilitate, treat mental illness and be proactive in instituting criminal justice**

reforms." Even Judge Michael Ponser, the judge who ruled that Sheriff's Ashe's deplorable policy of **videotaping strip-searches in the women's prison in Chicopee was "unconstitutional**," also noted that Ashe has a good reputation running the county's jails in the Conclusion to his Decision. But Debra Baggett**, the plaintiff** in the class-action case for 178 former and current detainees at the Chicopee jail **has much to say about the place where 274 strip searches were videotaped**. The lawsuit was filed by the law offices of Howard Friedman in 2011 against Sheriff Michael J. Ashe and Assistant Superintendent Patricia Murphy of the Western Massachusetts Regional Correctional Center in Chicopee and it contended that the searches violated the Fourth Amendment which protects citizens from unreasonable searches and seizures. **These tapes, began in** mid-September **2008,** and according to the suit, **68 percent of them show "some or all of the women's genitals, buttocks, or breasts."** Per Friedman's law office website, "From September 15, 2008 to May 20, 2010, **males held the camera for about 70% of the strip searches."** And the gender of the camera holder is not irrelevant in spite of the fact that men were supposed to have their backs to the prisoners during the videotaping. As the judge pointed out, "If you're going to videotape something, it's awfully hard not to view it." **The jail contended that these videotapes were used for safety reasons and to document a "potentially dangerous move"** from general population to the segregation unit. But as David Milton, an attorney for the women, said of the jail, in a telephone interview, "No one couldn't identify a single place in the country that videotaped strip searches." Baggett, who is now living in Alabama, said that to her, **the policies at Chicopee certainly didn't look so progressive**. She explained that "Seg" or the **Segregation Unit was "multi-function;" in other words, it was used to isolate women with behavioral issues and supposedly to prevent those with mental health issues from suicide.** Baggett said to me, imagine being a woman who had just lost her daughter or someone who had been raped a few hours before her arrest—both cases which occurred during her jail stay in Seg—and imagine how distraught you might be. Then imagine a jail that decides to handle such women with strip searches after they have been transferred from general population to Seg. From Think Progress, These searches required a woman to "run her fingers through her hair, remove dentures if she wore them, raise both arms, lift her breasts, lift her stomach for visual inspection if she had a large mid-section, and remove any tampon or pad if she were menstruating. She was then required to turn around, bend over, spread her buttocks, and cough." Then imagine being videotaped during those searches. **Videotaped, because the jail contended this was a necessity to stop possible infractions.** In two phone interviews, Baggett was very open about the fact that **a "Mental Health person was almost non-existent**" in her experience in Seg. **She never once saw a psychiatrist** while she was there**. She said that medication for her mental health issues was taken away when she entered WCC and she had a severe withdrawal from being without it that led to restraints and pepper spray. She said this kind of treatment exacerbated the issues that she suffered from.**

Abuses will continue- prisoners can't effectively access legal redress Buchanan 07

Kim Shayo Buchanan, Associate professor of Law and Gender Studies at USC Gould School of Law who specializes in constitutional law, international and comparative human rights law, prisoners' rights, reproductive rights, race, gender and sexuality, "Impunity: Sexual Abuse in Women's Prisons", *HARVARD LAW REVIEW,* http://www.law.harvard.edu/students/orgs/crcl/vol42_1/buchanan.pdf, Vol 42, 2007, pp. 70-73//SRawal

With few, if any, exceptions, prisoners' civil claims against correctional authorities for toleration of sexual abuse have succeeded only when a large number of women testify to widespread abuses, and some guard witnesses break ranks to corroborate the prisoners' accounts that severe custodial sexual abuse was both widespread and publicly known within the prison.199 When prison administrators seek to restrict male guards' access to women prisoners in order to protect the prisoners against sexual abuse, courts generally have upheld these institutional policies against guards' employment discrimination claims,200 at least at the appellate level.201 However, **when a prisoner brings civil claims on her own behalf, they are generally screened out or rejected.**202 Indeed, **one commentator argues that juries are so reluctant to award any damages to prisoners that they will not on basis that prisoner was "not credible" because she had formed a "plan" to get a transfer by reporting sexual activity with corrections officers; the court** found some of this activity not to have happened because it was uncorroborated, and **stated that other activity "could only reasonably be described as consensual**" because the prisoner "never tried to caught [the guards] off, scream, or yell"). 70 Harvard Civil Rights-Civil Liberties Law Review [Vol. 42 do so unless they believe the defendant has acted with such malice that punitive damages are appropriate.203 Even when prisoners are able to prove that they have been raped, juries may tend to "lowball prisoners' nonwage damages as an expression of disregard for them."204 For example, in Morris v. Eversley, 205 a jury convicted a guard of sexually assaulting a female prisoner based on DNA evidence. **A civil jury awarded the prisoner only $500 in compensatory damages and $7,500 in punitive damages.2**06 The district court judge found the verdict generally inadequate, and

ordered a new trial. The new jury awarded $1,000 for compensatory damages and $15,000 for punitive damages. The judge, apparently frustrated by this paltry award, wrote: I was bafºed that the ªrst jury awarded such low amounts, and yet **the second jury did not award much more**. **It is hard to imagine that Morris could be made whole for the damages she suffered, including the loss of her dignity, by a mere $500 or $1,000 in compensatory damages**. . . . **[A] prisoner**, even a former prisoner, **is unable to recover a fair measure of damages**.207 **Such inadequate jury awards reºect the discredited prejudicial racial and gender stereotypes by which low-status women, especially black women, prostitutes, and prisoners, are viewed as less likely to be harmed by sexual assault**. Outside of the prison context, damage awards for sexual assault are typically much higher**. A recent survey of civil actions for sexual assault resolved in state appellate courts between 2001 and 2004 found that damage awards in sexual assault cases outside prison can range from nothing to well over one million dollars**. But in cases involving institutional liability, "a signiªcant number of cases award compensatory damages of $100,000 to $200,000." Ellen M. Bublick, Tort Suits Filed by Rape and Sexual Assault Victims in Civil As Bublick observes, "[i]nadequate damage awards may be a particular issue when the victim and the assailant are acquaintances or partners," as they are by deªnition in cases of custodial sexual abuse 1. **The Prison Litigation Reform Act The Prison Litigation Reform Act209 ("PLRA") was expressly designed to deter prisoner lawsuits**. It was introduced in 1995 to respond to congressional concern about the dramatic increase in prisoner litigation between 1980 and the mid-1990s—an increase that, as commentators have noted, coincided with a dramatic increase in the incarcerated population in the United States.210 **The PLRA was not intentionally designed to block lawsuits for custodial sexual abuse; rather, it was designed to address the perceived problem of jailhouse lawyers who brought frivolous lawsuits**. In 1995, during the Senate debate over the bill, Senator Bob Dole cited a notorious prisoner lawsuit in which a prisoner complained that the prison served chunky, rather than creamy, peanut butter.211 Numerous other frivolous suits, such as claims arising from an unsatisfactory prison haircut and a desire for a particular brand of sneakers, were also used during the PLRA debates as examples of the pressing need for special barriers to prisoner litigation.212 During the congressional debates, Senator Joe Biden pointed out that the PLRA would erect "too many roadblocks to meritorious prison lawsuits."213 He urged Congress not to "lose sight of the fact that some of these lawsuits have merit—some prisoners' rights are violated."214 Senator Biden pointed out that hundreds of women prisoners had been sexually abused by dozens of guards, openly and for years, in Washington, D.C., prisons. He noted that this practice changed only after their class action was successful.215 Despite Senator Biden's warnings, no amendment was adopted to protect the right of prisoners to sue in the event of sexual abuse by guards. The PLRA is a status-based law that excludes almost all prisoner claims from the courts.216 Like historical doctrines designed to deter rape average sentence given to Black women's assailants is two years. The average sentence given to white women's assailants is ten years." Crenshaw, Sexual Harassment, supra note 44, at 1471. complainants, black witnesses, and married women from bringing white men to court, the PLRA establishes unique hurdles that are nearly impossible for prisoner plaintiffs to overcome. The most damaging hurdle imposed by the PLRA is its grievanceexhaustion requirement.217 Like the marital privacy doctrine that excluded wives' claims from the courts in order to protect "family government,"218 this provision values the peace of mind of those in power over the safety of those who are in their custody. **The grievance-exhaustion provision requires inmates to exhaust internal prison grievance procedures before they may bring their claims to an outside authority, even if the procedures are complex, ineªcient, unfair, or incapable of offering a remedy for the prisoner's claim.219 If the prisoner has failed to do so, the litigation is dismissed**. **Thus a prison is virtually insulated from prisoner litigation to the extent that its grievance process is complex and time-consuming, its deadlines for ªling a grievance are brief,220 and the threat of retaliation deters prisoners from using the process at all**. In practice the grievance-exhaustion requirement "invites technical mistakes resulting in inadvertent noncompliance with the exhaustion requirement, and bar[s] litigants from court because of their ignorance and uncounselled procedural errors."221 Unreasonably quick grievance deadlines evoke the "fresh complaint" requirements of traditional rape doctrine.222 In New York, for example, the Department of Corrections imposes a fourteen-day limit for ªling any prisoner grievance, unless the grievance authority determines that "mitigating circumstances" justify the delay.223 If a **prisoner is in a "consensual" sexual relationship with a guard, she is unlikely to express a grievance until well after the guard becomes threatening or abusive, thus missing the deadline**.224 If she misses the grievance deadline, her litigation is dismissed**. Furthermore, prison grievance procedures offer no prospective relief to protect the prisoner before she is raped**. If a guard has merely threatened to assault the prisoner, offered a quid pro quo for sex, or groped her— or if she did not think to preserve a DNA sample during her rape—the grievance process will do nothing.225 Even though ªling a grievance is futile in such circumstances, **the PLRA still requires the prisoner to report the abuse to her abuser's colleagues through an often-humiliating disciplinary procedure**226 **that is likely to result in retaliation**. In addition to its grievance-exhaustion requirement, **the PLRA further hinders prisoner litigation by prohibiting any prisoner lawsuit "without a prior showing of physical injury**."227 Some courts have raised this barrier even further by requiring that the physical injury be at least as serious as an injury that would meet the Eighth Amendment's "de minimis harm" requirement.228 **Presumably, vaginal or anal rape would sufªce**.229 On its face, however, **the physical injury requirement appears to bar prisoner claims for sexual abuse if no physical injury results**.230 For example, the text of this provision

appears to bar claims that a prisoner was forced to perform or submit to oral sex, was digitally penetrated, or was coerced into sexual compliance through threats or inducements without a beating.

Drones

No Enforcement

***There is no enforcement of drone regulation

Kinane 15

Ed Kinane, activist with the Upstate Drone Action, 2-17-2015, "'Concerns over domestic drones: spying, civil liberties' abuse & accidents'," *RT English*, http://www.rt.com/op-edge/233043-commercial-drones-intelligence-agencies-abuse//SRawal

I think we should be very concerned about the abuse of the drones for surveillance. Already we have US intelligence agencies like the FBI, NSA gathering enormous amounts of surveillance data with very little control over them. And we've seen that our intelligence agencies don't necessarily respect out laws regarding these matters. Trying to enforce regulations is very difficult especially when you go up against the NSA, the National Security Administration, or the FBI, or Homeland Security. There is very little in the way of enforcement. The FAA, the Federal Aviation Administration, is already stretched very thin. And it's not their function to be enforcing the rules and regulations, and they don't have the means to do it. It is a very risky situation we're going into…We would have many drones in the air probably... how do we know which ones are doing what? It would give very good cover to spy drones because we're just used to spy drones because we're just used to seeing drones in the air. So we don't think of it when we see drones that really are performing functions that are very inappropriate for them.

Local Police will Use

Drone use would continue- local police and commercial drones
Nelson 15

Steven Nelson, reporter at U.S. News & World Report, 2-24-2015, "FAA Wants Local Cops to Be Drone Police," *US News & World Report*, http://www.usnews.com/news/articles/2015/02/24/faa-wants-local-cops-to-be-drone-police//SRawal

See this peeking in your window? You can't shoot it, a federal official said Tuesday**. State and federal officials droned on Tuesday about rules for increasingly popular unmanned aircraft.** Federal Aviation Administration official Mark Bury told dozens of state attorneys general at an event in the nation's capital that his agency needs help enforcing federal rules on drones**. "We're hoping that moving forward we'll be able to enlist the assistance of local law enforcement in gathering information about operations of unmanned aircraft that violate our regulations,"** said Bury, the FAA's assistant chief counsel for regulations, during a panel discussion. "**We simply don't have the manpower,"** he said. Last week, the FAA released proposed rules for commercial drones under 55 pounds. If adopted**, the rules would require licenses – issued after knowledge tests and valid for two years – to use the aircraft and mandate that operators keep the drones within eyesight and under 500 feet**. Some rules are already in place that affect use of small drones. **Temporary air restrictions above stadiums hosting large events, for example, already apply.** Drones can perform an ever-expanding list of tasks, and safeguards for privacy and public safety are only now catching up. **Many possible applications of drones aren't regulated**. Mississippi Attorney General Jim Hood, who repeatedly solicited new hunting buddies during this week's National Association of Attorneys General meeting, asked about using the aircraft to pursue prey. **Bury told Hood the FAA considered the issue but doesn't have a strong regulatory interest. "From [the FAA's] perspective, if installation of a weapon, camera, whatever … if safe operation is not implicated, we don't really have an interest,"** he said.

Other Aerial Surveillance

Plan fails- law enforcement would move to powerful aerial surveillance cameras Timberg 14

Craig Timberg, national technology reporter for The Post, 2-5-2014, "Get the feeling you're being watched? These eyes in the sky can track every person, vehicle in an area for hours.," *Washington Post*, http://www.washingtonpost.com/business/technology/new-surveillance-technology-can-track-everyone-in-an-area-for-several-hours-at-a-time/2014/02/05/82f1556e-876f-11e3-a5bd-844629433ba3_story.html//SRawal

DAYTON, Ohio — Shooter and victim were just a pair of pixels, dark specks on a gray streetscape**. Hair color, bullet wounds, even the weapon were not visible in the series of pictures taken from an airplane flying two miles above**. But what the images revealed — to a degree impossible just a few years ago — **was location, mapped over time**. Second by second, **they showed a gang assembling, blocking off access points, sending the shooter to meet his target and taking flight after the body hit the pavement**. When the report reached police, **it included a picture of the blue stucco building into which the killer ultimately retreated**, at last beyond the view of the powerful camera overhead. "I've witnessed 34 of these," said Ross McNutt, the genial president of Persistent Surveillance Systems, which collected the images of the killing in Ciudad Juárez, Mexico, from a specially outfitted Cessna. "It's like opening up a murder mystery in the middle, and you need to figure out what happened before and after." As Americans have grown increasingly comfortable with traditional surveillance cameras**, a new, far more powerful generation is being quietly deployed that can track every vehicle and person across an area the size of a small city**, for several hours at a time. **Although these cameras can't read license plates or see faces, they provide such a wealth of data that police, businesses and even private individuals can use them to help identify people and track their movements**. Already, the cameras have been flown above major public events such as the Ohio political rally where Sen. John McCain (R-Ariz.) named Sarah Palin as his running mate in 2008, McNutt said. They've been flown above Baltimore; Philadelphia; Compton, Calif.; and Dayton in demonstrations for police. They've also been used for traffic impact studies, for security at NASCAR races and at the request of a Mexican politician, who commissioned the flights over Ciudad Juárez**. Defense contractors are developing similar technology for the military, but its potential for civilian use is raising novel civil liberties concerns. In Dayton, where Persistent Surveillance Systems is based, city officials balked last year when police considered paying for 200 hours of flights, in part because of privacy complaints.**

The police keeps the new powerful aerial surveillance secret Smith 14

Ms. Smith, 4-15-2014, "Record and rewind: Cops quietly test aerial surveillance to track crime," *Network World*, http://www.networkworld.com/article/2226742/microsoft-subnet/record-and-rewind--cops-quietly-test-aerial-surveillance-to-track-crime.html//SRawal

Because America apparently isn't enough of a surveillance society, and **aerial surveillance only works if it is "looking at the right spot," cops have been testing a new wide-area surveillance system that can watch, record and rewind every outdoor activity that happens in a city, every person, every car and every crime.** It "is something of a time machine - the entire city is filmed and recorded in real time," reported The Center for Investigative Reporting (CIR). "Imagine Google Earth with a rewind button and the ability to play back the movement of cars and people as they scurry about the city." Retired Air Force veteran Ross **McNutt previously helped build a wide-area surveillance system that provided the military with a "360-degree eye in the sky**" to "hunt down bombing suspects in Iraq and Afghanistan." Although it wouldn't seem like there's a huge need to hunt down terrorists from above in the United States, McNutt, the creator of Ohio-based Persistent Surveillance Systems, **decided law enforcement in the U.S. also needed such "gaming-changing" surveillance capabilities.** Instead of needing such powerful surveillance to track suspected terrorists, **the Los Angeles County Sheriff's Department used it to track necklace-snatchers, thieves similar to purse-**

snatchers, except they were stealing necklaces. PSS high-resolution surveillance cameras were fitted to the belly of small plane, giving the police the power to literally watch the entire city of Compton, CA. CIR said of the sample image**: "Persistent Surveillance Systems' technology captures in real time a necklace snatching and the getaway car that was involved**." Those aerial cameras can "record a 25-square-mile patch of Earth constantly-for up to six hours." Although the aerial surveillance isn't as powerful as the unblinking, all-seeing 1.8-gigapixel camera of DARPA's ARGUS-IS, McNutt believes that in a few years, the **technology will be able to cover an area about "as large as the entire city of San Francisco."** He told Gizmodo that his PSS system is like a "live version of Google Earth, only with TiVo capabilities." "Our whole system costs less than the price of a single police helicopter and costs less for an hour to operate than a police helicopter," McNutt told CIR. "But at the same time, it watches 10,000 times the area that a police helicopter could watch." Why hadn't the citizens of Compton heard of the aerial surveillance? **L.A. County Sheriff's Sgt. Doug Iketani told CIR, "The system was kind of kept confidential from everybody in the public. A lot of people do have a problem with the eye in the sky, the Big Brother, so in order to mitigate any of those kinds of complaints, we basically kept it pretty hush-hush."**

Businesses sell info

Businesses will use drones for surveillance

Ray **Henry, 7-6**-2015, "Utility companies look to use drones for surveillance, equipment inspection," SecurityInfoWatch, http://www.securityinfowatch.com/news/14026747/utility-companies-look-to-use-drones-for-surveillance-equipment-inspection

Power **companies across the United States are testing** whether small **drones** can spot trouble on transmission lines or inspect equipment deep inside hard-to-reach power plant boilers. That's just for starters. Researchers and industry executives predict **the drones could provide security surveillance** to deter vandalism on remote gear and make it safer for utility workers to climb poles and towers. **One of the country's largest power companies, Southern Co., says it hopes drones can eventually** identify storm damage in the Southeast and **allow it to increase its routine inspections. About a dozen utility or service companies have sought permission to use drones for similar purposes.**

Business use drones
Whitlock 14

Craig Whitlock, covers the Pentagon and national security. He has reported for The Washington Post since 1998, 10-16-2014, "FAA rules might allow thousands of business drones," Washington Post, https://www.washingtonpost.com/world/national-security/faa-releases-proposed-rules-for-domestic-drone-use/2015/02/15/6787bdce-b51b-11e4-a200-c008a01a6692_story.html//SRawal

Thousands of businesses could receive clearance to fly drones two years from now under proposed rules that the Federal Aviation Administration unveiled Sunday, a landmark step that will make automated flight more commonplace in the nation's skies. Meanwhile, the White House on Sunday issued presidential directive that will require federal agencies for the first time to publicly disclose where they fly drones in the United States and what they do with the torrents of data collected from aerial surveillance. Together, **the FAA regulations and the White House order provide some basic rules of the sky that will govern who can fly drones in the United States and under what conditions, while attempting to prevent aviation disasters and unrestrained government surveillance**. **The FAA's draft rules would make it relatively simple for real estate agents, aerial photographers, police departments, farmers and anyone else to fly small drones for work purposes. Operators** would need to pass a written proficiency test, register the drone and pay about $200 in fees — but **would not have to obtain a regular pilot's license or demonstrate their flying skills.** The long-awaited regulations — **the FAA had been drawing them up for several years — are expected to lead to a revolution in commercial aviation.** But they must first undergo a lengthy period of public review and comment that is projected to take at least until early 2017. Once the rules are finalized, **the FAA estimates that more than 7,000 businesses will obtain drone permits within three years.**

And these businesses and corporations will sell the info to the government
Boghasian 03

Heidi Boghosian, executive director of the National Lawyers Guild and co-host of the civil liberties radio show Law and Disorder, "The Business of Surveillance," Vol. 39, No. 3, *AMERICAN BAR PUBLICATION- Human Rights,* http://www.americanbar.org/publications/human_rights_magazine_home/2013_vol_39/may_2013_n2_privacy/the_business_of_surveillance.html, 2003//SRawal

Corporations routinely and readily hand over customers' private personal data, absent warrants, to government agencies often without legal justification or beyond what was requested. The NSA has collected records of phone calls of millions of individuals with data provided by AT&T, Verizon, and BellSouth. Despite reports citing abuses of the Patriot Act from the Justice Department Office of the Inspector General, su**ch data collection is authorized by legislation signed by Presidents Bush and Obama.** Bush issued an executive order authorizing the NSA to monitor phone calls, e-mails, Internet activity, text messaging, and other communication involving any party believed by the NSA to be outside the United States, even if the other end of the communication lies within the United States, without a warrant or other express approval. This executive order was issued pursuant to congressional passage of the Authorization for Use of Military Force, presumably on the grounds that if the president can order targeted assassinations, there is no reason why lesser intrusions should be limited. **Several former officials and telecommunications workers have indicated that the NSA program extends beyond the surveillance of those suspected to be linked to foreign terrorists. A significant disclosure came in 2005 when former technician Mark Klein revealed that AT&T was cooperating with the NSA. The firm had installed a fiber optic splitter at a San Francisco facility that made copies of Internet traffic to and from AT&T customers, and gave them to the NSA.**

SPOT (TSA Airports)

Agencies will use Racial Profiling

The aff does nothing –The CBP, TSA, and ICE will still be allowed to use racial profiling- Horwitz 14

Sari Horwitz, covers the Justice Department and criminal justice issues nationwide for The Washington Post, where she has been a reporter for 30 years, 12-5-2014, "Racial profiling will still be allowed at airports, along border despite new policy," *Washington Post*, http://www.washingtonpost.com/politics/racial-profiling-will-still-be-allowed-at-airports-along-border-despite-new-policy/2014/12/05/a4cda2f2-7ccc-11e4-84d4-7c896b90abdc_story.html//SRawal

In recent months, **DHS officials pushed** the White House and Justice Department **to allow major exclusions for prominent DHS agencies such as the TSA, Immigration and Customs Enforcement, and Customs and Border Protection, officials said. CBP, for instance, will still be allowed to use racial profiling when conducting inspections at the country's "ports of entry" and interdictions of travelers at the border, officials said**. **Some DHS officials also questioned the Justice Department's authority to set policies for a separate federal agency.** DHS **Secretary Jeh Johnson made the case in a series of high-level meetings, arguing that while his department did not condone profiling, immigration and customs agents and airport screeners needed to consider a variety of factors to keep the nation safe, according to officials familiar with his personal efforts. TSA officials**, meanwhile, **argued that they should not be covered by the new limits on the grounds that the TSA is not a law enforcement agency. "We** tend to **have a very specific clientele** that we look for,'' said one federal official involved in immigration enforcement, who spoke on the condition of anonymity to discuss internal deliberations. "If you look at numbers, the vast majority of people we deal with are Hispanic. Is that profiling, or just the fact that most of the people who come into the country happen to be Hispanic?''

Racial profiling in these agencies is still legally allowed- Muslims will be targeted Rhodan 14

Maya Rhodan, Web Reporter at Time Magazine, 12-8-2014, "New Federal Racial Profiling Guidelines Worry Civil Rights Groups," *TIME*, http://time.com/3623851/justice-department-racial-profiling-muslims-sikhs-aclu//SRawal

But some **carve-outs—such as screenings and inspections by the Transportation Security Administration and U.S. Customs and Border Protection—have raised eyebrows among groups including the American Civil Liberties Union, Muslim Advocates and the Sikh Coalition**. "**It's baffling that even as the government recognizes that bias-based policing is patently unacceptable, it gives a green light for the FBI, TSA, and CBP to profile racial, religious and other minorities at or in the vicinity of the border and in certain national security contexts,** and does not apply the Guidance to most state and local law enforcement," said Laura Murphy, the director of ACLU's Washington legislative office. **Muslim Advocates,** a faith-based legal and educational advocacy organization**, echoed those sentiments. "While these changes are welcome,"** a statement reads, "it **is difficult to see how the guidance will improve the lives of law-abiding American Muslims who are singled out and targeted based on their faith,** not evidence of wrongdoing, **by the FBI, Customs and Border Protection, and other law enforcement agencies." The Department of Justice guidelines do not apply to activities conducted by military, intelligence or diplomatic personnel**. Border screening activities are also not covered, which has been of particular concern to civil rights groups. After 9/11, sweeping counterterrorism efforts were imposed that led Arab and Muslim Americans—and some perceived to be Muslim or Arabic such as South Asians and Sikhs—to feel singled out and profiled by the federal government. A 2009 ACLU and Rights Working Group report found that **Arabs,**

Muslims and South Asians "have been disproportionately victimized through various government initiatives" including FBI surveillance, questioning, airline profiling and no-fly lists.

Other programs result in racial profiling
Leadership Conference 11

The Leadership Conference, coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, "The Reality of Racial Profiling", http://www.civilrights.org/publications/reports/racial-profiling2011/the-reality-of-racial.html?referrer=https://www.google.com/, 2011//SRawal

- Operation front line
- Lower standard from probable cause to reasonable suspicion
- Terrorists screening center

Another example of a federal program that involves racial profiling is Operation Front Line (OFL). The stated purpose of OFL,47 which was instituted just prior to the November 2004 presidential election, is to "detect, deter, and disrupt terror operations."48 **OFL is a covert program**, **the existence of which was discovered through a Freedom of Information Act lawsuit filed by the American-Arab Anti-Discrimination Committee** and the Yale Law School National Litigation Project.49 According to the 2009 ACLU/Rights Working Group report, data regarding OFL obtained from the Department of Homeland Security show that**: an astounding seventy-nine percent of the targets investigated were immigrants from Muslim majority countries**. Moreover, foreign nationals from Muslim-majority countries were 1,280 times more likely to be targeted than similarly situated individuals from other countries. Incredibly, not even one terrorism-related conviction resulted from the interviews conducted under this program. What did result, however, was an intense chilling effect on the free speech and association rights of the Muslim, Arab and South Asian communities targeted in advance of an already contentious presidential election.50 Lists of individuals who registered under NSEERS were apparently used to select candidates for investigation in OFL.51 **Inasmuch as the overwhelming majority of those selected were Muslims, OFL is a clear example of a federal program that involves racial profiling**. Moreover, because OFL has resulted in no terror-related convictions, the program is also a clear example of how racial profiling uses up valuable law enforcement resources yet fails to make our nation safer.52 Although Arabs and Muslims, and **those presumed to be Arabs or Muslims based on their appearance, have since 9/11 been targeted by law enforcement authorities in their homes, at work, and while driving or walking,53 airports and border crossings have become especially daunting**. One reason for this is a wide-ranging and intrusive Customs and Border Patrol (CBP) guidance issued in July 2008 that states, "**in the course of a border search, and absent individualized suspicion, officers can review and analyze the information transported by any individual attempting to enter …. the United States**."(Emphasis added)54 In addition, the standard to copy documents belonging to a person seeking to enter **the U.S. was lowered from a "probable cause" to a "reasonable suspicion" standard**.55 **Operating under such a broad and subjective guidance, border agents frequently stop Muslims, Arabs, and South Asians for extensive questioning about their families, faith, political opinions, and other private matters, and subject them to intrusive searches**. Often, their cell phones, laptops, personal papers and books are taken and reviewed. **The FBI's Terrorist Screening Center (TSC) maintains a list of every person who, according to the U.S. government, has "any nexus" to terrorism.5**6 Because of misidentification (i.e., mistaking non-listed persons for listed persons) and over-classification (i.e., assigning listed persons a classification that makes them appear dangerous when they are not), **this defective "watch-list" causes many problems for Muslims, Arabs, and South Asians seeking to enter the United States, including those who are U.S. citizens.**

No Enforcement

TSA regulation enforcement is ineffective- Sikh turbans are still invasively searched despite better regulation

Leadership Conference 11

The Leadership Conference, coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, "The Reality of Racial Profiling", http://www.civilrights.org/publications/reports/racial-profiling2011/the-reality-of-racial.html?referrer=https://www.google.com/, 2011//SRawal

Individuals wearing Sikh turbans or Muslim head coverings are also profiled for higher scrutiny at airports. In response to criticism from Sikh organizations, the Transportation Security Administration (TSA) recently revised its operating procedure for screening head coverings at airports. **The current procedure provides that: All members of the traveling public are permitted to wear head coverings (whether religious or not) through the security checkpoints**. The new standard procedures subject all persons wearing head coverings to the possibility of additional security screening, which may include a patdown search of the head covering. **Individuals may be referred for additional screening if the security officer cannot reasonably determine that the head area is free of a detectable threat item. If the issue cannot be resolved through a pat-down search, the individual will be offered the opportunity to remove the head covering in a private screening area.**63 Despite this new procedure, and TSA's assurance that in implementing it "TSA does not conduct ethnic or religious profiling, and employs multiple checks and balances to ensure profiling does not happen,"64 Sik**h travelers report that they continue to be profiled and subject to abuse at airports.**65 Amardeep Singh, director of programs for the Sikh Coalition and a second-generation American, recounted the following experience in his June 2010 testimony before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Judiciary Committee: Two months ago, my family and I were coming back to the United States from a family vacation in Playa Del Carmen, Mexico. At Fort Lauderdale Airport, **not only was I subjected to extra screening, but so was** [**my 18 month-old son Azaad].** I was sadly forced to take my son, Azaad, into the infamous glass box so that he could [be] patted down. He cried while I held him. He did not know who that stranger was who was patting him down. His bag was also thoroughly searched. His Elmo book number one was searched. His Elmo book number two was searched. His minimail truck was searched. **The time spent waiting for me to grab him was wasted time. The time spent going through his baby books was wasted time.** I am not sure what I am going to tell him when he is old enough and asks why his father and grandfather and soon him—**Americans all three**—are **constantly stopped by the TSA 100% of the time at some airports.**

Borders

Obama ignores the Immigration law- leads to detrimental consequences

JAMES JAY **CARAFANO** • 7/13/**14** ("Immigrants ignore U.S. immigration laws because Obama won't enforce them", June 13th, 2014, http://www.washingtonexaminer.com/immigrants-ignore-u.s.-immigration-laws-because-obama-wont-enforce-them/article/2550787, Accessed 7/16/15, EHS MSK)

Today, **the flood of unaccompanied minors illegally crossing the borde**r makes Napolitano's declaration **look foolish**. Last year, the Department of Health and Human Services reported it had custody of about 2,000 minors who had entered illegally, without a parent. This year more than 52,000 unaccompanied children have been apprehended at the South Texas border alone. Why the dramatic upsurge? It comes fo**llowing the president's 2012 declaration that his administration would defe**r, virtually automatically, **deportation of minors unlawfully present in the U**.S. Over the last year, "coyotes" have been using that promise as a marketing tool for their people smuggling business. Coupling this announcement with disastrous policies towards El Salvador, Honduras, and Guatemala -- the three countries from which most of these children come -- **Obama has done much to undermine all the enforcement measures that had stemmed the tide of illegal migration.** Now Washington has stepped in with three proposals to solve the problem. First, **the president has asked for $3.8 billion in "emergency" spending**. T**hat's** a l**aughable** request **intended** mostly **as a sound bite for the White House to claim it is doing something. Little** of the **money would go toward making the border more secure**. A lot would go to hiring immigration judges -- a two-year process that hardly qualifies as emergency spending**. If there are legitimate additional needs Congress should just address them in the annual appropriations bill.** Second, **some want to cut foreign aid to punish El Salvador, Honduras, and Guatemala**. But, Congress has to be careful not to gut programs that help those nations battle the gangs and cartels that have made life there so difficult. Indeed, **by withholding security assistance funds over the last few years, Washington has inadvertently fueled the problems many Central Americans seek to flee.** Third, **there is a move to amend current law to allow for expedited removal of minors from countries that are noncontiguous with the United States**. If done right, **that policy change would actually help over the long-term. Even under expedited removal**, U.S. officials must fully consider a child's safety in their decision-making. After all, once the U.S. takes custody of a minor, it's responsible for that child. Today's border crisis offers an important lesson: **When an administration ignores the law or only pretends to enforce it, no one pretends to obey it. The consequences are self-evident.**

Arizona won't follow new border laws

Elizabeth **Erwin 4/11** ("Arizona lawmakers want to ignore President Obama's executive orders", Mar 11, 2015 6:27 PM, http://www.abc15.com/news/state/arizona-lawmakers-want-to-ignore-president-obamas-executive-orders, Accessed 7/16/15,)

President Barack Obama has signed some big executive orders lately. **They've impacted** guns and immigration, two **issues Arizonans clearly care about.** But the approach some lawmakers are taking to keep us from enforcing those rules has some questioning if the plan is even legal! "**The legislature wants to prevent enforcement of executive orders and prevent enforcement of federal agency policy directives**," said attorney David Abner with Knapp & Roberts Law Firm. **House Bill 2368 says unless**

those orders have been voted on by Congress and signed into law, Arizona wouldn't have to follow them. "It's political grandstanding. There's nothing of substance to this. It's silly," Abner said. "Well, unfortunately, it's a waste of time, somewhat ridiculous. In fact very ridiculous," said House Minority Leader Bruce Wheeler. Wheeler voted against the bill. He said the priorities of what gets floor time doesn't match up with what Arizonans really need. "**We ought to be addressing education and jobs. Instead we're addressing these extremist bills**," Wheeler said. **Abner said even if this bill is signed into law there's no way it would stand up in court**. "If our state officials ignore federal law they run the risk of prosecution by federal authorities," Abner said. ABC15 reached out to the bill's sponsors today for comment. We have not heard back yet.

Decryption

Loopholes

Loopholes exist for the FBI and NSA
Cushing 14

Tim Cushing, Techdirt contributor, 12-5-14, "Ron Wyden Introduces Legislation Aimed At Preventing FBI-Mandated Backdoors In Cellphones And Computers," *Techdirt.*, https://www.techdirt.com/articles/20141204/16220529333/ron-wyden-introduces-legislation-aimed-preventing-fbi-mandated-backdoors-cellphones-computers.shtml//SRawal

Here's the actual wording of the backdoor ban [pdf link], which has a couple of loopholes in it. (a) IN GENERAL.—Except as provided in subsection (b), no agency may mandate that a manufacturer, developer, or seller of covered products design or alter the security functions in its product or service to allow the surveillance of any user of such product or service, or to allow the physical search of such product, by any agency. Subsection (b) presents the first loophole, naming the very act that Comey is pursuing to have amended in his agency's favor. (b) EXCEPTION.—Subsection (a) shall not apply to mandates authorized under the Communications Assistance for Law Enforcement Act (47 U.S.C. 1001 et seq.). Comey wants to alter CALEA or, failing that, get a few legislators to run some sort of encryption-targeting legislation up the Congressional flagpole for him. Wyden's bill won't thwart these efforts and it does leave the NSA free to continue with its pre-existing homebrewed backdoor efforts -- the kind that don't require mandates because they're performed off-site without the manufacturer's knowledge.

They will still have access- government can still influence companies
Newman 14

Lily Hay Newman, 12-5-2014, "Senator Proposes Bill to Prohibit Government-Mandated Backdoors in Smartphones," *Slate Magazine*, http://www.slate.com/blogs/future_tense/2014/12/05/senator_wyden_proposes_secure_data_act_to_keep_government_agencies_from.html//SRawal

It's worth noting, though, that the Secure Data Act doesn't actually prohibit backdoors—it just prohibits agencies from mandating them. There are a lot of other types of pressure government groups could still use to influence the creation of backdoors, even if they couldn't flat-out demand them. Here's the wording in the bill: "No agency may mandate that a manufacturer, developer, or seller of covered products design or alter the security functions in its product or service to allow the surveillance of any user of such product or service, or to allow the physical search of such product, by any agency."

Financial Surveillance

Banks can break the law

Will be circumvented by banks- ineffective SEC enforcement
Kwak 11

James Kwak, An Associate Professor At The University Of Connecticut School Of Law, Is Co-Author Of White House Burning, 12-14-2011, "Too Big to Stop: Why Big Banks Keep Getting Away With Breaking the Law," *Atlantic*, http://www.theatlantic.com/business/archive/2011/12/too-big-to-stop-why-big-banks-keep-getting-away-with-breaking-the-law/249952//SRawal

Move along, nothing to see here. That's been the Wall Street line on the financial crisis and the calamitous behavior that caused it, and that strategy has been spectacularly successful. Since Spring 2010, financial institutions' predatory practices have fallen off the front pages of newspapers, replaced by manufactured fears of over-regulation and -- thanks to an assist from the European continent -- an Orwellian belief that government debt lies at the root of our economic problems. Occasionally, a news event brings the need for financial reform momentarily into the partial spotlight, like last week when Judge Jed Rakoff rejected a proposed settlement between the SEC and Citigroup over a complex security called a CDO (actually, a CDO-squared) that the bank manufactured and pushed onto investor clients solely so it could bet against it. In April 2010, when the SEC sued Goldman over similar behavior, that was big-time news for weeks. But Citigroup's behavior in "Class V Funding III" was far worse. The issue in the Goldman case was whether the bank properly disclosed that John Paulson, a hedge fund manager, was involved in the selection of securities for the deal, because he wanted to bet against them. This time, Citigroup's own proprietary "trading desk" asked its CDO "structuring desk" to create a debt instrument that it could bet against. The trading desk came up with a list of securities to include in the new CDO and passed it on to the structuring desk, which in turn sent it to a supposedly independent third party that would manage the CDO itself, called CSAC. In one email, the person on the structuring desk overseeing the deal wrote, "This is [the CDO trading desk]'s prop trade (don't tell CSAC). CSAC agreed to terms even though they don't get to pick the assets" (SEC complaint against Brian Stoker, paragraph 32.) Half of the eventual CDO was based on securities chosen by Citi's trading desk (paragraph 42). (Yves Smith has more, from the SEC's order against CSAC--which, by the way, is part of Credit Suisse, another big bank.) Of course, the structuring desk didn't do this just as a favor to the trading desk: "On November 14, 2006, Stoker's immediate supervisor informed Stoker that Stoker should take action to ensure that the structuring desk received 'credit for [the trading desk's] profits' on Class V III" (complaint, paragraph 33). As is common in these cases, the SEC and Citi negotiated a settlement in which the bank would pay $285 million ($190 million for its profits plus a $95 million penalty) but neither admit nor deny the allegations. Judge Rakoff (who previously gave the SEC a hard time over a settlement with Bank of America over the closing of the Merrill Lynch acquisition) refused to approve the settlement, saying that it offered no factual basis on which to even decide whether it was fair, adequate, reasonable, and in the public interest (pp. 13-14). CAPTURED! The absence of a factual basis is a decent legal argument, but I think what Rakoff is really taking aim at is the problem of regulatory capture. For Citi, the settlement boiled down to two things: a $95 million penalty and a promise not to break the law in the future. Anyone who can do basic arithmetic can see that it's worth it to break the law under those terms so long as you have a two-thirds chance of getting away with it (and who thinks the SEC is catching more than one-third of all violations?). And earlier in the case, Rakoff asked the SEC how often it has actually enforced the promise by a bank not to violate the law in the future. The answer: never, at least not in the past ten years (pp. 22-23).In short, a settlement like this seems to have exactly zero value as a deterrent. The SEC argues that it could lose at trial, but that doesn't justify a settlement that is worth nothing to begin with. It argues that its resources are better spread across more cases, but many times zero is still zero. So the real question is why the SEC wants these settlements so badly. Rakoff's take: after calling the settlement, at most, "a mild and modest cost of doing business" for Citigroup, he continues, "It is harder to discern from the limited information before the Court what the S.E.C. is getting from this settlement other than a quick headline" (p. 11 in his order). Regulatory capture can occur for many reasons: outright bribery and the hope of future job offers are possibilities, but so are ideological conformity and the desire for good relationships and a peaceful life. The result is the same, however: an agency that cannot or does not enforce the public interest against powerful private actors. In that case, the only hope the public has is private lawsuits--hence Rakoff's desire for facts on the record that can help those suits proceed and his impatience with the "neither admit nor deny" convention. The SEC seems to have taken this construction to the height of absurdity in this week's settlement with Wachovia, which neither admits nor denies rigging the market in municipal bond derivatives--even though it admitted criminal violations in a parallel settlement with the Justice Department.

Banks bend laws- government tries and protects economy
Packin 14

Nizan Geslevich Packin, Assistant Professor of Business Law, Zicklin School of Business, Baruch College, City University of New York, “Breaking Bad? Too-Big-To-Fail Banks Not Guilty As Not Charged”, *Washington University Law Review,* http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6085&context=law_lawreview, 2014, Vol. 91 Issue 4, pp. 1092-1093//SRawal

In the years following the financial crisis, the media reported on largescaled scandals in which the biggest banks were illegally involved. Nevertheless, even after it had learned about these scandals, the U.S. government only fined rather than prosecuted the relevant banks. This approach, which was nicknamed too-big-to-jail, caused a great deal of anger and frustration.20 Trying to justify this policy, Attorney General Holder explained that the DOJ cannot indict big financial institutions because doing so might harm the economy. Holder, testifying before the Senate Judiciary Committee, said that he is "concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if we do prosecute—if we do bring a criminal charge—it will have a negative impact on the national economy, perhaps even the world economy."21 Some have argued that this declaration is unsurprising given that in 1999, as Deputy Attorney General, Holder instructed prosecutors to consider "collateral consequences" when determining whether or not to prosecute corporations.22

Gets circumvented- Obama has waived punishments for financial institutions Sirota 14

David Sirota, an In These Times senior editor and syndicated columnist, is a staff writer at PandoDaily who graduated from Northwestern University's Medill School of Journalism9-19-2014, "Is Obama Going Easy On Banks That Break the Law?," *In These Times*, http://inthesetimes.com/article/17182/credit_suisse_wall_street_banks_above_the_law//SRawal

Yet earlier this month, the Obama administration announced its proposal to waive some of the possible sanctions against Credit Suisse. The little-noticed waiver, which was outlined in the Federal Register, comes amid criticism that the Obama administration has gone too easy on major financial institutions that break the law. In its announcement outlining the waiver, the Department of Labor notes that Credit Suisse "operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts" and in "using sham entities" to hide money. Under existing Department of Labor rules, the conviction could prevent Credit Suisse from being designated a Qualified Professional Asset Manager. That designation exempts firms from other federal laws, giving them the special status required to do business with many pension funds. The Obama administration is proposing to waive those anti-criminal sanctions against Credit Suisse, thereby allowing Credit Suisse to get the QPAM designation needed to continue its pension business. The waiver proposal follows a larger pattern. In June, Bloomberg News reported that federal prosecutors have successfully pushed U.S. government agencies to allow Credit Suisse to avoid many regulatory sanctions that could have accompanied its criminal conviction. "The New York Fed said last month that the bank can continue handling government securities as a so-called primary dealer," reported the news service. "The SEC let the firm continue as an investment adviser while the agency considers a permanent waiver." Pensions and Investments magazine has reported that despite Department of Labor assurances of tough enforcement of its sanctions against convicted financial firms, the agency has "granted waivers for all 23 firms seeking individual waivers since 1997." Critics say that by using such maneuvers, the Obama administration is effectively cementing a "too big to punish" doctrine. That criticism intensified in 2012 and 2013, when top Justice Department officials defended the administration's reluctance to prosecute banks by publicly declaring that the government considers the potential economic impact of such prosecutions. Those declarations echoed an earlier memo by Attorney General Eric Holder, which stated that officials could take into account "collateral consequences" when deciding whether to prosecute major corporations. Why is the Obama administration reducing sanctions on Credit Suisse? The administration says it is a decision based on pragmatism, not favoritism. The Federal Register announcement, for instance, notes that Credit Suisse has assets of nearly $1 trillion, and argues that if the anti-criminal provisions were enforced, the bank would lose its ability to offer investment products to pension funds. The announcement also argues that the Credit Suisse entities that specifically conduct pension business "are independent of" and "not influenced by Credit Suisse AG's management and business activities." What the administration did not mention, of course, is that according to data compiled by the Sunlight Foundation, employees of Credit Suisse have given President Obama's campaigns more than $376,000. That's particularly relevant in light of an April study of SEC data from London Business School professor Maria M. Correia. That analysis showed that "politically connected firms are on average less likely to be involved in … enforcement action and face lower penalties if they are prosecuted."

FACTA

CIA can collect info about international money transfers

Gorman et al 14

Siobhan Gorman, Devlin Barrett and Jennifer Valentino-Devries, Gorman is a reporter for The Wall Street Journal covering terrorism, counter terrorism, and intelligence and Barett is staff reporter for the Wall Street Journal covering federal law enforcement and security, Devries works on special projects for the Investigations group at The Wall Street Journal, 1-25-2014, "CIA's Financial Spying Bags Data on Americans." *WSJ,* http://www.wsj.com/articles/SB10001424052702303559504579198370113163530//SRawal

The Central Intelligence Agency is building a vast database of international money transfers that includes millions of Americans' financial and personal data, officials familiar with the program say. The program, which collects information from U.S. money-transfer companies including Western Union, is carried out under the same provision of the Patriot Act that enables the National Security Agency to collect nearly all American phone records, the officials said. Like the NSA program, the mass collection of financial transactions is authorized by a secret national-security court, the Foreign Intelligence Surveillance Court. The CIA, as a foreign-intelligence agency, is barred from targeting Americans in its intelligence collection. But it can conduct domestic operations for foreign intelligence purposes. The CIA program is meant to fill what U.S. officials see as an important gap in their ability to track terrorist financing world-wide, current and former U.S. officials said. The program serves as the latest example of blurred lines between foreign and domestic intelligence as technology globalizes many activities carried out by citizens and terrorists alike. The CIA program also demonstrates how other U.S. spy agencies, aside from the NSA, are using the same legal authority to collect data such as details of financial transactions.

SWIFT gives foreign bank information to the CIA and FBI

Lichtblau and Risen 06

Eric Lichtblau and James Risen, Lichtblau an American journalist and Washington bureau reporter for The New York Times and Risen is an American journalist for The New York Times who previously worked for the Los Angeles Times 6-23-2006, "Bank Data Is Sifted by U.S. in Secret to Block Terror," New York Times, http://www.nytimes.com/2006/06/23/washington/23intel.html?pagewanted=1&_r=1&adxnnl=1&adxnnlx=1437145270-dW19y5TsMerwdeYBVsXS9w

Data from the Brussels-based banking consortium, formally known as the Society for Worldwide Interbank Financial Telecommunication, has allowed officials from the C.I.A., the Federal Bureau of Investigation and other agencies to examine "tens of thousands" of financial transactions, Mr. Levey said. While many of those transactions have occurred entirely on foreign soil, officials have also been keenly interested in international transfers of money by individuals, businesses, charities and other groups under suspicion inside the United States, officials said. A small fraction of Swift's records involve transactions entirely within this country, but Treasury officials said they were uncertain whether any had been examined.

CIA collects Americans' financial information

RT 13

Russia Times, “CIA monitors Americans' financial activities”, *RT English,* http://www.rt.com/usa/cia-monitors-americans-finances-796/, 11-15-13//SRawal

The Central Intelligence Agency is collecting bulk records of international money transfers, including the financial and personal data of millions of Americans. Citing “officials familiar with the programs,” the Wall Street Journal reported that the CIA and FBI collect financial information when international transactions are filed through numerous money-transfer companies, including MoneyGram and Western Union. As with the National Security Agency’s surveillance efforts, the CIA’s actions are authorized under the 2001 Patriot Act and overseen by the same Foreign Intelligence Surveillance Court that has sanctioned the collection of millions of Americans’ phone records and digital data. As an agency that specializes in foreign intelligence gathering, the CIA is only permitted to target American citizens in connection to foreign activity. Officials told the WSJ that the intent of the program is to help track the flow of money financing terrorist organizations around the world. The CIA does not collect information on transfers that occur within the United States or on those that take place bank-to-bank. The majority of the transactions recorded take place entirely outside of the United States, the newspaper said, but some do involve cash that enters or leaves the country. In some cases, Social Security numbers are used in an attempt to connect the flow of money to a single individual.

No Circumvention

FISA Isn't a rubber Stamp

FISC isn't a rubber stamp – Multiple reasons as to why warrant approval rate is so high

Clarke 14 (Conor Clarke, J.D. Candidate, Yale Law School, Is the Foreign Intelligence Surveillance Court Really a Rubber Stamp? Ex Parte Proceedings and the FISC Win Rate", February 28, 2014, http://www.stanfordlawreview.org/online/foreign-intelligence-surveillance-court-really-rubber-stamp-ex-parte-proceedings-and-fisc-win)

The fact that ex parte proceedings are lopsided in a broad range of contexts—and that there are good reasons to expect them to be lopsided—**has several implications for the current debate over the FISC. First, it gives us reason to be skeptical of other explanations for why the FISC approves so many requests. For example, former FISC Judge James Carr has written that the "low FISA standard of probable cause—not spinelessness or excessive deference to the government—explains why the court has so often granted the Justice Department's requests."**[28] But if this were correct, we should expect different approval rates when the requesting party needs to clear a higher bar—say, by justifying the warrant (probable cause) and delayed notice (necessity) in Title III cases. We don't see this. **It also casts doubt on the relationship between the lopsided win rate and the political affiliation of FISC judges—a common media suggestion.**[29] If Republican deference to the executive produced the FISC win rate, we should also expect to see variation in win rates based on political affiliation in the Title III and delayed-notice contexts (where data on individual judges are available). Again, we don't.¶ A second set of conclusions involves consistency. **There are good reasons to be skeptical of ex parte proceedings: they are in tension with basic norms of due process—the right to notice, to a hearing, to confront adversaries, and so forth.** But if the FISC's ex parte proceedings are troubling to some critics, those critics should explain whether and why that skepticism extends to the Title III and delayed-notice contexts. The government's win rate can't help distinguish among these cases.¶ Third, **thinking about the lopsided win rate as a general consequence of ex parte proceedings, rather than as a specific problem of the FISC, offers perspective on the current FISC reform proposals. In January 2014, President Obama suggested creating an adversarial process for "significant cases" heard by the FISC**[30]—a proposal that mirrors roughly similar proposals under consideration in Congress.[31] These proposals highlight an important difference between the FISC's ex parte work and the ex parte work of federal courts responding to delayed-notice and Title III requests: FISC cases sometimes generate precedent on novel questions of law. But these cases are also rare—it has been said that novel legal questions come before the FISC only "[o]nce in a very great while."[32] **If this proposal is adopted, critics of the FISC should be at peace with the fact that the judges will probably continue to approve the vast majority of the executive's routine requests; in other words, adding an occasional adversary for the most significant cases is unlike to affect the win rate.**¶ But the simplest lesson of this analysis is that **public discourse should stop focusing on the rate with which the FISC approves applications. Ultimately, we should care about the substance of what the court approves, not the frequency with which it does so. And if the substance of what the court does affects how the government selects applications, there's no reason to think FISC reforms will change the win rate. Even an ex parte process that has satisfied the FISC's most fervent critics might continue to produce an outcome in which the government always wins.**

FISA could be reformed via a special advocate

Carr 13 (JAMES G. CARR, a former judge on the FISA Court, "A Better Secret Court", JULY 22, 2013, http://www.nytimes.com/2013/07/23/opinion/a-better-secret-court.html)

¶OLEDO, Ohio — **CONGRESS created the Foreign Intelligence Surveillance Court in 1978 as a check on executive authority. Recent disclosures about vast data-gathering by the government have raised concerns about the legitimacy of the court's actions. Congress can take a simple step to restore confidence in the court's impartiality and integrity: authorizing its judges to appoint lawyers to serve the public interest when novel legal issues come before it.**¶The court is designed to protect individual liberties as the government protects us from foreign dangers. In 1972, the Supreme Court ruled that the Nixon administration had violated the Fourth Amendment by conducting warrantless surveillance on a radical domestic group, the White Panthers, who were suspected of bombing a C.I.A. recruiting office in Ann Arbor, Mich. In 1975 and 1976, the Church Committee, a Senate panel, produced a series of reports about foreign and domestic intelligence operations, including surveillance by the F.B.I. of suspected communists, radicals and other activists — including, notoriously, the Rev. Dr. Martin Luther King Jr.¶ The Foreign Intelligence Service Act set up the FISA Court in response. **To obtain authority to intercept the phone and electronic communications of American citizens and permanent residents, the government must only show probable cause that the target has a connection to a foreign government or entity or a foreign terrorist group. It does not have to show, as with an ordinary search warrant, probable cause that the target is suspected of a crime.**¶For decades, the court worked under the radar. That changed after 2005, when The New York Times disclosed a National Security Agency program of surveillance of e-mail to and from foreign countries. Though the surveillance was conducted outside of FISA (Congress later specified that FISA court approval was required), the disclosures brought the court to the public's attention. **Criticism of the court** (on which I served for six years after 9/11, while the caseload grew enormously) **revived recently after revelations that the N.S.A., without court orders specifying individual targets, gathered troves of data from companies like Google and Facebook.**¶ **Critics note that the court has approved almost all of the government's surveillance requests. Some say the court is virtually creating a secret new body of law governing privacy, secrecy and surveillance.** Others have called for declassified summaries of all of the court's secret rulings.¶James Robertson, a retired federal judge who served with me on the FISA court, recently called for greater transparency of the court's proceedings. He has proposed the naming of an advocate, with high-level security clearance, to argue against the government's filings. He suggested that the Privacy and Civil Liberties Oversight Board, which oversees surveillance activities, could also provide a check. I would go even further.¶In an ordinary criminal case, the adversarial process assures legal representation of the defendant. Clearly, in top-secret cases involving potential surveillance targets, a lawyer cannot, in the conventional sense, represent the target.¶Congress could, however, authorize the FISA judges to appoint, from time to time, independent lawyers with security clearances to serve "pro bono publico" — for the public's good — to challenge the government when an application for a FISA order raises new legal issues.¶**During my six years on the court, there were several occasions when I and other judges faced issues none of us had encountered before. A staff of experienced lawyers assists the court, but their help was not always enough given the complexity of the issues.**¶**The low FISA standard of probable cause** — not

spinelessness or excessive deference to the government — **explains why the court has so often granted the Justice Department's requests. But rapid advances in technology have outpaced the amendments to FISA, even the most recent ones, in 2008.¶ Having lawyers challenge novel legal assertions in these secret proceedings would result in better judicial outcomes. Even if the government got its way all or most of the time, the court would have more fully developed its reasons for letting it do so**. Of equal importance, the appointed lawyer could appeal a decision in the government's favor to the Foreign Intelligence Surveillance Court of Review — and then to the Supreme Court. **No opportunity for such review exists today, because only the government can appeal a FISA court ruling.¶** One obvious objection: judges considering whether to issue an ordinary search warrant hear only from the government. Why should this not be the same when the government goes to the Foreign Intelligence Surveillance Court?¶ My answer: the court is unique among judicial institutions in balancing the right to privacy against the president's duty to protect the public, and it encounters issues of statutory and constitutional interpretation that no other court does or can.¶ For an ordinary search warrant, the judge has a large and well-developed body of precedent. When a warrant has been issued and executed, the subject knows immediately. If indicted, he can challenge the warrant. He can also move to have property returned or sue for damages. These protections are not afforded to FISA surveillance targets. Even where a target is indicted, laws like the Classified Information Procedures Act almost always preclude the target from learning about the order or challenging the evidence. This situation puts basic constitutional protections at risk and creates doubts about the legitimacy of the court's work and the independence and integrity of its judges. To avert these dangers, Congress should amend FISA to give the court's judges the discretion to appoint lawyers to serve not just the interests of the target and the public — but those of the court as well.

FISA is not the problem – It is the process

NPR 13 (Dina Temple-Raston reporting for NRP citing Joel Brenner, the former general counsel at the National Security Agency, Mike German is with the American Civil Liberties Union, "FISA Court Appears To Be Rubber Stamp For Government Requests", JUNE 13, 2013, http://www.npr.org/2013/06/13/191226106/fisa-court-appears-to-be-rubberstamp-for-government-requests)

LINDA WERTHEIMER, HOST:¶ It's MORNING EDITION, from NPR News. I'm Linda Wertheimer.¶ RENEE MONTAGNE, HOST:¶ And I'm Renee Montagne.¶ The NSA leaks revealing the broad extent of U.S. surveillance programs are also putting a spotlight on the special court that oversees them. It's called the Foreign Intelligence Surveillance Court. Created by Congress in 1978 to ensure the government doesn't abuse its surveillance powers, it operates in secret.¶ NPR's Dina Temple-Raston has this report on how the court works.¶ DINA TEMPLE-RASTON, BYLINE: **The criticism of the Foreign Intelligence Surveillance Court is simple: that it's a rubber stamp, and that the government always gets what it wants**. And here's a number that seem to support that: 1,856. That's the number of applications presented to the court by the government last year. And it's also the number that the court approved: 100 percent success.¶ But Joel Brenner, the former general counsel at the National Security Agency, says this is not proof that the FISA court is a rubber stamp.¶ JOEL BRENNER: I **can tell you that that court has taken a**

wire brush to certain applications that have come before it. The idea that somehow they put their stamp on everything the government puts before them couldn't be farther from the truth.¶ TEMPLE-RASTON: To understand why every application seems to be approved, you have to understand how the process works. The government goes to the FISA court with a proposition. It tells the judge, for example, that the NSA wants to track the phone calls and emails of someone they say is vital to an international terrorism investigation. Basically, according to Brenner, the government says...¶ BRENNER: Here's what we'd like to do, and there follows a back and forth and a discussion with a FISA judge, who, in many cases, has serious questions about what is being done or how it's being done.¶ TEMPLE-RASTON: That FISA judge is a regular federal judge who presides over day-to-day criminal and civil cases. In a FISA case, that judge is supposed to question the government's case.¶ Mike German is with the American Civil Liberties Union, and he says that isn't enough.¶ MICHAEL GERMAN: These are federal judges, and deserve some respect. But it's the process that's broken.¶ TEMPLE-RASTON: German is a former FBI agent, and now the ACLU's senior policy counsel.¶ GERMAN: **I don't think it's necessarily a rubber stamp, but it's just that it suffers from these fatal flaws.**¶ TEMPLE-RASTON: **There are two fatal flaws, according to civil liberties groups. The first is that the court is secret. To get an idea of how secret, the leaked document about the NSA asking to collect Verizon phone records was a FISA order. One had never been seen publicly before.**¶ **The second problem**, the ACLU's Mike German says, **is that the process isn't adversarial. There isn't the equivalent of a defense attorney to challenge the prosecution's version of events. It's just the prosecution talking to the judge - a little like the grand jury process.**¶ GERMAN: **You have a prosecutor who goes in a room with 23 grand jurors to indict somebody, but the process - because it isn't adversarial - often doesn't come to the right result.**¶ JENNIFER DASKAL: There are certain things that just can't be adversarial. They don't work that way.¶ TEMPLE-RASTON: Jennifer Daskal teaches at Georgetown Law School and used to be a lawyer with Human Rights Watch. She also worked at the Department of Justice.¶ DASKAL: **What you have, I think, is an incredible amount of secrecy about how the court works - often for good reason. But as a result, there is this misperception and fear and assumptions that the executive always gets what it wants, and that the executive is always overreaching, and overreaching more and more with time.**¶ TEMPLE-RASTON: It may be there are other ways to measure whether the government gets what it wants from a FISA court. The Justice Department says it presented 212 requests to conduct surveillance in the U.S. to the FISA court last year. It says the court modified 200 of them before they were approved. The problem: the public doesn't know why these orders from the government were modified or how they were changed.¶ This week, senators introduced legislation that would declassify significant FISA court rulings.¶ Dina Temple-Raston, NPR News.¶

The FISA court is not a rubber stamp – Lack of oversight is the problem

http://www.cbsnews.com/news/former-judge-admits-flaws-with-secret-fisa-court/

A former federal judge who served on a secret court overseeing the National Security Agency's secret surveillance programs denied Tuesday that the judges act as "rubber stamps." But **James Robertson said the system is flawed because of its failure to allow legal adversaries to question the government's actions.**¶ "**Anyone who has been a judge will tell you a judge needs to hear both sides of a case**," Robertson, a former federal district judge based in Washington who served on the secret Foreign Intelligence Surveillance Court, said during a hearing of the federal oversight board directed by President Barack Obama to scrutinize government spying.¶ **Robertson questioned**

whether the secret FISA court should play the role of providing legal approval for the surveillance programs, saying the court "has turned into something like an administrative agency."¶ Much of the NSA's surveillance is overseen by the FISA court, which meets in secret and renders rulings that are classified. Many of these rulings also likely been disclosed by Edward Snowden, the NSA systems analyst who leaked significant information about the spying program. After Snowden began exposing the NSA's operations in June, Obama instructed the board to lead a "national conversation" about the secret programs. The board has been given several secret briefings by national security officials and it plans a comprehensive inquiry and a public report on the matter.¶ The board's chairman, David Medine, had told The Associated Press in advance of Tuesday's hearing that "our primary focus will be on the programs themselves. Based on what we've learned so far, further questions are warranted."¶ Robertson, who said he asked to join the FISA court "to see what it was up to," had previously played a central role in national security law. Robertson was the judge who ruled against the Bush administration in the landmark Hamdan vs. Rumsfeld case, which granted inmates at the U.S. naval prison at Guantanamo Bay, Cuba, the right to challenge their detentions. That ruling was upheld by the Supreme Court in 2006.¶ **Robertson said Tuesday that FISA court judges have been scrupulous in pushing back at times against the government, repeatedly sending back flawed warrants. But he warned that Congress' 2008 reform of the FISA system expanded the government's authority by forcing the court to approve entire surveillance systems, not just surveillance warrants**, as it previously handled. Robertson said the system needed the presence of a legal adversary to act as a check on the government's programs.¶ "**This process needs an adversary,"** Robertson said, **suggesting that the oversight board itself might play that role in the secret legal setting.**

Civil Suits Solve

Civil suits can deter spousal surveillance

Camille **Calman** 20**05** [Camille Calman is a litigator who has handled a range of matters, including false advertising cases under the Lanham Act and before the National Advertising Division; libel defense; copyright; and trademark; for clients in media, technology, financial services, consumer products, and other industries. She has performed internal investigations for clients in the financial services industry. She works closely with the entertainment transactions group, in particular with respect to theater and performing arts, on rights clearance issues, claims and demands, litigation, and settlement. She also counsels clients on libel and other issues related to newsgathering and publishing; advertising, promotions, and sweepstakes law; and copyright fair use., November 2005, "SPY VS. SPOUSE: REGULATING SURVEILLANCE SOFTWARE ON SHARED MARITAL COMPUTERS" Columbia Law Review, 105 Colum. L. Rev. 2097 JC]

A more pressing question is what society might hope to achieve by regulating surveillance software. Regulating technology is unlikely to change marital behavior. Certainly some **spousal spies will be deterred by the prospect of civil suits** and monetary damages. But it is unrealistic to presume that a law can stop adultery or jealousy altogether. Perhaps it is paternalistic to expect that the state can improve marital relations by banning a form of software. **Putting** such **a law on the books could**, **however, have an important expressive effect**. [n228] **Jealousy would still exist, but perhaps the existence of the statute would reinforce, and increase awareness of, the social norm that frowns on spying**. [n229] Spouses, recognizing the possibility of surveillance thanks to the statute's existence, might be more cautious. **Discouraging snooping might encourage other means of solving problems within marriages, such as seeking counseling and increasing honest communication.**

Civil suits are effective against Telecom providers without court authorization

Mike **Wagner**, 20**09** [Mike Wagner, AB, Villanova University; JD, The George Washington University. Mike Wagner is an associate in the Washington office of Covington & Burling LLP, where he counsels government contractors on issues arising at all phases of the public procurement process and handles complex white collar investigations involving allegations of fraud and corruption. Prior to joining Covington, he served as a law clerk on the U.S. Court of Appeals for the Third Circuit and the U.S. District Court for the District of Maryland. A graduate of GW Law, he was an Articles Editor on the George Washington Law Review and received the 2010 Scribes Law Review Writing Award for best student-written article. November 2009, "Warrantless Wiretapping, Retroactive Immunity, and the Fifth Amendment". The George Washington Law Review, 78 Geo. Wash. L. Rev. 204. JC]

Subject to certain narrowly defined exceptions, [n20] electronic government surveillance on U.S. soil is prohibited unless the FISC first determines that there is probable cause to believe that the target is an agent of a foreign power and that the place at which the surveillance is directed is being used by a foreign power or its agent. [n21] If the government ignores this warrant requirement and engages in electronic domestic surveillance anyway, it will be found to have violated FISA. [n22] In such a case, FISA creates a direct private cause of action for anyone "who has been subjected to ... electronic surveillance" in violation of FISA. n23 Interestingly, **FISA** specifically **contemplated the potential civil liability of private telecommunications providers assisting in government surveillance, but the Act made clear that such private carriers would be protected from civil suit only when they assisted the**

government "in accordance with the terms of a court order, **[*208]** **statutory authorization, or certification" in writing from the Attorney General**. [n24]

Past civil suits have proved to change FISA and improve government surveillance regulation

Trevor **Rush**, 20**08** [Lieutenant Commander Trevor Rush, JAGC, USN, Judge Advocate General's Corps, U.S. Navy. Presently assigned as Vice Chair and Associate Professor for the International and Operational Law Department at The Judge Advocate General's Legal Center and School, Charlottesville, Va. 2008 "Mayfield, FISA, and the Fourth Amendment" Naval Law Review, 56 Naval. L. Rev. 87 JC]

At the time of these events, **Brandon Mayfield was an American citizen** born in Oregon **and** reared in Kansas. [n6] He was married with three children, a former U.S. Army officer with an honorable discharge, and a practicing Oregon lawyer. [n7] In what became integral to the Mayfield family's civil suit against the U.S. Government, Mr. Mayfield was also **a practicing Muslim**. [n8] The Mayfield family alleged that their religion and ties to the local Muslim community caused the Government to mishandle the case and violate the family's civil rights. **These allegations had merit because the U.S. Government would ultimately pay a settlement and apologize to Brandon Mayfield, who was completely innocent of any connection to the terrible events in Madrid**. **However, before his innocence could be shown, the Government turned the Mayfield family's world upside down by using all the tools of counter-intelligence, national security, criminal investigation, and prosecution. As a result of the Mayfield family's civil suit, a federal court declared portions of** the Foreign Intelligence **Surveillance** Act [hereinafter **FISA**], [n9] **to be unconstitutional under the Fourth Amendment of the United States Constitution**. [n10] This article examines *Mayfield v. United States* and concludes that the court erred. The story of the Mayfields is the epitome of the old adage that "bad facts make bad law." Mr. Mayfield was an innocent man that the Government accused of being a terrorist and in the process invaded his privacy and freedom. In a society that treasures both liberty and justice, it is tragic when the Government accuses an innocent person of an offense he did not commit. In this particular case, it is distressing to suspect that Mr. Mayfield's religion **[*89]** played a role in that tragedy. The end result was that the Madrid terrorists succeeded not just in their immediate objectives of death and destruction, but also in tarnishing the criminal justice system of the United States, a country they did not directly attack. Whether through its individual agents or the totality of the justice system, the U.S. Government failed the Mayfield family, and the resulting financial settlement with the Mayfields is appropriate. Nothing in this article is meant to detract from that result.

Oversight

Effective

Congress has power over agencies

Michaels '8, Acting Professor, UCLA School of Law. Law Clerk to the Hon. David H. Souter, U.S. Supreme Court, 2005-06. Law Clerk to the Hon. Guido Calabresi, U.S. Court of Appeals for the Second Circuit, 2004-05. J.D., Yale Law School, 2003. (August 2008, Jon D. Michaels, CALIFORNIA LAW REVIEW, "All the President's Spies: Private-Public Intelligence Partnerships in the War on Terror", 96 Calif. L. Rev. 901, Lexis)

Armed with data far more detailed and more timely than what it currently receives, n227 Congress could decide to hold hearings (in camera, if necessary to preserve classified information) to investigate programs that it suspects are misguided, insufficiently attentive to privacy concerns, overly burdensome to the corporations, or exploitative of the status differentials that make it legally easier for the private sector to collect information and give it to the government than for the intelligence agencies to obtain the data in the first place. n228 Congress could also hold up confirmation votes on nominees as leverage to force the Executive to make concessions. n229 Or, it could de-fund a given [*954] program, which it has previously done when it disapproved of an intelligence or national-security operation. n230 (It should be underscored, of course, that even a minority within Congress can wield tremendous influence, by insisting on various amendments to critical bills, by itself trying to hold up nominees, or, at least in the Senate, by filibustering.)

The appropriations power n231 may be particularly potent in the intelligence budgetary arena. Intelligence budgets are treated differently from much of the rest of the overall federal budget, n232and to the extent intelligence line appropriations can remain classified yet be subject to programmatic-level revisions, Congress would have both the dexterity and political cover to exercise aggressively its co-ordinate powers over intelligence policy. That is, the ability to tinker with funding streams on a regular basis gives the legislature a means of acting promptly upon its concerns.n233 What is more, the concomitant opportunity to appropriate in a manner largely occluded from the public gives lawmakers the political freedom to challenge imprudent intelligence policies with less fear of being harshly punished at election time for their so-called "soft-on-terrorism" vote - a fear that routinely prevents many a member from voting against (publicly recorded) military-spending bills. When a vote to deny military appropriations is taken as an article of disloyalty, as it often is, representatives lose perhaps the most straightforward and valuable means of influencing foreign policy. n234 None of this is, of course, to say that Congress [*955] will need to scrutinize every penny spent on intelligence matters. Most operations, like most expenditures in the larger budget or, say, most military promotions requiring Senate confirmation, will be approved as a matter of course. n235 But the option to affect funding when necessary to redirect misguided policy is not an inconsequential one.

Congress has power over surveillance—funding, jurisdiction, and leaks

Riley and Schneider '10 John Riley is an Assistant Professor at the Political Science Department at Kutztown University. Mary Kate Schneider is a research assistant; Mary Kate Schneider is a Ph.D. Candidate, Political Science, University of Maryland, Keith Gregory Logan is the editor of the book, He is an Assistant Professor in the Department of Criminal Justice at Kutztown University (April 2010, John

Riley and Mary Kate Schneider, Praeger Security International, Book Title: “Homeland Security and Intelligence”, Chapter Title: “Congressional Oversight of U.S. Intelligence”, p.173)

Legislative Leverage: how Congress Influences the Intelligence Community

There are three key mechanisms through which Congress can exert leverage over the IC. Foremost, Congress controls the flow of resources from the U.S. government to the intelligence agencies, is responsible for reviewing the agencies’ budgets, and appropriates and authorizes funds through the annual Intelligence Authorization Act. Thus, Congress can threaten to withhold funds from the IC, and the intelligence community is obligated to justify its expenses to Congress. Although this sometimes “smacks of micromanagement,”1 such leverage is a powerful tool in ensuring accountability, serving as both carrot and stick.

A second mechanism through which Congress influences the intelligence community is legal—that is, Congress has both the power and the obligation to pass legislation that authorizes, constrains, or otherwise affects the operations of intelligence agencies. Additionally, Congress is charged with the responsibility to monitor the IC’s adherence to these laws and to the U.S. Constitution.

Third, Congress can shape the actions of the IC through “the power to go public”2 Although leaking classified information would appear to be a threat to national security, S. Res. 400 (the resolution that created the Senate’s intelligence oversight committee) includes provisions through which Congress can declassify information despite opposition from the executive branch.3 Congress has never exercised these formal procedures, but at least one former director of central intelligence (DCI) has been accused of leaking information after a congressional hearing and then blaming the leak on congress.4

The church committee proves congressional effectiveness

Langston ’15 Law Clerk to Chief Special Master Denise K. Vowell, U.S. Court of Federal Claims in Washington, D.C.(Spring 2015, Marc B. Langston, TEXAS A&M LAW REVIEW, “REDISCOVERING CONGRESSIONAL INTELLIGENCE OVERSIGHT: IS ANOTHER CHURCH COMMITTEE POSSIBLE WITHOUT FRANK CHURCH?”, Lexis)

Church led the Church Committee to conduct an unprecedented investigation of intelligence agencies, yielding myriad controversial secrets. His experience in opposing the executive branch over issues such as the Vietnam War encapsulated his requests for cooperation with a formidable coating of confidence. Just as Watergate had provided the political will to create the Church Committee, Church harnessed the secrets of the intelligence agencies to precipitate sweeping reforms and ensure permanent congressional intelligence oversight.

By reviewing this Article's brief summary of Church's political background and key aspects of the Church Committee's work, one hopefully gleans a model for congressional intelligence oversight that is a persuasive alternative to the status quo, wherein congressional intelligence oversight committees defer heavily to the executive branch and offer few protections against government misconduct. As Church $=P487 envisioned, "Congress being a political animal will exercise its surveillance with whatever diligence the political climate of the time makes for." n401 The recent shortcomings of congressional intelligence oversight committees may spawn a renewed interest in returning to a less-deferential posture.

War powers prove congressional effectiveness

Pitt '15, J.D. Candidate, 2016, Fordham University School of Law (April 2015, Celdon Pitt, Fordham Law Review, "FAIR TRADE: THE PRESIDENT'S POWER TO RECOVER CAPTURED U.S. SERVICEMEMBERS AND THE RECENT PRISONER EXCHANGE WITH THE TALIBAN", Lexis) Congress repeatedly has tried to check the President's ability to wage war, using assorted means to at least oversee - if not attempt to seize outright control of - the executive branch's conduct of military operations. n135 The White House has offered various reactions to these methods, ranging from unchallenged acceptance, to grudging acquiescence, to blatant disregard. n136 Two primary methods, appropriations riders and the [*2853] implementation of requirements for congressional notification and consultation, have emerged as both the most effective and the most popular congressional tools for checking the President's war powers. This section will describe several of the ways in which Congress has used these tools to attempt to shape national security policy.¶ 1. Appropriations Riders As a Means of Congressional Oversight: The Boland Amendments and the Iran-Contra Affair Appropriations riders, which contain specific conditions on the grant of funds and are inserted as amendments to large spending bills, give Congress an opportunity to more narrowly tailor the use of federal money. n137 As one scholar notes, this dimension of the power of the purse has been "one of the major factors in shaping and restricting presidential decision making with respect to the commitment of forces abroad." n138 Congress has traditionally given the President much more discretion over the use of funds during times of emergency or conventional war than under circumstances of indefinite conflict or terrorist threat. n139 Riders to defense spending bills therefore have become more common over the last fifty years, as Congress has sought to exercise more control over small wars and covert activity. n140 The Iran-Contra Affair combined all of these elements and sparked a broader debate about the role of "restrictive national security appropriations" in shaping defense policy. n141¶ The Reagan Administration's attempts to overthrow the Communist Sandinista regime in Nicaragua in the early 1980s were scandalous for several reasons. n142 Congress, concerned over reports that the White House was raising and training the anti-Sandinista Contra movement without appropriate oversight, passed an initial spending restriction in 1982. n143 This amendment to the DOD Appropriations Act prohibited the use of funds for military equipment, training, or other activities in support of any group not part of the Nicaraguan armed forces. n144¶ Under the leadership of House Intelligence Committee Chair Edward Boland, Congress gradually tightened funding restrictions over the next [*2854] several years. n145 Congress eliminated all funding by 1984, declaring that no money designated for intelligence activities "may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual." n146 President Reagan signed these provisions into law without objection. n147¶ Despite these restrictions, staff members of the National Security Council (a group known as "the Enterprise") channeled money to the Contras as part of a larger scheme to also free U.S. hostages being held in Lebanon by Iranian-backed forces. n148 The Iran-Contra Affair prompted Congress to initiate an investigation into the executive branch's apparent deceit and resolve potential constitutional issues. n149 The congressional committee concluded that the Enterprise executed a covert Contra aid program by raising "private and non-appropriated money[] and without the accountability or restrictions imposed by law on the CIA." n150 Moreover, this was a program "that Congress thought it had prohibited." n151 Aside from the conviction of one member of the Enterprise for the commission of several minor offenses, no legal consequences stemmed from the Iran-Contra Affair. n152 Congress issued a series of recommendations at the end of its report, reminding the White House that "Congress is the partner, not the adversary of the executive branch, in the formulation of policy" and calling for a more rigid system of presidential findings related to covert action. n153¶ 2. Consultation and Notification Requirements A second method of congressional control over defense policy is the enactment of consultation and notification requirements, either through attachment to a spending bill or as stand-alone legislation. n154 When the political system is functioning as designed, the formal framework of consultation and notification is often complemented by a less rigid, more ad hoc consultative process between the executive and legislative branches that is "an essential unwritten ingredient in the national security process." n155 [*2855] Congress also must strike a balance between fulfilling its role as a representative body and observing the need for limited transparency in the national security context. n156 This section will examine two recent efforts by Congress to control presidential discretion through the use of reporting requirements.¶ a. The War Powers Resolution Spurred by the mission creep of U.S. involvement in Vietnam, the War Powers Resolution was "the product of almost four decades of bipartisan effort to recapture legislative authority that had drifted to the President." n157 The resolution declared that any foreign introduction of U.S. armed forces without a declaration of war would require the President to submit a report to

congressional leaders within forty-eight hours. n158 The report must contain details about, at a minimum, the circumstances leading to the deployment, the constitutional and legislative authority under which the President is conducting the military operation, and an estimation of the involvement's scope and duration. n159 This reporting requirement remains in effect for the duration of the engagement, during which the President must submit updates at least every six months. n160 Furthermore, the engagement must cease after sixty days unless Congress has declared war, been incapacitated, or voted to delay the deadline. n161¶ The War Powers Resolution was controversial during its enactment and has been applied unevenly since. n162 The first test came in 1975, when President Gerald Ford initially sought authorization to evacuate the remaining U.S. personnel from Cambodia and South Vietnam, but, after growing impatient with congressional delays, unilaterally approved the evacuations under his executive authority to protect American lives. n163 Two missions to recover captured Americans, from the Mayaguez commercial ship under President Ford and the U.S. embassy in Iran under President Carter, have complied with the reporting requirements in letter but not in spirit. n164 In both cases, the White House circumvented [*2856] congressional input by waiting to file the report until after the engagement had either ceased or "reached the point of no return." n165¶ b. Intelligence Oversight Congress possesses similar tools for oversight of the intelligence community. n166 Passed in the wake of revelations about counterproductive covert actions in Latin America and Southeast Asia, the Intelligence Oversight Act of 1980 n167 prohibits the President from authorizing a covert action without first making a formal determination that "such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States." n168¶ This finding must be submitted in writing to the congressional intelligence oversight committees prior to the initiation of the covert action, unless the President determines that "it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States." n169 In that case, the President may inform only the chairs and ranking minority members of each intelligence committee, as well as the majority and minority leaders in both the House and the Senate, as long as he provides a written justification for doing so. n170 If the President complies with neither of these options, he still must inform the intelligence committees "in a timely fashion," along with providing justification for not notifying them earlier. n171

Agencies listen to congress

Rosenbach and Peritz '9 Eric Rosenbach is the Assistant Secretary of Defense for Homeland Defense and Global Security, earlier worked at the Harvard Kennedy S;chool as the Executive Director of the Belfer Center for International Affairs. He managed the Center's operations, taught graduate-level classes; Aki J. Peritz is an Associate at the Belfer Center for Science and International Affairs at the Harvard Kennedy School of Government. (7/18/2009, Eric Rosenbach and Aki J. Peritz, Belfer Center at Harvard, "Confrontation or Collaboration? Congress and the Intelligence Community", http://belfercenter.ksg.harvard.edu/files/IC-book-finalasof12JUNE.pdf)

Although the Constitution gives the executive branch preeminence in dealing with intelligence matters, Article I nevertheless provides Congress with an important oversight role. However, Congressional oversight into intelligence issues is a complex task, requiring a sophisticated understanding of the issues. ¶ The floor debate for the FISA Amendments Act of 2008 provided a clear example of the difficulties Congress faces when trying to modify intelligence legislation. Members, for reasons of classification or technical complexity, did not share a common understanding of the law, let alone how it should be adjusted. ¶ Authorization and Appropriation: ¶ Congress's most important source of leverage is the power to authorize programs and appropriate funds. During the authorization and appropriations process, Congress can signal its intelligence and policy priorities through both the allocation of funds and the inclusion of non budget-related clauses in the authorization and appropriations bills.¶ Nominations: Many of the IC's top leaders, including the Director of National Intelligence and the CIA Director, are nominated by the President and confirmed by the Senate. This sometimes grueling process forces the White House to carefully select its nominees and provides an opportunity for Senate input on both the individuals and issues related to intelligence policy. In recent years, the Senate has withheld confirmation until the executive branch agreed to share additional information on key areas of congressional oversight of intelligence activities.¶ Congressional Hearings: Congress invites—and, in some cases, compels—high-ranking members of the executive branch to appear before Congress to ask them targeted questions

intended to create more transparent and effective IC operations. As noted previously, however, the power of this tool depends in large part on Congress's awareness of IC activities. ¶ Investigations: Congress has responded to perceived intelligence abuses or failures by forming committees and mandating commissions to determine 'what went wrong' and how it might be corrected. In the 1970s, the Church and Pike Committees served this function. More recently, the SSCI conducted extensive investigations on prewar intelligence relating to Iraq. ¶ Treaty Ratification: Treaty ratification is a constitutional power of the Senate. Although few treaties relate directly to intelligence matters, members of the SSCI can use the treaty ratification process to indirectly press related national security policy issues. ¶ Government Accountability Office (GAO): The GAO is the investigative arm of Congress, particularly focused on budget-related issues. As a non-partisan, objective audit and evaluation agency, the GAO gives financial oversight capabilities to Congress. However, classification and security clearance hurdles set by the White House may limit the power of the GAO to investigate intelligence-related topics.

President

The president complies with congressional authority

Dellapenna '6, Professor of Law, Villanova University School of Law; B.B.A., University of Michigan (1965); J.D., Detroit College of Law (1968); LL.M. in Public International & Comparative Law, George Washington University (1969); LL.M. (Environmental Law), Columbia University (1974). (Fall 2006, Joseph W. Dellapenna, ILSA Journal of International & Comparative Law, "PRESIDENTIAL AUTHORITY AND THE WAR ON TERROR", Lexis)

Presidential exercises of unilateral authority did not end with Youngstown Sheet and Tube, but Presidents thereafter tended to involve Congress in their more controversial actions. In Vietnam, the Presidents did not claim sweeping authority independently of Congress, although they came to be accused of abusing the powers conferred by Congress n93 and of lying to Congress to obtain authorization for the war. n94 Unity between the political branches did not hold. Congress repealed the authorization in 1971 n95 and took steps to bar continuation of the War. n96 Congress also enacted legislation to limit the exercise of presidential authority as commander-in-chief (the War Powers Resolution of 1973 n97) and to assure judicial and congressional oversight of intelligence gathering within and without the United States (the Foreign Intelligence Surveillance Act n98). Presidents have never been happy with these restraints, consistently [*38] insisting that they are not bound by them, n99 yet Presidents have complied with them. n100 President Bush's report to Congress on the actions taken to respond to the 9/11 attacks exhibits the typical Presidential posture: compliance with the War Powers Resolution's procedures while insisting that he is not bound by it:

Enforces law

Congress can guarantee the executives abide by the law

Welling ’12 assistant-professor at Groningen University. (August 2012, George M. Welling, “Oversight Powers of Congress”, http://www.let.rug.nl/usa/outlines/government-1991/the-legislative-branch-the-reach-of-congress/oversight-powers-of-congress.php)

Congress' oversight function takes many forms:¶ committee inquiries and hearings;¶ formal consultations with and reports from the executive;¶ Senate advice and consent for executive nominations and treaties;¶ House impeachment proceedings and subsequent Senate trials;¶ House and Senate proceedings under the 25th Amendment in the event that the president becomes disabled, or the office of the vice president falls vacant;¶ informal meetings between legislators and executive officials;¶ congressional membership on governmental commissions; and¶ studies by congressional committees and support agencies such as the Congressional Budget Office, the General Accounting Office or the Office of Technology Assessment -- all arms of Congress.¶ The oversight power of Congress has helped to force officials out of office, change policies and provide new statutory controls over the executive. In 1949, for example, probes by special Senate investigating subcommittees revealed corruption among high officials in the Truman administration. This resulted in the reorganization of certain agencies and the formation of a special White House commission to study corruption in the government.¶ The Senate Foreign Relations Committee's televised hearings in the late 196Os helped to mobilize opposition to the Vietnam War. Congress' 1973 Watergate investigation exposed White House officials who illegally used their positions for political advantage, and the House Judiciary Committee's impeachment proceedings against President Richard Nixon the following year ended his presidency. Select committee inquiries in 1975 and 1976 identified serious abuses by intelligence agencies and initiated new legislation to control certain intelligence activities.¶ In 1983, congressional inquiry into a proposal to consolidate border inspection operations of the U.S. Customs Service and the U.S. Immigration and Naturalization Service raised questions about the executive's authority to make such a change without new legislation. In 1987, oversight efforts disclosed statutory violations in the executive branch's secret arms sales to Iran and the diversion of arms profits to anti-government forces in Nicaragua, known as the contras. Congressional findings resulted in proposed legislation to prevent similar occurrences.¶ Oversight power is an **essential check** in monitoring the presidency and controlling public policy.

Oversight controls agencies-CIA proves

Knott ‘5 Assistant Professor at the Miller Center of Public Affairs, University of Virginia - See more at: http://historynewsnetwork.org/article/380#sthash.hQ6e0msn.dpuf (8/8/2005, Stephen F. Knott, History News Network, “Congressional Oversight and the Crippling of the CIA,” http://historynewsnetwork.org/article/380)

The story of how the executive branch lost its control over the CIA is well known, but deserves a retelling, since it is often presented incompletely. In the aftermath of Vietnam, Watergate, and revelations of CIA assassination plots and domestic spying, Congress moved in the mid-1970s to “reassert” its role in shaping American foreign policy, including the most controversial tool of that policy, covert action. Secrecy was seen as antithetical to the American way, and there was widespread agreement that “rogue” agencies such as the CIA were a threat to liberty. Proponents of congressional intelligence oversight argued that openness and accountability were the cornerstone of a legitimate foreign policy, and it was believed that Congress, due to its diversity of opinion, possessed greater wisdom than the executive branch. Spurred on by the sensational revelations of the Church Committee hearings in the Senate and the Pike Committee in the House, both bodies established permanent intelligence committees.

It is still widely believed that the Church and Pike reforms were an attempt to cure a “cancerous” growth on the Constitution that had developed during the Cold War, an era which witnessed an increasing reliance on executive secrecy and the creation of a “private army” for the president in the form of the CIA. Senator Frank Church and his allies claimed that an assertive legislative role would

bring the United States "back to the genius of the Founding Fathers." This assertion was made despite the fact that American presidents from 1789 to 1974 were given wide latitude to conduct clandestine operations they believed were in the national interest. President Washington, in his first annual message to Congress in 1790, requested a Contingency Fund, or "secret service" fund, as one member of Congress described it. Washington was given this fund, in the amount of $40,000, a sizable sum in the early 1790s. The president was not required to report how he spent this money, he merely had to divulge the amount of money spent, without revealing to whom or for what reasons it had been spent. Thomas Jefferson, James Madison, Andrew Jackson, and Abraham Lincoln, all authorized clandestine operations out of this fund, and did not report the details to Congress. This pattern persisted until the mid-1970s with little or no change, other than the increasing size and bureaucratization of the nation's intelligence apparatus in the twentieth century. The real aberration occurred in the mid-1970s when the United States granted its legislative branch the greatest control over intelligence matters of any Western nation, and overturned the system which had prevailed in the United States since the Founding.¶ The damage done to the CIA by this congressional oversight regime is quite extensive. The committees increased the number of CIA officials subject to Senate confirmation, condemned the agency for its contacts with unscrupulous characters, prohibited any further contact with these bad characters, insisted that the United States not engage or assist in any coup which may harm a foreign leader, and overwhelmed the agency with interminable requests for briefings (some 600 alone in 1996). The committees exercised line by line authority over the CIA's budget and established an Inspector General's office within the agency, requiring this official to share his information with them, causing the agency to refrain from operations with the slightest potential for controversy. The CIA was also a victim of the renowned congressional practice of pork barrel politics. The intelligence committees forced the agency to accept high priced technology that just happened to be manufactured in a committee member's district.¶ On some occasions, members of Congress threatened to leak information in order to derail covert operations they found personally repugnant. Leaks are a recurring problem, as some member of Congress, or some staff member, demonstrated in the aftermath of the September 11th attack. President Bush's criticism of members of Congress was fully justified, despite the protests from Capitol Hill. Leaks have occurred repeatedly since the mid-1970s, and in very few cases has the offending party been disciplined. One of the Founding Fathers of the new oversight regime, former Representative Leo Ryan, held that leaks were an important tool in checking the "secret government."¶ In the wake of the September 11th terror attack, some legislators are now proclaiming their commitment to unleashing the CIA and rebuilding its human "assets." Just a short while ago these same legislators were leading the charge to curtail the agency. One such convert is the chairman of the Senate Foreign Relations Committee, Joseph Biden. The Delaware Democrat was one of seventeen Senators who voted in 1974 to ban all covert operations, and proudly noted during his 1988 campaign for president that he had threatened to "go public" with covert action plans by the Reagan administration, causing them to cancel the operations. Hopefully Senator Biden, and other congressional converts, are undergoing a genuine epiphany. Perhaps they now realize, as Henry Kissinger once observed about the Church Committee, that it is an illusion that "tranquility can be achieved by an abstract purity of motive for which history offers no example." It is precisely this illusion which has prevailed in congressional circles since the heyday of Frank Church and Otis Pike. As Church himself once argued, the United States should not "fight fire with fire . . . evil with evil."¶ Another convert is Senator Robert Torricelli of New Jersey, who led the charge in the mid-1990s to prevent the CIA from hiring unsavory characters. Torricelli rallied to the defense of State Department employee Robert Nuccio, who leaked classified material dealing with CIA operations in Guatemala to Torricelli, who in turn held a press conference and revealed the information to the media. It was these revelations that led to congressional restrictions on the ability of agents in the field to deal with "bad people." Torricelli is now calling for a "thorough inquiry" into what he calls the intelligence community's "stunning failure."¶ There is almost universal agreement that the CIA remains overly reliant on technological tools in gathering information on very human, very political, problems. Yet Congress is partly responsible for this, for the intelligence committees (with the support of some in the executive branch, particularly in the Carter and Clinton administrations) were determined to keep America's hands clean. Technology was safer -- it kept us at a distance from the "dirty stuff." The sad reality is that a CIA operative with any hope of infiltrating a terrorist cell would need to demonstrate his bona fides in any number of reprehensible ways. These are unpleasant thoughts to contemplate, and they certainly do not fit our conception of the way the world ought to work. But America cannot have it both ways -- it cannot expect to deter an Osama bin Laden and keep its hands clean at the same time. Presidents need options short of war to handle this type of threat.¶ While the old CIA may have been noted for the "cowboy" swagger of its personnel, the new CIA is, in the words of one critic, composed of "cautious bureaucrats who avoid the risks that come with taking action, who fill out every form in triplicate" and put "the emphasis on audit rather than action." Congressional meddling is primarily responsible for this new CIA ethos, transforming it from an agency willing to take risks, and act at times in a Machiavellian manner, into just another sclerotic Washington bureaucracy. This cautious, legalistic attitude has crippled the agency's effectiveness and will not change unless the oversight committees of Congress acknowledge the uniquely executive character of intelligence and covert operations, and start to dismantle the cumbersome oversight apparatus erected during the last twenty five years.¶

FISA/FISC CP

AFF – FISA/FISC CP

2AC FISA/FISC CP

Perm do both

Perm do the CP

Non-compliance guarantees circumvention – no oversight means precedent is reversed or ignored by lower FISC court or the NSA

Stanley 13 Jay Stanley, Senior Policy Analyst, ACLU Speech, Privacy & Technology Project. "The FISA Court's Problems Run Deep, and More Than Tinkering is Required" NOVEMBER 21, 2013. ACLU. https://www.aclu.org/blog/fisa-courts-problems-run-deep-and-more-tinkering-required

With the latest release of documents about the NSA and the FISA Court (this one in response to an ACLU/EFF Freedom of Information Act request) we now have yet more evidence that the NSA's compliance with the court's orders has been poor. We learn, for example, that, according to the court, "the NSA exceeded the scope of authorized [metadata] acquisition continuously during the more than [redacted] years of acquisition under these orders." And, "NSA's record of compliance with these rules has been poor." Extraordinary powers require extraordinary oversight. But we're gradually beginning to see the full scope of the FISA Court's inadequacy as an oversight institution. The latest disclosures follow other evidence that this court has had less than a stellar record in enforcing its rulings. Previous documents revealed, for example, that the NSA repeatedly violated court-imposed limits on its surveillance powers, and that the agency experienced numerous so-called "compliance incidents" such as staff using the agency's tremendous powers to spy on love interests. And as my colleague Jameel Jaffer points out, the record suggests that the government has felt free to make bolder, less-supportable arguments before the secret FISA Court than it's willing to make before real courts that are open to the public. It has often been pointed out that the FISA Court is not a normal court, a big reason being that all of its proceedings are ex parte (that is, there is no adversarial proceeding, the court only hears from one side) and that it operates within an ocean of secrecy and compartmentalization. My colleagues Patrick Toomey and Brett Max Kaufman yesterday detailed the sorry story of how these characteristics allowed the court to stretch the law to permit bulk metadata collection.

Can't solve and turn – no accountability for decisions, no review process, and no investigative authority - destroys court transparency

Setty 15 (Sudha Setty; Professor of Law and the Associate Dean for Faculty Development and Intellectual Life at Western New England University School of Law; "Surveillance, Secrecy, and the Search for Meaningful Accountability" Faculty Publications; Digital commons; Western New England University School of Law; 51 STAN. J. INT'L L 16 (2015) http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol)

Two forms of relatively weak judicial review exist over the NSA Metadata Program. The primary mechanism by which the NSA has legitimated its surveillance activities is the Foreign Intelligence Surveillance Court (FISC), a closed, non-adversarial setting. Article III courts have had the opportunity to consider post-9/11 surveillance programs on numerous occasions, and with few exceptions, Article III courts have refused to review matters of national securityrelated surveillance. I. Foreign Intelligence Surveillance Court The FISC differs from Article III courts in numerous ways: Its statutory scope is limited to matters of foreign intelligence gathering; its judges are appointed in the sole discretion of the Chief Justice of the United States Supreme Court; its proceedings are secret; its opinions are often secret or are published in heavily redacted form; and its process is not adversarial as

only government lawyers make arguments defending the legality of the surveillance being contemplated. 70 Many of these differences bring into doubt the legitimacy of the court, its ability to afford adequate due process regarding civil liberties concerns, and its ability to uphold the rule of law in terms of government accountability. Compounding this legitimacy deficit is the FISC's own loosening of the relevance standard under Section 215 of the PATRIOT Act such that the FISC has found that bulk data collection without any particularized threat or connection to terrorism is legally permissible. 71 Historically, the FISC has rejected NSA surveillance applications too infrequently to be considered a substantial check on government overreach as an ex ante matter. 72 As an ex post matter, it is unclear to what extent the FISC's work guarantees any meaningful accountability over NSA surveillance activities. On the one hand, because the FISC lacks an adversarial process and has no independent investigative authority, the FISC only addresses ex post compliance problems when the government itself brings the problem to the comt's attention. 73 As such, FISC judges rely on the statements of the government as to the govemment's own behavior and lack the authority to investigate the veracity of the government's representations. 74 For example, in 2011, the FISC found one aspect of the surveillance program brought to its attention months after the program went into effect to be unconstitutional. 76 Additionally, in one declassified opinion, the FISC critiques the NSA's sloppy over-collection of metadata of U.S. communications, and questions the efficacy of bulk data collection as a national security measure. 77 At one point, the FISC sanctioned the NSA for overreaching in saving all metadata and mining daily metadata against an "alert list" of approximately 17,800 phone numbers, only 10% of which had met FISC's legal standard for reasonable suspicion. 78 On such occasions, the administration has modified problematic aspects of the surveillance and continued forward without further impediment by the FISC. 79 On the other hand, the fact that the NSA itself has brought potential compliance incidents to the notice of the FISC indicates at least some internal policing of these programs. However, this is hardly an effective substitute for external review and accountability mechanisms that would ensure that consistent controls are in place. Further, the self-reporting of these compliance incidents does not in any way allow for discourse over the larger structural questions surrounding the surveillance programs. Finally, the ability of the FISC to act as an effective check on NSA oveneaching is severely limited by the secrecy and lack of information available to the FISC judges. Judge Reggie B. Walton, formerly the Chief Judge of the FISC, lamented that "[t]he FISC is forced to rely upon the accuracy of the information that is provided to the Court .... The FISC does not have the capacity to investigate issues of noncompliance .... " 81 The ability of the NSA to not only gather and retain bulk metadata, but also to build in backdoor access into data files despite private encryption efforts has been largely sanctioned by the FISC based on NSA representations as to the seriousness of the security threats posed to the nation. 82 In an enviromnent in which there is a tremendous fear of being held responsible for any future terrorist attack that might occur on U.S. soil, 83 and in which there is a information deficit for those outside of the intelligence community, the FISC has consistently deferred to the NSA's assertions and has not been able to act as an effective accountability mechanism.

That’s key to the democratic process – ensures further infringements on rights and replicates the error – perm is key to transparency and public engagement

HRW 14 (Human Rights Watch; Kenneth Roth; Executive Director of HRW; “Letter to President Obama Urging Surveillance Reforms” January 16, 2014 http://www.hrw.org/news/2014/01/16/letter-president-obama-urging-surveillance-reforms)

Vast changes to US law on surveillance have happened in secret without adequate oversight. The lack of public information has prevented debate about issues of great importance to the democratic process and individual rights. In addition, the companies and organizations that have participated in US surveillance programs have been prevented from disclosing basic data about the information that the government has been demanding of them. You have in the past stated that you welcome a debate

about these matters, and your decision to establish the review group to recommend possible reforms implicitly recognizes the importance of this discussion. Yet **it is impossible to have a healthy and open democratic debate about these matters when the public – and most of the US Congress – is kept in the dark about the scope of the programs and their implementation**. There are legitimate reasons to classify certain types of information – for example, to protect the identities of vulnerable individuals or to protect the public from harm. But classification can too easily become a tool to prevent embarrassment or exposure of wrongdoing, or to conceal information about the functioning of public institutions. Protecting national security does not have to come at the expense of public accountability. For example, there was no legitimate reason why the extent of the government collection of metadata should have been kept from the general public. We urge you to disclose much more about the scope of terms of surveillance occurring under Section 702 and Executive Order 12333, which could have enormous implications for the rights of foreigners abroad. US persons have the same interest as those abroad in knowing when their privacy rights are protected, and that can be revealed without disclosing information that would threaten national security. We also encourage you to support legislative reforms suggested by the review group, including transparency measures to require greater reporting to Congress and the public about use of intelligence gathering powers, and to permit technology companies to report on the number of orders they receive for user data. They also recommended a strong presumption of transparency in decisions about whether to keep programs of the magnitude of the 215 bulk telephony metadata program secret. These measures will not only assist democratic debate today, but guard against abuse of power in the future. The review group also made a number of other specific recommendations with which we agree, and which we hope you adopt and encourage Congress to act on. These include: * Ending the widespread use of National Security Letters (NSLs) without judicial review: National security letters are a form of administrative subpoena that give the FBI and other government agencies expanded power to compel the production of records. Under the PATRIOT Act of 2001, authorization for their use was greatly expanded; the need for individualized suspicion was reduced and a broader array of officials became authorized to issue them. As a result, the use of NSL's dramatically increased to the point where the FBI currently issues nearly 60 NSLs per day without judicial approval and accompanied by strict gag orders on the recipients. According to a report by the Office of the Inspector General in the Department of Justice, the lack of oversight has resulted in serious compliance issues and extensive misuse of NSL authority.[9] The review group effectively called for an end to this practice, saying that NSLs should be subject to judicial authorization, like 215 orders. We agree with these recommendations, and though they require Congressional action we strongly urge you to support them. * Creating an Institutional Advocate at the Foreign Intelligence Surveillance Court (FISC): For years, the FISC has been authorizing dramatic changes to US law in secret without any adversary's view being part of the process. That is a recipe for decisions that set the wrong balance between security and rights, because any judge is more likely to be persuaded by the side whose views he or she hears. The panel supported creating an institutional advocate with appropriate security clearances at the FISC to represent the public's privacy interests. We strongly urge you to support legislative action on this matter. * Strengthening the Privacy and Civil Liberties Oversight Board (PCLOB) and Investing It with Whistleblower Reporting Authority: The PCLOB was established by Congress after September 11, 2001, to conduct oversight of the intelligence community and make recommendations about how to improve privacy and civil liberties protections. But for years, the board remained dormant, without a chairman or staff. It now has a chairman and staff but limited resources. If strengthened further and provided with adequate resources, it can help to check the powers of an intelligence

community that gravitates toward over-classification and secrecy. Additionally, we agree with the review group that the PCLOB should be empowered to receive whistleblower complaints. Would-be whistleblowers need an independent and effective body to which they can report abuses or wrongdoing without having to report them internally first. A presidential policy directive issued in 2012, intended to improve whistleblower protections for federal employees, does not cover contractors and requires whistleblowers to report to a person in their direct chain of command instead of a more independent body.[10] While this would not adequately address the need for whistleblower reform that Human Rights Watch has previously identified, it would be a starting point. More complete whistleblower reform would require more than just creating an independent body to report wrongdoing. It would also require providing whistleblowers with legal protection against retaliation and legal defenses to prosecution. We urge you to propose to Congress a law that will grant such protections to federal employees and consultants in this sector. The rules that the United States establishes today on these matters will likely govern surveillance long after your administration has completed its term. They will also set a key precedent to which other countries will look to as they debate crucial questions about privacy and Internet freedom across the world. We strongly urge you, even as US surveillance capabilities continue to increase, to ensure that those capabilities are effectively regulated, within a framework of the rule of law, maximum transparency, and respect for democracy and human rights. Adopting the recommendations outlined above will be a first step in that direction.

2AC Addon — Internet Freedom

Public surveillance reform key to revive US credibility on the internet freedom agenda
Ries '14

(Internally quoting Zeke Johnson, director of Amnesty International's Security & Human Rights Program. Also internally quoting Cynthia M. Wong is the senior researcher on the Internet and human rights for Human Rights Watch. Before joining Human Rights Watch, Wong worked as an attorney at the Center for Democracy & Technology (CDT) and as director of their Project on Global Internet Freedom. She conducted much of the organization's work promoting global Internet freedom, with a particular focus on international free expression and privacy. She also served as co-chair of the Policy & Learning Committee of the Global Network Initiative (GNI), a multi-stakeholder organization that advances corporate responsibility and human rights in the technology sector. Prior to joining CDT, Wong was the Robert L. Bernstein International Human Rights Fellow at Human Rights in China (HRIC). There, she contributed to the organization's work in the areas of business and human rights and freedom of expression online. Wong earned her law degree from New York University School of Law. Also internally quoting Center for Democracy and Technology Senior Counsel Harley Geiger – Brian Ries is Mashable's Real-Time News Editor. Prior to working at Mashable, Brian was Social Media Editor at Newsweek & The Daily Beast, responsible for using Twitter, Facebook, and Tumblr to cover revolutions, disasters, and presidential elections. During his time at The Daily Beast, he contributed to a team that won two Webby Awards for "Best News Site". "Critics Slam 'Watered-Down' Surveillance Bill That Congress Just Passed" - Mashable - May 22, 2014 – http://mashable.com/2014/05/22/congress-nsa-surveillance-bill/)

As a result, many of its initial supporters pulled their support. "We supported the **original** USA Freedom act, **even though it didn't do much for non-US persons,"** Zeke Johnson, director of Amnesty International's Security & Human Rights Program told Mashable after Thursday's vote. He described the **original version as "a good step to end bulk collection."** However, in its current version, it's not even clear that this bill does that at all, Johnson said. He added that Congress left a lot of "wiggle room" in the bill – something he said is a real problem. "Where there is vagueness in a law, **you can count on the administration to exploit it,"** Johnson said. However, Laura W. Murphy, director of the ACLU Washington Legislative Office, took a more positive view of the bill. "While far from perfect, this bill is an unambiguous statement of congressional intent to rein in the out-of-control NSA," she said in a statement. "While we share the concerns of many — including members of both parties who rightly believe the bill does not go far enough — without it we would be left with no reform at all, or worse, a House Intelligence Committee bill that would have cemented bulk collection of Americans' communications into law." The Electronic Frontier Foundation simply called it "a weak attempt at NSA reform." "The ban on bulk collection was **deliberately watered down** to be ambiguous and exploitable," said Center for Democracy and Technology Senior Counsel Harley Geiger. "We withdrew support for USA FREEDOM when the bill morphed into a codification of large-scale, untargeted collection of data about Americans with no connection to a crime or terrorism." And **Cynthia Wong**, senior Internet researcher at Human Rights Watch, said, "This so-called reform bill won't restore the trust of Internet users in the US and around the world. **Until Congress passes real reform, U.S. credibility and leadership on Internet freedom will continue to fade."**

That's key to the global economy
Kalathil '10

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As use of the Internet has grown exponentially around the world, so too have concerns about its defining attribute as a free and open means of communication. Around the world, countries, companies and citizens are grappling with thorny issues of free expression, censorship and trust. With starkly different visions for the Internet developing, this era presents challenges—and also opportunities—for those who wish to ensure the Internet remains a **backbone of** liberty and **economic growth. U.S. officials have made clear their vision for the Internet**'s future. President Obama, in a speech before the UN General Assembly, said that **the U.S. is committed** to promoting new communication tools, "so that people are empowered to connect with one another and, in repressive societies, to do so with security. We will support a free and open Internet, so individuals have the information to make up their own minds." His words were reinforced by FCC Chairman Julius Genachowski: "It is essential that we preserve the open Internet and stand firmly behind the right of all people to connect with one another and to exchange ideas freely and without fear."1 Indeed, a free, widely accessible Internet stands **at the heart of** both global communication and **global commerce.** Internet freedom enables dialogue and direct diplomacy between people and civilizations, facilitating the exchange of ideas and culture while bolstering trade and economic growth. Conversely, censorship and other blockages stifle both expression and innovation. When arbitrary rules privilege some and not others, the investment climate suffers. Nor can access be expanded if end users have no trust in the network. However, making reality live up to aspirations for Internet freedom can prove difficult. Numerous global initiatives—spearheaded by governments, private sector and civil society—are attempting to enshrine the norms, principles and standards that will ensure the Internet remains a public space for free expression. At the same time, other norms are fast arising—particularly those defined by authoritarian countries that wish to splinter the Internet into independently controlled fiefdoms. Even as Internet access has expanded around the world, many governments are attempting to control, regulate and censor the Internet in all its forms: blogs, mobile communication, social media, etc. Such governments have devoted vast resources to shaping the Internet's development within their own borders, and they are now seeking to shape the Internet outside their borders as well. Indeed, Internet experts are worried that national governments of all stripes will increasingly seek to extend their regulatory authority over the global Internet, culminating in a balkanized Internet with limited interoperability. Hence, the next few years present a distinct window of opportunity to elevate the principles of the free exchange of ideas, knowledge and commerce on the Internet. While U.S. leadership within this window is vital, a global effort is necessary to ensure that these norms become a standard part of the Internet's supporting architecture.

Decline leads to war
Merlini '11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (~357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons.** The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be

exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

1AR Transparency Turn

FISA courts undermine democracy

Timm 13 (Trevor Timm; co-founder and the executive director of the Freedom of the Press Foundation. He is a journalist, activist, and lawyer; JD in law from New York Law school; "Reform the FISA Court: Privacy Law Should Never Be Radically Reinterpreted in Secret" JULY 10, 2013; https://www.eff.org/deeplinks/2013/07/fisa-court-has-been-radically-reinterpreting-privacy-law-secret)

It's likely the precedent laid down in the last few years will stay law for years to come if the courts are not reformed. FISA judges are appointed by one unelected official who holds lifetime office: the Chief Justice of the Supreme Court. Under current law, for the coming decades, Chief Justice John Roberts will solely decide who will write the sweeping surveillance opinions few will be allowed to read, but which everyone will be subject to. Judge James Robertson was once one of those judges. He was appointed to the court in the mid-2000s. He confirmed yesterday for the first time that he resigned in 2005 in protest of the Bush administration illegally bypassing the court altogether. Since Robertson retired, however, the court has transitioned from being ignored to wielding enormous, undemocratic power. **"What FISA does is not adjudication, but approval**," Judge Robertson said. "This works just fine when it deals with individual applications for warrants, but the [FISA Amendments Act of 2008] has turned the FISA court into administrative agency making rules for others to follow." Under the FISA Amendments Act, "the court is now approving programmatic surveillance. **I don't think that is a judicial function."** He continued, "**Anyone who has been a judge will tell you a judge needs to hear both sides of a case…This process needs an adversary**." **No opposing counsel, rulings handed down in complete secrecy by judges appointed by an unelected official, and no way for those affected to appeal**. As The Economist stated, **"Sounds a lot like the sort of thing authoritarian governments set up when they make a half-hearted attempt to create the appearance of the rule of law**." This scandal should precipitate many reforms, but one thing is certain: **FISA rulings need to be made public so the American people understand how courts are interpreting their constitutional rights. The very idea of democratic law depends on it.**

Further lack of transparency undermines public confidence in federal surveillance – stymies legal reform and ensures further violations

Butler 13 (Alan Butler; Appellate Advocate Counsel, Electronic Privacy Information Center; J.D., UCLA School of Law; B.A., magna cum laude, Economics, Washington University in St. Louis. "Standing Up to Clapper: How to Increase Transparency and Oversight of FISA Surveillance" New England Law Review v. 48, 55, p 59-100; 2013)

The failure to publish FISC opinions over the last ten years is the root of the current loss of public confidence in the Administration's use of foreign intelligence authorities.192 The court's legal analysis and conclusions, as opposed to the operational details of surveillance activities, are part of the law that cannot properly develop without public oversight. Promulgation of the law is a central requirement of democracy; the **failure** to promulgate **results in a "fail[ure] to make law**." 193 Both the FISC and the Attorney General bear the responsibility to promote public understanding of the FISA process and what it encompasses. This is especially true where the court attempts to strike some balance between national security and civil liberties concerns.194 Secret law undermines our system of checks and balances by disabling the democratic oversight by which the public governs its government.195

1AR Solvency Deficit

Adversarial system is key to consistent rulings – even if they fiat FISCR compliance, trials still ensure NSA noncompliance – specifically true of 702 and 4th amendment rulings

Butler 13 (Alan Butler; Appellate Advocate Counsel, Electronic Privacy Information Center; J.D., UCLA School of Law; B.A., magna cum laude, Economics, Washington University in St. Louis. "Standing Up to Clapper: How to Increase Transparency and Oversight of FISA Surveillance" New England Law Review v. 48, 55, p 59-100; 2013)

The recent revelations about the extent and nature of FISA surveillance have highlighted the important and unreviewed body of constitutional and statutory law being developed by the FISC.205 Unlike other ex parte proceedings, the FISC reviews of applications submitted under Section 702 require extensive analysis and create precedent for the court.206 **But this lawmaking process only works when the judges hear both sides of the argument**. In addition, the Fourth Amendment issues and technical details of surveillance tactics are very complex, **and FISC judges cannot adequately evaluate the various interests without in-depth briefing on both sides**. Any FISC reform should address this problem by providing for a "Special Advocate" to the court, who would operate with a security clearance and argue in opposition to the Department of Justice on important legal questions regarding FISA and the Constitution. The FISC is developing complex legal interpretations under a provision of the FAA that requires the FISC to find that the "targeting and minimization procedures" adopted by the Government are "consistent with . . . the fourth amendment to the Constitution . . . ."207 **But these decisions are necessarily complex and difficult to make in the abstract context of a Section 702 application because Fourth Amendment analysis is necessarily fact-based**.208 In the American judicial system, facts are developed through an adversarial process.209 The government has an interest in arguing in favor of the surveillance applications that it submits to the FISC; a Department of Justice lawyer's role is not to present the judges with reasons why the application might be denied or modified. There is currently no advocate on the other side of these complex and novel issues judged by the FISC. And while recipients of FISA-authorized surveillance orders and directives can file challenges under certain circumstances,210 they cannot review the classified opinions or government briefs and do not have the necessary opportunity or incentive to develop fact-based constitutional arguments. The difficulty in having an adversarial process at the FISC is that the materials presented by the government are highly classified. However, classified proceedings have become more prevalent over the past ten years in the United States211 as well as in the United Kingdom.212 The use of specially appointed, security-cleared attorneys to challenge government legal arguments in national security cases has been in place for more than a decade in the United Kingdom.213 The use of such a "Special Advocate" would be appropriate in the FISA context where FISC judges are asked to make novel and significant legal determinations regarding important constitutional rights. Two former FISC judges,214 and other prominent legal scholars,215 have proposed adding such an adversarial position to ensure that legal developments at the FISC do not suffer from unbalanced advocacy.216

SOP Court CP

Notes

SOP Supreme Court CP

1. The Counterplan is to have to Supreme Court rule on the separation of powers doctrine.
2. The net benefits are the internal SOP DA, and the 4th amendment DA
3. You could read this aff against affirmatives that have the Supreme Court rule on an amendment that is not the separation of powers doctrine ie. 1st, 4th, etc.

1NC Material

1NC Solvency

[Insert Plan] replace the grounds with = "based on the separation of powers doctrine"

1st and 4th amendment challenges to surveillance fail – the counterplan is key to legitimately stopping surveillance

Slobogin 15

(Christopher -Milton Underwood Professor of Law, Chris Slobogin has authored more than 100 articles, books and chapters on topics relating to criminal procedure, mental health law and evidence. Named director of Vanderbilt Law School's Criminal Justice Program in 2009, Professor Slobogin is one of the five most cited criminal law and procedure law professors in the country, according to the Leiter Report, Vanderbilt University Law School, Standing and Covert Surveillance, Pepperdine Law Review, February 18, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2567070, JZG)

IV. A THIRD BASIS FOR CHALLENGING SURVEILLANCE: SEPARATION OF POWERS AND THE NONDELEGATION DOCTRINE One response to standing arguments based on the insights of scholars like Milligan and Richards is that they ignore the close relationship between standing and the scope of the right in question.131 Indeed, when the Fourth Amendment is the basis for the claim, the Supreme Court has explicitly conflated standing with the Amendment's substance. In Rakas v. Illinois, 132 the Court stated that the decision as to whether a defendant can make a Fourth Amendment claim "forthrightly focuses on the extent of a particular defendant's rights under the Fourth Amendment, rather than on any theoretically separate, but invariably intertwined concept of standing."133 If a government action is not a Fourth Amendment "search" vis-à-vis the litigant, Rakas held, then the litigant lacks standing to challenge it. If that reasoning is the correct approach to standing, then in cases challenging covert surveillance on Fourth or First Amendment grounds everything rides on whether the surveillance, as it operates in the way the plaintiff describes it, infringes the plaintiff's reasonable expectations of privacy or speech and association interests.134 While such a finding would presumably be made in the Clapper case, which involved the alleged interception of the content of overseas phone calls,135 it is less certain in connection with collection and querying of metadata. The Fourth Amendment is only meant to protect reasonable expectations of privacy.136 Supreme Court case law to date strongly suggests that any privacy one might expect in one's metadata or Internet activity is unreasonable, because we assume the risk that third parties to which we knowingly impart information (here phone companies and Internet service providers) will in turn divulge it to the government.137 The same type of analysis might limit standing in cases brought under the First Amendment. As the Court intimated in Clapper, 138 one could conclude that even if speech and association are inhibited by surveillance, that inhibition proximately results from the individual's choices, not from anything the government has done to the individual.139 On this view, even if an individual can show that he or she was targeted, standing to contest surveillance does not exist unless and until the government uses the seized information against the individual, because otherwise a colorable claim that a constitutionally cognizable interest was infringed cannot be made. If, despite its impact on political participation, covert surveillance like the metadata program remains immune from Fourth and First Amendment challenges, there remains another avenue of attack, derived directly from separation of powers doctrine. In other work, I have argued that, even if the Fourth (or First) Amendment does not govern a particular type of surveillance, Ely's political process theory provides a basis for challenging panvasive actions that are the result of a seriously flawed political process.140 More specifically, panvasive surveillance might be challengeable on one of three grounds: (1) the surveillance is not authorized by the appropriate legislative body; (2) the authorizing legislative body does not meaningfully represent the group affected by the surveillance; or (3) the resulting legislation or law enforcement's implementation of it violates notions underlying the non-delegation doctrine.141 The first and third of these grounds are based explicitly on separation of powers concerns. As I pointed out, some panvasive surveillance has not been legislatively authorized or has been authorized by legislation that does not announce an "intelligible principle" governing the

implementing agency.142 Panvasive surveillance is also defective under non-delegation principles if, as I have argued is true of the NSA's metadata program, it is implemented by rules or practices that are not explained, were produced through flawed or non-transparent procedures, or are applied unevenly.143 Based on several Supreme Court cases, particularly in the administrative law area,144 I concluded that any one of these deficiencies could be the basis for the claim that the legislature, the relevant law enforcement agency, or both are failing to carry out their constitutional obligations as law-making and law implementing bodies.145 Although this type of claim, like the Fourth and First Amendment claims, aims at "generalized relief," the Court itself has often granted standing to individuals making separation of powers claims.146 The rationale of these cases is not difficult to grasp, because it again reflects the political process rationale. Many years ago Justice Brandeis stated, "[T]he doctrine of the separation of powers was adopted by the convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power."147 More recently, Chief Justice Burger asserted that "checks and balances were the foundation of a structure of government that would protect liberty."148 More recently still, in Bond v. United States149 the Court stated "[t]he structural principles secured by the separation of powers protect the individual as well."150 If one accepts the possibility that a separation of powers argument can be made in covert surveillance cases, then parties who can demonstrate the type of injury described above—that is, a significant stifling of political participation that, to borrow the Second Circuit's language in its Clapper decision,151 is a reasonable, non-fanciful, and non-paranoid reaction to covert surveillance—should have standing to challenge panvasive surveillance even if it is not a search under the Fourth Amendment or does not abridge First Amendment freedom. The merits claim would not be that the surveillance is an unreasonable search or infringement of speech or association rights, but rather that the legislature has failed in its delegation task or that the relevant law enforcement or intelligence agency has acted in an ultra vires fashion. These are the types of separation of powers claims that courts ought to hear because they assure the proper functioning of the political process that the Court is so eager to protect (with, inter alia, its standing doctrine). To requote Chief Justice Roberts, "[T]he obligation of the Judiciary [is] not only to confine itself to its proper role, but to ensure that the other branches do so as well."152

1NC SOP Net Benefit

The counterplan is key to SOP and checking executive powers – solves democracy and function of the government

Slobogin 15

(Christopher -Milton Underwood Professor of Law, Chris Slobogin has authored more than 100 articles, books and chapters on topics relating to criminal procedure, mental health law and evidence. Named director of Vanderbilt Law School's Criminal Justice Program in 2009, Professor Slobogin is one of the five most cited criminal law and procedure law professors in the country, according to the Leiter Report, Vanderbilt University Law School, Standing and Covert Surveillance, Pepperdine Law Review, February 18, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2567070, JZG)

If panvasive surveillance cannot be challenged in court, it could well continue indefinitely despite its real threat to democratic institutions. Despite all of the hullabaloo occasioned by Edward Snowden's disclosures, the NSA appears to be continuing its large-scale surveillance and Congress has yet to propose serious limitations on it.162 Although President Obama has put a few new restrictions on the NSA's programs,163 to date there have been few judicial assessments of their constitutional status, and Clapper stands as an obstacle to challenges to all but the most obviously panvasive government actions. While the limitations on standing may make sense in some types of cases, challenges to panvasive surveillance should be treated differently than most other generalized claims. The separation of powers, Fourth Amendment, and First Amendment concerns about this surveillance go to the core of American democracy. The Court's decision in De Jonge v. Oregon, decided almost eight decades ago, makes the point in language that still resonates in this post- 9/11 era: The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.164 Unwarranted surveillance broadly stifles fundamental liberties and undermines "the very foundation of constitutional government." Government is no longer functioning as the framers of the Constitution imagined it should if political discourse, individual creativity, outspokenness and non-conformity are not allowed to flourish. This state of affairs threatens rather than sustains the notion of separate but equal governmental powers, because it diminishes the vitality of the legislative function, improperly enhances the executive function, and ignores the judiciary's role as a regulator of law enforcement through determinations of cause. Standing doctrine, meant to ensure each branch of government is allowed to do its job, should not prevent courts from ensuring that the other branches actually do it.

Democracy checks inevitable extinction.

Diamond '95

(Larry, Senior Fellow at the Hoover Institution and Coeditor of The Journal of Democracy , "Promoting Democracy in the 1990s", December, http://www.wilsoncenter.org/subsites/ccpdc/pubs/di/fr.htm)

This hardly exhausts the lists of threats to our security and well-being in the coming years and decades. In the former Yugoslavia nationalist aggression tears at the stability of Europe and could easily spread. The flow of illegal drugs intensifies through increasingly powerful international crime syndicates that have made common cause with authoritarian regimes and have utterly corrupted the institutions of tenuous, democratic ones. Nuclear, chemical, and biological weapons continue to proliferate. The very source of life on Earth, the global ecosystem, appears increasingly endangered. Most of these new and unconventional threats to security are associated with or aggravated by the weakness or absence of democracy, with its provisions for legality, accountability, popular sovereignty, and openness. LESSONS OF THE TWENTIETH CENTURY The experience of this century offers important lessons. Countries that govern themselves in a truly democratic fashion do not go to war with one another. They do not aggress against their neighbors to aggrandize themselves or glorify their leaders. Democratic governments do not ethnically "cleanse" their own populations, and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable, open, and enduring trading partnerships. In the long run they offer better and more stable climates for investment. They are more environmentally responsible because they must answer to their own citizens, who organize to protest the destruction of their environments. They are better bets to honor international treaties since they value legal obligations and because their openness makes it much more difficult to breach agreements in secret. Precisely because, within their own borders, they respect competition, civil liberties, property rights, and the rule of law, democracies are the only reliable foundation on which a new world order of international security and prosperity can be built.

2NC CP

2NC Solvency

The political process theory supports the cp's solvency

Slobogin 15

(Christopher -Milton Underwood Professor of Law, Chris Slobogin has authored more than 100 articles, books and chapters on topics relating to criminal procedure, mental health law and evidence. Named director of Vanderbilt Law School's Criminal Justice Program in 2009, Professor Slobogin is one of the five most cited criminal law and procedure law professors in the country, according to the Leiter Report, Vanderbilt University Law School, Standing and Covert Surveillance, Pepperdine Law Review, February 18, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2567070, JZG)

V. OBJECTIONS One objection to the political process rationale for granting standing to litigants with colorable claims of injury from NSA surveillance is that, as Clapper stated, the Court has "often found a lack of standing in cases in which the Judiciary has been requested to review actions of the political branches in the fields of intelligence gathering and foreign affairs."153 A separate but related objection comes from Professor Jesse Choper, who argued in 1980 that the executive and legislative branches have "tremendous incentives jealously to guard [their] constitutional boundaries and assigned prerogatives against invasion by the other," and thus separation of powers issues ought to be non-justiciable political questions.154 Neither of these objections are sustainable from the political process perspective. Precisely because of the perceived importance of national security, the legislative and executive branches often either act in collusion with one another or, as illustrated earlier, function in ways that undermine the other's prerogatives, with the result that both end up ignoring their constitutional obligations.155 Particularly when it comes to national security, courts should have the authority to ensure that legislatures define the scope of permissible law enforcement and that law enforcement abide by appropriate rule-making mechanisms, a notion the Court has accepted in related national security contexts.156 At the least, these obligations should include procedures for assuring public accountability (such as notice-andcomment or other transparent rule-making processes), or, if that is not feasible, some method of assuring accountability to the legislature.157 Unfortunately, the perceived imperatives of the War on Terrorism have led both branches to short-circuit these requirements.158 A different kind of objection is that the political process rationale for standing reaches too broadly.159 If the chilling effect of panvasive surveillance on private communications and speech and association is enough to establish standing, then other challenges to alleged flaws in the political process—ranging from voting matters to educational obligations—could conceivably create standing as well. Perhaps so. As noted above,160 in FEC v. Akins the Court has already recognized as much with respect to the "most basic of political rights" of voting.161 Whether other interests less closely related to the democratic process might be treated similarly is beyond the scope of this Article.

2NC AT Perm Do CP

The counterplan severs the part of the plan text that rules on the ____ amendment. Severance is bad because it also the aff to be a moving target – we can never get stable negative ground – voting issue for fairness

2NC AT Perm Do Both

The permutation still links to the 4th amendment DA

The perm links to the net benefit – creates confusion

Thurmon 92

(Mark Alan, 1992, WHEN THE COURT DIVIDES: RECONSIDERING THE PRECEDENTIAL VALUE OF SUPREME COURT PLURALITY DECISIONS, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3205&context=dlj, JZG)

When the Supreme Court decides a case, the Federal District Courts and Circuit Courts of Appeals are responsible for finding the governing rules of law in that decision. The first lower court to deal with the issue often "defines" the holding of the case by reviewing the reasoning found in the Supreme Court's opinion. Other lower courts then rely largely on this interpretation. Plurality decisions' greatly complicate this process because lower courts not only have to find the rationale of each opinion, **but must also decide which opinion's rationale governs**. With all these choices, it is not surprising that plurality decisions often do "more to confuse the current state of the law than to clarify it."2

Multiple gruonds cause confusion

Hochschild 2k - J.D., Washington University School of Law

(Adam S., The Modem Problem of Supreme Court Plurality Decision: Interpretation in Historical Perspective, http://heinonline.org/HOL/Page?handle=hein.journals/wajlp4&div=11&g_sent=1&collection=journals#266, JZG)

On the evening of December 12, 2000 America watched as TV legal scholars scrambled to decipher the United States Supreme Court's split decision in Bush v. Gore.' Despite the six different opinions, that case turned out to be easy enough to understand. A clear majority of five Justices ruled the same way. Real problems arise when there is less than a clear majority speaking for the Court when the leading opinion of the Court is a plurality opinion. A Supreme Court plurality decision holds ambiguous precedential value. At the very least, plurality decisions bind the parties in the particular case.2 Our jurisprudential tradition further assumes that all cases elaborate a general rule of decision, or ratio decidendi, that applies to future cases involving similar issues.3 The discernment of a ratio decidendi from a majority opinion is generally uncontroversial because a majority opinion represents the rationale of a majority of Justices.4 But, the discernment of a ratio decidendi from a plurality opinion, which represents the rationale of less than half of the Justices, is more problematic. A majority opinion may command more authority than a plurality decision,5 but precisely what authority does a plurality decision command? In other words, how should courts apply a plurality decision to subsequent controversies involving similar issues? This Note posits that the growing confusion surrounding plurality opinions is a foreseeable consequence of the formative years of the Supreme Court. The hubris of wielding federal judicial power, that has driven Justices since the Court's inception, is the cause of the plurality opinion chaos. An examination of the history of the Supreme Court's power and its methods of decision making suggests that the problem is deeply rooted in American law. Accordingly, an earnest solution involves a shift in our fundamental understanding of the Supreme Court's role. We must begin, at least, by recognizing the esteemed and modest beginnings of the Supreme Court.

2NC SOP Net Benefit

2NC CP Overview

The counterplan solves 100% of the case that is not based on the ____ amendment. We use the same process of the plan but rule on different grounds. 1NC Slobogin is the most specific to the counterplan's process, multiple standings exist for litigants to sue based on the doctrine and the Supreme Court has often given standing to those litigants.

The Counterplan solves the internal SOP net benefit and avoids the 4th amendment good DA.

2NC SOP Good

Executive power is too massive – control over FISA Court is to blame
Williams 14 -Assoc. Professor, Western State College of Law

(Ryan T., The Road Most Travel: Is the Executive's Growing Preeminence Making America More Like the Authoritarian Regimes It Fights So Hard Against?, August 2014, http://works.bepress.com/cgi/viewcontent.cgi?article=1006&context=ryan_williams, JZG)

Through further analysis, one finds that congress' FISA court solution does not establish a valid check on Executive power. First, the FISA court is comprised of eleven justices, who serve seven-year terms.46 All current judges were appointed to the special court by Chief Justice John G. Roberts Jr.47 This method raises concerns about the democratic process. These eleven judges, unlike the Supreme Court justices, were not vetted and brought before Congress for ratification. They were simply appointed by one Supreme Court justice to decide important Constitutional issues, such as the scope of the Fourth Amendment and the limits/expectations of privacy.48 Second, unlike almost any other court, "the FISA court hears from only one side in the case — the government."49 One need not be a Constitutional law professor or political science scholar to realize that if only one side of an argument is heard, the chance for a fair examination of both sides diminishes. The government routinely seeks trillions of records about American citizens, including, but not limited to phone call and e-mail records.50 One wonders how the FISA court considers both sides if only one side is being argued. The fear, of course, is that the two outcomes, to grant or deny the government's request, are not accorded equal weight, if any weight at all. Under such a scenario, one might suspect a disproportionate number of granted requests by the government. Unfortunately, that appears to be the case, here. As of the writing of this Article, nearly every NSA surveillance request ever submitted to the FISA court, with regard to spying on Americans, was granted.51 In 2012, the FISA court granted every single government request and issued nearly 1,800 surveillance orders pursuant to those requests. 52 That equates to more than five orders each day for the entire year. According to the FISA court, no request from any intelligence agency was denied.53 This makes it difficult to argue that Congressional authorization of the FISA court to oversee the Executive's spying program is little more than a talisman, creating a mirage of democratic process cloaked in secrecy and power to a few people in charge. If the FISA court is the supposed watchdog of the privacy interests for Americans, but only the government gets to present its case and every single government request for spying is granted, where is the check? Nothing about the aforementioned process comports with Constitutional notions of checks and balances, regardless of Congressional approval. In addition, the FISA court's findings are almost "never made public."54 The people are not afforded a chance to review the breadth of a surveillance request, which 100% of the time results in a surveillance order. The NSA obtains everything it seeks and reports to no one outside of the Executive branch.

This leads to autocratic rule through the destruction of the separation of powers
Williams 14 -Assoc. Professor, Western State College of Law

(Ryan T., The Road Most Travel: Is the Executive's Growing Preeminence Making America More Like the Authoritarian Regimes It Fights So Hard Against?, August 2014, http://works.bepress.com/cgi/viewcontent.cgi?article=1006&context=ryan_williams, JZG)

D. Resulting Harm Is the Executive's newfound expansive ability to spy on Americans, and seeming inability to challenge it, harmful? Such spying may be necessary to protect the nation from credible terrorist threats. Moreover, on an individual level, why is there is any problem with the Executive tracking all of people's activities and information? If people have nothing to

hide, then what is the harm? First, one potential harm is if (and when) the Executive wants to further expand its powers, and, in secret, unilaterally take away other rights or privileges. By granting the Executive unchecked power for it's NSA surveillance program, a dangerous precedent is set where the **Executive may have incentive to take additional power in other areas, while falsely claiming it is for national security**. It may really be for political or personal gain, or to push another agenda to improperly shape American policy, but if it's under the guise of national security, a precedent is being set where the Executive is beyond reproach. Thus, not having a watchdog over the NSA and the Executive can lead to a host of abuses we have yet to even realize, the worst of which may be yet to come. Second, aspects of the NSA surveillance program may be unconstitutional. Facially, the concept of tracking phone calls, email communications and Internet traffic to see if someone is behaving suspiciously seems a little unnerving. It is not "we have a target, let's start monitoring them." Instead, it's "let's monitor virtually everyone, to see if there are any targets." To some, like the plaintiffs in Clapper, this difference is troubling enough to challenge in court, but their case was dismissed for lack of standing. Conjointly, the NSA surveillance program may have unconstitutional components, but they will continue to remain unnoticed if no one is ever able to challenge the Executive. Finally, **lacking a check on Executive power dilutes America's version of democracy**. The Executive is often supposed to, if not expected to, operate as the unilateral figure in international relations.71 That is not in dispute, but even as the appropriate central-figure in international relations, the Executive was never intended to operate in an unconstitutional manner without reproach. The **separation of powers, so vital to a democratic republic, is severely undermined when one branch is possesses seemingly limitless powers**. If America continues to allow the Executive, the person in charge of the military and controlling the spying agencies, to be effectively unchecked by the other branches, **this much more closely resembles an authoritarian regime than any form of democracy**. Is the current American President a dictator? Surely, this is not the case, but the NSA surveillance program represents a step towards the type of "elective despotism" that Thomas Jefferson and the Founding Fathers fought hard to guard against when they formed the United States of America.72 The aforementioned dangers highlight the problems with the Executive's newfound and unchecked secret and growing power to spy on Americans. The NSA surveillance program, however, is not the only way the Executive has usurped power without being stopped by Congress or the Judiciary in the War on Terror.

Executive is power bad – congress has ceded too much
Katyal 14 -Professor of Law, Georgetown University Law Center

(Neal Kumar, is an American lawyer and chaired professor of law. He served as Acting Solicitor General of the United States from May 2010[2] until June 2011, Internal Separation of Powers: Checking Today's Most Dangerous Branch From Within, The Yale Law Journal, http://poseidon01.ssrn.com/delivery.php?ID=406105097031083079027095086064097030017003038044067033122101097102092029124086026007007019055119006003021102115000083114104108034091000041007071122111113098030043035082069119077112125119018126070088122118088112005125069094003024125099091119&EXT=pdf&TYPE=2, JZG)

the need for internal separation of powers The treacherous attacks of September 11 gave Congress and the President a unique opportunity to work together. Within a week, both houses of Congress passed an Authorization for the Use of Military Force Resolution (AUMF); two months later they enacted the USA PATRIOT Act to further expand intelligence and law enforcement powers.11 But Congress did not do more. It passed no laws authorizing or regulating detentions for United States citizens. It did not affirm President Bush's decision to use military commissions to try unlawful belligerents.12 It stood silent when President Bush took thinly-reasoned legal views of the Geneva Conventions, such as that they did not require Article 5 hearings to determine prisoner-of-war status. 13 The Administration was content to rest on vague legislation like the AUMF, and Congress was content not to do much else.14 There is much to be said for the violation of separation of powers

engendered by these executive decisions, but for purposes of this Essay, I want to concede the executive's claim—that the AUMF gave the President the raw authority to make these decisions. A democratic deficit still exists; the values of divided government and popular accountability are not being preserved. Even if the President had the power to carry out the above acts, it is surely wiser if Congress authorizes them. Congress's imprimatur would have ensured that the people's representatives concurred, aided the government's defense of these actions in courts, and signaled to the world a broader American commitment to these decisions than one man's pen-stroke. Of course, Congress has not been passing legislation to denounce these Presidential actions either. And here we come to a subtle change in the legal landscape with broad ramifications: the demise of the congressional checking function. The story begins with the collapse of the non-delegation doctrine in the 1930s, which enabled broad areas of policymaking authority to be given to the President and agencies under his control. That collapse, however, was tempered by the legislative veto, meaning, in practical terms, that when Congress did not approve of a particular agency action, the legislature could correct the problem. But after INS v. Chadha, 15 which declared the legislative veto unconstitutional, that checking function, too, has disappeared. While Congress has at times engaged in oversight, such as the scandal-driven 1995- 2000 period, such oversight is often stymied by structural dynamics. In most instances today, the only way for Congress to disapprove of a presidential decree, even one chock full of rampant lawmaking, is to pass a bill with a solid enough majority to override a Presidential veto. This transforms the veto into a tool that entrenches presidential decrees, rather than one that blocks congressional misadventures. And because Congress ex ante appreciates the supermajority-override rule, its members do not even bother to try to check the President, knowing that a small cadre of loyalists in either House can block such a bill.16 For example, when some of the Senate's most powerful Republicans (John McCain, Lindsay Graham, and John Warner) tried to regulate detentions and trials at Guantánamo Bay, they were told that the President would veto their bill or any other attempt to modify the AUMF.17 The result is that once a court interprets a congressional act, such as the AUMF, to give the President broad powers, Congress often cannot reverse the interpretation, even if they never intended to give the President those powers in the first place. Members of Congress must not only surmount a supermajority requirement, they must do so in each House. Senator McCain might persuade every one of the other ninety-nine Senators to vote for his bill, but that is of no moment without a supermajority in the House of Representatives as well.18 At the same time, the executive branch has gained power from deference doctrines that induce courts to leave much conduct untouched–particularly in foreign affairs.19 The combination of deference and the presidential veto is particularly insidious—it means that a President can interpret a vague statute to give him additional powers, receive deference in that interpretation from courts, and then lock that decision into place via his veto power. This ratchetand-lock scheme makes it almost impossible to rein in executive power. This expansion of presidential power is exacerbated by the party system. When the political branches are controlled by the same party, considerations of loyalty, discipline, and self-interest generally preclude inter-branch checking. That general reluctance is exacerbated by the paucity of weapons with which to check the President, with the only ones in existence called "nuclear" ones. In earlier times, it was not difficult to use legislative vetoes as surgical checks. But post-Chadha, Congress only has weapons that cause extensive collateral damage. The fear of that damage, of course, becomes yet another reason why Congress is plagued with inertia. And the filibuster, the last big check in periods of single-party government, is useless against the host of problems where Presidents take expansive views of their powers under existing laws (such as the AUMF). Instead of preserving bicameralism, the rule in Chadha has therefore led to its subversion and "no-cameralism." All legislative action is therefore dangerous. Any bill, like Senator McCain's torture bill, can be derailed through compromise. Even if its text ultimately has teeth, a President will interpret it niggardly, and that interpretation will likely receive deference from a court, and it will then be locked into place due to the veto. A rational legislator, fearing this cascading cycle, is likely to do nothing at all. A Congress that conducts little oversight provides a veneer of legitimacy to an adventurist President. The President can appeal to the historic sense of checks and balances, even if those checks are entirely compromised by modern political dynamics. With this system in place, it is no surprise that calls for legislative revitalization in the wake of the September 11th attacks have failed. No successful action-forcing mechanisms have been developed; instead we are still in John Hart Ely's world of giving a "halftime pep-talk imploring that body to pull up its socks and reclaim its rightful authority."20 Instead of another pep-talk, it is time to consider second-best solutions to bring separation of powers into the executive. Bureaucracy can be reformed and celebrated (instead of purged and maligned), and neutral conflict-decision mechanisms can be introduced. Design choices such as these can help bring our government back in line with the principles envisioned by our Founders—ones that have served our nation and the world so well for so long.21

Lack of Court determination in determining the powers of the branches leads to excessive presidential power

Cantu 15

(Edward -Associate Professor, University of Missouri-Kansas City School of Law, 2015 The Separation-of-Powers and the Least Dangerous Branch, Hein Online, JZG)

III. THE UPSHOT: UNPRECEDENTED EXECUTIVE POWER Some appear to hold out in their hope of helping to corral the Court's pragmatism into some construct resembling doctrine. 192 But separation-of powers decisions are interminably pragmatic, and the systemic effect of that pragmatism becomes apparent upon a cursory examination of the state of modern government. The most conspicuous and controversial manifestation of the pragmatism in power allocation that the Court has acquiesced to is the dramatic growth of executive power, and corresponding decrease in congressional power, over the past century. A good example of this dramatic growth, and the reality that the political process is the only check on it, is the recent use by Presidents of executive orders and other mechanisms of presidential control over administration to manage national affairs. In 2001, then-Professor Elena Kagan reflected on the increasing control asserted by Presidents since Ronald Reagan over administrative agencies and declared quite correctly that "[w]e live today in an era of presidential administration." 19 3 She emphasized that "presidential control of administration, in critical respects, expanded dramatically during the Clinton years, making the regulatory activity of the executive branch agencies more and more an extension of the President's own policy and political agenda." 194 Lest one conclude that this is the result of rank grabs at power by ambitious Presidents, Kagan convincingly explained how this increasing assertiveness of Presidents is likely the result of "structural aspects of the modern presidency," 195 created by several dynamics beyond Presidents' control. For example, the American public's expectations of what Presidents can do have increased in recent decades, but the President's ability to convince Congress to go along has only decreased due to increasing partisanship. 196 Given Congress' decreasing ability to effectively legislate because of partisan gridlock, the President is left to meet national expectations using tools the use of which requires no congressional pre-approval. Naturally, then, Presidents get to work, tackling national problems as they see fit, even if that means taking an increasingly assertive stance regarding administrative agencies that Congress originally envisioned would be beyond the President's direct control. As others have explained, 197 in the criminal law context especially, this is a vicious cycle. Congress understands it can escape political accountability and appear "tough on crime" by enacting broad criminal laws. Presidents, in turn, exercise increasing prosecutorial discretion in choosing what conduct the statute criminalizes, and which offenders to prosecute. This further increases the public's expectations of the President, which increases the President's willingness to push the boundaries of his prosecutorial discretion. Which encourages Congress to enact more laws empowering the executive.., and so on. The "structural aspects" of the modern presidency that Justice Kagan discusses manifest in controversies over, for example, President Bush's Executive Order 13,435,198 which banned federal funding for certain types of embryonic stem cell research, based on Bush's belief that the restriction was necessary for "maintaining the highest ethical standards and respecting human life and human dignity."1 99 President Obama reversed this Executive Order with one of his own. 200 These erratic shifts in federal law were due to simply a fundamental policy disagreement, one of a moral nature quintessentially the province of legislatures to resolve, yet one the legislature has left Presidents to resolve through massive delegation, a disinclination to be responsible for controversial federal policy, and a resignation to a reality that modern life requires a powerful executive branch. As of this writing, President Obama is well into his eight-year presidency, and the former constitutional law professor now well-appreciates the practical limitations of attempting to govern with the assistance of Congress. Rightly or wrongly-but no doubt controversially-President Obama has recently declared that, in light of Congress' inability or unwillingness to legislate with respect to important issues, "I have got a pen and I have got a phone," and that he would use his pen and phone to advance his policies without the help of Congress.20 1 Obama has thus, for example, announced, without consultation with Congress, that the executive branch would stop deporting children present in the country illegally,20 2 which some argue is tantamount to refusing to enforce federal immigration laws, at least in a significant categorical respect.20 3 Also controversial is his (as of this time) forthcoming executive order that would raise the minimum wage for federal contractors' employees without any legislation, 20 4 a move justified, as defenders argue,205 only by vaguely delegated authority in the Federal Property and Administrative Services Act of 1949, that charges the executive to promote

"economy and efficiency" in procurement.20 6 Perhaps more relevant-though less controversial for being so familiar-is the increasing use of military power by Presidents since the end of the Second World War without congressional approval. The argument, for example, that wars are illegal without Congress first declaring them is generally deemed so illegitimate-to the point of being almost adorably quaint-such that even those generally against U.S. involvement abroad generally bypass the argument altogether, notwithstanding historical evidence that the Declare War Clause was, absent the need to repel a sudden attack, intended to ensure Congress and not the executive commit the nation to war.20 7 Even half-way measures meant to preserve meaningful congressional constraints on executive war-making powers, such as the War Powers Resolution, have been largely ignored.208 Thus, the Obama administration has asserted that it may conduct airstrikes against Syria without congressional approval.20 9

Obama is violating the SOP – SOP key to stop despotism

Will 14

(George, Obama Violates Separation of Powers, 23 Jun 2014, https://www.newsmax.com/GeorgeWill/Obama-Separation-Powers-Congress/2014/06/23/id/578644/, JZG)

What philosopher Harvey Mansfield calls "taming the prince" — making executive power compatible with democracy's abhorrence of arbitrary power — has been a perennial problem of modern politics. It is now more urgent in America than at any time since the Founders, having rebelled against George III's unfettered exercise of "royal prerogative," stipulated that presidents "shall take care that the laws be faithfully executed." Serious as are the policy disagreements roiling Washington, none is as important as the structural distortion threatening constitutional equilibrium. Institutional derangement driven by unchecked presidential aggrandizement did not begin with Barack Obama, but his offenses against the separation of powers have been egregious in quantity, and qualitatively different. Regarding immigration, healthcare, welfare, education, drug policy, and more, Obama has suspended, waived, and rewritten laws, including the Affordable Care Act. It required the employer mandate to begin this year. But Obama wrote a new law, giving to certain-sized companies a delay until 2016, and stipulating that other employers must certify they will not drop employees to avoid the mandate. Doing so would trigger criminal perjury charges; so, he created a new crime, that of adopting a business practice he opposes. Presidents must exercise some discretion in interpreting laws, must have some latitude in allocating finite resources to the enforcement of laws, and must have some freedom to act in the absence of law. Obama, however, has perpetrated more than 40 suspensions of laws. Were presidents the sole judges of the limits of their latitude, they would effectively have plenary power to vitiate the separation of powers, the Founders' bulwark against despotism.

2NC SOP Low Now

SCOTUS ruling on marriage crushes SOP
Dixon 6-26

(Kristal, Loudermilk: Court Violated Separation of Powers In Marriage Equality Ruling, June 26, 2015, Patch.com, http://patch.com/georgia/cartersville/loudermilk-court-violated-separation-powers-marriage-equality-ruling-0, JZG)

U.S. Representative Barry Loudermilk (R-Cassville) is blasting the U.S. Supreme Court's decision to make marriage equality legal across the country. Loudermilk, who represents Georgia's 11th District in the U.S. House of Representatives, said in a statement that the court "has ignored the foundational intentions of the Constitution." Marriage, he added, has always been recognized as part of a "religious institution," something American founding fathers have deemed to be outside the realm of the federal government. "Therefore, any recognition or licensing of marriage by government was left within the power of the states," he said. "In this decision, the Supreme Court fully stepped upon the principle of federalism and the rights and will of the states regarding social and religious issues. Once again the courts have overstepped their boundaries and have engaged in social engineering by violating the basic premise of separation of powers and the will of the people."

2NC AT Non-Delegation DA

2NC Paris Doesn't Solve

Paris can't solve warming
Friedman 14

(Lisa - E&E reporter, The pending Paris climate deal may not keep the world under 2 C -- does that mean failure?, August 21, 2014, http://www.eenews.net/climatewire/stories/1060004756, JZG)

A growing number of leaders are openly acknowledging that a 2015 international agreement to avert catastrophic global warming will surely fall short of what's needed to achieve that goal. But another consensus is also forming among top U.S. experts: that shortfall is OK, as long as the deal puts all major climate polluters on a serious, upward and transparent path to cutting greenhouse gases. "The big question the public is going to ask is: Are all the major emitters participating? And are they doing enough to help solve this challenge?'" said Peter Ogden, director of international climate and energy policy at the Center for American Progress and a former chief of staff to U.S. Special Envoy for Climate Change Todd Stern. The new agreement to be signed in Paris, to take effect in 2020, will essentially replace the 1997 Kyoto Protocol. Unlike Kyoto, the Paris deal will demand action from everyone, and not just from wealthy industrialized countries. But in order to make that palatable for governments, negotiators are moving away from a traditional top-down approach in which scientists dictate what is needed to save the planet and countries are allotted targets accordingly. Instead, consensus has built around a more voluntary approach in which governments figure out how much they can cut and offer it up as a pledge. Those "intended nationally determined contributions" are due early next year. In interviews with former negotiators and longtime observers of the U.N. climate negotiations, not one person expressed confidence that the sum of countries' targets will be enough to keep rising global temperatures below the internationally agreed 2-degree-Celsius "guardrail" between dangerous and extremely dangerous warming. "If that were the case, it would be a stunning surprise. I don't think anyone expects that," said Joy Hyvarien, executive director of the U.K.-based Foundation for International Law and Development (FIELD). Recently, the Massachusetts Institute of Technology used a sophisticated climate model to come to the same result. Studies show a continuing emissions rise In a report, "Expectations for a New Climate Agreement," researchers reviewed the likely pledges and found that instead of greenhouse gas emissions scaling back dramatically, they would actually result in levels of carbon dioxide equivalent in the atmosphere exceeding 580 parts per million by the end of the century.

Paris wont get us below 2C
Neslen and Mathiesen 15

(Arthur Neslen and Karl Mathiesen, Paris climate pledges 'will only delay dangerous warming by two years', 3 June 2015, http://www.theguardian.com/environment/2015/jun/03/paris-climate-pledges-will-only-delay-dangerous-warming-by-two-years, JZG)

Pledges made by countries to cut their carbon emissions ahead of a crunch climate summit in Paris later this year will delay the world passing the threshold for dangerous global warming by just two years, according to a new analysis. The research, led by a former lead author on the UN's climate science panel, found that the submissions so far by 36 countries to the UN would likely delay the world passing the threshold until 2038, rather than 2036 without the carbon cuts. However, more than 150 countries have yet to submit their carbon pledges despite a deadline of the end of March. While most are relatively small emitters, commitments by big polluters such as India could significantly change the picture. The analysis for the Guardian by the non-profit Climate Analytics comes as climate negotiators from nearly 200 countries meet in Bonn and academics warned the agreement hoped for in Paris would not keep temperatures to UN's target of holding temperature rises below 2C above pre-industrial levels. None of the pledges, known in UN jargon as Intended Nationally Determined Contributions (INDCs), were found to be in line with the 2C limit, when a fair global distribution of emissions cuts was factored into countries' offers. Pledges made by Russia and Canada would be consistent with potentially catastrophic warming of between 3-4C if the pledges were matched with a similar level of ambition globally, according to the research. "The action and ambition we have seen to date is far from sufficient and unless it is rapidly accelerated, the difficulties of

limiting warming below 2C will be extreme," said Dr Bill Hare, the founder of Climate Analytics and a former Intergovernmental Panel on Climate Change (IPCC) lead author. But he added: "What we see in the economic and technological potential for emissions reductions gives us hope that if governments are willing to move fast enough in the next 5-10 years, we might still make it. All that is lacking is political will." Achim Steiner, the director of the UN Environment Programme, said this week that he would measure countries' commitments by "looking at whether the pledges add up to anything that comes close to ensuring that we at least have the possibility to stay within a 2C scenario." The new analysis suggests an uphill struggle. Some civil society groups complain that the focus on national pledges distracts attention from the planet's fast-dwindling carbon budget and the UN Framework Convention on Climate Change's (UNFCCC) goal of stabilising atmospheric greenhouse gas emissions at safe levels. "When the UNFCCC started 21 years ago, atmospheric CO2 concentration were at 300 parts per million (ppm). Today they are at 400 ppm, and increasing faster each year than the one before," said Michael Wadleigh, the founder of the Unesco-supported Homo Sapiens Foundation, and director of the Oscar-winning film, Woodstock. "Despite all the UNFCCC's negotiated agreements, the body is failing in its key objective." Reto Knutti, a lead author for the IPCC's last major climate report, said that scientists would prefer the world to set global carbon quotas – rather than percentages of national emissions set against baseline years – but admitted that this was a hard sell. "We presented carbon budget schemes in Warsaw two years ago [the UN climate summit in 2013], and the policy-makers all said 'we agree and its urgent'. But at the same time, they tried to tweak things so they had to do as little as possible," he said. Nicholas Stern, the author of aninfluential review of the economics of climate change for the UK government, said that the Paris summit would be crucial in at least setting a "floor of ambition" "The question is how fast can you ramp up," he said. "There's no doubt that [INDCs] are coming in too high for 2030 for 2C [of warming]. That's crystal clear. Much too high. But if we get some movement in policies, if we get much stronger innovation of the kind they are trying to encourage, then they could be ramped up quite quickly." Christiana Figueres, the head of the UN climate secretariat, acknowledges Paris is unlikely to meet 2C but said future rounds of pledges could meet the target. "You don't run a marathon with one step," Reuters reported her as as saying.

2NC No EPA Regs Now

States thump climate regulations

Foran 15

(Clare, Mike Pence Says Indiana Will Buck Obama's EPA Climate Plan, 6-24-15, http://www.nationaljournal.com/energy/mike-pence-says-indiana-will-buck-obama-s-epa-climate-plan-20150624, JZG)

June 24, 2015 Indiana Gov. Mike Pence says his state won't comply with the Environmental Protection Agency's effort to curb carbon dioxide from power plants—unless the administration dramatically overhauls its regulation. Mike Pence sent a letter to the President Obama on Wednesday with that warning, saying that unless proposed EPA regulations for power plants are significantly "improved" before the agency finalizes them, Indiana will buck the rule. That declaration arrives on the heels of a major push from Senate Majority Leader Mitch McConnell urging governors not to comply with the regulations, which stand at the heart of Obama's effort to tackle global warming and shore up a legacy on the environment before he leaves office. In his letter to the White House, Pence did not explicitly outline what changes he hopes to see from EPA, but claimed that the regulation "fails to strike the proper balance between the health of the environment and the health of the economy," and warned that it will drive up the cost of electricity. "As Governor of Indiana, I am deeply concerned about the impacts of the Clean Power Plan on our state, especially our job creators, the poor, and the elderly who cannot afford more expensive, less reliable energy. I reject the Clean Power Plan and inform you that absent demonstrable and significant improvement in the final rule, Indiana will not comply," Pence wrote, adding that Indiana will "reserve the right to use any legal means available to block the rule from being implemented." Indiana joined a coalition of states that sued the administration in a failed effort to block the regulations before they were made final. And this is not the first instance when a Republican governor has pushed back against the rule. Oklahoma Gov. Mary Fallin signed an executive order blocking her state from complying with the power-plant regulations. Wisconsin Republican Gov. Scott Walker, a 2016 presidential prospect, has also vowed to fight the regulations in court.

SCOTUS ruling crushed obama's momentum for the green agenda
GUILLÉN 6-29

(Alex, Supreme Court deals blow to Obama's green agenda, 6/29/15, http://www.politico.com/story/2015/06/supreme-court-epa-mercury-emissions-obama-environment-119541.html, JZG)

The Supreme Court dealt President Barack Obama's environmental agenda a major setback on Monday, ruling that the Environmental Protection Agency had erred in writing its 2012 limits on mercury pollution from power plants. The decision could alter the administration's strategy for rolling out an even grander environmental initiative — EPA's first-ever regulations on power plants' greenhouse gas emissions, which had been expected later this summer. Monday's ruling capped a session that delivered mixed signals regarding how the court will judge the inevitable challenge to that landmark climate rule. Even standing alone, Monday's ruling on EPA's Mercury and Air Toxics Standard, one of the administration's major green initiatives, comes as a blow to the agency, which was confident it was on solid legal ground after an unequivocal appellate court win in 2014. EPA said in a statement it was "disappointed" the court did not uphold the rule, but it was still committed to implementing the mercury controls that were now remanded to the U.S. Court of Appeals for the District of Columbia Circuit. And agency spokeswoman Melissa Harrison noted that because "this rule was issued more than three years ago, investments have been made and most plants are already well on their way to compliance." But congressional Republicans and other critics of EPA's agenda appeared emboldened by Monday's ruling as a rebuke for the administration's broader agenda. "Today's decision firmly rejects the Obama administration's circumvention of the democratic process and restores a dose of accountability to the increasingly unaccountable executive branch," House Majority Leader Kevin McCarthy (R-Calif.) said in a statement. He added that the decision "vindicates the House's legislative actions to rein in bureaucratic overreach and institute some

common sense in rule-making." The ruling, which greens had hoped would bolster the legal case for Obama's upcoming climate change rules, saps some of the president's momentum after last week's crucial rulings supporting Obamacare and gay marriage.

2NC Warming Impact Defense

( ) Warming not real- recent temperatures show no increase
Happer '12

(William is a professor of physics at Princeton. "Global Warming Models Are Wrong Again", Wall Street Journal, 3/27/12, http://online.wsj.com/article/SB10001424052702304636404577291352882984274.html)

What is happening to global temperatures in reality? The answer is: almost nothing for more than 10 years. Monthly values of the global temperature anomaly of the lower atmosphere, compiled at the University of Alabama from NASA satellite data, can be found at the website http://www.drroyspencer.com/latest-global-temperatures/. The latest (February 2012) monthly global temperature anomaly for the lower atmosphere was minus 0.12 degrees Celsius, slightly less than the average since the satellite record of temperatures began in 1979

( ) Warming won't cause extinction---mitigation and adaptation solve
Mendelsohn '9

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

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

2NC EPA Regs Hurt Econ

EPA regs hurt the economy
Harder 15

(Amy, Obama Administration Readies Big Push on Climate Change, June 9, 2015, http://www.wsj.com/articles/obama-administration-readies-big-push-on-climate-change-1433873269, JZG)

People on either side of the fight hotly contest to what degree—or whether at all—the regulations will create new costs on the U.S. economy. EPA Administrator Gina McCarthy has averaged about two speeches a week on climate change since the agency first proposed the carbon rule for power plants a little more than a year ago, according to EPA. Many of the speeches, which include addresses in front of oil and natural gas industry executives around the world, focus on what Ms. McCarthy describes as the positive economic impact of new regulation. "Strategies to reduce carbon can double as investments that return value for your operations as they evolve over time," Ms. McCarthy told an audience of energy executives at a conference in Houston in late April about the agency's proposed rule cutting carbon from the utility sector. Other experts maintain the economic upshots of regulations aren't as clear-cut. "There is no question that regulations are shifting supply and demand curves, so they are increasing costs," said Susan Dudley, who was a top regulatory official in the White House during the George W. Bush administration. "Some of those costs are encouraging cleaner alternatives; sometimes they're shifting things to other countries. Fully understanding the costs and benefits is really challenging."

Delegation CP

This CP would be run against affirmatives whose agent was the Congress- the CP delegates rule making authority to an executive agency, and then has the agency do the plan. The primary net benefit is Politics- delegation allows congress to maximize credit and minimize blame for controversial issues.

Here's how criddle explains the due process clause applied to delegation

The Due Process Clause's application to congressional lawmaking has important implications for legislative delegations to administrative agencies. Specifically, due process of lawmaking prohibits Congress from entrusting lawmaking authority to agencies outside the constraints of liberty-conserving administrative procedures. In other words, to satisfy due process, administrative rulemaking procedures must be sufficiently fair and deliberative to ensure, at a minimum, that an agency's institutional capacity for arbitrariness in the administrative process is not manifestly greater than Congress's capacity for arbitrariness in the legislative process. n229 While due process does not require any "particular form of procedure" in rulemaking proceedings, n230 Congress must take care to prescribe procedural [*170] safeguards that will prevent delegations of lawmaking authority from introducing domination that would subvert the republican ideals implicit in the checks and balances of Articles I and II. n231

1NC Delegation CP

The counterplan avoids politics- Public choice theory proves

Williams, Associate Professor of Law, Saint Louis University School of Law 2K

(*Stanford Law Review, Vol. 38*: DOUGLAS: SYMPOSIUM CONGRESS: DOES IT ABDICATE ITS POWER?: CONGRESSIONAL ABDICATION, LEGAL THEORY, AND DELIBERATIVE DEMOCRACY. published in 2000.)KalM

The question of whether and why Congress abdicates power is a complex one. n4 In Part I, I consider the distinction Dr. Fisher draws between abdication and delegation. I conclude that, with respect to war and budgetary matters, congressional behavior is different from ordinary forms of delegation. Nonetheless, delegation poses some of the same general concerns that attend Dr. Fisher's claim of abdication. For that reason, it makes sense to consider these behaviors as linked, with an initial hypothesis that they stem from the same general conditions. [*76] In Part II, I explore the question of why Congress might willingly choose to give away power. In my view, partial explanations or factors of significance are about the best one can hope to identify in pursuing this inquiry. I will first argue that, to the extent that Congress may be said to have abdicated its constitutional authority, a public choice analytic supplies a useful starting point. On this view, **individual Members of Congress will act in ways that maximize their opportunities for reelection**. In some circumstances, **choices that maximize reelection opportunities may compromise institutional powers and responsibility**. In cases of this sort, we should expect the interests of individual members in advancing their own fortunes to dominate over the members' interest in advancing institutional interests.

Extensions

Solvency-Due Process

Cp text: Congress should delegate authority to the nsa under the due process clause of the constitution

Due Process is the best method of delegation
Criddle Associate law professor 11

Evan WHEN DELEGATION BEGETS DOMINATION: DUE PROCESS OF ADMINISTRATIVE LAWMAKING
From the university of Georgia Law Review

As developed in the foregoing discussion, the due process model promotes the Constitution's republican design by conserving liberty in the administrative state. While reasonable minds might disagree about which particular safeguards are necessary to safeguard individual liberty when Congress entrusts lawmaking powers to administrative agencies, the three-part due process model outlined in the preceding sections best captures the Court's answer to these republican concerns.

This due process model is superior to both the traditional nondelegation doctrine and the current delegation doctrine because it allows Congress to harvest the benefits of broad delegation while checking the attendant threats to individual [*186] liberty. Like the traditional nondelegation doctrine, the due process model takes seriously the republican values embodied in constitutional checks and balances, but it does not require Congress to make every meaningful policy decision within those bounds. Instead, the due process model reconciles administrative lawmaking with the Constitution's republican design by requiring Congress to establish a minimalist substantive standard, combined with administrative procedures and judicial review to further limit potential agency arbitrariness. This approach is more principled than the traditional nondelegation doctrine because it sidesteps the dubious proposition that Congress does not delegate legislative powers to administrative agencies. n313 It also clarifies why congressional delegations need only establish an intelligible principle rather than a fully determinate criterion to pass constitutional muster at a substantial level. n314

For similar reasons, the due process model is vastly superior to the new nondelegation doctrine. n315 Both the new nondelegation doctrine and the due process model support the principle that federal agencies lack inherent authority to make law absent a delegation from Congress through legislation or from the President through subdelegation. The due process model is less susceptible to judicial domination than the new nondelegation doctrine, however, because it does not deputize courts to narrow broad congressional delegations through canons of statutory interpretation. n316 The due process model leaves the responsibility to establish an intelligible principle where it belongs: with Congress and the President, subject to the checks and balances of Articles I and II. The Judicial Branch's role, in contrast, is limited to evaluating whether Congress has established (1) an intelligible principle, (2) fair and deliberative administrative procedures, and (3) structural constraints such as political accountability and judicial review.

Delegation agencies have to abide by the due process clause, solves case
Criddle Associate law professor 11

Evan WHEN DELEGATION BEGETS DOMINATION: DUE PROCESS OF ADMINISTRATIVE LAWMAKING
From the University of Georgia Law review

A third area where the due process model could inform federal administrative law is agency self-regulation. Prior to American Trucking, some legal scholars argued that courts should allow administrative agencies to narrow unconstitutionally broad congressional delegations by establishing substantive standards to limit their own discretion. n353 The Court soundly rejected this position, however, in American Trucking. n354 Just as federal courts cannot cure unconstitutional delegations by supplying intelligible principles of their own design, n355 agency self-regulation does not adequately address the problem of unfettered administrative agency authority. The problem, as the Court recognized, is that an administrative agency's "choice of which portion of [Congress's delegated] power to exercise . . . would itself be an exercise of [*197] [unchecked] legislative authority." n356 If Congress does not provide an intelligible principle to guide agency discretion at the outset, principles of procedural and structural due process are ineffectual as safeguards against administrative arbitrariness because agencies, like courts, lack an independent standard against which to evaluate their actions. Although agency self-regulation might be desirable from a republican perspective to limit arbitrariness downstream at the adjudication stage, it does not fully address the domination concerns that arise when Congress delegates unfettered lawmaking authority to an agency at the rulemaking stage. An agency cannot, therefore, "cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute." n357

On the other hand, agency self-regulation may remedy Congress's failure to prescribe appropriate administrative procedures. Procedural due process asks whether an agency has engaged in a fair and deliberative process leading to a rational explanation of the legal and factual basis for the agency's action. n358 When courts conduct this inquiry, it should make little difference whether an agency's procedures derive from the APA, other federal legislation, or administrative self-regulation. Although agencies cannot exercise delegated lawmaking powers without employing minimally fair and deliberative procedures, Congress need not be the one to establish those procedures. As long as an agency's lawmaking procedures satisfy the minimum requirements of due process, congressional delegation does not lead to domination. n359

The due process model thus suggests that administrative agencies may cure procedural defects in congressional delegations by binding themselves prospectively to employ fair and deliberative lawmaking procedures. As recognized in American Trucking, however, no amount of agency self-regulation, no matter how well- intentioned, can compensate for Congress's failure to establish a substantive intelligible principle to constrain agency discretion. n360

Solves case
Criddle Associate law professor 11

Evan WHEN DELEGATION BEGETS DOMINATION: DUE PROCESS OF ADMINISTRATIVE LAWMAKING
Published in the university of Georgia law review

This Article has argued that federal courts should abandon the traditional nondelegation doctrine and embrace due process as the primary constitutional constraint on congressional delegation. According to the due process model, Congress may delegate lawmaking authority to administrative agencies if it channels that authority through substantive, procedural, and structural safeguards that prevent delegation from manifestly increasing the federal government's capacity for arbitrary lawmaking, the principal republican concern driving traditional nondelegation principles. Congressional delegations meet this standard when they combine (1) an intelligible principle to guide agency discretion together with (2) deliberative procedural requirements and (3) structural constraints, such as political accountability and judicial review. In most contexts, the APA easily satisfies procedural due process, avoiding the need for further judicial intrusion into [*212] administrative rulemaking procedure. Where an agency's lawmaking procedures do not satisfy the constitutional requirements of due process, however, courts should withhold Chevron deference and, where appropriate, set aside regulations to safeguard the public from administrative domination. The due process model thus takes seriously the nondelegation doctrine's republican ideals while reframing the Court's current delegation jurisprudence to better reconcile congressional delegation in the modern administrative state with the Constitution's enduring commitment to individual liberty.

Solvency-Generic

Delegation solves best

Posner and Vermeule, Professors of Law University of Chicago. 02 (Eric and Adrian Vermeule: *University of Chicago Law Review:* "Interring the Nondelegation Doctrine" published Fall, 2002)KalM

II. Delegation in Political and Economic Theory The burden of Part I was showing that a nondelegation rule lacks any moorings in formal constitutional sources. For some, that is conclusive; nothing more need be said about the consequences of delegation or of a nondelegation rule. For others, however, constitutional argument properly includes consequentialist and functional considerations; many nondelegation proponents appeal to those considerations as well. In this Part we add a consequentialist analysis to the formal argument of Part I. We argue here that there is no successful consequentialist or functional justification for recognizing constitutional restrictions on statutory grants of authority to executive agents. Initially, we need to clear up a terminological confusion created by the literature's metaphoric use of the word "delegation." In debates about the nondelegation doctrine, supporters and opponents alike usually use the word "delegation" to include any transfer of authority from Congress to executive agents. We have avoided this usage because under our constitutional argument a statutory grant of authority [*1744] to executive agents is formally not a delegation of legislative power under the Constitution. The executive's use of that authority is an instance of executive power, not of legislative power. In this Part, however, we will adopt the usage of the literature, for to do otherwise would require labored verbal manipulations. Thus, when we use the word "delegation," we mean to include statutory grants of authority to executive agents. Critics of delegation argue that Congress delegates for nefarious purposes--to make transfers to interest groups and to avoid responsibility for difficult political decisions. These arguments appeal to widespread conspiratorial intuitions about government, and so before addressing the arguments directly we should emphasize the peculiarity of attacking this particular instrument of government power, whatever one's views are about the motives of elected officials. Delegation is ubiquitous in public and private life. The most familiar example is the employment relationship. When managers delegate to employees, they expect that the employees will specialize in some area for which the managers have responsibility. Delegation is just as common in government: mayors, governors, judges, agency heads, police captains, and countless other officials delegate power to subordinates. The ubiquity of delegation is due to the need for (a) authority and (b) division of labor, in any complex institution, whether public or private. All institutions must take direction from a person, or a small group of people, but the leader of an institution cannot possibly perform all of its tasks directly. Instead, the leader or principal delegates broad authority to agents. The principal sometimes controls agents by giving them detailed instructions but more often by giving them a vague goal--"maximize profits" or "sell lots of widgets"--and then rewarding them on the basis of an ex post evaluation of the agent's performance. Although principals sometimes give bad instructions to agents, or fail to discipline them properly, no one thinks that delegation has bad effects in itself. No one argues that shareholders should not delegate; people argue about whether existing compensation packages provide the right kind of incentives for executives. No one argues that the mayor should not delegate; they argue about whether the mayor has delegated to the right people, too much or too little. The reason no one makes these arguments, except in rare cases, is that the value of delegation is too widely understood; it is simply an aspect of the division of labor that underlies both market and nonmarket institutions. Given the self-evident value of delegation, we should not be surprised to find that the United States Congress delegates its powers--using "delegate" in the conventional sense of enacting statutes that [*1745] grant agents legal authority. The critics of delegation need to explain why delegation by Congress raises special functional objections, objections that

cannot be applied generally to all congressional action, and objections that cannot be applied to the countless routine delegations that occur in any complex institution.

Delegation solves best: agencies have expertise

Posner and Vermeule, Professors of Law University of Chicago. 02 (Eric and Adrian Vermeule: *University of Chicago Law Review:* "Interring the Nondelegation Doctrine" published Fall, 2002)KalM

The welfarist argument by the critics of delegation boils down to the claim that social welfare would be greater if Congress made all the specific policy choices rather than delegating that power to agencies. This claim is like an argument that the owner of a corporation should design the corporation's products rather than hiring engineers and marketing experts. The owner knows that the agents might make specific choices that he would not make himself, but by **rewarding** the **agents** on the basis of an ex post evaluation of performance, he **ensures** that **they act** roughly in his interest **while at the same time exploiting their expertise** and the other benefits of a division of labor.

PTX I/L

Delegation doesn't link to politics

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(DOUGLAS: SYMPOSIUM CONGRESS: DOES IT ABDICATE ITS POWER?: CONGRESSIONAL ABDICATION, LEGAL THEORY, AND DELIBERATIVE DEMOCRACY. published in 2000.)KalM

There are number of reasons to question this logic. First, it is precisely **on issues "of particular local interest" that legislators are unlikely to delegate**, preferring instead to push for the favored position in order to gain credit. n127 Delegation is most likely the product of intense conflict among constituencies - a circumstance in which a delegation allows legislators to blame agencies for adverse constituent effects, while at the same time claiming credit for delivering the goods to benefited constituencies.

Delegation eliminates legislators' accountability

Krent, Associate Professor, Chicago-Kent College of Law, 94 (Harold, Book Review: Delegation and Its Discontents: Power Without Responsibility, Columbia Law Review Column 94, L. Rev, 710)

Yet members of Congress can claim credit for attempting to solve the problems of the environment and the economy by authorizing agencies to tackle the problems, and then distance themselves from the ensuing regulation if unfavorable to their constituents. Delegation permits legislators to "look good" to their constituents without necessarily providing tangible benefits (pp. 8687). [n20] Congress may too readily distribute rights without imposing [*715] commensurate obligations, concealing the tradeoffs that must necessarily follow (p. 9). Indeed, Schoenbrod further observes that members of Congress might try to benefit politically by excoriating an agency's performance before some constituents while taking credit for the agency's efforts before others (pp. 8894). Schoenbrod explains that "just as deficit spending allows legislators to appear to deliver money to some people without taking it from others, delegation allows them to appear to deliver regulatory benefits without imposing regulatory costs. It provides "a handy set of mirrors ... by which a politician can appear to kiss both sides of the apple.'" (p. 10). [n21] Citizens are confused by the game and fail to hold legislators accountable for the resulting policy choices by administrators. In short, delegation permits members of Congress to maximize credit while minimizing blame for legislation, and the less that legislators appear to make the important policy choices that govern the nation, the more estranged from politics citizens may become Schoenbrod also notes that delegation of lawmaking authority in detailed statutes (which he terms "narrow delegation," p. 78) can be as problematic as open-ended delegation to agencies to regulate in the public interest (pp. 7881). [n22] Despite the welter of subsidiary rules in detailed laws such as the Clean Air Act, delegation harms the public whenever Congress enacts legislation setting forth goals such as "a safe environment" without stating clearly how those goals are to be met. The accuracy of the gloomy picture Schoenbrod portrays is of course open to dispute. Members of Congress often act from ideology and not just from the desire to maximize their chance for reelection, as Schoenbrod recognizes (pp. 8588 & n.23). Citizens may vote for representatives not only on the basis of benefits brought home to their districts, but also on the basis of the candidates' political vision. Some voters also perceive the connection between Congress and agencies and therefore hold legislators responsible for the exercise of delegated authority. Moreover, the nexus between delegation and rent-seeking is inexact: Congress at times is quite specific in approving funding for bridges or particular weapon systems that are likely not needed; and some agencies, whether the Federal Reserve Board or the Securities and Exchange Commission, implement statutory directives in a way that may well serve the public interest. Therefore, prohibiting all delegation might not enhance [*716] public welfare, for lawmaking by Congress, at least at times, might be worse. [n23] Nonetheless, Schoenbrod's skepticism is partly warranted. Legislators often adapt their conduct in office to maximize the chance for reelection, or at least to appear conscientious in the public eye, and delegation of lawmaking authority offers a vehicle for furthering such goals. Delegation has resulted in the rent-seeking Schoenbrod describes, as his informative explications of the navel orange marketing order (pp. 4957) and the Clean Air Act (pp. 5881) demonstrate. The risk of abuse is particularly acute when Congress does not specify the governing rules. Thus, although the extent of abuse is debatable, few would reject Schoenbrod's central thesis that delegation often confers benefits on concentrated interests.

Pres Powers I/L

Executive delegation increases presidential powers
Moe Professor of political science 99

Terry Unilateral action and presidential power From Presidential Studies Quarterly (a peer reviewed Journal) http://home.uchicago.edu/~whowell/papers/UnilateralAction.pdf

Yet statutory constraint cannot be counted on to work especially well as a check on unilateral action by presidents. In the first place, legislators may actually prefer broad delegations of authority on many occasions, granting presidents substantial discretion to act unilaterally. This can happen, for instance, (1) when their policy goals are similar to those of presidents; (2) when they are heavily dependent on the expertise and experience of the administration; (3) when they want to avoid making conflictual decisions within the legislature and thus find it attractive to "shift the responsibility" to the executive; (4) when Congress, as a collective institution, really does not have specific preferences and can only decide on the broad outlines of a policy;(5)when, in complex policy areas with changing environments, it is impossible to design a decent policy that promises to meet its objectives unless substantial authority is delegated to the executive; and (6) when certain policies require speed, flexibility, and secrecy if they are to be successful (Moe 1990; Epstein and O'Halloran 1999). Most of these conditions, we should point out, are more likely to be met in foreign than domestic policy, so there is good reason to expect broad delegations to be more common in that realm.

When delegations are broad, presidential powers of unilateral action are at their greatest. One might be tempted to think that they are also innocuous in their effects on the balance of institutional power—for, as long as presidents stay within the broad bounds set by statute, they are simply following the will of Congress, and all is as it should be. This would be something of a misconception ,though. The key issue is :who actually has power to make policy for the nation? And in these cases, that power would rest overwhelmingly with presidents, for with broad delegations of authority, they would be the ones making virtually all the key choices about the content, meaning, and consequences of policy. Whether or not presidents stay within congressional boundaries, then, delegation itself puts expanded powers into their hands that shift the institutional balance in their favor.

Delegation increases agencies the president can control: raises pres powers
Moe Professor of political science 99

Terry Unilateral action and presidential power From Presidential Studies Quarterly http://home.uchicago.edu/~whowell/papers/UnilateralAction.pdf

Finally, whatever the discretion contained in specific pieces of legislation, and whatever opportunities for shirking they open up, it is crucial to recognize that the presidentisgreatlyempoweredbythesheerproliferationofstatutesovertime.Inpart, the reasons are pretty obvious. When new statutes are passed, almost whatever they are, they increase the president's total responsibilities and give him a formal basis for extending his authoritative reach into new realms. At the same time, they add to the total discretion available for presidential control, as well as to their sources contained within the executive. Less obviously, though, the proliferation of statutes creates substantial

ambiguity about what the "take care "clause ought to mean in operation, ambiguity that presidents can use to their great advantage (Corwin 1973, 1984). While it may seem that theburgeoningcorpusoflegislativerequirementswouldtiethepresidentupinknots, the aggregate impact is liberating. For the president, as chief executive, is responsible for all the laws, and inevitably the laws turn out to be interdependent and conflicting in ways that the individual statutes themselves do not recognize. In the aggregate, what they require of him is ambiguous. The president's proper role, as would be true for any executive, is to rise above a myopic focus on each statute in isolation, to coordinate policies by taking account of their interdependence, and to resolve statutory conflicts by balancing their competing requirements. All of this affords him enormous discretion to impose his own priorities on government unilaterally and to push out the boundaries of his own power—claiming all the while that he is faithfully executing the laws. Even though presidents are mere executives, then, charged with taking care that the laws be faithfully executed, Congress cannot be expected to use statutory constraints with great effectiveness in restricting the expansion of presidential power.

Pres Powers Good

Presidential powers good

Posner and Vermeule, Professors of Law University of Chicago. 02 (Eric and Adrian Vermeule: *University of Chicago Law Review:* "Interring the Nondelegation Doctrine" published Fall, 2002)KalM

(2) If it did happen, it might not be bad. The legislatures of many liberal democracies around the world have granted the executive broad rulemaking powers, of varying scope, duration, and legal effect. n85 Sometimes, of course, these practices or episodes represent executive usurpation of legislative authority. **Sometimes they represent a sensible social response to some crisis--war, economic chaos, or social unrest--best resolved by executive processes**. Sometimes, less dramatically, they represent a reasonable judgment by the legislature that the opportunity costs of controlling policy formulation are too high, in light of other things legislatures want to do. Even if Congress granted the president broader rulemaking powers than it already has--thereby sliding the rest of the way to the bottom of the slope--there is little reason to suppose, ex ante, that the grant would represent legislative abdication to an engorged presidency, rather than a desirable response to contemporary social needs. Much more could be said about this essentially empirical and predictive question; Part II amplifies the good reasons supporting delegation to executive agents. Suffice it to say here that the current literature in comparative politics finds that executive usurpation or legislative abdication is rarely the best explanation for broad legislative grants of authority to the executive. n86

Democracy I/L

Delegation increases democratic accountability

Posner and Vermeule, Professors of Law University of Chicago. 02 (Eric and Adrian Vermeule: *University of Chicago Law Review:* "Interring the Nondelegation Doctrine" published Fall, 2002)KalM

B. Democratic Arguments Some critics of delegation argue that delegation violates democratic values. Their main argument focuses on accountability. Suppose that Congress delegates certain powers to an agency. Those who want to influence policy will make arguments to the agency, not to Congress. Those who are disappointed by the agency's decisions will appeal to the agency, not to Congress. Members of Congress are thus not accountable for political outcomes under their responsibility. But in a wellfunctioning democracy those who are ultimately responsible for policy should be directly accountable to those who are affected by it. n97 The problem with this argument is that Congress is accountable when it delegates power--it is accountable for its decision to delegate power to the agency. If the agency performs its function poorly, citizens will hold Congress responsible for the poor design of the agency, or for giving it too much power or not enough, or for giving it too much money or not enough, or for confirming bad appointments, or for creating the agency in the first place. And, as noted above, Congress is accountable not only in this derivative sense. Congress retains the power to interfere when agencies make bad decisions; indeed, it does frequently. n98

Nondel Solves- Circumvention DA

NonDelegation solves circumvention

Lemos, Assistant Professor at Cardozo School of Law 08 (Margaret: *Southern California Law Review:* ARTICLE: THE OTHER DELEGATE: JUDICIALLY ADMINISTERED STATUTES AND THE NONDELEGATION DOCTRINE published 2008) KalM

[*419] Nevertheless, it would be a mistake to say that the nondelegation doctrine is dead. n68 Individual Justices repeatedly have invoked the nondelegation doctrine in separate opinions. n69 Although they have failed to persuade a majority of the Court to strike down the statutes in question, on several occasions the Court has relied on the nondelegation doctrine as a reason for narrowly construing statutes that might otherwise pose a constitutional problem because of the lack of an intelligible principle to cabin agency discretion. n70 **The Court also has relied on the nondelegation principle to invalidate federal statutes that sought to circumvent** the "finely wrought" procedure for the enactment of legislation n71 by vesting power in the president to "cancel" select portions of a duly enacted bill, n72 or by giving a single chamber of Congress authority to invalidate executive action under a statutory delegation. n73 Moreover, to the extent the Court has attempted to explain its lackluster enforcement of the doctrine, it has pointed to functional reasons - such as the difficulty of drawing a coherent line between permissible and impermissible delegations - rather than any rejection of the constitutional principle itself. n74

NonDelegation CP

This CP you read if the affirmative uses an executive agency. The CP would strip that agency of rule making authority and have congress enact and oversee the plan.

1NC Nondelegation

Delegation annihilates democratic accountability

David **Schoenbrod**, Professor of Law, New York Law School, Adjunct Scholar, Cato Institute, Former Staff Attorney and Co-director, Project on Urban Transportation, Natural Resources Defense Council, Former Director of Program Development, Bedford Stuyvesant Restoration Corporation, Former Staff Attorney, Association of the Bar, City of New York Committee on Electric Power and the Environment, Former Professor, Yale Law School, and Member, American Tree Farmers' Association, **and** Jerry **Taylor**, Director of Natural Resource Studies, Cato Institute, **2001** ("Delegation of Legislative Powers" – Legislative Handbook of the Cato Institute) http://www.cato.org/pubs/handbook/hb107/hb107-8.pdf

Delegation: **The Corrosive Agent** of Democracy The concern over congressional delegation of power is not simply theoretical and abstract, for **delegation does violence**, not only to the ideal construct of a free society, but also to the day-to-day practice of **democracy itself**. Ironically, delegation does not help to secure '' good government'' ; **it helps to destroy it**. Delegation Breeds Political Irresponsibility Congress delegates power for much the same reason that Congress ran budget deficits for decades. With deficit spending, members of Congress can claim credit for the benefits of their expenditures yet escape blame for the costs. The public must pay ultimately, of course, but through taxes levied at some future time by some other officials. Likewise, delegation allows legislators to claim credit for the benefits that a regulatory statute airily promises yet escape the blame for the burdens it will impose, because they do not issue the laws needed to achieve those high-sounding benefits. The public inevitably must suffer regulatory costs to realize regulatory benefits, but the laws will come from an agency that legislators can then criticize for imposing excessive burdens on their constituents. Just as deficit spending allows legislators to appear to deliver money to some people without taking it from others, delegation allows them to appear to deliver regulatory benefits without imposing regulatory costs. It provides, in the words of former Environmental Protection Agency deputy administrator John Quarles, '' a handy set of mirrors— so useful in Washington— by which politicians can appear to kiss both sides of the apple.'' Delegation Is **a Political Steroid for Organized Special Interests** As Stanford law professor John Hart Ely has noted, '' One reason we have broadly based representative assemblies is to await something approaching a consensus before government intervenes.'' The Constitution was intentionally designed to curb the '' facility and excess of law-making'' (in the words of James Madison) by requiring that statutes go through a bicameral legislature and the president. Differences in the size and nature of the constituencies of representatives, senators, and the president— and the different lengths of their terms in office— increase the probability that the actions of each will reflect a different balance of interests. That diversity of viewpoint, plus the greater difficulty of prevailing in three forums rather than one, makes it far more difficult for special-interest groups or baremajorities to impose their will on the totality of the American people. Hence, the original design effectively required a supermajority to make law as a means of discouraging the selfish exercise of power by well-organized but narrow interests. Delegation shifts the power to make law from a Congress of all interests to subgovernments typically representative of only a small subset of all interests. The obstacles intentionally placed in the path of lawmaking disappear, and the power of organized interests is magnified. That is largely because diffuse interests typically find it even more difficult to press their case before an agency than before a legislature. They often have no direct representation in the administrative process, and effective representation typically requires special legal counsel, expert witnesses, and the capacity to reward or to punish top officials through political organization, press coverage, and close working relationships with members of the appropriate congressional subcommittee. As a result, the general public rarely qualifies as a '' stakeholder'' in agency proceedings and is largely locked out of the decisionmaking process. Madison's desired check on the '' facility and excess of law-making'' is thus smashed. **Delegation Breeds the Leviathan State** Perhaps the ultimate check on the growth of government rests in the fact that there is only so much time in a day. No matter how many laws Congress would like to pass, there are only so many hours in a session to do so. Delegation, however, **dramatically expands the realm** of the possible by effectively '' deputizing'' tens of thousands of bureaucrats, often with broad and imprecise

missions to '' go forth and legislate.'' Thus, as columnist Jacob Weisberg has noted in the New Republic: '' As a laborsaving device, delegation did for legislators what the washing machine did for the 1950s housewife. Government could now **penetrate every nook and cranny of American life** in a way that was simply impossible before.''

Democratic accountability solves extinction and turns the case- produces better policy making

Peter **Montague**, Co-Director, Environmental Research Foundation, and Publisher, Rachel's Environmental & Health News, **1998** ("Democracy and the Environment" – Green Left Weekly) http://www.greenleft.org.au/back/1998/337/337p12.htm

The environmental movement is treading water and slowly drowning. There is abundant evidence that our efforts -- and they have been formidable, even heroic -- have largely failed. After 30 years of exceedingly hard work and tremendous sacrifice, we have failed to stem the tide of environmental deterioration. Make no mistake: our efforts have had a beneficial effect. Things would be much worse today if our work of the past 30 years had never occurred. However, the question is, Have our efforts been adequate? Have we succeeded? Have we even come close to stemming the tide of destruction? Has our vision been commensurate with the scale and scope of the problems we set out to solve? To those questions, if we are honest with ourselves, we must answer No. What, then, are we to do? This article is intended to provoke thought and debate, and certainly is not offered as the last word on anything. Openness Open, democratic decision-making **will be an essential component of any successful strategy**. After the Berlin wall fell, we got a glimpse of what had happened to the environment and the people under the Soviet dictatorship. The Soviets had some of the world's strictest environmental laws on the books, but **without the ability for citizens to participate** in decisions, or blow the whistle on egregious violations, those laws meant nothing. For the same reason that science cannot find reliable answers without open peer review, **bureaucracies** (whether public or private) **cannot achieve beneficial results** without active citizen participation in decisions and strong protection for whistle-blowers. Errors remain uncorrected, narrow perspectives and selfish motives are rewarded, and the general welfare will not usually be promoted. The fundamental importance of democratic decision-making means that our strategies must not focus on legislative battles. Clearly, we must contend for the full power of government to be harnessed toward achieving our goals, but this is quite different from focusing our efforts on lobbying campaigns to convince legislators to do the right thing from time to time. Lobbying can mobilise people for the short term, but mobilising is not the same as organising. During the past 30 years, the environmental movement has had some notable successes mobilising people, but few successes building long-term organisations that people can live their lives around and within (the way many families in the '30s, '40s and '50s lived their lives around and within their unions' struggles). The focus of our strategies must be on building organisations that involve people and, in that process, finding new allies. The power to govern would naturally flow from those efforts. **This question of democracy is not trivial**. It is deep. And it deeply divides the environmental movement, or rather movements. Many members of the mainstream environmental movement tend to view ordinary people as the enemy (for example, they love to say, "We have met the enemy and he is us".). They fundamentally don't trust people to make good decisions, so they prefer to leave ordinary people out of the equation. Instead, they scheme with lawyers and experts behind closed doors, then announce their "solution". Then they lobby Congress in hopes that Congress will impose this latest "solution" on us all. Naturally, such people don't develop a big following, and their "solutions" -- even when Congress has been willing to impose them -- have often proven to be expensive, burdensome and ultimately unsuccessful. Experts In the modern era, **open democratic decision-making is essential to survival**. Only by informing people, and trusting their decisions, can we survive as a human society. Our technologies are now too complex and too powerful to be left solely in the hands of a few experts. If they are allowed to make decisions behind closed doors, small groups of experts can make fatal errors. One thinks of the old Atomic Energy Commission (AEC) justifying above-ground nuclear weapons testing. In the early 1950s, their atomic fallout was showering the population with strontium-90, a highly radioactive element that masquerades as calcium when it is taken into the body. Once in the body, strontium-90 moves into the bones, where it irradiates the bone marrow, causing cancer. The AEC's best and brightest studied this problem in detail and argued in secret memos that the only way strontium-90 could get into humans would be through cattle grazing on contaminated grass. They calculated the strontium-90 intake of the cows, and the amount that would end up in the cows' bones. On that basis, the AEC reported to Congress in 1953, "The only potential hazard to human beings would be the ingestion of bone splinters which might be intermingled with muscle tissue in butchering and cutting of the meat. An insignificant amount would enter the body in this fashion." Thus, they concluded, strontium-90 was not endangering people. The following year, Congress declassified many of the AEC's deliberations. As soon as these memos became

public, scientists and citizens began asking, “What about the cows' milk?” The AEC scientists had no response. They had neglected to ask whether strontium-90, mimicking calcium, would contaminate cows' milk, which of course it did. Secrecy in government and corporate decision-making continues to threaten the well-being of everyone on the planet as new technologies are deployed at an accelerating pace after inadequate consideration of their effects. Open, democratic decision-making is no longer a luxury. In the modern world, **it is a necessity for human survival**.

Extensions

No Accountability

Delegation produces bad policies and ruins accountability

Lovell, Assistant Professor of Government, College of William and Mary, 2k (George, That Sick Chicken Won't Hunt: The Limits of a Judicially Enforced Non- Delegation Doctrine, Constitutional Commentary, 17 Constitutional, Commentary 79)

Critics of delegation claim that legislative delegation to executive branch agencies is bad because it produces bad policies [*83] and weakens the accountability provided by electoral controls on legislators. Legislative delegation to the executive branch allegedly creates these problems by shifting responsibility for making important policy choices from elected officials in Congress to unelected bureaucrats in executive branch agencies. When decisions are properly made in Congress, electoral controls on individual members make those members reluctant to support policies that benefit narrow interests. However, if Congress delegates the power to make decisions to agency bureaucrats, the lack of electoral controls on those bureaucrats allows concentrated interests to exert a corrupt influence on agency decision-making processes. Shifting such decisions to the executive branch also allows legislators to escape accountability because it allows them to blame the executive branch agencies for any unpopular decisions. Based on this understanding of delegation, the critics conclude that ending delegation will improve accountability. By intervening and striking down all statutes that delegate, judges would force legislators to take responsibility for the "hard choices" involved in regulatory policy-making. Forcing legislators to make those choices will make it less likely that the government will produce policies that favor narrow interests at the expense of a broader public. [n6] David Schoenbrod adds to the surface plausibility of this analysis by using concrete examples of delegated regulatory decisions gone awry. Schoenbrod devotes a great deal of attention to a favorite example, the regulation of navel oranges in the 1980s. [n7] Such regulation came in the form of marketing orders, issued by the Secretary of Agriculture under powers originally delegated by Congress in the Agricultural Adjustment Act of 1933. [n8] Schoenbrod convincingly argues that the marketing orders issued during the 1980s established bad policies that served narrow interests and harmed the general public. Congress empowered an Agriculture Department advisory board to make decisions on marketing orders. One industry actor, Sunkist, was able to dominate the decision-making processes on that board. Sunkist convinced the board to fix an artificially high price for oranges, a policy that advanced Sunkist's interests at the expense of both smaller growers and the general public. [n9] [*84] Schoenbrod blames this outcome on the ability of Congress to delegate. Delegation shifted the decisions to an obscure wing of the executive branch, making it likely that the public would pay little attention (and perhaps not even notice that the price supports existed). Because delegation allowed the executive branch to issue the marketing orders without members of Congress taking a direct vote to create them, members of Congress expected to be able to blame the Department of Agriculture if anyone noticed the harmful orders and complained. At the same time, delegation allowed members of Congress to win support from the concentrated interests that expected to benefit from the shift in authority. [n10] The critique of delegation made by Schoenbrod and other advocates of the **non-delegation doctrine** is based on a particular understanding of how accountability is supposed to work. The critics assume that legislative decision-making occupies a sort of privileged position when establishing or measuring accountability. In this respect, the critique of delegation is connected to the dominant theoretical framework that constitutional scholars use to understand democratic accountability in the separation of powers system. I call that framework the counter-majoritarian framework because its current dominance can be traced back to Alexander Bickel's claim, in The Least Dangerous Branch, that the power of judicial review created a "counter-majoritarian problem" in American democracy. Bickel claimed that judicial review was a "deviant" institution in American democracy because the power allowed unelected judges to make decisions that reversed the choices made by elected legislatures. [n11] Although Bickel was primarily concerned with explaining judicial review, the basic assumptions of his framework have wider application.

Delegation bad: doesn't meet public needs and misplaces responsibility, keeps bad leaders in power

Almendares University of NY Ph.D 12 (Nicholas: *The Journal of Law and Politics:* Blame-Shifting, Judicial Review, and Public Welfare. Published winter, 2012. Accessed June 6th, 2015.)KalM

The delegation n1 of policymaking authority to the bureaucracy is usually justified as a means to take advantage of the bureacracy's expertise, which becomes more attractive as policy becomes more complex and technical. n2 [*241] Legislators are not typically chosen on the basis of technical or scientific knowledge, nor are legislative bodies necessarily well-suited to translate specialized information into policy, so the bureaucracy steps in to fill this gap. n3 Delegation, especially the expansive delegation that is the hallmark of the modern administrative state, leads to two principal problems. The first is how to ensure that the bureaucrats design and implement policies that serve the

best interests of the public, rather than shirking this responsibility in some manner. This problem is usually dealt with by placing the bureaucracy under the control of elected officials. n4 The second principal problem is that the legislature may be able to use delegation to promote its own interests rather than the public's. Congress, or any similarly-situated legislature, can attempt to engage in blame-shifting: rather than enacting an unpopular policy itself, Congress delegates the matter to an agency, shifting responsibility and blame to the agency and thereby reducing the political costs of the policy. In effect, blame-shifting turns the agency into Congress' political cat's-paw. n5 Blame-shifting, then, is an attempt by Congress to reduce the political costs for unpopular policies it wishes to see enacted by making use of delegation. In like fashion, Congress is thought to be able to displace blame for a regulatory program that fails to deliver on its promises. n6 The possibility of blame-shifting has animated many critiques of delegation and the modern administrative state. By reducing political costs, namely lack of voter support in the next election, blame-shifting is thought to enable policies that are not beneficial to the public, such as laws that benefit special interests at the expense of the public at large, thereby undermining both democratic accountability and public welfare. The [*242] proposed solution to blame-shifting has usually been to call upon the judiciary to bar all broad delegations of authority through a renewed or strengthened nondelegation doctrine. n7 The core of this argument is that broad delegations of authority make blame-shifting possible. If, instead, Congress can only engage in specific delegations of authority, which constrain the agency's policy choice and force Congress to more clearly articulate what policy it intends the agency to implement, then blame-shifting will be that much more difficult, perhaps prohibitively so. Congress will be less able to disown a policy and displace blame onto the bureaucracy if Congress has explicitly and expressly authorized the policy.

Delegation gives politicians invisible power, strengthening the panoptic control of the state by allowing rulers to stay in power despite making self-serving decisions

Williams, Associate Professor of Law, Saint Louis University School of Law 2K (DOUGLAS: SYMPOSIUM CONGRESS: DOES IT ABDICATE ITS POWER?: CONGRESSIONAL ABDICATION, LEGAL THEORY, AND DELIBERATIVE DEMOCRACY. published in 2000.)KalM

Second, delegation enables members to mediate disputes among conflicting constituent groups without coming down strongly on one side or the other. Broad delegations often funnel the conflict over the distribution of benefits and burdens in public programs from the legislative to the administrative forum, in which incremental adjustments can be made that tend to lessen the hardships experienced by those who "lose" the battle for benefits and burdens. n49 Mashaw notes, for example, that broad delegations facilitate both temporal and situational variances in regulatory requirements that may better account for the actual effects of regulation than is possible through legislation that eliminates the possibility of such variances by tightly constraining administrative discretion. n50 In this manner, legislators may minimize the chances of alienating important constituents and thus increase their chances of reelection. More generally, and especially when coupled with uncertainty about the effects of various policy choices, "with greater... conflict there is a stronger incentive for Congress to pass the hot potato to the agency by broadening the scope and instruments of delegated authority." n51 Third, broad delegation may permit legislators to exert influence over the implementation of delegated authority in ways that would likely be much more difficult in a regime of more rule-like legislation. n52 This influence may frequently service particular constituents' interests, enabling members to gain visible credit and shift blame in ways that might be unlikely without abdication or delegation at the institutional level. n53 As McCubbins and Schwartz argue, congressional oversight is less costly to members and more effective, in terms of electoral prospects, when undertaken in response to specific complaints about administrative action voiced by important constituents than when conducted systematically. n54 To the extent that broad delegations enable [*86] administrators to exercise the flexibility to respond to legislators' inquiries in ways that reduce friction between

the agency and legislators, such delegations enhance legislators' effectiveness in dealing with constituents' complaints, directly increasing the likelihood of electoral success.

Circumvention

The counterplan will be circumvented: Delegation fails to set specific policy choices

Spence Professor Of Law 97

David Administrative law and agency policy-making: Rethinking the positive theory of political control Published in the yale journal of regulation volume 14, 2, pages 407-450

That is not to say that structural choice is meaningless-rather, that its importance as a determinant of agency policy choice is seriously overstated. It is one thing to say that structural choices about the agency's jurisdiction and mission influence the agency's subsequent policy preferences.64 It is quite another to contend that structure influences most agency policy choices. Indeed, a more circumspect and persuasive version of the structural choice argument is consistent with well-established works from outside the PPT tradition that describe how an agency can become populated by bureaucrats with certain shared values. For example, Kaufman65 and Marcus66 have noted that an agency with a well-defined mission will tend to attract bureaucrats whose goals are sympathetic to that mission. Consequently, the Environmental Protection Agency's (EPA) Office of Water tends to attract people who place a high value on protecting water quality, while the Federal Energy Regulatory Commission's (FERC) Office of Hydropower Licensing tends to attract people who place a high value on encouraging the development of hydroelectric power. Politicians' structural choices can therefore point the agency toward a general goal. Nevertheless, agencies must face many policy choices while attaining that goal which are orthogonal to the original structural choice (as shown in Figure 3). For these policy choices, factors unrelated to the original structural choice-bureaucrats' technical expertise, professional norms, or the influence of the relevant policy network-will determine the agency's policy preferences. Consider the FERC hydroelectric licensing example mentioned above. Congress has made very few structural choices affecting the program since the passage of the Federal Power Act in 1935.67 Yet the FERC has made countless policy decisions about how to achieve its goals during that time. These aging structural choices exerted little influence over decisions profoundly affecting national energy and environmental policy.68

Democracy I/L

Delegation challenges democracy

Shoenbrod attorney, professor, and author 93 (David, attorney, professor, and author who is nationally recognized for his contributions to environmental law and scholarship. A professor of environmental and constitutional law at New York Law School for over 25 years, he is the author or co-author of six books and numerous articles for major newspapers and scholarly journals. Schoenbrod has also been an adjunct scholar and senior fellow at the Cato Institute, an independent public policy research organization, and is a visiting scholar at the American Enterprise Institute for Public Policy, Power without responsibility: How congress Abuses the People through Delegation, page 14)

We can refuse to reelect legislators who make laws we dislike. Delegation shortcircuits this democratic option by allowing our elected lawmakers to hide behind unelected officials. When this concern was raised in the 1940s, the Supreme Court wrongly dismissed it with the argument that Congress and the president still are responsible for the laws made under delegation because they specify the fundamental policy choices in statutes and leave to the agencies only the more technical questions appropriate for resolution by experts.' This argument assumes that Congress and the president make the hard choices, but in fact, as I have argued, they often delegate precisely in order to avoid the hard choices. The Supreme Court also relies upon the power of Congress to repeal agency laws, but that capacity does little to soften the blow delegation inflicts against democratic accountability. Legislators usually hold no vote on whether to let an agency law stand, so they need offend neither those constituents who support nor those who oppose the law in question. Yet they can actively please both groups by doing casework on their behalf; casework, unlike roll-call voting, is not of public record. Delegation thus allows members of Congress to function as ministers rather than legislators; they express popular aspirations and tend to their flocks rather than make hard choices. With delegation members can escape being ejected from office except upon grounds that *would* oust a minister from the pulpit—scandal. In those exceptional cases when incumbent legislators do lose elections, their defeat is far more likely to be caused by some escapade or chicanery than by how they shaped the law.[20]

Delegation excludes the public, and defeats democracy

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It is, however, possible to improve on the first explanation by supplementing it. Critics of delegation suggest that something about the nature of decision-making processes in bureaucratic agencies adds to problems of accountability. Critics conclude that accountability breaks down in cases involving delegation because the public lacks the capacity to pay sufficient attention to regulatory decisions in the agencies. The non-delegation doctrine may improve accountability by simply ensuring that the decisions are made in Congress, the location where the public is most able to pay attention. [*93] Critics of delegation sometimes suggest an explanation of this type when they characterize agency decision-making processes. Critics claim that delegation erodes accountability because it makes policy-making processes complicated, obscure, or just plain boring. Schoenbrod claims that public opinion is often dampened by "prolonged administrative procedures" making public opinion "less powerful" in an administrative setting than "in an open legislative battle." [n25] Delegation allows Congress to defeat the democratic controls by leaving Congress free to add enough layers of decision-making authority to make sure that the process always exhausts the public's limited capacity to pay attention. Faced with such complexity, the people will not bother to identify and punish the legislators responsible for the bad policies.

Delegation kills democracy
Herrman J.D. at University of Pacific 97

David To Delegate Or Not To Delegate-That Is Preemption: The Lack Of Political Accountability In Administrative Preemption Defies Federalism Constraints On Government Power From From the University of Pacufic law Review Lexis 28 Pac. L.J. 1157

Accountability for those who make decisions is both critical to the maintenance of democracy n227 and the legitimacy of rule-making. n228 Only when people can be secure in the knowledge that administrative rule-making is being conducted under the watchful eye of elected officials is rule-making validated. n229 Perhaps the most important link in the accountability chain, especially in relation to administrative preemption, exists between Congress and the agencies. Because the hallmark of preemption is the search for clear congressional intent to displace state law, any attempt to expand federal power at the expense of the states must be responsible through the [*1185] Legislature. n230 Only in this type of system can poor decisions, extending too far into the traditional domain of the states via preemption, be counteracted through new legislation or new representatives. n231 Congressional accountability in a federalist system serves as the backbone for rights-protective legislation, especially in the preemption context where state laws and state autonomy is displaced by federal statutes. n232

Surveillance K2 Democracy

Surveillance is a key tipping point on democracy

Aguilar, and Daniel, Graduate Students 2014

Arndt and Niels Under the Guise of National Security - Surveillance, Snowden and the challenges to democracyhttp://diggy.ruc.dk/bitstream/1800/13534/1/UNDER%20THE%20GUISE%20OF%20NATIONAL%20SECURITY.pdf

As a result of the Snowden revelations, mass media coverage on a global scale has created a critical view on the secrecy inherent in state surveillance systems of democracies. Regardless of whether Snowden's actions can be deemed criminal, the information he leaked has highlighted the extent to which states have taken secret decisions. The US citizens ought to have been consulted with on these decisions, because the government took the liberty to make decisions concerning the governed in secrecy. Yet, historical circumstance seems to have created a general acceptance of the state's role taking on that of the parent who acts for the child's own good. The state occasionally condescends to the citizens' wants and needs, however it does not take their criticisms seriously, nor are the citizens of the state its equal when it comes to big 'power' or 'defence' decisions. This norm of blindness or simply blind acceptance concerning decisions made on the citizens' behalf, has been declared in an interview by Edward Snowden as his greatest fear in making this information public. He fears that nothing will result of this, which he expresses in the interview he did with the Guardian in Hong Kong in June: "The greatest fear that I have regarding the outcome for America of these disclosure is that nothing will change. People will see in the media all of these disclosures they'll know the length the government is going to grant themselves power unilaterally to create greater control over American society and global society. But they [the US citizens] won't be willing to take the risks necessary to stand up and fight, to change things, to force their representatives to actually take a stand in their interests." (Greenwald et.al., 09.06.2013: 10 min. 47 sec.). The US citizens will accept the argument of national security as the excuse and reason for violating the constitution and the civil liberties every citizen in the US holds, and that this will serve as proof that the values inherent in democracy are increasingly getting blurred. However, the criticism of surveillance mobilised in the wake of Snowden's leaks has led to a tipping point. This happens when the threats and risks reach a point where the uncertainty is so great that it actually makes a opening for change, it creates a "moment" where change is possible. The attention is global, and so is the concern. Without the knowledge of the classified programs, people were perfectly content with and accepting of the implicit relation between security and secrecy, because they did not understand the extent to which surveillance was happening. After these leaks this cannot be ignored, which now creates a demand for more transparency as a mean to increase the legitimacy of the US government. Since the leaks, Jim Sensenbrenner, who is a Republican member of the House of Representatives and one of the original authors of the PATRIOT Act (which originally expanded NSA surveillance capabilities in the name of national security after 9/11), has drafted a bill for the reform of the NSA's oversight structures for the purpose of greater transparency. His motivation for doing this is a critique of the implementation of the PATRIOT Act: "The Patriot Act never would have passed…had there been any inclination at all it would have authorized bulk collections" (Serwer, 19.11.2013). This substantiates the conclusion that the PATRIOT Act is being used to legitimate surveillance programs that it was not intended to defend. Sensenbrenner wants to impose public disclosures as well as restrictions on secretive interpretations of what would become the newly tightened Foreign Intelligence Surveillance Act. This legislation, that has yet to pass through vote of Congress, is a concrete result emerging from global outrage regarding the Snowden revelations. Sensenbrenner states: "Congress never intended this. I will rein in the abuse of both the Patriot Act and the U.S. Constitution with the support of the American public." (Richardson, 29.10.2013) In the event of the bill's enactment, the aimed increase in transparency would aid in reconnecting the US citizens with surveillance measures taken on behalf of national security. If the process of national security is reintegrated into the public sphere, rather than kept out of it for the sake of national security. This would mean the first institutional step towards the reintegration of the public into the democratic process, balancing with civil liberties, such as privacy and the right to not be surveilled, and the hopeful revival of deliberative democratic values. The FREEDOM Act, however, is not supported by everyone. One of the many opposing, seemingly superficial, reforms of the NSA oversight is one drafted by Diane Feinstein (Conservative Action Alerts, 27.11.2013), proposing to legally cement the legitimacy of the surveillance programs in FISA. This is where democratic fundamental values will be tested. If the congress votes for Feinsten's bill, and this vote meets little or no public opposition, Edward Snowden's worst fears will probably be realised. This will mean that democratic values are so dissoluted that the public does not care or does not comprehend the implications of accepting the secrecy of the national security oriented state. If the FREEDOM Act passes with the pressure of public support, this will imply that the citizens realize that the threat to the democratic values they defend is greater than the threat to national security. Potentially the echo of this test of democratic values in the US congress could be felt on the global scale. Because of the modern network society and the interconnectedness of the world, this institutional change and integration of the american public sphere into the balance of security versus privacy, could serve as an exemplary reform to then be applied and fought for on a global scale. This perceived risk to democracy is in fact a 'world

risk' and this can also be seen in the massive media coverage there has been around the world. Perceived risks to democracy and civil liberties could echo through the global public sphere, and push for a much needed greater transparency.

Democracy good

Democratization leads to economic growth – Africa proves

Masaki and van de Walle 14 (Takaaki, Postdoctoral Fellow and Data Analyst at AidData Center for Development Policy at the College of William & Mary; a Ph.D. in Government from Cornell University in 2015, Nicolas, professor at Cornell University Department of Government, March 2014, "The impact of democracy on economic growth in sub-Saharan Africa, 1982-2012," United Nations University, http://takaakimasaki.com/wp-content/uploads/2014/08/wp2014-057.pdf)

Since the early 1990s, at the same time, the region's economic-growth trajectory seemed to alter, from the previous two decades of economic stagnation and recession, to a substantial and sustained growth spurt that has now lasted for over two decades in a majority of states in the region. Whereas overall gross national product (GNP) growth in the region was a mediocre 1.7 per cent during the 1980s, it increased appreciably to 2.5 per cent annual growth in the 1990s, and over five per cent annually in the first decade of the new century. The latest numbers suggest gross dom estic product (GDP) growth at 5.3 per cent in 2012 and 5.6 per cent in 2013 (World Bank 2014). The growth appears to be widespread, since over a third of the region's 49 states are growing by more than six per cent this year. Are these two major regional political and economic trends related? Oddly, relatively few observers have argued for a positive causal relationship between the current economic boom and the region's political reform. Radelet (2010) and journalistic outlets such as The Economist1 have suggested that the improvements in political conditions have facilitated the growth, but they are exceptions. Indeed, the consensus in the public policy literature has been that the region's political changes are likely to have either no effect or a negative effect on economic growth. Collier (2009) and Sachs (2005) are just two prominent economists who have written popular best sellers arguing among other things that democratization is not likely to be helpful for the task of economic development. In Britain, the donor sponsored Overseas Development Institute (O D I) has similarly espoused research on low-income country governance issues that is characterized by the argument that multi-party electoral democracy is likely to have a negative effect on governance and economic growth (Kelsall and Booth 2013; Booth 2012). Multi-party electoral systems in the region are often derided as corrupt and clientelist, and their prospects for economic growth contrasted unfavorably with those of autocratic regimes like Angola and Rwanda. So, is the current economic boom taking place despite democratization rather than because of it? In this paper, we argue that empirical and theoretical reasons exist to believe that democratization in Africa since 1990 is associated with faster economic growth and that this 'democratic advantage' increases over time, as democratic consolidation takes place. We argue it is important not to confound the economic effects of stable democracy with those of the actual period of transition to democracy, which is characterized by political instability and uncertainty, which is almost certainly bad for growth, and we show that the longer a democracy sustains itself, the greater its positive impact on growth.

Federalism I/L

Delegation of unpopular issues causes a destruction of federalism
Herrman J.D. at University of Pacific 97

David To Delegate Or Not To Delegate-That Is Preemption: The Lack Of Political Accountability In Administrative Preemption Defies Federalism Constraints On Government Power From From the University of Pacufic law Review Lexis 28 Pac. L.J. 1157

This Comment addresses the problems that exist when administrative agencies, staffed with unelected and unaccountable bureaucrats, preempt state law while sidestepping the procedural safeguards implicit in our federal system. n25 Specifically, this Comment points out that one of the main reasons administrative preemption is able to avoid federalism restraints is because Congress blurs its own responsibility for controversial lawmaking by delegating this responsibility away. n26 This practice, which manipulates voter perception of governmental accountability, coupled with inadequate congressional oversight of administrative rule-making, illustrates the absence of an effective mechanism for imposing accountability upon elected lawmakers. n27 Therefore, agency officials promulgate powerful regulations without subjecting themselves to political repercussions. n28 Thus, the federal system is subverted and congressional delegations of preemptive authority lack the political and procedural checks that legitimize this type of administrative lawmaking. n29

Ending delegation leads to accountability and restores constitutional limits
Lovell, Assistant Professor of Government, College of William and Mary, 2k (George, That Sick Chicken Won't Hunt: The Limits of a Judicially Enforced Non- Delegation Doctrine, Constitutional Commentary, 17 Constitutional, Commentary 79)

A third explanation of how the non-delegation doctrine improves accountability is that ending delegation will restore some important constitutional limitations on Congress's power. According to some critics of delegation, the framers of the Constitution wanted to ensure that Congress would not pass legislation unless, after careful deliberation, a strong consensus formed in favor of a new law. To inhibit excessive legislation and protect liberty, the framers established numerous procedural constraints that slow down the legislative process, prevent Congress from reaching bad compromises without careful deliberation, and offer [*96] opportunities to block or delay legislation. The procedural obstacles that the critics of delegation point to are bicameralism, presentment, and, most importantly, the alleged ban on delegation. [n30] Critics suggest that delegation subverts these important constitutional limits on Congress's power. Delegation makes it easier for members of Congress to pass laws in the absence of a strong consensus, and thus more likely that Congress will pass laws without careful deliberation and restraint. While finding consensus will be harder in a world without delegation - in which members of Congress are forced to take responsibility for their decisions - the delays will be desirable since they will allow opportunities for more careful deliberation. In some cases, a ban on delegation may lead Congress to abandon attempts at regulation, an outcome that critics of delegation are often happy to embrace. [n31]

Delegation destroys federalism
Herrman J.D. at University of Pacific 97

David To Delegate Or Not To Delegate-That Is Preemption: The Lack Of Political Accountability In Administrative Preemption Defies Federalism Constraints On Government Power From From the University of Pacufic law Review Lexis 28 Pac. L.J. 1157

Allowing Congress to avoid responsibility through the delegation of its essential lawmaking power, particularly in the area of preempting state governmental functions, thwarts the federalism aspect implicit in our constitutional design. n222 Although defenders of broad agency powers argue that

administrative bodies are accountable to the legislature through congressional oversight, n223 this argument runs counter to the legislators' goal of blurring their own accountability and preventing divisive legislation. n224 Thus, the important restraints on federal power fail to protect the states from an overreaching government where Congress delegates the power to preempt to federal agencies. n225

Unfortunately, in the area of preemption, the view that political accountability exists as the last defense to state sovereignty is more theory than actuality. By delegating the power of regulatory preemption, Congress has subverted the constitutional scheme. n226

B. The Theory of Administrative Agency Accountability Through Congress

Federalism Good-Generic

Federalism good: laundry list

Bednar, Department of Political Science, University of Michigan 06 (Jenna: Constitutional Political Economy: "Volume 16, Issue 2 , pp 189-205" Cover Date: 2005-06. http://proxy.lib.umich.edu/login?url=http://search.proquest.com/docview/215937734?accountid=14667)KalM

1.2. **Robustness** As described above, a second difficulty in prior studies is the specification of the dependent variable. Many studies focused on the variable stability. Stability is both difficult to measure3 and misplaces the focus. Stability emphasizes federalism as ends—the existence of federalism—rather than federalism as means – its performance. Governments are tools to satisfy goals set by the constitutional designers, goals that may be updated according to changing demands. How well do federations achieve these goals? What institutional systems enable federal structures to perform well? To answer these questions, this study shifts the dependent variable from existence to performance, to emphasize robustness. In the study of robustness, as opposed to stability, we are interested in how a system maintains features and functionalities in the face of change and perturbations (Jen 2002). Our primary concern is how federal systems perform in the real world, under varied, changing circumstances. A federal system must be flexible and responsive, but not overreact to economic, political, and social challenges. This contrasts with a federation in stasis, that cannot respond, and whose citizens suffer. Persistent strong performance will therefore be evidence not of stability but of robustness. And robustness, not stability, should be a better predictor of longevity for those interested in regime duration. In the section that follows, I describe the functionalities that guarantee robustness in detail. I identify opportunism as the chief perturbation that threatens the performance of federations. A robust federation minimizes opportunism to maximize productivity. For empirical verification, since opportunism is not observable, and not measurable, we define a robust federation as one that performs well. 2. Objectives Federalism may provide a variety of benefits; it is populations that seek one or more of these benefits who choose federalism as their governmental form. Federalism's performance at meeting these objectives determines its robustness. The potential benefits from federating, and their logic, follow. 2.1. Military Security A federal union is better able to defend itself than a confederation or looser alliance of states. The strength that comes from an expanded territory and resources, as well as the improved coordination of effort, makes members of the federal union more secure against foreign invasion than they are on their own (the Federalist; Riker 1964; Ostrom 1971). 2.2. Efficiency and Innovation This category includes economic benefits. Some compare federalism to a unitary state, arguing that decentralization brings benefits. In the fiscal federalism literature, the existence of two levels of government mean that taxation and expenditure policy may be efficiently distributed to maximize total utility (e.g. Musgrave 1997, Oates 1999). In the market-preserving federalism literature, decentralization and fragmenting authority enables a state to credibly commit not to expropriate all rents, when coupled with other conditions, such as a decentralization of fiscal control and hard budget constraints (Weingast 1995, Rodden and Rose-Ackerman 1997, Qian and Weingast 1997, Rodden and Wibbels 2002). Also, there may be benefits from lower government policy experimentation (Kollman et al. 2000); these may be economic in nature – welfare policy, taxation schemes – but often are not, directly, as with education or health care. At the same time, federalism is more centralized than a confederacy, and centralized regulation of trade permits a polity to enjoy the benefits of a common market (e.g. the Federalist). 2.3. **Effective Representation** Madison praised federalism for its potential to improve the overall quality of representation over what was present in the state legislatures prior to federation, bolstering the feasibility of democracy (the Federalist, Elazar 1987, Ostrom 1991), Other benefits of federalism cite the value of decentralization: it may more effectively manage heterogeneous populations; distributing authority at lower levels may serve as a pressure

valve, releasing ethnic tensions (the Federalist, Horowitz 1985, Stepan 1999). In the fiscal federalism literature, decentralization permits citizens to elect politicians who will tailor policy to meet local preferences or to move to states that better match their interests (Tiebout 1956, Inman and Rubinfeld 1992, Peterson 1995, Donahue 1997, Oates 1999). Most federations are established for multiple reasons. In the Federalist, Hamilton, Madison, and Jay allude to the unions potential to make the states more **secure against foreign invasion, to improve the economy through establishment of a common market, to minimize the incidence and consequences of skirmishes between the states, and** (particularly Madison), to **improve the quality of** representative **democracy**. A third and fourth reason for federating should be mentioned. First, some federations were established or encouraged by a colonial power with the aim of maintaining dependence, a sort of divide-and-conquer strategy. A fifth objective comes from the political economy of fiscal federalism literature (see especially Cre´mer and Palfrey 1999, 2002 and Hafer and Landa 2004). There are conditions where a majority would prefer federation to either confederation (no federal tax rate) or centralization (no regional tax). However, one must note that these results really concern the divide-the-dollar potential of federalism: that is, how one might divide the federal spoils. Given that federalism is an institutional arrangement, and that Finstitutions create winners and losers, some will prefer federalism—even a majority—if it allows them to take advantage of the minority. This advantage of federalism over unitary or completely decentralized governance does not emphasize federalism's potential to increase total utility; it is a calculation based upon the utility of single agents. The redistributive aspects of federalism are very real, but are largely a problem of federalism, not a virtue (Filippov et al. 2004). Neither of these reasons are selections that a public would make behind the veil of ignorance; that is, in both cases, federalism is adopted to advantage some over others.

Federalism Good-Econ

Federalism good for econ: smaller government branches both compete and co-operate.

Weingast, Senior Fellow, Hoover Institution 8 (Barry: *Journal of Urban Economics Volume 65, Issue 3:* "Second generation fiscal federalism: The implications of fiscal incentives" Published December 25th, 2008. http://scholarship.law.duke.edu/faculty_scholarship/2520) KalM

Local governments exist within a complex set of institutional arrangements, with political, legal-constitutional, and economic aspects. This section develops a framework for analyzing how different institutional arrangements affect the performance of local governments. Federalism, and decentralization more generally, encompasses a wide range of different political–economic systems, not one, whose political and economic properties vary widely (Shah, 1997b; Watts, 1999). As Litvak et al. (1998, p. vii) observe, "decentralization is neither good nor bad for efficiency, equity, or macroeconomic stability; but rather that its effects depend on institutionspecific design." We therefore cannot speak of the tendencies of federalism per se. Some federal systems promote macroeconomic stability and economic growth while others just the opposite. Consider: **For the last three centuries, the richest nation in the world has almost always been federal.** The Dutch Republic from the late sixteenth through mid-seventeenth centuries; England from the late seventeenth or early eighteenth and mid-nineteenth centuries (a de facto though not de jure federal system); and the United States from the late nineteenth to the present. Similarly, modern China, a de facto federal state, has experienced sustained rapid growth. India, having grown slowly for several decades, has experienced high growth in the last. In contrast, the large Latin America federal states of Argentina, Brazil, and Mexico, have all fared much more poorly. How do we account for such large differences in economic performance? In this section, I summarize a comparative theory of decentralized governance that explains the differential economic performance of various types of decentralization. This framework helps understand some of the institutions necessary to support decentralization that provides political officials with incentives to improve social welfare. The comparative theory of federal performance begins with a set of conditions that differentiate federal systems.11 All federal systems decentralize political authority, so a necessary condition for federalism is: (F1) Hierarchy. A hierarchy of governments exists with each level having a delineated scope of authority. Yet federal systems differ enormously in terms of the policy authority assigned to different levels of government. The following conditions characterize how federal states assign authority among national and subnational governments. (F2) Subnational autonomy. Subnational governments have primary both local regulation of the economy and authority over public goods and service provision. (F3) Common market. The national government provides for and polices a common market that allows factor and product mobility. (F4) Hard budget constraints. All governments, especially subnational ones, face hard budget constraints. (F5) Institutionalized authority. The allocation of political authority is institutionalized. We can characterize different federal systems by which of conditions they satisfy, ranging from the hierarchy condition alone to all five conditions.12 An ideal type of federalism, called market-preserving federalism, satisfies all five conditions (Weingast, 1995). These conditions make explicit some of the political assumptions implicit in FGFF. Indeed, many of the major results in this approach implicitly assume most or all these conditions, including Oates's (1972) "decentralization theorem," Tiebout's (1956) interjurisdictional competition, and Musgrave's (1959) solution to the assignment problem. Scholars of fiscal federalism have long argued that federalism places subnational governments in competition with one another (Tiebout, 1956; Oates, 1972; Brennan and Buchanan, 1980). Competition gives subnational governments the incentive to foster local economic prosperity **rather than costly market intervention, service to interest groups, and corruption**. Competition among jurisdictions limits a subnational government's ability to abuse its policy authority, for example, by predating on investments or by granting privileged positions, such as monopolies or above market wages to government workers. Governments that fail to foster markets risk falling land values

and the loss of capital and labor – and hence valuable tax revenue. Put another way, interjurisdictional competition provides political officials with strong fiscal incentives to pursue policies that provide for a healthy local economy. Effective inter-jurisdictional competition requires several institutional conditions. First, subnational governments must have the authority to adapt policies to their circumstances; hence, the subnational autonomy condition (F2). Consistent with the FGFF assignment principle, these governments must have considerable power to regulate local markets, to tailor the provision of local public goods and services to local circumstances, and to set tax rates, ideally to reflect local demand for public services (Musgrave, 1959; Oates, 1972).

Federalism Good-Military

Federalism K2 military: empirics

Leider, Student at Yale with Ph.D in philosophy 13 (Robert*:* "FEDERALISM AND THE MILITARY POWER OF THE UNITED STATES" Published September 27th, 2013. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330648)KalM

The American experience with militia between 1776 and 1787 to resist King George III and govern under the Articles of Confederation was no watershed moment in constitutional law. It merely confirmed the advantages and disadvantages of professional forces and citizen-soldiers. The compromises over the Constitution's military clauses derive from these tradeoffs: they were an attempt to get the benefits of professional forces and a trained and armed citizenry to have a stable system of defense without risking national oppression. The debate over armies versus militia had begun over a century earlier in Britain. The English Civil Wars solidified the popular hatred of standing armies and volunteer select militia. 8 Several kings used the army and other volunteer forces, which belonged solely to the Crown, to attack the Parliament and religious and political dissenters—and with them, democratic rule.9 From the English Civil Wars through the American Revolution, the army was viewed as dangerous because it was a professional, armed force—composed of unsavory characters—used by the executive authority to subvert popular government and the rule of law.10 The belief in the universal militia as a bastion of liberty came as a result of the English Civil Wars. But the desire for **a standing army** and considerable federal control over the armed forces **resulted from** the inefficiency and ineptitude of the American forces from 1775-1787. The militia was unreliable and resisted training.11 Although the Framers spoke frequently of their preferences for a universal militia—and the Militia Act of 1792 tried to codify it—in reality, a seriously maintained universal militia system ceased to exist by the sixteenth century in England—and was never fully revived on either continent.12 **Federalizing the military power** occurred as the United States adapted the British experience to its own situation, which, unlike England, has a federal structure.13 The constitutional powers and limitations over the military were directed at providing a secure freedom for American citizens. **Channeling the military power through federal and state governments added**, in the Framers' view, an extra layer of **protection**.

No Legitimacy

Delegation lacks legitimacy and effectiveness

Krent 94 (Harold, Associate Professor, Chicago-Kent College of Law, DELEGATION AND ITS DISCONTENTS: POWER WITHOUT RESPONSIBILITY L. Rev. 710)

When there is no agreement within Congress over the policy to be adopted, members of Congress may agree instead to delegate that issue to an agency. But in the long run, he argues, such benefit is illusory. Impasse can exist at the agency level as well, or the agency may delay action in light of the absence of any consensus (pp. 12122). Indeed, the procedural requirements confronting agencies may frustrate speedy resolution of the policy issues. [n30] Schoenbrod recounts the Environmental Protection Agency's (EPA) experience under the Clean Air Act to make his point (pp. 7980), and much the same story can be told about NHTSA's episodic encouragement of passive restraint systems in automobiles. [n31] In addition, delays may arise because agency rules are more difficult to enforce than laws. Businesses may refuse to comply with agency directives and seek judicial review, or they may circumvent the new requirement by pressuring influential members of Congress to alter the recently promulgated rule (p. 122). Agency rules may also lack the authoritative force attributed to congressional enactments - Congress has more legitimacy in the eyes of the public, and its laws of general applicability engender more respect than the case-specific determinations (smokestack by smokestack) of agency officials (p. 122). In any event, legislative gridlock may at times be public-regarding if the momentum for change stems from lobbying by special interest groups. Schoenbrod also argues that the decision-making process in agencies is far less rational than in Congress itself. He dismisses the fears of vote cycling in Congress as overblown (pp. 13134). [n32] Moreover, he points [*719] out (pp. 12628) that even well-meaning agency regulation is subject to unrealistic legislative deadlines, tight legislative control of resources (if not more invidious intervention), [n33] and possible interference by judges unable to provide sound guidance because of Congress' failure to make clear the policy underlying the delegated authority (pp. 13233). Instead, Schoenbrod is convinced that Congress, if forced to legislate itself, would enact far sounder measures than agencies currently do through rule-making or adjudication. He argues, as have others, [n34]that the Constitution's Article I procedures of bicameralism and presentment [n35] restrain excesses, minimize the chance for rent-seeking by interest groups, and discourage arbitrary rule by factions, the forebears of contemporary special interest groups (pp. 10911). Even though lawmakers at times legislate selfishly (pp. 10920), they may well hesitate before engaging in pork-barrel politics that the public can directly attribute to them. Overall, the requirement that both Houses and the President must agree on all legislation provides for more stable rule and protects individuals from government overreaching. He embraces the Madisonian perspective that Article I was intended to moderate legislative proposals, and that public debate during the deliberations in both Houses of Congress and the White House serves an educative function. [n36] He notes that the Madisonian argument is supported by economic intuition that increasing the costs of legislation will prevent capture by special interest groups. [n37]

Reduced delegation restores faith in government

Krent, Associate Professor, Chicago-Kent College of Law, 94 (Harold, Book Review: Delegation and Its Discontents: Power Without Responsibility, Columbia Law Review Column 94, L. Rev, 710)

Schoenbrod presents strong policy arguments against delegation, and riveting portrayals of government waste and inefficiency. Yet broad delegation of authority to agencies represents at most a failure of politics, not of law. The prohibition today against delegation does not represent an underenforced constitutional norm as much as a neglected norm of good government. Such neglect in part may be warranted, given that agency policymaking may be more responsive to majoritarian concerns in some contexts than direct congressional rule. Schoenbrod's book is nonetheless vitally important, for even if the nondelegation doctrine is discarded, vigorous steps should be taken to restore greater faith in government by discouraging routinized delegation and selectively encouraging in its stead alternative forms of regulation and innovative new strategies to influence conduct in the private sector.

Solvency-Generic

Congressional oversight is necessary – three reasons

Kibbe 10 (Jennifer, Associate Professor of Government; Chair of Government at Franklin and Marshall College, 2010, "Congressional Oversight of Intelligence: Is the Solution Part of the Problem?" Intelligence and National Security, Volume 25, Issue 1,

The congressional intelligence committees have come under considerable fire in the last few years for not conducting robust investigations into major intelligence failures (the pre-Iraq war intelligence) and for being too acquiescent in the Bush administration's controversial policies regarding interrogations, secret prisons and warrantless wiretapping. The calls for reform of congressional oversight have echoed from all corners of the debate. But the issue of congressional oversight of intelligence is complex, combining as it does the political and structural complexities of Congress with the difficulty of monitoring something of strategic significance that, by definition, operates in the shadows. Consequently, attempts to reform congressional oversight are inherently difficult. As just one measure of the difficulty, members of Congress introduced over 200 bills between 1947 and 1975 aimed at expanding their supervision of the intelligence community. Of those, exactly one was adopted.1 One of the most prominent voices calling for reform recently has been The National Commission on Terrorist Attacks Upon the United States (9/11 Commission). The commissioners also noted, however, that of their 42 recommendations, those 'strengthening congressional oversight may be among the most difficult and important'.2 Despite the difficulty involved, however, something must be done. The last seven years have shown that intelligence is more crucial than ever to national security, but as the executive branch and the intelligence community try to maximize the utility of intelligence in meeting national security needs, it is imperative that the congressional overseers meet their obligations as well. The importance of legislative oversight of the executive branch in general has long been recognized. 'Quite as important as legislation', noted Woodrow Wilson, 'is vigilant oversight of administration'.3 In the intelligence arena, however, congressional oversight is at an added premium. The first, most obvious reason is the inherent secrecy of the subject. In other areas, such as the environment or banking, the media plays a valuable role in helping Congress monitor the actions of the federal government on behalf of the public. In the largely classified world of intelligence, in all but a few exceptional cases, the media is effectively precluded from playing that supporting role, thus enhancing the importance of legislative oversight. A second less recognized but equally important reason that oversight is so critical to the intelligence enterprise is that, because ' … the intelligence community is constrained in its ability to convince the American public that it can be trusted and deserves their support', Congress also plays an important role in explaining and representing the intelligence community to the public.4 A third reason legislative oversight is so important is that, done well, it helps to improve the intelligence product, whether that means collection, analysis or covert action. When administration and intelligence officials know that they will have to explain a funding choice or particular operation to Congress, it has the effect of adding a layer to their own internal vetting.

Delegation kills responsibility—CP solves

Shoenbrod, attorney, professor, and author, **93** (David, attorney, professor, and author who is nationally recognized for his contributions to environmental law and scholarship. A professor of environmental and constitutional law at New York Law School for over 25 years, he is the author or co-author of six books and numerous articles for major newspapers and scholarly journals. Schoenbrod has also been an adjunct scholar and senior fellow at the Cato Institute, an independent public policy research organization, and is a visiting scholar at the American Enterprise Institute for Public Policy, Power without responsibility: How congress Abuses the People through Delegation, pages 8-9)

Delegation allows our elected lawmakers to disclaim any responsibility for harm done to consumers for three reasons: because the wording of the statute reflects concern for consumers, because the statute took its present form long before the current legislators took office,

and because the secretary in effect makes the law. The public is unlikely to know of the marketing order's existence as it comes from deep within the bowels of the bureaucracy rather than from Congress. In contrast, for Sunkist to see enacted a law that restricts competition without using delegation, legislators would have to vote for and the president would have to sign a statute that limits the supply of navel oranges to consumers. They would need to amend the statute frequently to take account of changing market and crop conditions. Our elected lawmakers could not deny direct responsibility for raising the price of oranges. They conceivably might still enact such a statute, but they would have to risk political vulnerability.

“Domestic” PIC

Text: The United States Federal Government should <insert plan text and remove the word domestic>

The aff’s invocation of “domestic” is an adherence to status quo security politics that sanitizes the otherization and subsequent elimination of the global “foreign”

Campbell 5—David Campbell is a professor of cultural and political geography at Durham University in the UK (September 2005, "The Biopolitics of Security: Oil, Empire, and the Sports Utility Vehicle", http://www.worldbridgermedia.com/mediaenvironment/wp-content/uploads/2008/09/biosecurity.pdf, HSA)

As an imagined community, the state can be seen as the effect of formalized practices and ritualized acts that operate in its name or in the service of its ideals. This understanding, which is enabled by shifting our theoretical commitments from a belief in pregiven subjects to a concern with the problematic of subjectivity, renders foreign policy as a boundary-producing political performance in which the spatial domains of inside/outside, self/other, and **domestic/foreign are constituted through the writing of threats as externalized dangers. ¶** The narratives of primary and stable identities that continue to govern much of the social sciences obscure such an understanding. In international relations these concepts of identity limit analysis to a concern with the domestic influences on foreign policy; this perspective allows for a consideration of the influence of the internal forces on state identity, but it **assumes that the external is a fixed reality that presents itself to the pregiven state** and its agents. In contrast, by assuming that the identity of the state is performativcly constituted, we can argue that there are no foundations of state identity that exist prior to the problematic of identity/difference that situates the State within the framework of inside/outside and self/other. Identity is constituted in relation to difference, and difference is constituted in relation to identity, which means that the “state,” the “international system,” and the “dangers” to each are coeval in their construction.¶ Over time, of course, ambiguity is disciplined, contingency is fixed, and dominant meanings are established. In the history of US foreign policy—regardless of the radically different contexts in which it has operated-the formalized practices and ritualized acts of security discourse have worked to produce a conception of the United States in which freedom, liberty, law, democracy, individualism, faith, order, prosperity, and civilization are claimed to exist because of the constant struggle with and often violent suppression of opponents said to embody tyranny, oppression, anarchy, totalitarianism, collectivism, atheism, and barbarism.¶ This record demonstrates that the boundary-producing political performance of foreign policy does more than inscribe a geopolitical marker on a map. This construction of social space also involves an axiological dimension in which the delineation of an inside from an outside gives rise to a **moral hierarchy that renders the domestic superior and the foreign inferior**. Foreign policy thus incorporates an ethical power of segregation in its performance of identity / difference. While this produces a geography of “foreign” (even “evil”) others in conventional terms, it also requires a disciplining of “domestic” elements on the inside that challenge this state identity. This is achieved through the exclusionary practices in which resistant elements to a secure identity

The impact is endless violence

Friis 2k [UN Sector @ the Norwegian Institute of International Affairs, Peace and Conflict Studies 7.2, “From Liminars to Others: Securitization Through Myths,” http://shss.nova.edu/pcs/journalsPDF/V7N2.pdf#page=2]

The problem with societal securitization is **one of representation.** It is rarely clear in advance who it is that speaks for a community. There is no system of representation as in a state. Since literately anyone can stand up as representatives, there is room for entrepreneurs. It is not surprising if we experience a struggle between different representatives and also their different representations

of the society. What they do share, however, is a conviction that they are best at providing (a new) order. If they can do this convincingly, they gain legitimacy. What must be done is to make the uncertain certain and make the unknown an object of knowledge. To present a discernable Other is a way of doing this. The Other is represented as an Other -- as an unified single actor with a similar unquestionable set of core values (i.e. the capital "O"). They are **objectified**, made into **an object of knowledge**, by re-presentation of their identity and values. In other words, the representation of the Other is depoliticized in the sense that its inner qualities are treated as given and non-negotiable. In Jef Huysmans (1998:241) words, there is both a need for a mediation of chaos as well as of threat. A mediation of chaos is more basic than a mediation of threat, as it implies making chaos into a meaningful order by a convincing representation of the Self and its surroundings. It is a mediation of "ontological security", which means "...a strategy of managing the limits of reflexivity ... by fixing social relations into a symbolic and institutional order" (Huysmans 1998:242). As he and others (like Hansen 1998:240) have pointed out, the importance of a threat construction for political identification, is often overstated. The mediation of chaos, of being the provider of order in general, is just as important. This may imply naming an Other but not necessarily as a threat. Such a dichotomization implies a necessity to **get rid of all** the liminars (what Huysmans calls "**strangers**"). This is because they "...connote a challenge to categorizing practices through the impossibility of being categorized", and does not threaten the community, "...but the possibility of ordering itself" (Huysmans 1998:241). They are a challenge to the entrepreneur by their very existence. They confuse the dichotomy of Self and Other and thereby the entrepreneur's mediation of chaos. As mentioned, a liminar can for instance be people of mixed ethnical ancestry but also representations of competing world-pictures. As Eide (1998:76) notes: "Over and over again we see that the "liberals" within a group undergoing a mobilisation process for group conflict are the first ones to go". The liminars threaten the ontological order of the entrepreneur by challenging his representation of Self and Other and his mediation of chaos, which ultimately undermines the legitimacy of his policy. The liminars may be securitized by some sort of disciplination, from suppression of cultural symbols to ethnic cleansing and expatriation. This is a threat to the ontological order of the entrepreneur, stemming from inside and thus repoliticizing the inside/outside dichotomy. Therefore the liminar must disappear. **It must be made into a Self,** as several minority groups throughout the world have experienced, or it must be forced out of the territory. A liminar may also become an Other, as its connection to the Self is cut and their former common culture is renounced and made insignificant. In Anne Norton's (1988:55) words, "The presence of difference in the ambiguous other leads to its classification as wholly unlike and identifies it unqualifiedly with the archetypal other, denying the resemblance to the self." Then the liminar is no longer an ontological danger (chaos), but what Huysmans (1998:242) calls a mediation of "daily security". This is not challenging the order or the system as such but has become a visible, clear-cut Other. In places like Bosnia, this naming and replacement of an Other, has been regarded by the securitizing actors as the solution to the ontological problem they have posed. Securitization was not considered a political move, in the sense that there were any choices. It was a necessity: Securitization was a solution based on a depoliticized ontology.10 This way the world-picture of the securitizing actor is not only a representation but also made into reality. The mythical second-order language is made into first-order language, and its "innocent" reality is forced upon the world. To the entrepreneurs and other actors involved it has become a "natural" necessity with a need to make order, even if it implies making the world match the map. Maybe that is why war against liminars are so often total;it attempts a total expatriation or **a total "solution"** (like the Holocaust) and not only a victory on the battlefield. If the enemy is not even considered a legitimate Other, the door may be more open to **a kind of violence that is way beyond any war conventions**, any jus in bello. This way, securitizing is legitimized: The entrepreneur has succeeded both in launching his world-view and in prescribing the necessary measures taken against it. This is possible by using the myths, by speaking on behalf of the natural and eternal, where truth is never questioned.

2NC—Impact / Top Level

2NC—Impact—Generic

The construction of binaries essentializes life and produces divisive stereotypes

Winegar 8 (Jessica Winegar is an Assistant Professor Department of Anthropology Temple University Philadelphia,¶ http://www.khaledhafez.net/critical/11.html, Khaled Hafez: The Art of Dichotomy) DJ

Good/evil. Secular/religious. Modern/traditional. These are some of the unfortunate dichotomies which have come to grip much Western political discourse about the Middle East. The political efficacy of these binaries for rendering manageable what are in fact messy situations persists, despite the fact that they have been roundly criticized, especially in intellectual and leftist circles. And even though most people in the international art scene also consider themselves part of these circles, sadly one often finds similar binaries of essentialist difference lurking in curatorial discourses on Middle Eastern artists. It is discouraging when artists' work is understood through the dichotomous lens, and especially when this lens is applied in a way that denigrates contemporary work as traditional or lagging. But it is especially exciting when an artist talks back to the universe of divisions by analyzing their emergence, their different forms, and the work that they do in the world. The artist then becomes an analytical agent examining the circumstances of his/her production, and thus opens up possibilities for a contrapuntal visual practice that is not forcibly encased in the language of resisting power or challenging stereotypes. For over 20 years, Khaled Hafez has explored the continuous reproduction of dichotomies within and between the popular culture of his native Egypt, of France where he lived for several years, and of the United States – the ultimate consumer society and locus of political power, which seems to thrive on the marketing potential of divisive binaries. Through painting and video, Hafez has concentrated primarily on the construction of certain categories and the overlaps between them: East/West, sacred/commercial, old/new, good/evil, animal/human, male/female, and static/kinetic. His work shows how these dichotomies rest on the international system of commodities which creates both the ideas of (cultural) similarity and difference, as well as affective attachments to certain histories and identities. Hafez explores out how each half of a dichotomy has come to be signified through particular visual forms, figures, or objects. This work suggests that it is the continual replication of these visual signifiers in mass media that creates emotions of love and hate, notions of collective memory, and visions of the future. Dichotomies are attractive, then, because they have become seductive visual commodities.¶

2NC—Turns Islamophobia

This us-them dichotomy is the root of Islamophobia

Jamal 8—Amaney Jamal is a professor in political science at Princeton University with a focus in Middle Eastern politics ("Civil liberties and the otherization of Arab and Muslim Americans", https://muslimdiasporas.files.wordpress.com/2014/09/civil-liberties-and-the-otherization-of-arab-and-muslim-americans_.pdf, HSA)

The binary construction of "us" versus "them" is not new to American social relations in the United States or abroad. Racial relations in the United States **have been constructed through the binary lens** of the dominant and the subordinate, a legacy of the history of race relations in this country. Likewise, **the lens through which America sees the rest of the world is tinted with this dichotomy**: "we," whoever and wherever "we" are, enjoy both cultural and moral superiority. Such interactions with "Others" abroad translate into a racial logic in a U.S. context that views ethnic and religious group differences through racial lenses at home. The process of othering, be it based on phenotype or cultural difference, therefore lends itself to racialization, particularly when it involves attributing essentializing characteristics to the entire group. The racialization of Arabs and Muslims, however, draws on yet another element of difference. Not only are they different at home, but their difference is exacerbated by geopolitical realities where the United States has utilized the construction of the "Other" as enemy- terrorist to justify its campaigns abroad.

2NC—Link

The aff's use of "domestic" reifies the domestic-foreign binary – necessitates violence against the "foreign" other

Hirst 10—Dr. Aggie Hirst is a Lecturer in International Politics at City University London (September 7th 2010, "Encountering the Abyss: Deconstructing the Political Philosophy of Leo Strauss and the Straussian Interventions Relating to the Invasion of Iraq", https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:96951&datastreamId=FULL-TEXT.PDF, HSA)

Immanent to the friend/enemy binary is an emphasis on the idea that difference is, or should be understood as, synonymous with danger, and that the friend is of necessity the similar one, the one who is familiar. This View, according to Campbell, "involves an axiological dimension in which the delineation of an inside from an outside gives rise to a moral hierarchy that **renders the domestic superior and the foreign inferior**" (Campbell 2005: 948). As Maria Stem notes, this **logic is predicated upon "contours dividing the included from the excluded and borders marking that which is to be made secure from the dangerous Others**" (Stern 2006: 192). The dichotomy thus rests on an oppositional and antagonistic relationship between the friend and enemy, the similar and the other. This is deemed to comprise the condition of possibility of politics; as R.B. J. Walker (2006: 66) has shown, this amounts to the framing of a distinction between norm and exception. This relates directly to the Straussian interventions which mobilised the figure of the terrorist, the tyrant and Saddam Hussein as the enemy. In Campbell's terms, this "renders foreign policy as a boundary-producing political performance in which the special domains of inside/outside, self/other, and domestic/foreign are constituted through the writing of threats as external dangers" (Campbell 2005: 947). Importantly, this formulation can be read as of a "political" character**; it is of the sphere of the political** and thus is emphatically not natural or essential. Accordingly, the politics at play here may be destabilised in ways that upset the internal logic of the Straussians' interventions.

2NC—AT: Dichotomy Good

No link to any dichotomy good offense – focus on the global doesn't deny the cultural

Healy et. al 97— Lynne M. Healy, M.S.W., Ph.D. is Board of Trustees Distinguished Professor. She currently chairs the Administration concentration and is Chair of the International Issues Focused Area of Study. (Yvonne Asamoah, Lynne M. Healy and Nazneen Mayadas, Journal of Social Work Education, Vol. 33, No. 2 (Spring/Summer 1997), "ENDING THE INTERNATIONAL-DOMESTIC DICHOTOMY: NEW APPROACHES TO A GLOBAL CURRICULUM FOR THE MILLENNIUM", HSA) we don't endorse ableist language

The ideas discussed here should not be viewed as separate, alternative possibilities. Rather, they should be treated holistically, with recognition of the significant interaction among them. The call to "end the dichotomy" between the domestic and international is **not a call to negate or ignore nationality or culture, nor does it in any way deny the importance of efforts to indigenize social work education and practice**. Similarly, individual liberation and social liberation are interactional concepts that can be realized in adopting a social development approach with a strong respect for client culture as well as a recognition that **ultimately the sanctity of culture must be subservient to human rights.**

2NC—AT: AFF Answers

2NC—AT: Word PICs Bad

Counter-interpretation – Word PICs limited to words in the plan are legitimate

Most predictable – aff gets to choose the words in their plan – they don't have to defend everything their authors say

Reciprocal – aff gets strategic advantage answering counterplans and DAs with the way they've written their plan – only fair they bear the cost as well

Best policy option – aff has infinite prep to devise the best possible plan – they should be forced to defend it

Productive – if we win our reps matter arguments, proves the distinction is not trivial – this outweighs their offense and is key to effective policy analysis

Bjork '92 (Rebecca S., The Strategic Defense Initiative, P. 2)

Most analyses of SDI are concerned with explaining either the technical controversies surrounding the program, or its effects on issues such as arms control, U. S.-Soviet relations, strategic policy, relationships with allies, and strategic stability.4 While these studies are important, and contribute to a sophisticated understanding of the effects of SDI on international stability, they ignore a vital aspect of the program, one that can lead to important conclusions about SDI and about foreign policy in general. This neglected dimension is the symbolic or rhetorical power of SDI. The Strategic Defense Initiative is not merely a collection of technical tools, research bodies, and bureaucratic organizations. Rather, it is an amalgamation of meanings; meanings which are shaped by. and, in turn, shape a variety of linguistic, political, ideological, cultural, and social forces. These meanings create an understanding of SDI that becomes reality, in the sense that the symbolic understandings of the program influence policy and shape bureaucratic action, which themselves are symbolically constructed. The study of rhetoric, as the analysis and interpretation of public discourse that aims to reveal its various underlying symbolic appeals, is an appropriate way to explore these meanings associated with SDI and to explain their connection to the broader political and socio-cultural context. This approach is similar to the recent turn toward post-structuralist critiques of international relations, in that the focus of the analysis is on discourse.5 Treating the "reality" of world politics as text underscores the increasing concern with modernist assumptions of objectivity, dualism, and rationality, and reflects an attempt to uncover relations of power as they are constructed and reified through language. Viewing SDI as a symbolic, rhetorical response to a difficult moral, political, military, and economic problem (the nuclear arms race) sheds light on SDI itself as well as the role that language plays in the formulation of American foreign policy.

Education – analyzing text is uniquely key to critical thinking

Stratton, 99- Professor of Philosophy and Symbolic Logic (Jon, "Critical Thinking for College Students" p 77, DC)

For critical thinking the most important of the five tasks of language is representation, the "putting of ideas into words." It is the primary way we understand, process, and communicate information. Expressive language is also important to critical thinking. Ideas are seldom, if ever, represented without a degree of expression of feeling. The representative-expressive function of language is carried out in both speaking and writing. Television, film, radio, lectures, public debates, and personal conversations are all examples of verbal thinking. Obviously, these "verbal" media are of immense importance. However, verbal communication comes aand leaves quickly. We hear speech and it vanishes. It is very diffficult to adequately review, evaluate, and revise the verbal media because, unlike writing, it is not permanently available on paper. Writing is permanent, it is "verbal thinking at rest." Writing is "always there," available for our repeated review,

careful evaluation, and precise revision. Hopefully, the process of thinking critically about the written word will enable us eventually to become more adept with the verbal media.

This is uniquely true in the context of the word "domestic"

Healy et. al 97— Lynne M. Healy, M.S.W., Ph.D. is Board of Trustees Distinguished Professor. She currently chairs the Administration concentration and is Chair of the International Issues Focused Area of Study. (Yvonne Asamoah, Lynne M. Healy and Nazneen Mayadas, Journal of Social Work Education, Vol. 33, No. 2 (Spring/Summer 1997), "ENDING THE INTERNATIONAL-DOMESTIC DICHOTOMY: NEW APPROACHES TO A GLOBAL CURRICULUM FOR THE MILLENNIUM", HSA) we don't endorse ableist language

The most **important and damaging distinction** that gets in our way as we redefine competence for American citizens in an interdependent world, is that thick black line we have drawn in our minds and in our institutions **between international affairs and domestic affairs.** American citizens, who are bound to be active participants in local decisions with global consequences, should not be crippled "hurt" by learning in school and college **to segregate domestic and foreign policies in separate compartments**. (pp. 21-22)¶ Because interest in and attention to social work's international dimension have increased, we must face Cleveland's challenge to remove, or at least **blur, the dichotomy between the domestic and the international.** President Clinton underscored this in his first inaugural address, saying: "**There is no longer a clear division between what is foreign and what is domestic**. The world economy, the world environment, the world AIDS crisis, the world arms race-they affect us all" (Clinton, 1998).¶ If we remove the sharp distinction drawn between domestic and international affairs, how would this new way of thinking reshape social work curricula and practice? What barriers lock us into traditional modes of dividing the world? What strategies will lead to reconceptualizing the social work reality as global?¶ CSWE's current Curriculum Policy Statement and educators' reactions to it demonstrate the potential of and obstacles to global-mindedness. For the first time, the CPS explicitly recognizes global interdependence by including the following statements as a Permise Underlying Social Work Education: "Effective social work programs recognize the interdependence of nations and the importance of worldwide professional cooperation" (CSWE, 1994, B3.6, M3.6). This statement has far-reaching implications. Full recognition of global interdependence would lead logically to efforts to eradicate the global-domestic dichotomy. In a world where identifying a purely domestic issue is increasingly **difficult, seeking broader ways to conceptualize practice and the profession becomes important**. The new CPS supports these efforts.

Turns decision-making – we must train debaters to be prepared to defend every single word of their plan

D.G. **Kehl and** Howard **Livingston**, English at Arizona State University and Pace University, July **1999** (English Journal 88.6)

Second, students' own linguistic vulnerability should be demonstrated in a meaningful and convincing way. How would they react, for example, if while shopping they encounter "vegetarian leather" for plain, cheap vinyl; or "synthetic glass" for plastic; or, in place of down payment, they get "customer capital cost reduction"? Third, they should be made more sensitive to language and how it works, not just denotation but connotation, concrete versus abstract terms, specific versus general, adjectives as evaluative projections of a speaker or writer, slanted language, and much more. For example, they can be asked to consider how many times in a year they buy something simply on the persuasive appeal of words rather than on the genuine merits of the product, whether that product is sunglasses, clothes, vehicles, or food. Especially illuminating in developing sensitivity to language are exercises that ask students to distinguish differences in connotation among lists of so-called synonyms. For example, which of the following would they

like to be called—and why: boy/girl, lad/lassie, kid, young person, youngster, tyke, juvenile, future citizen, Generation X-er, member of the rising generation? Lively discussions can be conducted on the connotative effects of the language of advertising. For example, why are certain words taboo in advertising, requiring the substitution of euphemisms: not "fat" but "full figured," not "cheap" but "inexpensive," not "used car" but "preowned automobile," not "smell" but "aroma." (A recent example of doublespeak for "stink" is "exceed the olfactory threshold.") Fourth, students should be taught not only to read critically but also to speak and write re responsibility Wasn't'it Sir Arthur Quiller-Couch who noted that a writer should be prepared to stand cross-examination on every word? And as for reading critically, perhaps Thomas Carlyle said it best: "If we think of it, all that a university or final highest school can do for us is still but what the first school began doing—teach us to read." Isn't that at least a significant part of the English teacher's job description? Finally, students should be taught how to "talk back" by disarming and defusing doublespeak through what Judith Butler calls "counter-appropriation" (or what Hugh Rank has called "intensifying" and "downplaying" in his Doublespeak Schema). Recent communication theory offers further direction for discussing doublespeak in the classroom. For example, even a brilliant, well-organized, and illustrated lecture on language manipulation may have limited success (the doublespeaker would call it "counterproductive").

It's a relevant test of opportunity cost

Bales, '1 [Susan Nall Bales, Pres of the Frameworks Institute, "A conversation with Susan Nall Bales," The Evaluation Exchange Volume VII, No. 1, Winter 2001, http://gseweb.harvard.edu/~hfrp/eval/issue16/bales.html]

Well, framing is a concept that runs through the cognitive, social and behavioral sciences. For the work that my colleagues and I do, it allows us to bridge the difference among these various disciplines that study communications and policy preference, but have done so in isolation from each other. So, the great thing about the concept of framing is that, whether you're looking through the literature of anthropology, psychology, political science, linguistics or sociology, people have studied framing, and so it's a core concept. Essentially, framing has to do with the way an issue is composed: the messengers, visuals and metaphors that are used to convey an idea. The cues that are given to people by the framing direct their reasoning about issues. Given this, **it is vital that advocates understand the composition of the frame and what kinds of meta-messages or world views it calls into play**. What we have tried to do in our work is to break down that frame; to deconstruct it and show people that, when you're talking about making news, you have a number of different variables you can manipulate. **It's not just the message, it's** the visual, **metaphors and colorful language that are used**. You can tell a story in many different ways and the more you know about which elements help and hurt your cause, the better you will be at telling a story about social policy. Strategic frame analysis is really something that has been invented in the last five years by a group of communications scholars and practitioners getting together to compare the way that they look at communications. I would cite as part of that team, Frank Gilliam, with the Center for Communications and Community at UCLA; Meg Bostrum, a political strategist and public opinion expert, linguists George Lakoff at UC/Berkeley and Pamela Morgan, and Joseph Grady and Axel Aubrun, co-founders of Cultural Logic. In my own work, as someone who's run communications campaigns for twenty-five years, I've tried to go back and develop a conversation between the various academic disciplines that ask how people think about social issues. I've added a more applied question, however: how can we change the communication in such a way that people will take another look at social problems? The result is **strategic frame analysis**, which is based in both **theory and practice** and attempts to continue that dialogue.

2NC—AT: Reps Not First

Prefer specificity – our evidence indicates in this context, the distinction between the words in the plan and counterplan have ramifications on implementation and real world policy

Language affects how we view the world – creates a lens that constructs hierarchies

Oxford Companion to American Military History '00 ("Military Language: Informal Speech", http://www.answers.com/topic/military-language-informal-speech)

Informal military language reinforces a service member's primary identity as being part of the group, along with those who share his or her language. Beyond that, informal language constructs a vision of the world that becomes the defining characteristic of group membership. This is done most directly through naming. The names we give to things are of vital importance in understanding the view of the world the namers participate in and is an important part of all language use. Names of objects, perhaps more than any other words, constitute implicit arguments. In informal language, names are often metaphors. Sometimes, these metaphors are obscure. When naval officers associated with aviation refer to the surface fleet surrounding and supporting the carriers as "greyhounds," they use language that seems positive, implying an image of sleekness and speed. However, the relationship drawn on is that between dog and master. The argument, in other words, is that the rest of the surface fleet is useful insofar as it serves the needs dictated by the carriers. Similarly, members of the U.S. military who handle nuclear weapons informally use metaphors, naming places where U.S. nuclear bombs are aimed as "home addresses" and referring to nuclear missiles on board U.S. submarines as "Christmas trees." These homey and domestic metaphors convey the meaning that U.S. nuclear weapons, although extraordinarily destructive, are safe for the U.S. military to handle. Such examples point to another important function of language. The arguments that are implicit in the words we use, particularly the names, often are those that construct hierarchies. Discourse communities use language that possesses its own internal symbolic logic, and this places the members of the community in a hierarchical relationship with those of other communities. Language not only bonds the membership; it also helps construct a world view in which that membership can be secure in the superiority of its knowledge. Because language is never value-neutral but always contains embedded arguments, it is always taking a position on whether that which is named is "good" or "bad." Thus, homey metaphors such as the one about "Christmas trees" bond members of the military community and place a positive value on their work.

That comes prior to their decision-making impacts on framework

Holzscheiter, Research Associate at Center for Transnational Relations, Foreign and Security Policy at Freie Universität Berlin, **'13** (Anna, "Between Communicative Interaction and Structures of Signification: Discourse Theory and Analysis in International Relations" International Studies Perspectives, p 1-21)

Today, many scholars no longer question the circumstance that language is important for the study of international politics, but instead seem to be eager to discuss "how and why language is important" (Fierke 2002:331). Resulting from this general sensitivity of IR scholars toward linguistic and communicative dimensions of political life is a heterogeneity of discourse approaches in contemporary studies of international politics. It is constructivist research in particular whose understanding of social life fundamentally built upon the understanding that "the objects of our knowledge are not independent of our interpretations and our language" (Adler 2002:95). Here, discourse has offered itself almost naturally as one of the most popular concepts. Early influential constructivist writings that summarized the constructivist "credo" that "social constructivism rests on an irreducibly intersubjective dimension of human action" (Ruggie 1998:856) have implicitly supported the claim that intersubjectivity is, before all, constituted through language, communication, and discourse (Onuf 1989; Wendt 1999). As a result, the consolidation of a constructivist school moved language, communication, and discourse closer to the core of IR theory. Within constructivism, discourse has been used to explore the creation and effect of human rights norms (Risse 1999; Brysk 2004); to investigate the powerful conjunction of knowledge and discourse in environmental politics (Litfin 1994; Hajer 1995; Payne 1996); or to understand processes of identity-building and its transformation (Fierke 1996; Neumann 1996; Bially-Mattern 2005; Hansen 2006). In the beginning, constructivists were reluctant to fully acknowledge that seeing intersubjectivity as constituted through language and discourse necessitates a methodological focus on language, communication, and discourse (Kratochwil 1989; Onuf 1989; Wendt 1999; for a critique see Fierke 2002). Today, more often than not, constructivists turn to the notion of discourse when they envisage to identify and operationalize

social facts such as ideas, identities, or norms and when they try to demonstrate that these facts are not natural but are both a result of discursive practices and constituted by socially shared meaning-structures (for example, nuclear danger as constructed through discourse).4 The Social Ontology of Discourse in Constructivist Approaches to International Politics Elaborating on the role of language in constructivist theory, Alexander Wendt and Friedrich Kratochwil suggest distinguishing between thin and thick constructivism, whereby a thick notion of constructivism sees language as the constitutive element of reality and communication as the constitutive element of intersubjectively created realities, rather than taking language and communication as additional facets of social life (Kratochwil 2001:23). Thin constructivists by contrast assume that social facts can also exist independently of the "minds and discourses of the individuals who want to explain them" (Wendt 1999:75). Following this reasoning, this paper suggests drawing a line of differentiation between thick discourse approaches that perceive discourse to be the precondition for social and political life and its analysis as the only way to access and observe social reality and thin ones that treat discourse as one social logic among others. The latter assumption can be roughly associated with certain constructivist works on communicative rationality who by and large belong to the "middle ground" (Adler 1997) between rationalism and constructivism (M€uller 2004; Panke 2006; Kornprobst 2007; Krebs and Jackson 2007). When the first tentative "rapprochements" were made between rationalism and constructivism, the linguistic and discursive facets of international politics emerged as the focal point in a debate about different "logics of action" in social encounters: on the one hand, rational strategic interest-driven action ("bargaining") following a logic of consequences, on the other norm-guided exchange of arguments ("arguing") following a logic of appropriateness. The Habermasian distinction between strategic use (rational, instrumental, self-interest) of language and communicative use (rational, dialogical, communitarian) has been frequently employed as a theoretical basis for these deliberations (Habermas 1984, 1985, 1996). Harald M€uller claimed in 2004: "Arguing and bargaining, at face value, belong to two different social theories—rationalism and communicative action theory" (M€uller 2004:396). By the mid-1990s, approximately, one could witness the birth of a whole new approach to international cooperation and norm-creation that emphasized the role of communicative interaction in international diplomacy and underlined the value of close observation of such interaction for a deeper understanding of cooperation and socialization in international politics. This debate evidences that a specific notion of discourse has also emerged in more traditional schools of IR and that discourse has proven to be of added value to the academic debate among constructivists and rationalists.5 Here, discourse as institutionalized communicative exchange has come to be seen as the terrain where different logics of action can actually be observed and analyzed and where argumentative justifications for behavior manifest themselves. The significance of discourse understood as communicative interaction is mainly epistemological in that it allows explaining how, when, and under which circumstances different social logics come to bear. Rationalists and constructivists convinced of the overlapping terrain between the two social theories often emphasize that discourse as communicative exchange can be seen as a precondition for rational interest-driven behavior: Thus, the social construction of reality via discourse comes to bear particularly in social situations where little common knowledge, uncertainty about other's perspectives and interests and conflicts of norms prevail. Discourse as the exchange of arguments is temporally **prior to rational decision making**. Within this discursive middle ground between rationalism and constructivism, actors are being seen as positioned in an institutionalized context that partly constrains how and what they can argue. Yet, they are still free to pursue a range of options in social interaction (Risse 2000, 2002; M€uller 2004; Krebs and Jackson 2007). On the other hand, thick constructivist approaches posit that all social relations constitute discourse and are, in turn, constituted by discourse (see for example Price 1995; Weldes 1996; Diez 2001; Hansen 2006). Here, it is assumed that nothing can be meaningfully understood outside discourse, that is, even the material outside can only be comprehended in and through language and discourse. For thick constructivists, discursive practices of representation (for example, a cookbook) cannot be dissociated from non-discursive practices (for example, the act of cooking, the tools we use for cooking). When this latter group of researchers investigates discourse, they "study how the world is 'talked into existence'" (Adler 2002:101) and how the representations of cooking shape what we perceive as cooking. This thick constructivism assumes that "social facts are constituted by the structures of language and that, accordingly, consciousness can be studied only as mediated by language" (Adler 2002:97).

It also implicates the effectiveness of the policies we advocate

Holzscheiter, Research Associate at Center for Transnational Relations, Foreign and Security Policy at Freie Universität Berlin, **'13** (Anna, "Between Communicative Interaction and Structures of Signification: Discourse Theory and Analysis in International Relations" International Studies Perspectives, p 1-21)

Bially-Mattern's methodology takes its inspiration from the poststructuralist theory of Lyotard with its emphasis on the analysis of narratives as the fundament of representational force. Her method is linguistic inasmuch as it entails the investigation of ensembles of phrases taken from memoranda, telegrams, communiques, and letters that have been exchanged between British and US ambassadors, heads of state, and foreign policy advisers during the Suez crisis. These phrases are then searched for particular structures within and between the phrases defining the identity of Britain vis-a-vis the United States and vice versa. The representational force of the speaker is deduced from a particular type of argument that dismisses alternative visions of this relationship and attempts to force the addressee to yield to the force of the argument. Bially-Mattern reduces the analysis to a synchronic "snapshot" of the discursive universe. However, her interest lies not so much in the motivation of the individual speakers but rather in the effects of the narratives they construct, thereby creating a particular social reality (identity, order). For Bially-Mattern, the power of representation still rests with the agents who engage in communicative practices and effectively influence larger narratives—discursive orders such as identity narratives, thus, are the production of the articulators of such narratives. However, the productive force of meaning-structures has also, and more commonly, been explored from a macro-structure perspective. Charlotte Epstein's The Power of Words in International Relations and her thorough analysis of the history of antiwhaling discourses represents a convincing Foucault-inspired analysis of how narratives influence the normative beliefs of actors and, as a consequence, predispose political practice (that is, the condemnation of whaling as an inhuman action threatening to extinct a whole species) (Epstein 2008). Epstein explicitly borrows Foucault's notion of power as productive and defines a discourse as "a cohesive ensemble of ideas, concepts, categorizations about a specific object that frame that object in a certain way and therefore delimit the possibilities for action in relation to it" (2). For her, powerful discourses are discourses "that make[s] a difference" (2)—these discourses, however, are seen as grounded in social relations which are both the source of hegemonic discourses and the outcome of discursive power. The productive power of discourses is first and foremost evidenced by the fabrication of specific subject positions, such as the subject position of environmental NGOs which were becoming increasingly influential the more an anti-whaling discourse occupied center state globally. Epstein's diachronic analysis of data spans approximately 100 years of history and comprises historical studies on whaling from a variety of perspectives and sources: her evidence for dominant discourses on whaling is taken primarily from academic literature on various aspects of whale hunting and the emergence of a dominant global save-the-whale (and save-the-planet) discourse, and a range of interviews with pro- and anti-whaling campaigners and activists. These sources are complemented by newspaper reports,

reports of environmental NGOs, etc. The historiographic exercise serves to identify patterns of meaning attached to the hunting of whales that, even though being constantly subject to contestation, have remained particularly influential as a "moral system" disciplining international political practice and defining the boundaries of ethical behavior in this field throughout the twentieth century. The analysis of linguistic facets of international politics provided by Bially- Mattern and Epstein takes place on very different levels, even though they both converge on the assumption that discourse has productive and, as such, constitutive effects on the identities and beliefs of decision makers. In terms of methodology, scholars such as Bially-Mattern or Johnstone, whose methodological focus lies on the semantic structure and logic of individual speech-acts, mostly choose single, or comparative, case studies. These are then subjected to a combination of ethno-methodological (for example, thick description); quantitative (for example, content-analysis); linguistic or conversation analytical;12 and process- tracing methods. Since discourse stands for a sequence of communicative events, the data is taken to evidence different lines of argumentation; microprocesses of discursive persuasion; or the role of particular ideas, knowledge resources and identity constructions in individual argumentative moves. Such micro-approaches, thus, study discourse as a discrete social event and often share an interest in the "trivial" details of interpersonal encounters between actors.

2NC—AT: Reps Focus Bad

Having a counter-advocacy solves – their evidence assumes we just criticize reps which is politically stagnating

Nonsensical – if we have two discoursive options available and one is problematic, just because it was presented first doesn't mean it should be preferred

Language of the plan determines the persuasive appeal of their policy – good advocates choose words wisely

Brien **Hallett**, Matsunaga Institute for Peace at University of Hawai'i--Manoa, **and** Ralph **Summy**, Australian Centre for Peace & Conflict Studies at the University of Queensland, **2003** "Detooling the Language of the Master's House: The Case of Those "Nuclear Things"," Peace & Change, vol 28 no 2

Why bother with the twigs when one can attack the roots? Instead of being on the defensive, opponents should go on the offensive, attacking the cogency of the key terms with which the proponents control the debate, attacking their fixation with power and their minimization of the consequences. For example, instead of debating the merits and demerits of de-alerting "nuclear weapons," opponents should be attacking the key term itself. Opponents should demand to know why the term "nuclear weapon" is used at all, since nuclear weapons are not, in reality, weapons, but are instruments of mass extermination. De-alerting nuclear weapons is a controversial policy; one might be for or against it. De-alerting instruments of mass extermination that arguably border on genocide is not controversial, inasmuch as no nation is justified in preparing for indiscriminate and unprecedented mass slaughter, nuclear or otherwise. Wade and Veneroso make this same point in a different policy area when they criticize the worldwide movement opposing the unfettered flow of capital. They argue, "The battle would be still less one-sided if those who favor capital controls agree to ban that phrase and use only 'capital prudential regulations' to denote the same thing, for words are weapons and no one can oppose prudential regulations."41 More successful social and political movements than the peace movement (and the movement against the global free-flow of capital) consciously have resorted to lexical alternatives to avoid the co-optation that comes from using the opponent's preferred terminology. Thus, in the abortion debate the two antagonists generally do not regard themselves as anti- or pro-abortion. The former refer to themselves as "pro- lifers" and the act as "murder," while the latter, who speak from the mother's perspective and the child's quality of life, describe themselves as "pro-choice." Similarly, vegetarians substitute the neutral term of vegetable eaters used by their carnivore opponents with a more barbed term. Instead of giving up meat, they are refusing to eat "dead flesh." During the long, drawn-out struggle over slavery in America, as long as the issue was framed in terms of "Negroes" being unequal to whites in intellectual and cultural abilities, a coherent if misleading case could be made for the continuation of slavery. Given the agreed status of less than human, the Negro was subject to a debate that centered on their treatment—whether they could be treated harshly or should be dealt with kindly like a domestic animal. However, as soon as the terms of the debate changed to acknowledge that Negroes were not unequal but were fully human with equal rights, the debate changed dramatically to a question of emancipation. While the struggle to preserve the environment has only begun, some progress already has been achieved. The debate has been framed in terms acknowledging the finite nature of our resources and the danger to the continued existence of a living planet if humans gravely upset the ecological balance with pollution, soil degradation, resource depletion, and overpopulation. Corporate leaders and their political allies talk (despite actions not always matching rhetoric) about "sustainable growth," "ecological limits," and "biodiversity" and no longer about unlimited material progress as during most of the last two centuries. On the issue of gun control, the gun lobby in America centers its arguments on the Second Amendment right to bear arms and to defend one's life and property, while their opponents frame the argument in terms of guns contributing to a culture of violence and high murder rates. The antigun forces have challenged the National Rifle Association on the positive grounds of people's safety. Thus, the debate is effectively enjoined, with the antagonists staking out their positions with clearly articulated choices in their use of terminology. That the two sides in the nuclear debate use the same terms, "nuclear weapons" and "nuclear war," to express their divergent perspectives is, indeed, quite remarkable—though perhaps understandable in light of the fact that a number of the opponents still cling to an imagining of the judicious use of nuclear explosives in certain circumstances. The lack of alternative terms would not be a problem if the terms used were

simple, neutral, or emotionless technical jargon like floppy disk or stethoscope, but they are charged with a denotation of enormous power through terror.

That's a key internal link to violence

Brien **Hallett**, Matsunaga Institute for Peace at University of Hawai'i--Manoa, **and** Ralph **Summy**, Australian Centre for Peace & Conflict Studies at the University of Queensland, **2003** "Detooling the Language of the Master's House: The Case of Those "Nuclear Things"," Peace & Change, vol 28 no 2

The manner in which a text is written, a speech is uttered, a thought is thought, is integral to its content. There is no neutral way of representing the world, a form that is somehow detached from the linguistic and social practices in which the speaker or writer is embedded.... Language is not merely a means to an end. It merges into an inseparable unity of substance and form. Language, then, is recognized as being part of the material realm—as constituting a form of action in its own right. 'Words are not just narrative material,' Costas M. Constantinou stresses, 'but can themselves have stories to tell.'40 Thus the language or words chosen will direct the course of any debate, including the nuclear debate. They are what need to be changed to shift the debate away from an attachment to the incredible power and to focus it on an appreciation of the incredible consequences of these "nuclear things." The point of attack for serious antinuclearists should not be diverted onto questions about this or that innovation in bomber, missile, or submarine technology or about a choice between virtual or absolute abolition. Rather, the point of attack should center on the key terms that define the debate—nuclear war and nuclear weapons.

Independent from our critique impacts, policy terminology plays a role in determining the desirability of the plan

Shannon, Law at the University of Idaho, **2k2** (77 Wash. L. Rev. 65)

The first answer to this question is, why should we not care? If proper terminology (of whatever type) is readily available and comprehendible, why should one not want to use it? Does one really need a reason for not misusing any word, technical or otherwise? In other words, though many misuses of Rules terminology might not seem to cause serious problems, surely that is not an argument in favor of a disregard of proper Rules terminology, particularly where the cost of using proper terminology is negligible. The second answer to the question why we should care about the use of proper Rules terminology goes to the cost of using improper terminology even in seemingly trivial contexts. Understanding legal concepts is difficult enough without the confusion created when an inappropriate term is used to represent those concepts. And this is true regardless of how minor the misuse. In some sense, every misuse of legal language impedes the understanding - and, consequently, the progress - of the law.

Turns effective policymaking – clear policy language key to effective implementation

Philip **Milne**, Partner in Simpson Grierson's Wellington Local Government and Environment work group, **1994**

("Validity of Rules in Regional Plans: A Seminar for Wellington Regional Council Officers" http://www.qp.org.nzipubs/3665.pd0 p.17

What can be said however is that in order to minimise the risk of a successful challenge, it is important that rules be drafted as objectively and clearly as practicable. One should always bear in mind the basic principle that so far as is possible, a reader should be able to determine the effect of the rule from the rule itself. In particular, the category within which the rule will place a particular activity should be clear, along with the requirements of the rule

(performance standards/conditions). 5.4 Do the principles relating to certainty and reserving discretions apply equally to different types of activity? There is considerable authority for a consistent application of these principles to rules concerning "permitted activities". (See Ruddlesden and Kapiti Borough (1986) 11 NZ 11)A 301). A permitted activity is one permitted as of right without the need for a resource consent provided it complies with all relevant conditions in a plan. If a proposal meets those conditions it may go ahead without consent. Clearly it is desirable, if not essential, that the classification of an activity as permitted and all conditions attached to those classifications be objectively ascertainable and certain. Otherwise persons carrying out activities in the belief that they are permitted, may in fact be doing so unlawfully.

2NC—AT: Perm Do Both

Still links – no benefit to including the problematic representations of the plan if the counterplan alone is sufficient to solve the 1AC impacts

Doesn't solve - change is only possible if we all unite in crafting new terminology

Brien **Hallett**, Matsunaga Institute for Peace at University of Hawai'i--Manoa, **and** Ralph **Summy**, Australian Centre for Peace & Conflict Studies at the University of Queensland, **2003** "Detooling the Language of the Master's House: The Case of Those "Nuclear Things"," Peace & Change, vol 28 no 2

To properly propose an implementation strategy would require a full-length monograph. The modest suggestions below are intended only to open up the discussion. Furthermore, in devising any political campaign, general prescriptions need to be tailored carefully to local circumstances. The particular context and special local conditions should be paramount in the planners' thinking. With these two provisos in mind then, the following are a few general principles and procedures to consider in initiating an action strategy: • First and foremost, endeavor to change the terms of the debate, destroy the unanimity that unites proponents and far too many of the opponents of nuclear weapons, and suggest that a change in the status quo is possible only if all opponents insist upon reframing the debate with a more honest, more accurate terminology. An uncomfortable linguistic radicalism is the key to nuclear sanity and the absolute abolition of these "things." • Make this appeal to peace researchers around the world through academic bodies such as the International Peace Research Association, Consortium on Peace Research and Education, Asia Pacific Peace Research Association, International Political Science Association, and the Peace Studies Association. Convince them of the necessity to use the new consequentialist terminology in their scholarly writing and teaching. • Formally introduce the new thinking and terminology into peace and conflict studies programs, ranging from grades eight through the tertiary levels. • Invite academics to use the terminology in their research and when writing op-eds and appearing on the electronic media.

Doublethink- the permutations contradictory phrasings is part and parcel of the strategy of political manipulation of language to justify mass atrocity

Mary **Louise**, journalist with the London Morning Paper, **2004**
(http://www.newswithviews.com/guest_opinion/guest32.htm)

Doublethink, or reality control, involves being aware of truthfulness, while at the same time professing carefully devised lies and believing both, as our so-called leaders aptly demonstrate. Political language is designed to make lies sound truthful, and to convey the opposite of actual intentions, in order to greatly influence public opinion. Politically correct terminology is the invention of a simplified new vocabulary that masks, distorts, and alters the true meanings of traditional definitions. It limits the range of ideas and emotions that are allowed to be expressed, and causes unnecessary confusion and conflict that restricts understanding, which makes it difficult to communicate rationally and effectively. Control of language and information is necessary to condition citizens to love their oppressors, appreciate censorship, and tolerate brutality. Freedom is slavery, war is peace, and ignorance is strength.

2NC—AT: Technical Language Bad

Using technocratic language just because the bad people do makes us cogs in the system – only way to counter hegemonic violence is external resistance

Cohn '87 (Carol-, June, Bulletin of Atomic Scientists, "Slick 'Ems, Glick 'Ems, Christmas Trees, and Cookie Cutters: Nuclear Language and How We Learned to Pat the Bomb", Vol. 43, http://www.buildfreedom.com/tl/tl07aa.shtml)

I think it would be a mistake, however, to dismiss these early impressions. While I believe that the language is not the whole problem, it is a significant component, and clue. What it reveals is a whole series of culturally grounded and culturally acceptable mechanisms that make it possible to work in institutions that foster the proliferation of nuclear weapons, to plan mass incineration of millions of human beings for a living. Language that is abstract, sanitized, full of euphemisms; language that is sexy and fun to use; paradigms whose referent is weapons; imagery that domesticates and deflates the forces of mass destruction; imagery that reverses sentient and non sentient matter, that conflates birth and death, destruction and creation--all of these are part of what makes it possible to be radically removed from the reality of what one is talking about, and from the realities one is creating through the discourse. Close attention to the language itself also reveals a tantalizing basis on which to challenge the legitimacy of the defense intellectuals' dominance of the discourse on nuclear issues. When defense intellectuals are criticized for the cold-blooded inhumanity of the scenarios they paint, their response is to claim the high ground of rationality. They portray those who are radically opposed to the nuclear status quo as irrational, unrealistic, too emotional--"idealistic activists." But if the smooth, shiny surface of their discourse--its abstraction and technical jargon--appears at first to support these claims, a look below the surface does not. Instead we find strong current of homoerotic excitement, heterosexual domination, the drive toward competence and mastery, the pleasures of membership in an elite and privileged group, of the ultimate importance and meaning of membership in the priesthood. How is it possible to point to the pursuers of these values, these experiences, as paragons of cool-headed objectivity? While listening to the language reveals the mechanisms of distancing and denial and the emotional currents embodied in this emphatically male discourse, attention to the experience of learning the language reveals something about how thinking can become more abstract, more focused on parts disembedded from their context, more attentive to the survival of weapons than the survival of human beings. Because this professional language sets the terms for public debate, many who oppose current nuclear policies choose to learn it. Even if they do not believe that the technical information is very important, some believe it is necessary to master the language simply because it is too difficult to attain public legitimacy without it. But learning the language is a transformative process. You are not simply adding new information; new vocabulary, but entering a mode of thinking not only about nuclear weapons but also about military and political power, and about the relationship between human ends and technological means. The language and the mode of thinking are not neutral containers of information; they were developed by a specific group of men, trained largely in abstract theoretical mathematics and economics, specifically to make it possible to think rationally about the use of nuclear weapons. That the language is not well suited to do anything but makes it possible to think about nuclear weapons should not be surprising. Those who find U.S. nuclear policy desperately misguided face a serious quandary. If we refuse to learn the language, we condemn ourselves to being jesters on the sidelines. If we learn and use it, we not only severely limit what we can say but also invite the transformation, the militarization, of our own thinking. I have no solution to this dilemma, but I would like to offer a couple of thoughts in an effort to push it a little further--or perhaps even to reformulate its terms. It is adopting the strategy of learning the language. When we outsiders assume that learning and speaking the language will give us a voice recognized as legitimate and will give us greater political influence, we assume that the language itself actually articulates the criteria and reasoning strategies upon which nuclear weapons development and deployment decisions are made. this is largely an illusion. I suggest that technostrategic discourse functions more as a gloss, as an ideological patina that hides the actual reasons these decisions are made. Rather than informing and shaping decisions, it far more often legitimizes political outcomes that have occurred for utterly different reasons. If this is true, it raises serious questions about the extent of the political returns we might get from using it, and whether they can ever balance out the potential problems and inherent costs. I believe that those who seek a more just and peaceful world have a dual task before them--a deconstructive project and a reconstructive project that are intimately linked. Deconstruction requires close attention to, and the dismantling of, technostrategic discourse. The dominant voice of militarized masculinity and decontextualized

rationality speaks so loudly in our culture that it will remain difficult for any other voices to be heard until that voice loses some of its power to define what we hear and how we name the world. The reconstructive task is to create compelling alternative visions of possible futures, to recognize and develop alternative conceptions of rationality, to create rich and imaginative alternative voices--diverse voices whose conversations with each other will invent those futures.

Abstract language cannot be deployed subversively- it structurally excludes other voices and learning to work within it trains us to forget about all political concerns outside of nuclearism and to take pleasure in doing so

Cohn '87 (Carol-, June, Bulletin of Atomic Scientists, "Slick 'Ems, Glick 'Ems, Christmas Trees, and Cookie Cutters: Nuclear Language and How We Learned to Pat the Bomb", Vol. 43, http://www.buildfreedom.com/tl/tl07aa.shtml)

ALTHOUGH I WAS startled by the combination of dry abstraction and odd imagery that characterized the language of defense intellectuals, my attention was quickly focused on decoding and learning to speak it. The first task was training the tongue in the articulation of acronyms. Several years of reading the literature of nuclear weaponry and strategy had not prepared me for the degree to which acronyms littered all conversations, nor for the way in which they are used. Formerly, I had thought of them mainly as utilitarian; they allow you to write or speak faster. They act as a form of abstraction, removing you from the reality behind the words. They restrict communication to the initiated, leaving the rest both uncomprehending and voiceless in the debate. But being at the center revealed some additional, unexpected dimensions. First, in speaking and hearing, a lot of these terms are very sexy. A small supersonic rocket "designed to penetrate any Soviet air defense" is called a SRAM (for short-range attack missile). Submarine-launched cruise missiles are "glick'ems." Air-launched cruise missiles are magical "alchems." Other acronyms serve in different ways. The plane in which the president will supposedly be flying around above a nuclear holocaust, receiving intelligence and issuing commands for where to bomb next, is referred to as "Kneecap" (for NEACP--National Emergency Airborne Command Post). Few believe that the president would really have the time to get into it, or that the communications systems would be working if he were in it--hence the edge of derision. But the very ability to make fun of a concept makes it possible to work with it rather than reject it outright. In other words, what I learned at the program is that talking about nuclear weapons is fun. The words are quick, clean, light, they trip off the tongue. You can reel off dozens of them in seconds, forgetting about how one might interfere with the next, not to mention with the lives beneath them. Nearly everyone I observed--lecturers, students, hawks, doves, men, and women--took pleasure in using the words; some of us spoke with a self-consciously ironic edge, but the pleasure was there nonetheless. Part of the appeal was the thrill of being able to manipulate an arcane language, the power of entering the secret kingdom. But perhaps more important, learning the language gives a sense of control, a feeling of mastery over technology that is finally not controllable but powerful beyond human comprehension. The longer I stayed, the more conversations I participated in, the less I was frightened of nuclear war. How can learning to speak a language have such a powerful effect? One answer, discussed earlier, is that the language is abstract and sanitized, never giving access to the images of war. But there is more to it than that. The learning process itself removed me from the reality of nuclear war. My energy was focused on the challenge of decoding acronyms, learning new terms, developing competence in the language--not on the weapons and the wars behind the words. By the time I was through, I had learned far more than an alternate, if abstract, set of words. The content of what I could talk about was monumentally different. Consider the following descriptions, in each of which the subject is the aftermath of a nuclear attack: Everything was black, had vanished into the black dust, was destroyed. Only the flames that were beginning to lick their way up had any color. From the dust that was like a fog, figures began to loom up, black, hairless, faceless. They screamed with voices that were no longer human. Their screams drowned out the groans rising everywhere from the rubble, groans that seemed to rise from the very earth itself. [You have to have ways to maintain communications in a] nuclear environment, a situation bound to include EMP blackout, brute force damage to systems, a heavy jamming environment, and so on. There is no way to describe the phenomena represented in the first with the language of the second. The passages differ not only in the vividness of their words, but in their content: the first describes the effects of a nuclear blast on human beings; the second describes the impact of a nuclear blast on technical systems designed to secure the "command and control" of nuclear weapons. Both of these differences stem from the difference of perspective: the speaker in the first is a victim of nuclear weapons, the speaker in the second is a user. The speaker in the first is using words to try to name and contain the horror of human suffering all around her; the speaker in the second is using words to insure the possibility of launching the next nuclear attack. Technostrategic language articulates only the perspective of users of nuclear weapons, not the victims. Speaking in expert language not only offers distance, a feeling of control, and an alternative focus for one's energies; it also offers escape from thinking of oneself as victims of nuclear war. No matter what one deeply knows or believes about the likelihood of nuclear war and no matter what sort of terror or despair the knowledge of a nuclear war's reality might inspire, the speakers of technostrategic language are allowed, even forced, to escape that awareness, to escape viewing nuclear war from the position of the victim, by virtue of their linguistic stance. I suspect that much of the reduced anxiety about nuclear war commonly experienced by both new speakers of the language and longtime

experts comes from characteristics of the language itself: the distance afforded by its abstraction, the sense of control afforded by mastering it, and the fact that its content and concerns are those of the users rather than the victims. In learning the language, one goes from being the passive, powerless victim to being the competent wily, powerful purveyor of nuclear threats and nuclear explosive power. The enormous destructive effects of nuclear weapons systems become extensions of the self, rather than threats to it.

That the affirmative thinks they have other objectives in mind is irrelevant- the psychological distancing that occurs when we try and learn the language makes use lose the ability to even think in other terms

Cohn '87 (Carol-, June, Bulletin of Atomic Scientists, "Slick 'Ems, Glick 'Ems, Christmas Trees, and Cookie Cutters: Nuclear Language and How We Learned to Pat the Bomb", Vol. 43, http://www.buildfreedom.com/tl/tl07aa.shtml)

But the better I became at this discourse, the more difficult it became to express my own ideas and values. While the language included things I had never been able to speak about before, it radically excluded others. To pick a bald example: the word "peace" is not a part of this discourse. As close as one can come is. "strategic stability," a term that refers to a balance of numbers and types of weapons systems--not the political, social, economic, and psychological conditions that "peace" implies. Moreover, to speak the word is to immediately brand oneself as a soft-headed activist instead of a professional to be taken seriously. If I was unable to speak my concerns in the language, more disturbing still was that I also began to find it harder even to keep them in my own head. No matter how firm my commitment to staying aware of the bloody reality behind the words, over and over, I found that I could not keep human lives as my reference point. I found that I could go for days speaking about nuclear weapons, without once thinking about the people who would be incinerated by them.

And the pleasure derived from participation in this system is a reason to be skeptical of all their offense- defense intellectuals always cast opponents as too idealistic so as to maintain their membership in the nuclear priesthood

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2NC—AT: This Word Inevitable

Not offense – discriminatory language is also inevitable but that's not a reason to ignore individual utterances – counterplan is still a preferable policy options

It solves – re-languaging can spill over

Geroge **Lakoff**, Linguistics at UC Berkeley, **2001** "The Mind and The World Changing the Very Idea Of American Foreign Policy," google

The problem is a conceptual problem, a problem of mind. Our job is to change ideas, to imagine and implement a new way of thinking. How we understand the world is all-important. Our understanding at least limits, and often determines, our possibilities for action. The US is a powerful country. Our IDEAS in the area of foreign policy shape our actions toward other countries every bit as much as do external events. The academic discipline most relevant to understanding and changing the very nature of our ideas is cognitive science — the interdisciplinary study of mind — and especially that branch of cognitive science concerned with conceptual systems and language, namely, cognitive linguistics. From cognitive science we learn that most of our thought is below the level of consciousness, part of what is called "the cognitive unconscious." Even careful, well- educated planners who think deeply about what they are doing typically make use of a system of unconscious, implicit concepts that they may not be aware of. The job of cognitive linguistics is to study what those concepts are and how they change. Cognitive linguistics has produced two major insights that are of relevance to this study: (1) Language is defined relative to what are called "conceptual frames" — ways of "framing" problems. Again, these are sometimes below the level of consciousness. (2) The major mechanism of abstract thought is conceptual metaphor. It is metaphorical thought that allows us to understand and reason with difficult and sophisticated ideas in everyday terms. As we shall see, most if not all of our major foreign policy ideas are metaphorical. One of our tasks will be to show just what our foreign policy metaphors have been in the past and what new metaphorical ideas are needed to replace them. If the Global Interdependence Initiative – the GII – is to be successful, we will have to construct a clear general way of conceptualizing an overall foreign policy and language to go with it, language that will effectively frame every issue.

Ethics DA – any use of euphemisms is unethical and must be rejected

Neiman '8 (Susan-, Moral Clarity: A Guide for Grown-Up Idealists, P. 4-5)

We have moral needs, needs so strong they cannot override our instincts for self-protection, as the story of Abraham shows. It also shows those needs are not based in religion, or any form of divine command. They include the need to express reverence and the need to express outrage, the need to reject euphemism and cant and to call things by their proper names. They include the need to see our own lives as stories with meaning—meanings we impose on the world, a crucial source of human dignity—without which we hold our lives to be worthless. Most basically and surprisingly, we need to see the world in moral terms. These needs are grounded in a structure of reason. While they may be furthered by religion, or emotion, that is not what keeps them alive. As I will argue, they are based in the principle of sufficient reason that we use as a compass. Moral inquiry and political activism start where reason is missing. When righteous people suffer and wicked people flourish, we begin to ask why. Demands for moral clarity ring long, loud bells because it is something we are right to seek. Those who cannot find it are likely to settle for the far more dangerous simplicity, or purity, instead. This book began in response to needs expressed by readers of my last book, Evil in Modern Thought. Conceived as a history of philosophy, it stirred readers beyond academia who were hungry for serious discussion of ethics and value. More people than I'd ever expected said it was the sort of thing they'd always hoped for from philosophy, and asked me to go one step further. I had reinterpreted the history of modern Western philosophy to show that its major thinkers were driven not by epistemologica! puzzles, but by the search for the meaning of evil and suffering as seen in the events of their day. Was I prepared, readers asked, to give an account of my own views in relation to contemporary events? I was not. The task was daunting, and it seemed presumptuous even to try. Perhaps nothing but the 2004 U.S. election would have persuaded me to do so. Like many who were dismayed on that third of November, I was stunned by the claim that voters chose George W. Bush because they cared about moral values. Either they had been bamboozled, or the left had dramatically failed. The election was probably a result of both, but that's now for historians to settle. The most useful thing I could do as an American philosopher was to examine philosophical consequences of contemporary political discourse, and offer a framework for alternatives. For it isn't enough to argue that if Republicans have captured the field of individual virtues, Democrats still corner the market on social ones; or to point out that many people go to church not in search of spiritual solace, but to get simple services now missing elsewhere. In Conservatives Without Conscience, Nixon's former legal counsel John Dean even argued that the culture wars were constructed to give the right a platform as its traditional targets collapsed with the Cold War. All these claims may be true, but they overlook a gnawing gap. Western secular culture has no clear place for moral language, and its use makes many profoundly uncomfortable. The 2004 election made some things crystal clear. All over the world, people argued about what caused its outcome, but this much

was certain: Everyone, everywhere, was running on moral passion. Whether voters were moved by their views about terrorism, or the war in Iraq, or abortion, what did not decide the most significant election in decades was the bottom line. Bush supporters were likelier to be those his economic policies had hurt, while many of his fiercest opponents stood a chance of benefiting from his tax cuts. Cynics, and old-fashioned Marxists, must return to the drawing board. "Erst kommt das Fressen, dann kommt die Moral," Bcrtolt Brecht s famous claim that grub comes first, and ethics later, turns out to be just a matter of chronology. As soon as our bellies stop rumblinp. we bepin to moralize.

The impact is totalitarianism

David **Bromwich**, English—**Yale**, 2008 "Euphemism and American Violence," http://www.nybooks.com/articles/21199

In Tacitus' Agricola, a Caledonian rebel named Calgacus, addressing "a close-packed multitude" preparing to fight, declares that Rome has overrun so much of the world that "there are no more nations beyond us; nothing is there but waves and rocks, and the Romans, more deadly still than these—for in them is an arrogance which no submission or good behavior can escape." Certain habits of speech, he adds, abet the ferocity and arrogance of the empire by infecting even the enemies of Rome with Roman self-deception: A rich enemy excites their cupidity; a poor one, their lust for power. East and West alike have failed to satisfy them.... To robbery, butchery, and rapine, they give the lying name of "government"; they create a desolation and call it peace. The frightening thing about such acts of renaming or euphemism, Tacitus implies, is their power to efface the memory of actual cruelties. Behind the façade of a history falsified by language, the painful particulars of war are lost. Maybe the most disturbing implication of the famous sentence "They create a desolation and call it peace" is that apologists for violence, by means of euphemism, come to believe what they hear themselves say. On July 21, 2006, the tenth day of the Lebanon war, Condoleezza Rice explained why the US government had not thrown its weight behind a cease-fire: What we're seeing here, in a sense, is the growing—the birth pangs of a new Middle East, and whatever we do, we have to be certain that we're pushing forward to the new Middle East, not going back to the old one. Very likely these words were improvised. "Growing pains" seems to have been Rice's initial thought; but as she went on, she dropped the "pains," turned them into "pangs," and brought back the violence with a hint of redemptive design: the pains were only birth pangs. The secretary of state was thinking still with the same metaphor when she spoke of "pushing," but a literal image of a woman in labor could have proved awkward, and she trailed off in a deliberate anticlimax: "pushing forward" means "not going back." Many people at the time remarked the incongruity of Rice's speech as applied to the devastation wrought by Israeli attacks in southern Lebanon and Beirut. Every bombed-out Lebanese home and mangled limb would be atoned for, the words seemed to be saying, just as a healthy infant vindicates the mother's labor pains. Looked at from a longer distance, the statement suggested a degree of mental dissociation. For the self-serving boast was also offered as a fatalistic consolation—and this by an official whose call for a cease-fire might well have stopped the war. "The birth pangs of a new Middle East" will probably outlive most other phrases of our time, because, as a kind of metaphysical "conceit," it accurately sketches the state of mind of the President and his advisers in 2006. The phrase also marked a notable recent example of a turn of language one may as well call revolutionary euphemism. This was an invention of the later eighteenth century, but it was brought into standard usage in the twentieth—"You can't make an omelet without breaking eggs"—by Stalin's apologists for revolution and forced modernization in the 1930s. The French Revolutionist Jean-Marie Roland spoke of the mob violence of the attack on the Tuileries as agitation or effervescence, never as "massacre" or "murder"—improvising, as he went, a cleansing metaphor oddly similar to Rice's "birth pangs." It was natural, said Roland, "that victory should bring with it some excess. The sea, agitated by a violent storm, roars long after the tempest." The task of the revolutionary propagandist, at a temporary setback, is to show that his zeal is undiminished. This he must do with a minimum of egotism, and the surest imaginable protection is to invoke the impartial authority of natural processes. If one extreme of euphemism comes from naturalizing the cruelties of power, the opposite extreme arises from a nerve-deadening understatement. George Orwell had the latter method in view when he wrote a memorable passage of "Politics and the English Language": Defenceless villages are bombarded from the air, the inhabitants driven out into the countryside, the cattle machine-gunned, the huts set on fire with incendiary bullets: this is called pacification. Millions of peasants are robbed of their farms and sent trudging along the roads with no more than they can carry: this is called *transfer of population* or *rectification of frontiers.* People are imprisoned for years without trial, or shot in the back of the neck or sent to die of scurvy in Arctic lumber camps: this is called elimination of unreliable elements. Such phraseology is needed if one wants to name things without calling up mental pictures of them. Orwell's insight was that the italicized phrases are colorless by design and not by accident. He saw a deliberate method in the imprecision of texture. The inventors of this idiom meant to suppress one kind of imagination, the kind that yields an image of things actually done or suffered; and they wanted to put in its place an imagination that trusts to the influence of larger powers behind the scenes. Totalitarianism depends on the creation of people who take satisfaction in such trust; and totalitarian minds are in part created (Orwell believed) by the ease and invisibility of euphemism.

2NC—AT: Moral Framing Key

The frames we use determine policy outcomes—adopting conservative moral frames ensures the failure of progressive policies—the counterplan is a key corrective to the flawed rhetoric of the affirmative.

The Rockridge Institute 2007—http://www.rockridgeinstitute.org/aboutus/frames-and-framing/index.html

Expressing progressive political ideas and values effectively begins with understanding frames. Frames are the mental structures that allow human beings to understand reality — and sometimes to create what we take to be reality. Contemporary research on the brain and the mind has shown that most thought — most of what the brain does — is below the level of consciousness, and these unconscious thoughts frame conscious thought in ways that are not obvious. These mental structures, or frames, appear in and operate through the words we use to discuss the world around us, including politics. Frames simultaneously shape our thinking and language at multiple levels — the level of moral values, the level of political principles, the level of issue areas (e.g., the environment), the level of a single issue (e.g., the climate crisis), and the level of specific policy (e.g., cap-and-auction). Successful political arguments depend as much on a well-articulated moral frame as they do on policy details — often more. The most effective political messages are those that clearly and coherently link an issue area, single issue, or specific policy to fundamental moral values and political principle frames. Rockridge is the only progressive think tank that takes such a comprehensive view of framing and messaging. The primary determinant of how someone thinks about politics is what we refer to as their fundamental moral frame or their moral worldview. Progressive politics is about morality, about doing what is right. That moral frame is not always obvious, yet it can be stated simply: Progressives care about people and the earth, and act responsibly on that sense of care. All other progressive values — freedom, fairness, equality, security, opportunity, honesty, community, and all the rest — flow from that basic moral understanding of how people should act in the world. Conservatives have been more effective than progressives at getting their worldview, or moral frame, into public discourse. So effective, that progressives all too often adopt conservative frames – as members of Congress did in adopting the President's "unitary executive" frame which defined Congress as responsible for carrying out his mission — and thus primarily responsible for the safety of the troops. Congress may argue against the President's Iraq policy, but when they do so using his words, and thus his fundamental moral frame, they put themselves at a distinct disadvantage. It is nearly impossible to persuasively present a progressive policy using conservative language and frames. The debate on the U.S. response to 9/11 is a great example of how frames work. The phrases "war on terror" and "crimes against humanity" use different words to frame the same issue and, in doing so, evoke different ideas and guide us toward different actions. The phrase "war on terror" frames the issue as an open-ended military action against a vague, indeterminate enemy, with open-ended war powers given to the President for an indefinite period. "Crimes against humanity" frames our response to 9/11 as a police action where international law enforcement agencies are directed to root out groups and individual criminals using many of the same methods effective against crime syndicates. Further, these phrases trigger related moral and political principle frames deep in our unconscious minds, shaping how we experience our relationships to our political leaders and to people in other countries. "War" triggers fundamental moral and political principle frames that evoke an evil world in which we must look to an authoritarian President as commander-in-chief, whose orders we obey in order to protect our entire society from destruction by foreign enemies. With these frames dominating our thinking, we are more likely to tolerate giving up some of our civil liberties and dropping bombs that kill innocent civilians. By contrast, "crimes against humanity," as both a word and issue frame, triggers deep moral and political principle frames of an interdependent world where dangers occur, but they are not debilitating. With this frame foremost in our minds, we are more likely to protect society by enlisting the police, while also reaching out to our neighbors, who are suffering in other countries where poverty, disease, and oppression make it more likely that people will become terrorists. The persistent repetition of the "war on terror" word and issue frame triggers and reinforces deep moral and political principle frames. So, even when someone opposes the Iraq policy, they often do it by invoking the frame they wish to negate. This is why Americans who want to shift the ideas underlying American political debate — towards a greater emphasis on the values of empathy, social responsibility, fairness, honesty, integrity, and community — must do so by changing the deep moral and political principle frames that we use in thinking. We do this in large part by stating these frames openly and often. In other words, it is nearly impossible to persuasively articulate a law enforcement policy on Iraq when one is continually using the phrase "war on terror." Frames matter. Our fundamental moral frame, our worldview, determines how we experience and think about every aspect of our lives, from child rearing to healthcare, from public transportation to national security, from religion to love of country. Yet, people are typically unconscious of how their fundamental moral frames shape their political positions. The Rockridge Institute works to make that thinking more explicit in order to improve political debate.

Executive CP

1nc & Solvency Cards

1nc Executive Counterplan

Text: The President of the United States should, through executive action, stop *

***(Write out the action/area of the 1ac plan text).**

Reductions in domestic surveillance should be done through executive orders – not curtailed by acts of congress or the courts.

E.F.F 14 Electronic Frontier Foundation – Executive Director Cohn

[Cindy Cohn, Tell Obama: Stop Mass Surveillance Under Executive Order 12333, https://act.eff.org/action/tell-obama-stop-mass-surveillance-under-executive-order-12333]

The NSA relies on Executive Order 12333 to engage in mass surveillance of people around the world. But most people have never even heard of this presidential order. It's time to respect the privacy rights of innocent people, regardless of their nationality. Tell Obama: amend Executive Order 12333 to prohibit mass surveillance.

Executive orders are legally binding orders given by the President of the United States which direct how government agencies should operate. Executive Order 12333 covers "most of what the NSA does" and is "the primary authority under which the country's intelligence agencies conduct the majority of their operations."1 So while the U.S. **Congress is considering bills to curtail** mass telephone **surveillance**, the NSA's primary surveillance authority will be left unchallenged.

It's time to change that.

Last July, former State Department chief John Napier Tye came forward with a damning account of Executive Order 12333, which he published in The Washington Post2. Thanks to his account and the reports of others who have spoken out candidly against surveillance under E.O. 12333, we know:

1. Executive Order 12333 is used to collect the content of your communications– including Internet communications like emails and text messages.

2. Executive Order 12333's has no protections for non-U.S. persons, a fact that has been used to justify some of the NSA's most extreme violations of privacy, including the recording of an entire country's telephone conversations.3

3. Executive Order 12333 is used to collect information on U.S. persons who are not suspected of a crime. As Tye wrote, "It does not require that the affected U.S. persons be suspected of wrongdoing and places no limits on the volume of communications by U.S. persons that may be collected and retained."

4. No US court has seriously considered the legality and constitutionality of surveillance conducted under Executive Order 12333.

This executive order was signed by President Ronald Reagan in 1981, many years before the Internet was widely adopted as a tool for mass communication. A stroke of the U.S. President's pen over thirty years ago created the conditions that led to our global surveillance system. The present President could fix it just as easily.

1nc

The President acting alone preserves executive power – prevents congress from stepping in
Wall Street Journal 13

[Wall Street Journal, 9/5/2013. “Obama's Curbs on Executive Power Draw Fire,” http://online.wsj.com/article/SB10001424127887323893004579057463262293446.html]

The president's moves on national-security issues reflect a mix of political pragmatism as well as personal principles, and exactly how much power Mr. Obama actually has given up is the subject of debate. He has walked a fine line on Syria, for example, saying he wasn't required to seek sign-off from lawmakers for a military strike but asking for their approval anyway.

A senior administration official said that while the new drone-strike policy does rein in executive authority, the NSA and Syria proposals weren't a reduction of power but an effort to increase transparency and build public confidence.

Still, the president, who was criticized for seizing too much power through recess appointments and other steps that some said circumvented Congress, now is being criticized by veterans of past Republican administrations for weakening the presidency.

John Yoo, a Justice Department official in the George W. Bush administration, said Mr. Obama had unnecessarily limited his own authority. He noted that it is rare to see a president restrict his powers.

Mr. Obama "has been trying to reduce the discretion of the president when it comes to national security and foreign affairs," said Mr. Yoo, now a law professor at the University of California at Berkeley. "These proposals that President Obama is making really run counter to why we have a president and a constitution."

Others, though, said the president had given up a modicum of authority in an effort to protect presidential power and guard against congressional action.

The question of the extent of executive power has been long debated in Washington. President Lyndon Johnson was accused of using a narrow congressional resolution to vastly and illegally expand the Vietnam War, for example, and President Richard Nixon was accused of creating an "imperial presidency" before his resignation.

More recently, Mr. Obama's predecessor, Mr. Bush, was accused by Democrats of having inappropriately expanded executive powers in combating terrorism.

Jack Quinn, who served as White House counsel for President Bill Clinton, said Mr. Obama's recent moves amount to threading a needle to reach agreements and avoid larger setbacks for executive power. "Sometimes, it's important to show tolerance for others in order to preserve the power that you have," he said. "I don't think anyone can say that he is a shrinking violet when it comes to his use of power as president."

A.B. Culvahouse, White House counsel under Ronald Reagan, agreed that the president imposing constraints on executive authority is the preferable course if it helps dissuade Congress from stepping in to impose the same or more onerous limitations. Lawmakers retain the power of the purse, he noted, and also could codify restrictions in statute.

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A strong unchecked executive is necessary to prevent and win inevitable conflicts McCarthy, Director Center for law and counterterrorism at the Foundation for Defense of Democracies, 06

[Andrew C. McCarthy, March 2006. Directs the. "The Powers of War and Peace by John Yoo," Commentary, https://www.commentarymagazine.com/articles/the-powers-of-war-and-peace-by-john-yoo/]

Yoo's thesis in this book is strongest as an argument grounded in text—the text, that is, of our founding law. Precisely because the Constitution reposes such power in the executive, he argues, it is adaptable to the demands of crisis (though one must add that broad presidential power is necessarily also open to great abuse and even disastrous miscalculation). It is also flexible enough to allow for international cooperation in the name of the national interest without a wholesale commitment to dreamy multilateral constructs (though this, too, can make for trouble in an age of globalization in which dependable allies are essential).

But is Yoo's reading, especially concerning the power of war, truly consistent with the framers' original understanding? As the constitutional scholar Cass Sunstein has observed in reviewing Yoo's book, George Washington himself construed Congress's power to declare war as meaning that "no offensive expedition of importance can be undertaken until after they [Congress] have deliberated on the subject, and authorized such a measure." Other giants of the founding—Adams, Jefferson, Hamilton, Madison, Chief Justice John Marshall—voiced similar sentiments. Even granting that the framers expressly resisted congressional war-making, and promoted a vibrant executive, one need not interpret "declare" as narrowly and legalistically as Yoo suggests.

In short, the tension reflected in the debates at the constitutional convention persists. But one must also be alert to reality. In a world beset by the constant threat of sudden destructive force, a robust and firmly grounded view of presidential power is imperative. Potential perils come today not just from growing national powers like China but from rogue states in Iran and North Korea as well as from increasingly diffuse terror cells that have demonstrated their capacity to continue striking globally even when, as now, they are under siege. If public safety is to be something other than an illusion, securing it will demand the power to attack quickly and, in appropriate circumstances, preemptively; the price of awaiting consensus from 535 members of Congress may be too prohibitive. For showing how that power derives from the very system the framers bequeathed us, John Yoo deserves our deep thanks.

Immigration Solvency

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(__) Executive authority to change immigration laws – opponents are wrong
Gorod, appellate counsel at Constitutional Accountability Center, 15

[Brianne Gorod, 2 – 19 – 15, President Obama's Unproductive Statements About His Productive Immigration Policy, http://www.newrepublic.com/article/121098/president-obamas-executive-order-immigration-wasnt-overreach]

Earlier this week, a federal judge in Texas ordered a temporary halt to the implementation of President Obama's executive action that would defer the deportation of roughly 4.9 million immigrants. The rhetoric in his opinion echoed administration opponents who have criticized President Obama for executive overreach. The president's critics are clearly wrong when they claim he has exceeded his authority as chief executive. Ironically, though, much of the blame for their views may rest with one of the policy's biggest supporters: Obama himself.

As immigration rights advocates pushed the president to take executive action in his first term and early in his second, the president repeatedly resisted, claiming that he didn't have the authority to take the kind of action at issue in the Texas case. "I am president, I am not king. I can't do these things just by myself," he told Univision in 2010. In 2011, he discussed meeting with "immigration advocates ... [who] wish I could just bypass Congress and change the law myself." To these supporters, he responded "that's not how a democracy works." In 2013, he repeated the same message: "I'm the president of the United States. I'm not the emperor of the United States. My job is to execute laws that are passed, and Congress right now has not changed what I consider to be a broken immigration system."

The president's comments may have been motivated more by his sense of immigration politics than his views on immigration law—reports in 2014 indicated that Obama was "dial[ing] down the partisan rhetoric on immigration ... [to] give House Republicans some breathing room to try to pass legislation"—but they nonetheless fueled detractors. Some on the right argued that the president didn't have the authority to take executive action on immigration; when Obama ultimately did take action, they maintained he was simply doing so in order to achieve unilaterally what he could not achieve by working with Congress. Indeed, in the decision out of Texas, the district judge wrote, "The Government must concede that there is no specific law or statute that authorizes [Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)]. In fact, the president announced that it was the failure of Congress to pass such a law that prompted him ... to 'change the law.'" (The judge formally based his decision to halt implementation not on the substance of the executive action, but on the government's failure to comply with certain procedural requirements he felt were warranted.)

But President Obama's opponents are as wrong now as he was then: He does have the authority to take executive action on immigration action, and that executive action isn't a response to congressional inaction at all. Rather, it's a response to congressional action—actions by past Congresses that have passed immigration laws that it is now the responsibility of the executive branch to enforce. There's

nothing novel about this. Presidents are always asked to exercise discretion in determining how best to implement laws passed by Congress (a responsibility and power often referred to as "prosecutorial discretion"), and that's exactly what the Framers of our Constitution intended. When the Framers drafted the Constitution, their views on the presidency were shaped not only by their experiences under British rule, but also by their experiences under the Articles of Confederation, the precursor to the Constitution. The Articles lasted just eight years, and one of the central weaknesses that led to its failure was the absence of a strong executive branch capable of enforcing the nation's laws.

Immigration Solvency

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(__) Obama's executive order on immigration has been implemented
Jorgensen, Staff writer for the Observer, 4 – 2 – 15

[Jilian Jorgensen, Council Gearing Up to Implement Immigration Executive Order, Despite Court Challenges, http://observer.com/2015/04/council-gearing-up-to-implement-immigration-executive-order-despite-court-challenges/]

President Barack Obama's immigration reform executive order may be tied up in federal court—but that hasn't stopped the New York City Council from getting ready to implement it, Speaker Melissa Mark-Viverito told the Observer.

"We're just trying to put the wheels in motion and be ready to really roll, fully, once we get the approval—and we believe that court case is going to be overturned, thrown out, whatever—so the executive order can move forward," Ms. Mark-Viverto said in an interview yesterday at her City Hall office.

Mr. Obama's executive order would expand the existing Deferred Action for Child Arrivals program—and, if enacted, would allow as many as five million undocumented immigrants, who came to this country under the age of 16 or have family who are legally here and have resided in the United States for five years, to register to avoid deportation and to work legally in the country, if they have no criminal record.

NSA Solvency

(__) Executive controls all things related to the NSA – started with an executive order Williams, Think Progress Staff, 14

[Lauren C. Williams, The 'Primary Source' Of NSA's Spying Power Is A 33-Year-Old Executive Order By Ronald Reagan, http://thinkprogress.org/world/2014/09/30/3573647/reagan-nsa-order/]

Newly released documents prove the U.S. National Security Agency's spying power overseas primarily comes from a 33-year-old executive order signed by then President Ronald Reagan.

The American Civil Liberties Union obtained a series of internal papers from intelligence agencies including the NSA and Defense Intelligence Agency detailing how integral Reagan's 1981 order is to the NSA's current surveillance program. The order broadly allows the government to collect data from any company that is believed to have ties to foreign organizations. It also complicates the path forward for intelligence reforms in Congress.

Previous reports acknowledge the order's use as a foundation for some of the NSA's surveillance programs such as gaining backdoor access to tech companies' data centers. But the new documents, which were released as part of a Freedom of Information Act lawsuit the ACLU and other civil liberties advocates filed just before Edward Snowden's leaks to the media, show Executive Order 12333 is the "primary source" authority when it comes to the NSA's foreign spy programs.

"Because the executive branch issued and now implements the executive order all on its own, the programs operating under the order are subject to essentially no oversight from Congress or the courts," Alex Abdo, a staff attorney for the ACLU wrote in a blog post.

(__) Executive can reform the NSA - Paul statements prove Volz, Staff Writer for the National Journal, 15

[Dustin Volz, Rand Paul Pledges to 'Immediately' End NSA Mass Surveillance If Elected President The new Republican presidential candidate makes a forceful stand on surveillance, http://www.nationaljournal.com/2016-elections/rand-paul-pledges-to-immediately-end-nsa-mass-surveillance-if-elected-president-20150407]

Sen. Rand Paul vowed Tuesday while announcing his presidential campaign to immediately end the National Security Agency's bulk collection of Americans' phone records.

"The president created this vast dragnet by executive order. And as president on day one, I will immediately end this unconstitutional surveillance," Paul, speaking before a raucous crowd in Kentucky, said. "I believe we can have liberty and security. And I will not compromise your liberty for a false sense of security, not now, not ever. "

Paul has been among the most ardent critics of the NSA's sweeping surveillance programs in Congress—a policy position that has grown more pronounced in the two years since the Edward Snowden disclosures began.

War on Drugs Solvency

(__) Obama can reform drug policy through executive action
Tracy, Cannabis Consultant & Civil Liberties Activist, 14

[Sam Tracy, Three Executive Actions Obama Can Take to Rein in the Drug War, http://www.huffingtonpost.com/sam-tracy/three-executive-actions_b_4691178.html]

In his fifth State of the Union address, President Obama didn't hide his frustrations with one of the least productive Congresses in history. He focused his speech on changes he can make unilaterally, saying, "Some [of my proposals] require Congressional action, and I'm eager to work with all of you. But... wherever and whenever I can take steps without legislation to expand opportunity for more American families, that's what I'm going to do." Sadly, he didn't say a single word about one of the areas where he has the most authority to make positive change: drug policy. Here are three of the most important reforms Obama could make with a stroke of his pen.

1. Reschedule marijuana. Federal drug policy is determined largely by the Controlled Substances Act (CSA), which divides illegal drugs into five categories, or "schedules," of harmfulness. Marijuana remains in the most restrictive category, Schedule I, meaning it has a high potential for abuse and no accepted medical use in treatment. So, while a large majority of people -- including President Obama himself -- recognize that marijuana is safer than alcohol, the drug remains in the same legal category as heroin and LSD. Eighty percent of the public supports medical marijuana and 20 states have legalized its use, yet the federal government refuses to recognize that the drug has any medical benefits. This classification is why the federal government continues to raid medical marijuana facilities even when they're in full compliance with state law.

It doesn't have to be this way. As admitted by Attorney General Holder, President Obama has the power to reschedule marijuana without Congressional approval. The CSA states that any substance can be moved into another category by petitioning the Drug Enforcement Administration, a federal agency under the president's control. While this been tried many times in the past, including by Americans for Safe Access and governors Gregoire and Chafee, the DEA has denied every attempt. Obama can, and should, direct the agency to move marijuana at least to Schedule III, defined as having a lower potential for abuse and a currently accepted medical use (this category already includes Marinol, a synthetic form of the chemical THC found in marijuana). This simple change would allow states to legalize and regulate medical marijuana without any fear of federal intervention.

2. Replace DEA Administrator Michele Leonhart. One of the main causes of the DEA's obstinance is its leadership. As I've written before, Administrator Leonhart has lied to Congress and the American public on multiple occasions. Originally appointed by President George W. Bush, she has been an embarrassment for the Obama Administration for her refusal to admit that marijuana is less harmful than heroin. Even more nonsensically, she recently criticized the White House for flying a hemp American flag and allowing its unofficial softball team to play against a team of drug policy reformers (full disclosure: I'm a proud member of that team, the One Hitters, and we've beaten the White House both times we've played them).

There is a growing movement to replace Leonhart with someone who understands the drugs they're throwing people in prison for. The Marijuana Policy Project's petition to fire her already has over 20,000 signatures and is quickly growing. At least two members of Congress have called for her resignation, with Rep. Cohen saying Leonhart's leadership is "going to be looked upon in 10 or 20 years as the dark ages." Replacing Leonhart with someone more in line with the president's views on drug policy would go a long way towards scaling back the Drug War.

3. Pardon drug offenders serving unjust sentences. One of the president's most important criminal justice powers is the ability to pardon any federal conviction. President Obama has been one of the least merciful presidents in history when it comes to pardons; the eight clemencies and 13 pardons he granted last month was more than he did in his entire first term. Meanwhile, tens of thousands of Americans remain in prison for drugs: In 2012, the most recent date for which data is available, 99,426 of the nation's 196,574 federal prisoners -- just over 50 percent -- were serving time for drug offenses.

If President Obama truly believed his own (correct) statements that drug abuse is a mental health issue, he would pardon all nonviolent drug offenders just as President Carter once pardoned all Vietnam War draft dodgers. After all, what other mental health issue do we imprison people for? However, if Obama doesn't want to take the political risk that such a mass pardoning may bring, he could at least start with the most heinous cases, like the many people serving life sentences for as little as cocaine residue in a clothing pocket.

There is still hope that Congress will take some steps towards ending the War on Drugs in the near future. But as President Obama said, we have a criminal justice system "in which a large portion of people have at one time or another broken the law and only a select few get punished." If Congress refuses to do anything about it, Obama should use his executive powers to reform it as much as he can.

General Solvency – Legal Strength

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(__) Executive Action creates a legal framework – results in congressional agreement BRECHER, J.D. Candidate, May 2013, University of Michigan Law School, 12

[Aaron P. Brecher, "Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations," October, http://www.michiganlawreview.org/assets/pdfs/111/3/Brecher.pdf]

Cyberattacks present a challenge for U.S. policymakers: they are difficult to locate within a clear legal category and there is a significant risk of uncontrollable consequences associated with their use. As a result, policymakers must choose a paradigm to govern their use that will ensure that the executive branch is held accountable and shares information with legislators. This Part argues that the federal government should adopt the presumption that cyberattacks will be carried out under the covert action statute, and that the best way forward is for the president to issue an executive order making the covert action regime the presumptive framework for cyberattacks. It includes a brief discussion of why a president might willingly constrain her discretion by issuing the proposed executive order. It also shows that while the internal executive processes associated with both military and intelligence legal frameworks help mitigate the risk of cyberattacks' misuse by the executive, only the covert action regime provides an adequate role for Congress. Finally, this Part argues that the executive order option is preferable to one alternative proposed by scholars—enacting legislation—because of the practical difficulties of passing new legislation. The covert action regime is the best approach for committing cyberattacks under the current law, as it would facilitate cooperation among executive agencies. The debate over which agency and set of legal authorities govern cyberattacks has caused no small amount of confusion.145 Apparently, an Office of Legal Counsel ("OLC") memorandum declined to decide which legal regime should govern the use of cyberattacks, and the uncertainty has led to interagency squabbles, as well as confusion over how cyberattacks are to be regulated.146 Establishing a presumptive answer would go far toward resolving this dispute. Most importantly, adopting the covert action framework as the presumptive legal regime would be a principled way to help ensure constitutional legitimacy when the president orders a cyberattack.147 There is also reason to believe that presidential power is intimately bound up in credibility, which in turn is largely dependent on the perception of presidential compliance with applicable domestic law.148 A practice of complying with the covert action regime for cyberattacks, both when they do not constitute a use of force and when it is unclear whether they do, is most likely to be in compliance with the law. Compliance with the covert action regime would also encourage covert action procedures in close cases without unduly restricting the executive's choice to use military authorities in appropriate circumstances. The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of constraining future administrations or preempting legislative intervention.149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable

if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress **may give Congress the tools** and knowledge of the issue necessary **to craft related legislation.**150 Additionally, while executive orders are hardly binding, the inertia following adoption of an order may help constrain future administrations, which may be more or less trustworthy than the current one. Creating a presumption through an executive order also establishes a stable legal framework for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

General Solvency – Causes Legislation

(__) Executive action spurs legislation

Kagan, Visiting Professor at Harvard Law School and current Court Justice, 01

[Elena, "Presidential Administration," Harvard Law Review, Vol. 114, No. 8, June, p. 2293-2312]

It is not surprising, given these changes in the political landscape, that a President would turn to administration - a sphere in which he unilaterally can take decisive action. The more the demands on the President for policy leadership increase and the less he can meet them through legislation, the greater his incentive to tap the alternate source of supply deriving from his position as head of the federal bureaucracy. ¶ Administrative action is unlikely to provide a President with all he could obtain through legislation: Congress, after all, has set bounds on administration through prior statutory enactments. But as compared with legislative stasis, administrative action looks decidedly appealing. More, administrative action has the potential to **spur legislative action** by calling public attention to Congress's failure to act on the relevant issue.

General Solvency – Perception

(__) The international perception is that the counterplan is the plan.
SINNAR, Assistant Professor of Law, Stanford Law School, 13

[Shirin Sinnar, May 2013.. "Protecting Rights from Within? Inspectors General and National Security Oversight," Stanford Law Review, 65 Stan. L. Rev. 1027, Lexis]

These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

Thus, Neal Katyal argues that institutions within the executive branch can provide for the "internal separation of powers" in the foreign policy arena and champions bureaucracy as a check on presidential power. n2 Samuel Issacharoff and Richard Pildes argue that **internal dissension** within the executive branch has historically protected civil liberties in wartime. n3 Dawn Johnsen advocates that legal advisers within the executive branch serve to constrain unlawful executive action. n4 Others contend that internal executive mechanisms have comparative advantages over judicial review: for instance, Gillian Metzger observes that such mechanisms can operate **ex ante and continuously,** rather than solely in response to justiciable challenges or problems that generate congressional attention, and argues that the policy recommendations of executive institutions may face less resistance than external critiques. n5 Moreover, **outside the United States**, legal scholars also point to executive oversight institutions as necessary to mitigate inadequate judicial review of state national security activities. n6

Executive CP-SDI

Executive CP – 1nc Solvency

CP solves.

Quirk, University of British Columbia U.S. politics and representation professor with the Phil Lind Chair, and Bendix, Keene State College political science assistant professor, 2015

[Paul and William, No. 68, March 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance" http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf, p.16, accessed 7-15-15, TAP]

Ideally, in the aftermath of the Snowden scandals, Congress would undertake to restore order and legal regularity to surveillance policy by passing new legislation on the metadata program. Conceivably, it could choose to end bulk collection of phone records and reaffirm the original requirement of individual orders for the seizure of a target's business records. Given the prevailing sense of urgency about antiterrorism security, however, we think a constructive measure would more likely sanction metadata collection, subject to conditions and requirements designed to avoid unnecessary harm to privacy interests. For the immediate future, however, Congress appears to have gone out of the business of determining policy for antiterrorism surveillance. In the near term, the best hope for privacy interests is for President Obama to make good on his post-Snowden pledge, repeated in his 2015 State of the Union Address, to reform surveillance programs in order to instill "public confidence…that the privacy of ordinary people is not being violated." He promised to work with Congress on the issue. If Congress is not capable of acting, the executive branch can impose its own constraints on surveillance practices.57 But the maintenance of self-imposed executive-branch constraints would depend entirely on the strength of the administration's commitment—and, in two years' time, on the disposition of the next president. Because of the president's central responsibility for national security, the presidency is hardly a reliable institutional champion for privacy interests.

2nc Blocks

2nc – Solvency EXTN

Unilateral executive policymaking is inevitable – only the CP solves AND it solves the aff internal links sufficiently.

Quirk, University of British Columbia U.S. politics and representation professor with the Phil Lind Chair, and Bendix, Keene State College political science assistant professor, 2015

[Paul and William, No. 68, March 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance" http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf, p.15-6, accessed 7-15-15, TAP]

Even if Congress at some point enacted new restrictions on surveillance, the executive might ignore the law and continue to make policy unilaterally. The job of reviewing executive conduct would again fall to the FISA Court.56 In view of this court's history of broad deference to the executive, Congress would have a challenge to ensure that legislative policies were faithfully implemented.

2nc – Follow-on

Congress will defer to the Executive branch – it will follow the CP which solves every solvency deficit BUT it will take political cover meaning
Quirk, University of British Columbia U.S. politics and representation professor with the Phil Lind Chair, and Bendix, Keene State College political science assistant professor, 2015

[Paul and William, No. 68, March 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance" http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf, p.4, accessed 7-15-15, TAP]

Lacking any settled disposition on surveillance issues, Congress will respond to the leadership, and sometimes merely the political cover, provided by other institutions—especially the president, the intelligence agencies, and the FISA Court. It may take cues from the Justice Department or other executive agencies, and it will defer to rulings by the regular federal courts. In the end, Congress's performance in protecting privacy may depend on the design of the legislative arrangements for dealing with secret programs and on the structures and missions of relevant administrative and judicial institutions.

2nc – Signal

CP sends the most powerful signal (while avoiding Congressional confrontation)

Zbigniew **Brzezinski**, national security advisor under U.S. President Jimmy Carter, 12/3/**12**, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the **ultimate definer** of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the **authentic voice of America**. To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But **no one in the government** or outside it **can match the president's authoritative voice when he speaks and then decisively acts for America**. This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

Obama key to signal and sustainability

Singer, director – Center for 21st Century Security and Intelligence @ Brookings, and Wright, senior fellow – Brookings, 2/7/**'13**

(Peter W. and Thomas, "Obama, own your secret wars", www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620)

It is time for a new approach. And **all that is required** of the President is to do the thing that he does perhaps best of all: to speak. Obama has a unique opportunity — in fact, an urgent obligation — to create a new doctrine, unveiled in a major presidential speech, for the use and deployment of these new tools of war. While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield. The U.S. military's unmanned systems, popularly known as "drones," now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size. This is not just a military matter. American intelligence agencies are increasingly using these technologies as

the tips of the spear in a series of so-called "shadow wars." These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world's first known use of a specially designed cyber weapon. Throughout this period, the administration has tried to have it both ways — leaking out success stories of our growing use of these new technologies but not tying its hands with official statements and set policies. This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along. But that position has become unsustainable. The less the U.S. government now says about our policies, the more that vacuum is becoming filled by others, in harmful ways. By acting but barely explaining our actions, we're creating precedents for other states to exploit. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps. In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties. Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power. The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims. Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument that we cannot confirm or deny our involvement, which no one believes, either. Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the "not sure" category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists. The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an "Alice in Wonderland" feel. The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. After years of silence, occasional statements by senior aides are acknowledging the use of drones, while lesser-noticed working level documents have been created to formalize strike policies and even to explore what to do about the next, far more autonomous generation of weapons. These efforts have been good starts, but they have been disjointed and partial. Most important, they are missing the **much-needed stamp of the President's voice and authority**, which is essential to turn tentative first steps into established policy. Much remains to be done — and said — out in the open. This is why it's time for Obama's voice to ring loud and clear. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, Obama should publicly lay out criteria by which the United States will develop, deploy and use these new weapons. The President has a strong case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods. But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond. It's also about finally defining where America truly stands on some of the most controversial questions.

These include the tactics of “signature” strikes, where the identity is not firmly identified, and “double tap” strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far. The role of the President is not to conduct some kind of retrospective of what we have done and why, but to lay out a course of the future. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them? There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars. And, finally, the President must help resolve growing tensions between the executive branch and an increasingly restive Congress, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm’s way. Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel Peace Prize winner! The President’s voice on these issues won’t be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations.

2nc – AT: Rollback

And executive orders have the force of law:

Oxford Dictionary of English **2010**

(Oxford Reference, Georgetown Library)

executive order

▸ noun US (Law) a rule or order issued by the President to an executive branch of the government and having the **force of law**.

CP constrains future Presidents – it creates a legal framework

Brecher, JD University of Michigan, December **2012**

(Aaron, Cyberattacks and the Covert Action Statute, 111 Mich. L. Rev. 423, Lexis)

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of **constraining future administrations** or preempting legislative intervention. n149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. n150 Additionally, while executive orders are hardly binding, **the inertia following adoption of an order may help constrain future administrations**, which may be more or less trustworthy than the current one. **Creating a presumption through an executive order** also **establishes a stable legal framework** for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

2nc – AT: Links to Politics

Only Congressional moves to reclaim war power authority triggers the war power and politics disad

William **Howell**, Sydney Stein professor in American politics at the University of Chicago, **9/3**/13, All Syria Policy Is Local, www.foreignpolicy.com/articles/2013/09/03/all_syria_policy_is_local_obama_congress?page=full

From a political standpoint, seeking congressional approval for a limited military strike against the Syrian regime, as President Barack Obama on Saturday announced he would do, made lots of sense. And let's be clear, **this call has everything to do with political considerations**, and close to nothing to do with a newfound commitment to constitutional fidelity. The first reason is eminently local. Obama has proved perfectly willing to exercise military force without an express authorization, as he did in Libya -just as he has expanded and drawn down military forces in Afghanistan, withdrawn from Iraq, significantly expanded the use of drone strikes, and waged a largely clandestine war on terrorism with little congressional involvement. The totality of Obama's record, which future presidents may selectively cite as precedent, hardly aligns with a plain reading of the war powers described in the first two articles of the constitution. Obama isn't new in this regard. Not since World War II has Congress declared a formal war. And since at least the Korean War, which President Harry Truman conveniently called a "police action," commanders-in-chief have waged all sorts of wars -small and large -without Congress's prior approval. Contemporary debates about Congress's constitutional obligations on matters involving war have lost a good deal of their luster. Constitutional law professors continue to rail against the gross imbalances of power that characterize our politics, and members of whichever party happens to be in opposition can be counted on to decry the abuses of war powers propagated by the president. **But these criticisms** -no matter their interpretative validity -**rarely gain serious political traction**. Too often they appear as arguments of convenience, duly cited in the lead-up to war, but serving primarily as footnotes rather than banner headlines in the larger case against military action. **Obama's recent decision to seek congressional approval is not going to upend a half-century of practice that has shifted the grounds of military decision-making decisively in the president's favor**, any more than it is going to imbue the ample war powers outlined in Article I with newfound relevance and meaning. **For that to happen, Congress itself must claim for itself its constitutional powers regarding war.** Obama did not seek Congress's approval because on that Friday stroll on the White House lawn he suddenly remembered his Con Law teaching notes from his University of Chicago days. He did so for political reasons. Or more exactly, he did so to force members of Congress to go on the record today in order to mute their criticisms tomorrow. And let's be clear, **Congress** -for all its dysfunction and gridlock -**still has the capacity to kick up a good dust storm** over the human and financial costs of military operations. Constitutional musings from Capitol Hill -of the sort a handful of Democrats and Republicans engaged in this past week -rarely back the president into a political corner. The mere prospect of members of Congress casting a bright light on the human tolls of war, however, will catch any president's attention. Through hearings, public speeches, investigations, and floor debates, members of Congress can fix the media's attention -and with it, the public's -on the costs of war, which can have political repercussions both at home and abroad. Think, then, about the stated reasons for some kind of military action in Syria. No one is under the illusion that a short, targeted strike is going to overturn the Assad regime and promptly restore some semblance of peace in the region. In the short term, the strike might actually exacerbate and prolong the conflict, making the eventual outcome even more uncertain. And even the

best-planned, most-considered military action won't go exactly according to plan. Mishaps can occur, innocent lives may be lost, terrorists may be emboldened, and anti-American protests in the region will likely flare even hotter than they currently are. The core argument for a military strike, however, centers on the importance of strengthening international norms and laws on chemical and biological weapons, with the hope of deterring their future deployment. The Assad regime must be punished for having used chemical weapons, the argument goes, lest the next autocrat in power considering a similar course of action think he can do so with impunity. But herein lies the quandary. The most significant reasons for military action are abstract, largely hidden, and temporally distant. The potential downsides, though, are tangible, visible, and immediate. And in a domestic political world driven by visual imagery and the shortest of time horizons, it is reckless to pursue this sort of military action without some kind of political cover. Were Obama to proceed without congressional authorization, he would invite House Republicans to make all sorts of hay about his misguided, reckless foreign policy. But by putting the issue before Congress, these same Republicans either must explain why the use of chemical weapons against one's people does not warrant some kind of military intervention; or they must concede that some form of exacting punishment is needed. Both options present many of the same risks for members of Congress as they do for the president. But crucially, if they come around to supporting some form of military action -and they just might -**members of Congress will have an awfully difficult time criticizing the president for the fallout**. Will the decision on Saturday hamstring the president in the final few years of his term? **I doubt it.** Having gone to Congress on this crisis, must he do so on every future one? No. Consistency is hardly the hallmark of modern presidents in any policy domain, and certainly not military affairs. Sometimes presidents seek Congress's approval for military action, other times they request support for a military action that is already up and running, and occasionally they reject the need for any congressional consent at all. And for good or ill, it is virtually impossible to discern any clear principle that justifies their choices. The particulars of every specific crisis -its urgency, perceived threat to national interests, connection to related foreign policy developments, and what not -can be expected to furnish the president with ample justification for pursuing whichever route he would like. Like jurists who find in the facts of a particular dispute all the reasons they need for ignoring inconvenient prior case law, presidents can characterize contemporary military challenges in ways that render past ones largely irrelevant. Partisans and political commentators will point out the inconsistencies, but their objections are likely to be drowned out in rush to war. **Obama's decision does not usher in a new era of presidential power**, nor does it permanently remake the way we as a nation go to war. **It reflects a temporary political calculation** -and in my view, the right one -of a president in a particularly tough spot. Faced with a larger war he doesn't want, an immediate crisis with few good options, and yet a moral responsibility to act, he is justifiably expanding the circle of decision-makers. But don't count on it to remain open for especially long.

2nc – AT: Perm Do Both

Links to the net benefit

2nc – AT: Perm Do CP

The CP is functionally competitive and distinct from the plan-

1. Cutail-

A. Curtail means cutting away the authority

Merriam-Webster, 15 ('curtail', http://www.merriam-webster.com/dictionary/curtail

Full Definition of CURTAIL transitive verb : to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation>

B. That requires a third party restriction – executive self-restraint isn't topical – the distinction between the plan and the CP is the CP leaves discretion in the hands of the president. A topical plan takes away that discretion.

8th Circuit Court of Appeals 10

(Public Water Supply Dist. No. 3 v. City of Leb., 605 F.3d 511, Lexis)

HN9 7 U.S.C.S. § 1926(b) provides that a rural district's service shall not be curtailed or limited. In this context, the verbs "curtail" and "limit" connote something being **taken from** the current holder, rather than something being retained by the holder to the exclusion of another. "Curtail" is defined as shorten in extent or amount; abridge; "limit" is defined as set bounds to; restrict. The available cases and fragments of legislative history all seem to have in mind **curtailment** resulting from substitution of **some third party** as a water-supplier for the rural district. Shepardize - Narrow by this Headnote

2. Severance – the CP is PIC out of the federal government – the aff uses all three branches – the CP is net less action because it only fiats one branch and excludes the Congress and president – the perm severs out of executive and congressional action.

North, Center for Immigration Studies Fellow, 2010,

[David, "Backgrounder: Beware of Indirect Immigration Policy Making", Center for Immigration Studies, August) http://www.cis.org/indirect-immigration-policy-making, accessed 10-30-14, TAP]

Most of the **dialogue on national immigration policy**, understandably, **is focused on direct federal government policy making**; that is, when **Congress passes a law** or votes appropriations, when the **executive makes policies** within the law, **and** when the **judiciary interprets** the **law**.

Severance is a reason to reject the perm and vote neg, severance destroys neg counterplan and DA ground to shift out of neg links and competition arguments, and

makes the plan conditional, this makes it impossible to test the merits of the plan. fairness requires stability.

3. They should have specified – there is no USFG, just the three branches of the federal government – ASPEC is a voter for fairness and education – it is key to rigorously testing the aff – specification determines our ground – specific links, CPs, and solvency attacks. Even if you don't vote on specification, it provides a reason to reject this permutation

4. 2ac clarification is too late – they don't get to moot the 1nc – the plan is the stasis point for clash within the debate shifting the meaning based on the negative strategy undermines all clash.

The perm just begs the question of whether Agent CPs are good – they are.

1. Key to neg ground – this topic is AWFUL for the neg – over 30 affs are being read on the topic and the Terror DA is awful – generic CPs are the neg's only chance.

2. Key to rigorously test the aff – Debates over implementation are critical to the topic – they determine solvency and are the heart of the debate.
Kalanges, Northern Illinois University College of Law JD candidate, 2014

[Shaina, 34 N. Ill. U. L. Rev. 643, Summer 2014, "ARTICLE: Modern Private Data Collection and National Security Agency Surveillance: A Comprehensive Package of Solutions Addressing Domestic Surveillance Concerns, 34 N. Ill. U. L. Rev. 643" Lexis, accessed 6-28-15, TAP]

This comprehensive package is necessary because of the looming future of technology that is directly linked to NSA surveillance. Young U.S. citizens are not even immune to data collection by private companies when they are at school. 304Link to the text of the note A survey by Common Sense Media brought attention to private companies employed by schools that store student data with information on student health, grades, computer use, cafeteria meals, and disciplinary records. 305Link to the text of the note There are not many restrictions on how these companies use and store this particular data. 306Link to the text of the note Children and adults are also currently using a multitude of applications (apps), or software devices that [678] perform different functions like creating games, location devices, and connections to subscribers. 307Link to the text of the note Edward Snowden released documents detailing collaborations between the NSA and Britain's Government Communication Headquarters to gain access to data from a multitude of apps for collection and storage as early as 2007. 308Link to the text of the note NSA surveillance of the Angry Birds app is one example of app spying that captures details like user sex, location, and age. 309Link to the text of the note While allowing these intrusions now may not seem wholly detrimental to privacy, technological achievements in the future will make privacy virtually impossible for any software participants. The Google Brain project aims to program biology into computer systems so that phones and computers can form extremely intimate links with their owners in the future. 310Link to the text of the note There is currently an "arms race" between major corporations like IBM, Google, Apple, Baidu, and Microsoft to find the most adequate algorithms for the creation of a computer brain. 311Link to the text of the note In this future, apps and computer programs will be designed to read and interact with human emotion. 312Link to the text of the note Lurking behind those programs will be surveillance and data collection. This is "going to take decades," but the project is already in motion and the NSA has

already latched on to every major communication outlet. 313Link to the text of the note If steps are not taken to implement the goals of the aforementioned comprehensive package in the United States, the bounds of the law will expand as technology expands, and privacy expectations will shrink in the shadow of human analysis and surveillance. Still, reclaiming data collected and stored by the NSA could prove problematic, costly, and time consuming. But Judge Leon warned the government in Klayman that a failure to comply with his decision, if not overturned, would result in timely sanctions. 314Link to the text of the note Remedying any past issues and instituting safeguards for future issues is of the utmost importance. The future of NSA surveillance may depend most largely on the direction of the [679] executive, but the legislature and the Supreme Court have a large role to play in setting out guidelines for the NSA and the judiciary and guidelines for how much privacy the Constitution affords information moving across channels that may currently be seized at any moment. 315Link to the text of the note

3. Implementation is 90 percent of policymaking. Elmore, 1980

[Richard Elmore, University of Washington Public Affairs professor, 1980, Science Quarterly, p. 606-8, TAP]

The stakes involved in choosing an analytic approach are clearer when they are put in the context of current thinking about implementation. As the literature on implementation has accumulated certain issues have emerged that demonstrate the consequences both intellectual and practical, of seeing implementation either as a hierarchically ordered process or as a dispersed and decentralized process. Organizational Processes and Outputs The emergence of implementation as a subject for policy analysis coincides closely with the discovery by policy analysis that decisions are not self-executing. **Analysis of policy choices, matters very little if the mechanism for implementing** those choices **is poorly understood**. In answering the question, "**What percentage of** the **work of achieving a desired** governmental **action is done when the preferred** analytic **alternative has been identified**? Allison estimated that, in the normal case, it was about **10 percent**, **leaving** the remaining **90 percent in the realm of implementation**.9 Hence, in Nelson's terms, "the core of analysis of alternatives becomes the prediction of how alternative or structures will behave over. . . time."

But the task of prediction is vastly complicated by the absence of a coherent body of organizational theory, making it necessary to posit several alternative models of organization 7 Those policy analysts who are economists, impatient with the complexities of bureaucracy and the lack of precision in organizational theory, have tried to reduce implementation analysis to a simple choice between market and non-market mechanisms Schultze states the basic argument when he says that the "collective-coercion component of intervention should be treated as a scarce resource" in the formulation of policies, and that policymakers should learn to "maximize the use of techniques that modif the structure of private incentives,"8 Wolf furthers the argument, stating that the whole enterprise of implementation analysis can be reduced to a diagnosis of the pathologies of nonmarket structures, or as he calls it, "a theory of nonmarkel failures." The simplicity of the argument is comforting, but its utility is suspect. It seeks to solve one type of organizational problem, the responsiveness of large-scale bureaucracies, by substituting another type of organizational problem, the invention and execution of quasi markets. There is little evidence to suggest that the latter problem is any more tractable than the former. One would hardly expect, though, that a detailed framework for analysis of organizational alternatives would emerge from an intellectual tradition that regards organizational structure of any kind as a second-best solution to the problem of collective action. 10 Defining implementation analysis as a choice between market and nonmarket structures diverts attention from, and trivializes, an important problem how tome the structure and process of organizations to elaborate, speci and define policies. Most policy analysts, economists or not, are trained to regard complex organizatiom as barriers to the implementation of public policy, not as instruments to be capitalized upon and modified in the pursuit of policy objectives. In fact, organizations can be remarkably effective devices for working out difficult public problems, but their use requires an understanding of the reciprocal nature of authority relations. Formal authority travels from top to bottom in organizations, but the informal authority that derives from expertise, skill, and proximity to the essential tasks that an organization performs travels in the opposite direction. Delegated discretion is a way of capitalizing on this reciprocal relationship, responsibilities that require special expertise and proximity to a problem are pushed down in the organization, leaving more generalized responsibilities at the top. For purposes of implementation, this means that formal authority, in the form of policy statements, is heavily dependent upon specialized problem-solving capabilities further down the chain of authority. Except in cases where a policy requires strict performance of a highly structured routine (for example, airline safety inspections), strong hierarchical controls work against this principle of reciprocity. To use organizations effectively as instruments of policy, analysts and **policymakers have to understand where in the complex network of organizational relationships certain tasks should be performed**, what resources

are necessary for their performance, and whether the performance of the task has some tangible effect on the problem that the policy is designed to solve Analysts and policymakers do not need to know how to perform the task, or even whether the task is performed uniformly; in fact, diversity in the performance of the task is an important source of knowledge about how to do it better.

2nc – Agent CPs Good

Agent CPs are good – framing issue – even if on most topics they are bad, they are critical to being NEG on THIS TOPIC. At worst reject the arg not the team.

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XO CP – NEG

1NC

Text

Text: The president of the United States should (plan) through an executive order.

The executive order would follow Obama's position during his campaign and early presidency.

Barack Obama on surveillance, then and now By Caroline **Houck** on Thursday, June 13th**, 2013**
http://www.politifact.com/truth-o-meter/article/2013/jun/13/barack-obama-surveillance-then-and-now/
With revelations that the federal government has been collecting data on phone calls and Internet usage, some have questioned whether President Barack Obama has broken promises he made in the 2008 campaign. YouTube videos have popped up, juxtaposing speeches Obama made as a candidate in 2008 with his more recent argument that trade-offs must be made to protect the American people. Some see this as a reversal in his positions. So we went back and looked at promises tracked in our Obameter and other coverage of the 2008 election to see where Obama stood on the spectrum of security and privacy. In the years leading up to the 2008 campaign and in the early stages of the campaign itself, Obama regularly emphasized the importance of civil liberties and the sanctity of the Constitution. "We need to find a way forward to make sure that we can stop terrorists while protecting the privacy, and liberty, of innocent Americans," then-Sen. Obama said when he voted against Michael Hayden's confirmation as CIA director in 2006. "As a nation we have to find the right balance between privacy and security, between executive authority to face threats and uncontrolled power. What protects us, and what distinguishes us, are the procedures we put in place to protect that balance, namely judicial warrants and congressional review. ... These are concrete safeguards to make sure surveillance hasn't gone too far." During his presidential campaign he reinforced these earlier stances by promising to "strengthen privacy protections for the digital age and … harness the power of technology to hold government and business accountable for violations of personal privacy." Though our Obameter tracking of this promise notes that his specific pledges pertained more to safeguards against commercial privacy infringements than governmental intrusions, he did promise to protect citizens' privacy. As of Jan. 14, this promise was "in the works," as both Obama and Congress considered various measures to protect and define individuals' Internet privacy. But many of Obama's criticisms of government surveillance specifically targeted President George W. Bush's warrantless wiretaps and particular applications of FISA and the USA Patriot Act that Obama called excessive or illegal.

Net Benefits:

Pres Powers

Executive orders key to presidential power

Risen 4 [Clay, Managing editor of *Democracy: A Journal of Ideas,* M.A. from the University of Chicago "The Power of the Pen: The Not-So-Secret Weapon of Congress-wary Presidents" The American Prospect, July 16, http://www.prospect.org/cs/articles?article=the_power_of_the_pen]

In the modern era, **executive orders have gone from being a tool largely reserved for internal** White House **operations** -deciding how to format agency budgets or creating outlines for diplomatic protocol -- to **a powerful weapon in defining, and expanding, executive power**. In turn, **presidents have** increasingly **used that power to** construct and **promote social policies on** some of the country's most **controversial issues, from civil rights to labor relations to reproductive health**.

2NC/1NR

Avoids Politics

Unilateral actions avoid the politics DA – three reasons

Moe & Howell 99 (Terry M. Moe, William G. Howell, Howell is a graduate student in political science at Stanford University , Moe is a professor of political science at Stanford University and a senior fellow at the Hoover Institutionhttp://home.uchicago.edu/~whowell/papers/UnilateralAction.pdf**,) //RH**

The president's base of independent authority, in fact, is enormously enhanced rather than compromised by the executive nature of the job: First, because presidents are executives, the operation of government is in their hands. As an inherent part of their job, they manage, coordinate, staff, collect information, plan, reconcile conflicting values, and respond quickly and flexibly to emerging problems. These activities are what it means, in practice, to have the executive power, and they give presidents tremendous discretion in the exercise of governmental authority. The opportunities for presidential imperialism are too numerous to count. When presidents feel it is in their political interests, they can put whatever decisions they like to strategic use, both in gaining policy advantage and in pushing out the boundaries of their power. Second, because presidents are executives, they have at their disposal a tremendous reservoir of expertise, experience, and information, both in the institutional presidency and in the bureaucracy at large. These are critical resources the other branches can never match, and they give presidents a huge strategic advantage—in the language of agency theory, an information asymmetry of vast proportions—in UNILATERAL ACTION AND PRESIDENTIAL POWER □ 855 856 □ PRESIDENTIAL STUDIES QUARTERLY pursuing the myriad opportunities for aggrandizement that present themselves in the course of governmental decision making. Third, and finally, there is a key advantage that is often overlooked. Because presidents are executives, and because of the discretion, opportunities, and resources available to them, they are ideally suited to be first movers and to reap the agenda powers that go along with it. If they want to shift the status quo by taking unilateral action on their own authority, whether or not that authority is clearly established in law, they can simply do it—quickly, forcefully, and (if they like) with no advance notice. The other branches are then presented with a fait accompli, and it is up to them to respond. If they are unable to respond effectively, or decide not to, presidents win by default. And even if they do respond, which could take years, presidents may still get much of what they want anyway.

A2 – Congress Overrides XO

Congress rarely overrides unilateral actions

Huder 15, (2-23-2015, Joshua Huder is a senior fellow at the Government Affairs Institute at Georgetown University, earning a PhD at University of Florida in American politics "DHS dispute: Why Congress rarely curtails presidential unilateral actions (+video)," http://www.csmonitor.com/USA/Politics/Politics-Voices/2015/0223/DHS-dispute-Why-Congress-rarely-curtails-presidential-unilateral-actions-video,) //RH

Institutional power is more of an academic topic. Nonetheless, it has enormous ramifications. The current immigration debate is a great example of that. Despite the rhetoric around the Department of Homeland Security funding debate, America has never had a dictator president – the current president included. However, the fight for power in the separation of powers (i.e. How big should the presidency be?) is real. The DHS/immigration debate is an interesting look into that struggle. Much of the modern presidency's power stems from the type of actions we are observing in the immigration debate. Reinterpreting existing law, exercising discretion on the many responsibilities under the purview of the executive branch, or writing orders and directives, presidents have ample opportunity and authority to reshape national policy unilaterally. These actions pale in comparison to actually creating law, as Congress does, but they are important nonetheless. And while Obama's immigration action falls within precedents set by former presidents, Congress is well within its constitutional rights to correct presidential overreach. However, Congress rarely curtails presidential unilateral actions. There have been several attempts but few are successful. The best attempt was the 1974 Budget Control and Impoundment Act, establishing the modern budget process. After Nixon impounded congressionally appropriated funds, Congress established processes and deadlines to take back budgetary control. It also established a reconciliation process that could circumvent filibusters to restore budget harmony. That process could be used to respond to executive actions if those actions fail to follow congressional intent As we see today, even Congress's most powerful tool cannot address executive action. It would take some creative legislative drafting in order to use reconciliation to reverse Obama's immigration action, which prohibits provisions that have no budgetary effect. Which means today's congressional stalemate boils down to one of two possibilities: either Republicans cannot use reconciliation to reverse Obama's executive actions or – because the reconciliation process only allows a limited amount of bills per year – they plan on using it for another purpose. This is the problem Republicans currently face. They cannot circumvent the supermajority requirements of the process. Even if they could, there is no guarantee Republicans could find a Senate majority once the symbolic nature of the cloture vote was removed from the scenario. Should three moderate or border Republicans join Sen. Dean Heller (R) of Nevada in blocking the bill, Congress's response would still be deadlocked. Historically Congress's power has been hampered by its own processes and the political realities of forging majority coalitions. It's often very difficult to pass bills through both chambers. It's particularly challenging to find majorities to challenge unilateral executive actions that fall within the previously accepted scope of executive authority. It's nearly impossible to find a supermajority to do that. Without a Watergate-like scandal, where illegal actions clearly occurred, Congress rarely has the ability to tame America's 80-year tradition of expansive executives. The ambiguity of Article II means that presidential power is open to interpretation, which is another way of saying that presidents' unilateral power is mostly anything that Congress has not expressly prohibited. Given the inherent difficulties of lawmaking and the supermajority processes that have always existed in Congress, historically those prohibitions have been scarce. As Jon Bernstein points out, every modern president overreaches at some point. With a hamstrung legislative branch, that's likely to continue.

Self-Restraint CPs – HJPV

Executive Self-Restraint Mechanism

1nc

Text: the President of the United States should reduce [object of the plan].

The counterplan solves the case while preserving executive flexibility

Metzger 15

[Gillian, Professor of Law, Columbia Law School, April 2015, "ARTICLE: The Constitutional Duty To Supervise", Yale Law Review, LexisNexis, 124 Yale L.J. 1836] Schloss

Supervision and oversight are similarly pivotal when it comes to legal accountability. While courts play a central role in enforcing legal constraints on government, a variety of factors can limit the effectiveness and availability of such judicial review. 252 **Internal supervision is free of many of these obstacles, and thus plays a critical role in guaranteeing administrative adherence to governing legal requirements**.253 Reliance on internal supervision and oversight to achieve legal accountability, instead of just on courts, also minimizes the risk that enforcing legal constraints will undermine managerial control and accountability. 254 Despite its resistance to according supervision much constitutional significance, the Court has noted the role bureaucratic supervision plays in ensuring legal adherence. Thus, for example, it has emphasized the availability of internal administrative complaint mechanisms that could uncover and address constitutional violations in refusing to imply a Bivens right to challenge such violations in court.255 A number of scholars have gone further, underscoring the importance of internal administrative constraints in ensuring that delegated power is not wielded in an arbitrary fashion.256 And while the scope of delegated federal power is much vaster today, similar concerns with ensuring that government officials adhere to governing legal requirements have fueled bureaucratic supervision since the birth of the nation.257 Indeed, the Take Care Clause formally links supervision and legal accountability by tying supervision to faithful execution of the laws.258¶ Put starkly, bureaucratic and managerial accountability in the form of internal executive branch supervision is an essential precondition for political and legal accountability, given the phenomenon of delegation. Scholars debate whether the broad delegations that characterize modern administrative government can ever accord with the Constitution's grant of legislative power to Congress and separation of power principles. That debate will no doubt continue, but has been eclipsed by reality; modern delegation is here to stay.259 The more pressing question today is how best to integrate the inevitable phenomenon of delegation into the Constitution's structure. The answer, to my mind, is recognizing that delegation creates a constitutional imperative to ensure that the powers transferred are used in accordance with constitutional accountability principles. In short, delegation creates a duty to supervise delegated power

2nc Solvency

Executive self-restraint's best – anything else is overly restrictive, which ruins solvency in the long run

Christenson and Kriner 15 [Dino and Douglas, Assistant Professor of Political Science at Boston University, Associate Professor of Political Science at Boston University, EXECUTIVE DISCRETION AND THE ADMINISTRATIVE STATE: POLITICAL CONSTRAINTS ON UNILATERAL EXECUTIVE ACTION, http://law.case.edu/journals/LawReview/Documents/Hill%20Introduction.pdf] Schloss

Zachary Price, Associate Professor at University of California Hastings College of Law, places his focus on informal political constraints on presidential inaction. In particular, Professor Price asks how strong the norm of executive enforcement duty should be. He concludes that it should be relatively robust, since citizens of all stripes have an interest in ensuring that legislative achievements retain lasting force beyond the administration in which they are enacted. In addition, Professor Price contends that transparency, centralization, and definiteness—though arguably desirable in most administrative contexts—are **detrimental** to ensuring fidelity to statutory commands in the agency enforcement context. Thus, both Price's and White's contributions show that the nation's **long-term interest is not always well-served when short-term concerns** motivate the political branches to take actions affecting the distribution of power between them.

Only the executive acting alone solves

Moe and Howell 99 [Terry and William, a professor of political science at Stanford University and a senior fellow at the Hoover Institution, Howell is a graduate student in political science at Stanford University. He is currently writing a dissertation on the politics of unilateral action, Unilateral Action and Presidential Power: A Theory, http://onlinelibrary.wiley.com/doi/10.1111/1741-5705.00070/epdf] Schloss

If the president had the power to act unilaterally in this same situation, as depicted in Figure 1B, **things would turn out much more favorably**. He would not have to accept **Congress's shift in policy** from SQ2 to SQ2* and could take action on his own to move the status quo from SQ2* to V—using his veto to prevent any movement away from this point. V would be the equilibrium outcome (as it was in the earlier case of unilateral action). And although the president would still lose some ground as policy moves from the original SQ2 to V, unilateral action allows him to keep policy much closer to his ideal point—and farther from Congress's ideal point—than would otherwise have been the case. He clearly has **more power over outcomes** when he can act unilaterally.

The president has a unique role in national security

McGinnis 93 [John O., Assistant Professor, Benjamin N. Cardozo School of Law. From 1985-1987 1 was an attorney-adviser and from 1987-1991 Deputy Assistant Attorney General in the Office of Legal Counsel, Department of Justice. I thus participated in drafting some of the materials discussed in this

article, CONSTITUTIONAL REVIEW BY THE EXECUTIVE IN FOREIGN AFFAIRS AND WAR POWERS: A CONSEQUENCE OF RATIONAL CHOICE IN THE SEPARATION OF POWERS, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4213&context=lcp] Schloss

The output under the model depends on the relative interests and aptitudes of the institutions that will bargain with and accommodate each other. 8 These are partly defined by the textual provisions whose core is less likely to be disputed. 9 The president's power as commander-in-chief is relevant to his interests both because this gives him some power of initiative of action in war powers and because it creates the expectation that the president is immediately responsible for protecting the security of the nation and the safety of its citizens.' Given these expectations, the president will want to acquire the rights of governance over areas, such as diplomacy, which imminently affect the exercise of this responsibility. Additionally, the structure of the presidency as a single office possessed by one person also gives the executive unique capabilities of acting with "secrecy and dispatch,, 61 giving him a **comparative advantage in carrying out these functions**. Thus, because of the president's constitutional powers and because of expectations that have developed about his responsibilities in the area of foreign affairs and war powers, the president generally places **a very high value on control of the rights of governance in foreign affairs**.62

Congress and the Courts fail – internal checks are key
Metzger 09

Gillian E. Metzger, is a United States Constitutional Law scholar and a professor of law at Columbia University, "THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS," October 7, 2009, Columbia Law School Public Law and Legal Theory Working Paper Group, Google Scholar/NV

Equally important, the relationship between internal and external separation of powers is not unidimensional: Internal mechanisms can, in turn, play a pivotal role in enabling external checks on the executive branch to function. Congress needs information in order to conduct meaningful oversight of the executive branch. Internal agency experts and watchdogs are 94 important sources of that information, whether in the guise of formal reports, studies, and testimony or more informal conversations and leaks. Procedural constraints within agencies 95 can serve a similar function of ensuring that Congress is aware of agency activities. Internal 96 mechanisms also reinforce Congress's role by creating bodies of personnel within the executive branch who are committed to enforcing the governing statutory regime, which sets out the parameters of their authority and regulatory responsibilities, and on whose expertise functioning of those regimes often depends. Courts are equally dependent on information and evidence 97 compiled by agency personnel to adequately review agency actions, and have invoked this dependence in justifying the requirement that agencies disclose underlying information and offer detailed explanations of their decisions. Moreover, despite regularly intoning that "it [is] not 98 the function of the court to probe the mental processes of Secretar[ies] in reaching [their] conclusions," judicial review of agency actions often appear to turn on judges' perceptions of 99 the role politics played in agency officials' decisionmaking. Evidence that decisions were 100 made over the objections of career staff and agency professionals—sometimes indicated by inconsistency in an

agency's position from its previous stance—often triggers more rigorous review. A particularly striking suggestion of how internal checks can effect judicial review 101 came in the recent Boumediene litigation: Just a few months after refusing to grant certiorari in order to allow the CSRT process to proceed, the Court reversed course and granted review, apparently influenced in part by concerns expressed by military lawyers about how the tribunals were functioning.102

Internal checks are net-better than external ones
Katyal 06

Neal Kumar Katyal, professor of law at Georgetown University, "Internal Separation of Powers: Checking Today's Most Dangerous Branch From Within," May 5, 2006, The Yale Law Journal, Google Scholar/NV

Agency design can replicate some functional overlap of responsibilities amongst the branches. One of the classic divisions of power in the Constitution concerns war: While Congress declares it, the President is the Commander-inChief.25 That division is structurally inefficient, in the sense that it creates the possibility of dissension and rivalry, yet its inefficiency is the point.26 Today, the locus of academic concern centers on disputes between whether and to what extent the President and Congress should control agency decisionmaking. These discussions center along the President v. Agency axis. Instead, legal reform could focus on a lower rung: President v. (Agency1 + Agency2). Partially overlapping agency jurisdiction could create friction on issues before they are teed up to the President for decision. Otherwise, the President could easily surround himself with people of a similar worldview who lack expertise. Redundancy has a pejorative connotation–conjuring up images of inefficiency and waste. In private markets, attacks on redundancy became a dominant component of Taylorism (the early twentieth-century scientific management theory) and has motivated many recent agency consolidations.27 But there are a number of positive redundancies–starting with those in the Constitution itself, which creates two houses of Congress and divides functions between two political branches. And reliance on one agency is often risky, for "organizational systems of this sort are a form of administrative brinkmanship. They are extraordinary gambles. When one bulb blows, everything goes."28 As the common saying goes, "where you stand is a function of where you sit." By placing individuals in different organizational structures, different viewpoints emerge. Colin Powell as Secretary of State is a different entity than Colin Powell as head of the Joint Chiefs of Staff. And that point goes not simply for leaders but others within an agency as well.29 Bureaucratic overlap allows agencies to function more like laboratories–devising new solutions to new problems. That is one rationale for the division of antitrust authority between the Federal Trade Commission and Department of Justice.30 Moreover, to the extent particular agencies are captured by interest groups, overlapping bureaucratic entities can mitigate capture's effects.31 The notion of overlapping agency jurisdiction is not unlike the idea of a free market. We do not want one supplier of information to the President; a market better supplies clients than a monopolist. Without bureaucratic overlaps, agencies are not pushed to develop innovative ways of dealing with problems and may ossify.32 It is therefore surprising that market-oriented scholars resist conceptualizing the executive branch in this way. The story of the unitary executive has morphed into a myth of an executive that must have seamless control over all its components. But there is a counter-story to be told, one that emphasizes checks and balances within the Executive Branch, such as those resulting from the 1947 National Security Act. Just as bicameralism and two political branches produce better decisions, there is powerful evidence that presidents succeed because redundancy generates the information a President needs.33 Perhaps no analysis of a modern presidency so condemns the status quo as Richard Neustadt's comparison of FDR and Eisenhower. FDR succeeded because he guaranteed a flow of information to him, using his own contacts in agencies. He would call you in . . . and he'd ask you to get the story on some complicated business, and you'd come back after a couple of days of hard labor and present the juicy morsel you'd uncovered under a stone somewhere, and then you'd find out he knew all about it, along with something else you didn't know.34 FDR used bureaucratic overlaps to produce better policy and information: "His favorite technique was to keep grants of authority incomplete, jurisdictions

uncertain, charters overlapping."[35] Eisenhower, by contrast, imparted "more superficial symmetry and order to his flow of information . . . . Thereby, he became typically the last man in his office to know tangible details and the last to come to grips with acts of choice."[36]

Inspector General Mechanism

1nc

Text: The United States federal government should submit [the object of the plan] to Inspector General investigative review. The Inspector General of [the agency that oversees the plan] should report all relevant abuses in the area of domestic surveillance to the executive branch. The executive branch should fully and immediately implement the recommendations of the Inspector General.

Inspector generals can better scrutinize internal agencies and increases internal compliance.

Renan, 15 (Daphna; Alexander Fellow, New York University School of Law; formerly Attorney Advisor, Office of Legal Counsel, and Counsel, Office of the Deputy Attorney General; "POOLING POWERS"; March 2015; http://columbialawreview.org/wp-content/uploads/2015/03/Renan-Daphna.pdf) KW

Institutional strategies might not have the same drawbacks and, at a minimum, offer an additional course to pursue. We might ask how Congress can use institutions embedded inside the executive to make pooling more accountable. Congress, for instance, has tasked inspectors general inside individual agencies with preventing fraud and abuse.385 Because they are ensconced within the agencies, inspectors general can be more sensitive than courts or Congress to nuanced forms of legal evasion. And their formal and informal features of independence can help protect their ability to **scrutinize the conduct** of the agencies within which they are housed.386 Though inspectors general have not performed uniformly, they have had beneficial effects on **administrative compliance**.387 We might use this type of oversight structure but think about how to extend it into the interstices. **One possibility would be for Congress to task inspectors general with investigating when pooling exceeds an agency's legal mandate or poses a threat to civil rights and civil liberties**.388

2nc Solvency

Counterplan solves the whole case – IG review is *durable* and *thorough*

Brenner, 4 (Joel, NSA Inspector General 2002-2007, "Information Oversight: Practical Lessons from Foreign Intelligence", 9/30/4, http://www.heritage.org/research/lecture/information-oversight-practical-lessons-from-foreign-intelligence) KW

There are numerous additional layers of oversight within the executive branch itself. The Justice Department engages in broad oversight of NSA's policies through its Office of Intelligence Policy and Review, as does the President's Foreign Intelligence Advisory Board. The Assistant to the Secretary of Defense for Intelligence Oversight is further empowered to review activities as well as policies throughout the intelligence community. And the Inspector General of the Department of Defense is empowered to review any aspect of that Department, including the operations of the Defense Agencies, of which NSA is one. As a practical matter, however, NSA's Inspector General conducts the most **intense and effective** executive oversight of NSA's operations.21 In that capacity I have broad authority to audit, investigate, and inspect virtually any activity in the Agency, and I exercise that authority through a competent and experienced staff of more than 60 professionals and support personnel. Our collective **experience** in conducting oversight of a large, far-flung, and technically sophisticated intelligence agency may have something to teach legislators and policy-makers contemplating an expanded role for domestic antiterrorism activities. I will not enter here into the debate over the wisdom or necessity of such activities; but to the extent that they may be done, they should be done well--and scrupulously according to law.

Inspector General review solves the aff and ensures accountability

Goldsmith, 12 (Jack, Professor of Law at Harvard University, former assistant Attorney General to the Office of Legal Counsel under the Bush Administration; March 12, 2012; "Power and Constraint: The Accountable Presidency After 9/11"; W. W. Norton & Company; 1 edition)//JPM

The point for now is to recognize how important the inspector general has become as a fount of accountability inside the presidency's secretive national security bureaucracy. The leaders of the congressional intelligence committees lacked the political will to thoroughly examine the CIA program, as well as the time and resources of Helgerson's team. Moreover, in the early years after 9/11, separation-of-powers objections by the executive branch—classified information, executive privilege, attorney-client privilege, and the like—would have prevented them from anything close to Helgerson's full access to CIA personnel and documents as well as to Department of Justice and CIA legal memoranda. But by giving Helgerson a perch inside the CIA and comprehensive power to investigate, to collect information, to analyze it, and to send it to the Hill, Congress circumvents these hurdles and gets deep inside the presidency. Congress in effect delegates its initial oversight function to the inspector general, who can quickly gather a much more complete understanding of executive branch activity than Congress itself could have.¶ What Helgerson did inside the CIA is emblematic of the role that inspectors general across the government have played since 9/11. **Glenn Fine, the inspector general** of the Department of Justice, was just as forceful. On his own initiative he **launched critical investigations into the FBI**'s roundup of illegal aliens in the panicked weeks and months after 9/11 **and** into its involvement with Defense Department and **CIA**

interrogation practices in Guantanamo Bay, Afghanistan, and Iraq.76 Like Helgerson, Fine saw his office "as an independent entity that reports to both the Attorney General and Congress."77 But in truth, **Fine**, like Helgerson, **acted more as an agent of Congress than of the President.** In the post-9/11 period, **Congress increasingly asked inspectors general to do national security investigations within the executive branch that Congress never could have done as quickly or effectively.** Helgerson's investigation of responsibility for 9/11 was an example of this, as were Fine's reform-minded reports on FBI terrorist watch lists and the FBI's methods of obtaining personal and business records.78 Since 2001, pursuant to a requirement of the PATRIOT Act, **Fine** also r**eviewed allegations of civil liberties abuses and** dutifully **reported them to Congress** (and the public) twice each year, **which then acted on them**.79 Congress also charged Fine and a team of inspectors general to do a "comprehensive report" of the controversial Terrorist Surveillance Program of warrantless wiretapping.80 Congress continued this pattern in a 2010 intelligence of the Director of National Intelligence and gave inspectors eral around the national security world many new tanks,"¶ In 1978, Jimmy Carter's Justice Department concluded that the placement of powerful independent inspectors general inside the presidency "violates the doctrine of separation of powers.'* Two decades later, and just three years before 9/11, a bipartisan group of distinguished experts described inspectors general at "congressional ferrets of dubious constitutionality."*3 Today, constitutional doubts about these congressional ferrets are largely gone. **Inspectors general have grown in stature and power and have become an established, legitimate, and consequential mechanism of executive branch accountability, even in wartime**. Despite presidential resistance, Congress has expanded their jurisdiction to every corner of the national security bureaucracy except the White House itself. It has steadily increased their size, power, and responsibilities over the years. And it consistently gives them political support in their clashes with the executive branch.¶ Many executive branch officials dislike or distrust inspectors general, sometimes with good reason. Inspectors general are not angels. Like all bureaucrats, they have biases, their competence varies, and they make mistakes. There is a genuine question, which I examine later, about who guards these powerful guardians. But on the whole, **executive branch anxiety about inspectors general is a testament to their independence and effectiveness**. What critics fail to appreciate is **how credible independent inspectors general inside the executive branch can enhance executive power.**¶The 2008 amendments to the Foreign Intelligence Surveillance Act are a good example. Beginning in 2004, lawyers inside the government, and then leaks to the press, and then a secret surveillance court, pushed back against excesses in President Bush's controversial Terrorist Surveillance Program. By 2008, President Bush needed new legislation to keep the program going, and Congress obliged with new surveillance powers that were viewed by some as a capitulation to presidential unilateralism. "A weak Democratic Congress passed a law giving the Bush administration virtually unchecked power to intercept Americans* international email messages and telephone calls," charged ACLU Executive Director Anthony Romero." But this characterization is wrong. The Democratic Congress was convinced that the pre-9/11 surveillance regime had been overtaken by technological developments and needed to be more flexible to redress modern terrorism and related foreign intelligence collection challenges. The consensus was that the executive branch should be given power to surveil persons reasonably believed to be outside the United States as long as it took careful steps to redact or eliminate conversations of innocent Americans.¶The problems were that Congress did not trust the executive branch, especially the

Bush administration, to use these new powers faithfully; and it did not trust itself to undertake the hard work of oversight needed to ensure compliance with its mandate. A major part of the solution to these problems was to empower inspectors general around the national security bureaucracy to regularly analyze the procedures used for targeting persons outside the United States and for redacting U.S.-person conversations, and to regularly report its results to Congress, which can then decide—after the hard information-gathering work has been done, inside the executive branch—if the law is being implemented as it wishes.86 In explaining his vote for the law, the then senator and presidential candidate Barack Obama specifically referenced the inspector general guarantees that he believed "ensures that there will be accountability going forward."87 (The new law also imposed other credible constraints, including advance review by a court of the legality of the procedures, and scores of legal restrictions on the executive branch that are enforced by "a bevy of lawyers crawling up their asses all the time," as one senior Department of Justice official said.)88 The executive branch likely would not have received the modernized surveillance powers that are so crucial in the fight against hard-to-find terrorists if not for the existence of a credible inspector general that Congress could trust to monitor and enforce restrictions on presidential discretion in secret. In these and other What John Helgerson uncovered and put in his report comprised the foundation of many subsequent government-wide investigations of the CIA detention and interrogation program, some of which are still going on today. No CIA program—including the ones that underlay the Iran-Contra scandal and the many mitigated during the Church and the Pike Committee hearings has ever undergone so much extended or critical scrutiny. In tjw process both the CIA and the accountability system governing changed fundamentally. ¶ Helgerson followed up the initial review with more focused I investigations of the detention program and the CIA's rendition program as well.89 He eventually referred twenty or so cases for criminal investigation by career Justice Department prosecutors.90 One of these cases—Helgerson called it the most severe—resulted in a prosecution: CIA contractor David Passaro was convicted of assaulting Abdul Wali, who died in an Afghanistan prison in the summer of 2003.91 Some saw a whitewash in the refusal to prosecute others in 2003, but the truth is more benign. "The fact that we do a crime report does not necessarily mean that we believe it should be prosecuted," Helgerson explained.92 Congress required him to tell the Justice Department about "any information, allegation, or complaint" relating to a possible violation of federal criminal law, regardless of whether he thinks an actual crime was committed.93 Prosecutors, by contrast, must convince a jury of a crime beyond a reasonable doubt. The career prosecutors who first examined the inspector general referrals concluded that they lacked sufficient evidence of criminal conduct, criminal intent, or the subject's involvement to bring charges.94 A few cases were close calls, and would later be reopened. But after circling the globe to examine witnesses and evidence, the career prosecutors in 2004 concluded that they could not "probably obtain and sustain a conviction as justice Department regulations require before bringing charges.95 "The professionals at DOJ looked with considerable care at the various serious cases" and "spent countless hours in our work spaces/5 Helgerson later said, satisfied with their decisions.¶ This was not nearly the end of the matter. After the Justice Department review came scrutiny before the CIA "Accountability Boards-" An Accountability Board is an ad hoc group of CIA officials convened by the CIA Director to assess whether CIA officials failed to act "in a professional and satisfactory manner," and if so, whether they should be subject to disciplinary action ranging from

a reprimand to termination.97 Time before a CIA Accountability Board is a mark of dishonor that, during the review (which can take a long time), puts one's career on hold. Some **CIA officials involved in detention and interrogation quit the Agency rather than face an Accountability Board**.¶

IG review causes internal reform, even if the findings remain confidential

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

In addition, the CIA IG interrogations review suggests that the information from IG investigations **informed decisionmaking within the executive branch**, even in the absence of public transparency. Although the CIA IG report was publicly blocked for years, at the time of its release within the executive branch it revealed critical information about actual CIA interrogation practices, apparently with some impact. For instance, the report has been credited with influencing OLC head Goldsmith to withdraw an OLC memo approving extreme interrogations in June 2004211 and possibly contributing to the decision to end waterboarding.212 At the time the report was first issued internally—before the release of the Abu Ghraib photos—it supplied one of the earliest graphic depictions of extreme interrogations. In addition, because the CIA National Clandestine Service later destroyed ninety-two videotapes of detainee interrogations that the IG had reviewed,213 the IG report's description of those interrogations, including the repeated use of waterboarding, remains an **essential source** on those interrogations.

Identifying rights violations and wrongful conduct IG reviews solve better than courts – can critique actions where there aren't laws.

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

In several cases, IG reviews concluded that executive officials had **violated the law** or, even in the absence of a legal violation, had **engaged in wrongdoing**. **Like judicial findings**, IGs' declarations of government wrongdoing had expressive significance, perhaps drawing even **greater legitimacy** from an expectation that executive institutions would not lightly criticize executive conduct. The DOJ IG reports on September 11 detainees and NSLs, and the CIA IG report on harsh interrogations, provided powerful statements of the wrongfulness of government actions.¶ IG investigations sometimes proceeded where the underlying rights concerns **eluded judicial review**. The DHS IG investigated Arar's rendition where separation of powers and state secrets concerns ultimately led courts to decline review of his case and others challenging renditions.231 The DOJ IG NSL reviews exposed noncompliance with the law where courts could not have intervened, for lack of a private plaintiff with the knowledge, incentive, and standing to mount a legal challenge.232 Even where courts could have intervened, IGs had the **institutional advantage** of being able to assess compliance against a broad range of legal authorities, including agency rules and internal policies, which did not create judicially enforceable rights.¶ Furthermore, IGs sometimes showed a willingness to hold the executive accountable even in the "**gaps of the law**." **Particularly in the**

national security context, the lack of judicial review can result in substantive underdevelopment of the law. Cornelia Pillard has criticized the OLC and Solicitor General's office for taking advantage of this non-enforcement, arguing that where courts had not prohibited certain executive conduct, these institutions simply concluded that no constitutional problem existed.233¶ By contrast, IGs in several cases **critiqued government action** even where no specific legal provision applied or where interpretations of the law were strongly contested. For instance, in the DOJ IG September 11 detainees review, the IG criticized the INS's protracted service of immigration charging documents on detainees, which impeded their ability to contest the charges or apply for bond, even though no regulation or policy specified when the INS should serve those documents.234 Similarly, the IG strongly criticized prolonged detentions even though it noted that the lawfulness of detention past a statutory ninety-day removal period had yet to be adjudicated.235 Ultimately, the Second Circuit in Turkmen **sidestepped** the merits of that question: the court concluded that government defendants were entitled to qualified immunity and chose not to reach the underlying constitutional issue.236 In view of judicial disinclination to resolve the matter, the IG's sharp critique of the prolonged detention of September 11 detainees remains the most authoritative "official" judgment that the government's actions were wrong.¶ In fact, IGs sometimes **went further** in actually challenging the legal judgments of others within the executive branch. For example, in its NSL reviews, the DOJ IG rejected FBI counsel's after-the-fact legal justifications for the use of exigent letters.237 The FBI General Counsel argued that a provision in the Electronic Communications Privacy Act permitting voluntary disclosure of records by telecommunications companies in emergencies could justify the use of exigent letters.238 But the IG pronounced that justification unconvincing because the exigent letters did not frame their requests as voluntary, because the department issuing exigent letters denied relying upon the provision, and because the FBI did not recite the factual predication required to invoke the cited provision.239¶ Even more striking, in its 2010 report on exigent letters, the DOJ IG warned against a new legal argument that the FBI asserted would justify future voluntary disclosure of records by communications providers.240 The statutory provision on which the FBI based this new argument was redacted in the IG report, although it appears to relate to the voluntary disclosure of international communications.241 The IG cautioned that invocation of the new legal authority created a "**significant gap** in FBI accountability and oversight," and that Con-gress and the Department of Justice should consider controlling the exercise of that authority in light of recent abuses.242 Thus, moving beyond an assessment of how past agency practices complied with the law, **the IG did what courts are rarely in a position to do**—warn against a prospective legal justification that would bypass ordinary legal requirements.¶ Moreover, on several occasions, IGs criticized, on normative grounds, practices **specifically declared lawful** by the OLC, the executive branch's "chief legal adviser" whose opinions are **binding** on requesting agencies.243 In the NSL review, the DOJ IG warned against the FBI's new argument for voluntary disclosure even though the OLC had at least partly approved the FBI's legal interpretation of the relevant provision.244 Before the release of the September 11 detainees report, the OLC concluded that it was not unlawful to hold aliens for investigative purposes past a statutory 90-day removal period,245 but the IG still censured INS officials for not raising legal concerns over the practice as promptly and strongly as they should have.246

IG investigations cause reform – empirical evidence

Apaza, 11 (Dr Carmen R. Apaza, Assistant Professor, John Jay College of Criminal Justice, City University of New York. "Integrity and Accountability in Government : Homeland Security and the Inspector General". 2011) KW

These are **successful resolutions of issues arising from oIg investigations**, audits, inspections, and evaluations through legal or legal-related action other than criminal prosecution. they include: (1) civil judgments or forfeitures in favor of the united States in federal, state, local, or foreign government legal systems; (2) settlements negotiated by a governmental authority prior to or following filing a formal civil complaint; and (3) settlements or agreements in cases governed by the Program Fraud Civil Remedies Act or other agency-specific civil litigation authority (PcIe and ecIe 2004: 35). ¶ during Fy 2007, the oIgs produced 1,277 successful civil actions, an increase of nearly 35 percent above the Fy 2006 total of 947. cumulatively, during Fys 2003 through 2007, the oIgs were responsible for 4,022 successful civil actions. ¶ contrasting the number of civil actions with the number of criminal prosecutions, civil actions remain short for Fys 2003 through 2007. the main reason for this is related to the crucial mission of the dHS. the dHS mission includes protection of our borders from criminal activities such as illegal immigration, contraband, and smuggling. "We need to protect our nation from illegal activities that are determined by law as crime," said deputy dHS Inspector general taylor in an interview on July 22, 2009. those illegal activities mostly involve corruption committed by DHS officials (e.g., CBP officials). "For the nature of its mission, CBP is vulnerable to corruption. In most instances we found that CBP officials were involved with smugglers and drug traffickers," said Carlton Mann, assistant inspector general for inspections, in an interview on July 22, 2009. In the same these are successful resolutions of issues arising from oIg investigations, audits, inspections, and evaluations through legal or legal-related action other than criminal prosecution. they include: (1) civil judgments or forfeitures in favor of the united States in federal, state, local, or foreign government legal systems; (2) settlements negotiated by a governmental authority prior to or following filing a formal civil complaint; and (3) settlements or agreements in cases governed by the Program Fraud Civil Remedies Act or other agency-specific civil litigation authority (PcIe and ecIe 2004: 35). during Fy 2007, the oIgs produced 1,277 successful civil actions, an increase of nearly 35 percent above the Fy 2006 total of 947. cumulatively, during Fys 2003 through 2007, the oIgs were responsible for 4,022 successful civil actions. contrasting the number of civil actions with the number of criminal prosecutions, civil actions remain short for Fys 2003 through 2007. the main reason for this is related to the crucial mission of the dHS. the dHS mission includes protection of our borders from criminal activities such as illegal immigration, contraband, and smuggling. "**We need to protect our nation from illegal activities that are determined by law as crime**," said deputy dHS Inspector general taylor in an interview on July 22, 2009.

Increased inspector general enforcement solves – internal powers to investigate any agency activity and Congressional reporting solves.

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

*IG is the Inspector General

Among **internal executive structures** that might protect civil liberties or constrain executive power, IGs stand out in two ways. First, despite their location within the executive branch, IGs enjoy several statutory protections from agency interference. The Inspector General Act provides for presidential appointment and Senate confirmation of IGs "without regard to political affiliation and solely on the basis of integrity and demonstrated ability."31 While the President can remove an IG without cause, the Act requires that the President communicate to Congress the reasons for any removal no later than thirty days before the removal.32 Even more significantly,

IGs have a dual-reporting role that requires them to serve their agencies as well as Congress. They are required to keep both their agencies and Congress "fully and currently informed," through submitting detailed semiannual reports to Congress as well as notifying Congress seven days after reporting any particularly serious problems to their agencies.33 Among other extensive requirements, the semiannual reports must identify **any significant IG recommendation that the agency has not fully ad-dressed**,34 facilitating congressional monitoring of agency follow-through. These detailed reporting requirements distinguish IGs from institutions such as the Justice Department OLC or Office of Professional Responsibility, which report only to the Attorney General, and help Congress overcome information problems in supervising agencies.35

Other recently adopted features further protect IG independence: in budget submissions to Congress, the President must now include a statement from an IG who concludes that the budget request for the office would substantially inhibit IG performance, and the Act guarantees independent counsel for IGs.36 Second, IGs enjoy broad investigative powers. The Act authorizes IGs to undertake and carry out audits and investigations without interference from agency leadership and to access documents within and beyond their agencies.37 By law, IGs can access all records within their host agency, request information from other federal agencies, which are required to furnish it, and subpoena documents (but not testimony) outside federal agencies.38 IGs must generally **guarantee confidentiality** to agency whistleblowers, and agencies are prohibited from retaliating against employees who provide information in good faith.39 Despite granting IGs these broad powers, Congress accommodated national security agencies' concerns over information disclosure by permitting certain agencies to block IG investigations in sensitive circumstances. Thus, while agency heads ordinarily may not interfere with IG reviews,40 the heads of the Departments of Defense, Justice, and Homeland Security may block investigations or reports involving sensitive information on intelligence, counterterrorism, undercover operations, or any other matters for which information disclosure would seriously threaten national security.41 Where an agency head invokes such a statutory exception to impede an IG investigation, the Inspector General Act requires a written explanation to the IG and congressional oversight committees within a set time period.42 **Slightly broader escape clauses** apply to the CIA IG and other IGs for the intelligence community, though they preserve a congressional reporting requirement.43

Agencies appear to have **rarely invoked these escape clauses**.44 The Department of Homeland Security has never invoked its authority to impede an investigation,45 and the Department of Justice has done so only once.46 While the congressional reporting requirement may deter agencies from using this authority,47 the latent threat of obstruction may also influence IGs to stay within perceived limits. National security IGs thus face an additional constraint beyond the threat of presidential removal common to all IGs.

IGs best for addressing issues surrounding counter terrorism policies.

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

IGs now play a **significant role** in addressing the impact of counterterrorism policies on individual rights, despite their traditional association with detecting fraud, waste, and abuse. In the post-9/11 period, Congress explicitly required two IGs, those at the Departments of Justice and Homeland Security, to monitor complaints of individual rights violations. The Patriot Act, passed six weeks after the September 11 attacks, required the DOJ IG to designate an official to "review information and receive complaints alleging abuses of civil rights and civil liberties" by department officials and to report twice a year to Congress on its activities.[48] Notably, this provision did not apply solely to complaints related to the Patriot Act, but encompassed civil liberties or civil rights complaints against any department official.[49] Congress also made explicit a civil rights role for the new DHS IG, requiring the IG to designate a senior official to investigate civil rights allegations and to work with the DHS Officer for Civil Rights and Civil Liberties on policy recommendations.[50]¶ On other occasions, Congress mandated that IGs conduct special investigations into counterterrorism programs that raised civil liberties concerns. When Congress reauthorized expiring provisions of the Patriot Act in 2006, it directed the DOJ IG to review several controversial investigative tools used by the FBI.[51] In 2008, Congress directed multiple IGs to review the warrantless surveillance program initiated by President Bush after the September 11 attacks and to report on the impact of expanded surveillance authorities on U.S. persons.[52] The new statutory mandates have **raised the profile** of IGs' rightsmonitoring roles. The DOJ IG has been particularly visible in investigating national security practices implicating individual rights. In response to the Patriot Act mandate, the IG established a new branch to investigate civil rights complaints, coordinated with the Justice Department Civil Rights Division on post- 9/11 backlash complaints, and publicized its new role.[53] From September 2001 through September 2011, the IG completed approximately twenty-one special reviews and audits that it deemed related to its Patriot Act responsibilities.[54] These reviews covered such topics as the Department's treatment of September 11 detainees, use of investigative tools, investigations of domestic advocacy groups, terrorist watch list processes, and participation in detainee abuse abroad. Importantly, these reviews addressed systemic civil rights concerns raised by Congress, the media, or public interest groups, not just fact-specific individual complaints.[55]

IG oversight solves – only internal check that actually works

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

Not only do IGs benefit from statutory independence and significant information-gathering powers, but they also benefit from their existing stature, which newer institutions created specifically for rights oversight still struggle to acquire. For instance, while several national

security agencies have appointed civil liberties officers to review counterterrorism policies, responding to a congressional mandate, few have the budget, staff, or visibility of IGs, with the possible exception of the DHS Office for Civil Rights and Civil Liberties.305 Even that office enjoys less stature and information-gathering authority than the agency's IG: the head of the Office for Civil Rights and Civil Liberties is not subject to Senate confirmation306 and lacks the power to subpoena documents.307 Meanwhile, the Privacy and Civil Liberties Oversight Board, created in 2004 to review government terrorism policies, first lacked independence from the White House and then lay dormant for years, without board members, an agenda, meetings, or staff.308 It remains to be seen whether the recently reconstituted board will be successful. Given the scope and pace with which the executive has acquired and employed new national security powers, **no single internal institution is sufficient** to provide oversight, but the independence, powers, stature, and past successes of IGs are a good reason to support, and indeed strengthen, their rights oversight role.

Solves: CIA

CIA IG solves – investigation into human rights concerns and racial profiling.

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

The CIA IG has also investigated human rights concerns presented by its programs, particularly with respect to detainee interrogations and treatment. Most prominently, the IG reviewed the CIA's use of "enhanced" interrogation techniques against CIA detainees in the two-year period following the Septem-ber 11 attacks.56 The IG also reportedly investigated the agency's detention and interrogations of suspects in Iraq, the rendition of suspects to other governments, the registration of "ghost" detainees, and the deaths of several detainees in CIA custody, although reports from these investigations have not been made public.57 The IG reportedly referred twenty-four detainee abuse cases to the Justice Department for possible prosecution.58 Most recently, the CIA IG reviewed the agency's role in building a New York Police Department intelligence unit that mapped and monitored Muslim communities.59

Solves: DHS

IG oversight works – DHS proves that department management accepts changes

Apaza, 11 (Dr Carmen R. Apaza, Assistant Professor, John Jay College of Criminal Justice, City University of New York. "Integrity and Accountability in Government : Homeland Security and the Inspector General". 2011) KW

By analyzing statistical highlights of the Office of the Inspector General (OIG) of DHS, this chapter tests the second and fifth case study propositions proposed in chapter 1. In contrast to the second case study proposition, which says few of the IGs' investigations result in a recommendation for management improvement, evidence from the dHS oIg Semiannual reports to congress and dHS Performance report fails to support this proposition. data show that the dHS oIg has not only issued a significant number of recommendations but it has also been **receiving great concurrence and acceptance** from dHS management. moreover, data analyzed in this chapter support the fifth case study proposition that says IGs achieve increased savings, indictments, and convictions, and their interventions, findings, and recommendations influence agency management.

DHS IGs solve

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

Other IGs, including those at the Department of Homeland Security, the Department of Defense (DOD), and the National Security Agency (NSA), have on occasion reviewed individual rights concerns arising out of their agencies' national security programs, although the extent of their work is difficult to assess, in part because many reports remain classified. The DOD IG reported on department-ordered investigations of detainee abuse,60 allegations that the military used mind-altering drugs on detainees,61 and intelligence collection activities.62 The DHS IG investigated the rendition of Maher Arar, a Canadian citizen, to Syria, and the effectiveness of a redress process for travelers facing difdifficulties from terrorist watch list screening.63 The NSA IG, a nonpresidentially appointed IG, is said to have monitored the President's post- 9/11 NSA surveillance program while it was secret, though little is known bout what such monitoring entailed.64 The NSA IG and others conducted a joint review of the program in 2009.65 It is not publicly known whether the first IG for the Intelligence Community, confirmed in late 2011, has issued any reports pertaining to individual rights.

Solves: Insider Threats

Solve for whistleblowers

Apaza, 11 (Dr Carmen R. Apaza, Assistant Professor, John Jay College of Criminal Justice, City University of New York. "Integrity and Accountability in Government : Homeland Security and the Inspector General". 2011) KW

The Inspector General Act of 1978 included provisions that specifically authorize an Ig to **receive and investigate complaints from an employee of the agency** concerning any mismanagement, violations of law or rules, or "gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety." (1978 IG Act, Sec. 7(a).) The bill specifically prohibits any action against the employee "as a reprisal for making a complaint or disclosing information to an Inspector general." (1978 Ig act, Sec. 7 (a)-(c)) the 2008 Ig reform act added further provisions **to aid whistleblowers** and other complainants in bringing information to the attention of oIgs, by requiring "establishing and maintaining a direct link on the homepage of the oIg's website for reporting waste, fraud, and abuse." (2008 Ig reform act, Sec. 13 (b)(2))

Solves: NSA

The NSA's current IG isn't independent – an independent IG is best suited to challenge unethical NSA practices

Snider and Bttaglia, 13 (Britt Snider was general counsel of the Senate Select Committee on Intelligence from 1987 to 1995 and inspector general of the CIA from 1998 to 2001. Charles Battaglia was a senior staff member and staff director of the Senate intelligence committee from 1985 to 1997. "National Security Agency needs an independent inspector general". 9/26/13. http://www.washingtonpost.com/pb/opinions/national-security-agency-needs-an-independent-inspector-general/2013/09/26/ae37d7fc-25f4-11e3-ad0d-b7c8d2a594b9_story.html) KW

Public confidence in the National Security Agency (NSA) and the efficacy of the oversight system in which it operates is at a low. Ultimately, the NSA needs the support of the public to succeed. It cannot accomplish its mission without the cooperation of the private sector and, like all government agencies, it depends on Congress for funding and legal authority. Without public consensus regarding limits on the NSA's activities, it is more likely that those activities will be challenged by Congress and in court.

Several institutional reforms have been suggested in an effort to boost public support for the agency's data-collection systems, including creating an advocate for the public within the framework of the Foreign Intelligence Surveillance Court and requiring public disclosure of its opinions. But one important option has yet to be proposed: creating an **independent inspector general's office at the NSA**, comparable to the office that was created within the CIA in 1989.

As staff members of the Senate Select Committee on Intelligence, we were deeply involved in writing the legislation that made independent the Central Intelligence Agency's inspector general. We saw how the law made a difference.

Not only was the inspector general's office viewed differently after the law was passed, but the office itself was different. It decided which of the CIA's activities would be investigated, inspected or audited without waiting for direction or approval from agency management. Employees of the IG's office no longer had to worry about the potential effect on their careers if their findings and conclusions were critical of the agency. They may not have always gotten everything right, but they were freer to call things as they saw them and did so, at times to the chagrin of CIA management.

Having an independent inspector general at the CIA produced other advantages for the oversight process: It gave the congressional intelligence committees a more reliable partner — an office that lawmakers could call upon to conduct investigations beyond their own capabilities — and they learned of problems they otherwise might not have come across.

The same dynamic is not possible at the NSA today because the agency's inspector general is **appointed by and works for the NSA director**. For all practical purposes, he is a member of the director's staff and does not report directly to the intelligence committees.

The inspector general of the CIA, by contrast, is **appointed by the president** and can be dismissed only by the president. That person reports to both the CIA director and the congressional

intelligence committees. Although the director may impose constraints on the inspector general's work, the committees must be advised of such constraints and the reasons for their imposition. This has rarely happened because, as a practical matter, the CIA director has not wanted to put himself in that position vis-à-vis the committees.

Some may point out that the NSA falls under the jurisdiction of the Defense Department's inspector general, whose office is independent. The NSA, of course, is one of numerous defense agencies, not all of which require an independent inspector general. But a **stronger, more independent inspector general is necessary**, given the NSA's **size, capabilities, mission** and, most important, **potential for violating the rights of Americans on a grand scale.**

In addition, the Defense Department inspector general's office lacks the personnel and expertise to oversee the highly technical, compartmentalized world in which the NSA operates. Although the Pentagon inspector general should retain the ability to undertake oversight reviews as may be appropriate — such as studying alleged violations of departmental regulations — the lion's share of the oversight work belongs with an inspector general within the agency.

An independent inspector general at the NSA with statutory authority would not guarantee that every violation of law or applicable procedure would be detected, investigated or reported to appropriate authorities. But it would improve the chances that this would happen, which should lead to more effective and timely oversight.

Far from being a threat to the agency's sensitive yet necessary operations, an independent inspector general at the NSA would boost public support for that work.

Solves: Racial Profiling

IG solves for racial profiling – DOJ IG empirically stopped FBI and DOG overreach

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

Soon after the September 11 attacks, the Department of Justice began detaining hundreds of aliens for suspected terrorist ties, mostly from Muslim countries, and ultimately held more than 750 of them on immigration violations.76 In 2003, DOJ IG Glenn Fine issued two highly critical reports on the treatment of September 11 detainees: the first a 198-page report covering the decisionmaking behind the prolonged detentions and the second addressing harsh conditions and physical abuse at the Metropolitan Detention Center in Brooklyn.77 While recognizing the "monumental challenges" facing the Department after the September 11 attacks, the IG concluded that the "chaotic situation" did not excuse actions that resulted in "significant" mistreatment of the detainees.78

The reports concluded that the FBI had indiscriminately and haphazardly labeled aliens as being of interest to the terrorism investigation and then lagged in clearing them of terrorist ties, resulting in lengthy detentions.79 Prison officials subjected detainees at the Metropolitan Detention Center to particularly harsh conditions of confinement, including an initial total communications blackout, "lockdown" for twenty-three hours a day, and physical abuse by federal prison guards.80 Most notoriously, prison guards slammed detainees into a soon-bloodied T-shirt taped to a wall that pictured the American flag and the motto, "These colors don't run."81

The **scope, access, and rigor** of the IG investigation are striking. Justified as an exercise of the IG's responsibilities under the Patriot Act and IG Act,82 the investigation went beyond individual allegations of detainee abuse, squarely targeting the Justice Department's "hold until cleared" detention policy that led to lengthy confinement.83 Released with almost no redactions,84 the reports also provided an exceptionally detailed accounting of the government's post-9/11 detention decisions. In addition, the IG surmounted the one significant attempt to obstruct the investigation noted in the reports: although Metropolitan Detention Center officials repeatedly impeded IG attempts to obtain videotapes of detainees, IG investigators discovered more than 300 videotapes in a prison storage room, many of which revealed prison staff engaging in "the very conduct they specifically denied in their interviews."85

Solves: Transparency

IGs solve for transparency – increase oversight and keep Congress informed

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

Increasing transparency. Perhaps the least controversial function of rights oversight is to provide enough information about national security conduct to enable external assessment.197 Excessive secrecy allows abuses to go undetected and stymies assessment of whether the security benefits of a program justify burdens on individual rights. **Congress**, the public, **and agencies themselves** require information on the scope, effectiveness, and rights implications of national security programs. Moreover, the IG Act squarely mandates a transparency function for IGs**, requiring them** to keep agencies and Congress fully informed about serious problems in agencies and ordering agencies, in general, to make semiannual IG reports public.198

IG reviews increase transparency about programs

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

Most of the IG reviews studied here disclosed significant new information about national security programs, and several **created remarkable transparency** on issues that were previously highly secret. IG reviews frequently brought to light information on civil liberties violations that had not surfaced through litigation or alternative forms of congressional oversight.

Most notably, the DOJ IG's reviews of NSLs disclosed both the unprecedented extent to which the FBI relied on NSLs—information that public interest organizations had unsuccessfully sued to obtain205 and that the FBI had "significantly understated" to Congress206—and the fact that the FBI had used exigent letters to bypass legal processes altogether. Legal and practical barriers made it almost impossible for such information to surface through other channels: a statutory "gag order" forbade NSL recipients from revealing the records requests, phone companies complying with exigent letters had no incentive to expose their circumvention of privacy laws, and targets of either practice had no way of knowing that the government had sought their records. Moreover, the law only required the FBI to provide limited, classified reports to Congress on NSLs, and until 2006 did not require any public disclosure.207 Without identifiable victims of abuse, the information that might reveal abuses of authority resided almost exclusively within the executive branch.

IGs made use of their auditing expertise and broad investigative powers to access and analyze information. In the DOJ IG NSL review, the IG not only drew on a large sample of publicly unavailable data, but also used a detailed, resource-intensive audit to make the raw data on

NSL usage comprehensible.[208] In other cases, IGs appeared to enjoy extraordinary access to high-level government officials and individual employees under scrutiny. In the Septem-ber 11 detainees review, for instance, the DOJ IG interviewed Attorney General John Ashcroft, FBI Director Robert Mueller, and INS Commissioner James Ziglar,[209] and "administratively compelled" interviews with staff at the Metropolitan Detention Center, who could then be subject to discipline for refusing to answer questions or for not responding truthfully.[210]

Solves: TSA

Inspector general solves – behind report on TSA's failure

Bowman, 15 (Michael, 6/9/15, "Top US Inspector 'Deeply Concerned' About TSA Terror Vulnerability", http://www.voanews.com/content/report-us-transportation-security-agency-fails-to-identify-workers-with-terrorist-links/2813393.html)

The top inspector for the agency that protects America's flying public said he is "deeply concerned about its ability to execute its important mission."

Homeland Security Inspector General John Roth said Tuesday his team has uncovered "significant vulnerabilities" in the Transportation Security Administration's conduct of airport screenings, among other shortcomings.

Roth's testimony before the Senate Homeland Security Committee followed IG reports that the TSA failed to identify 73 workers with links to terrorism, and failed to detect simulated weapons and other dangerous items in 96 percent of tests conducted at airport screening checkpoints.

"We have deep concerns about the manner in which TSA manages this risk," Roth said.

AT//IG Investigations Don't Find Abuses

Even if reports don't reveal tons of information they still cause change within the agency

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

Even **weaker** IG reviews revealed important facts: despite the DHS IG Arar rendition report's spotty account of the decisionmaking behind Arar's transfer to Syria, for instance, the report did reveal that the Acting Attorney General had deemed Arar's return to Canada prejudicial to U.S. interests and that the government had issued an "operations order" to fly Arar to the Middle East even before it received assurances that he would not be tortured.214 Information disclosed through IG reports helped civil rights plaintiffs corroborate allegations of government abuse. A number of plaintiffs cited or incorporated IG reports into their complaints and courts took judicial notice of their contents. Using the DOJ IG September 11 detainee reports, former detain-ees survived motions to dismiss their civil rights claims against Justice Department officials215 and obtained the dismissal of a criminal indictment based on speedy trial right violations.216 And former counsels for detainees brought a new suit challenging the secret recording of attorney-client conversations at the Metropolitan Detention Center.217

For instance, in Turkmen v. Ashcroft, eight September 11 detainees who had sued Attorney General Ashcroft, FBI Director Robert Mueller, and officials at federal detention facilities twice amended their complaint with new information from the DOJ IG's detainee reports.218 In partially rejecting motions to dismiss, the district court extensively cited those reports, noting that they substantiated plaintiffs' claims of physical and verbal abuse,219 and further ruled that the reports enabled plaintiffs to plead that certain high-ranking defendants were personally involved in establishing wrongful policies.220 In fact, the IG reports had a second-order transparency benefit for plaintiffs: the Turkmen plaintiffs were not only able to use the findings of the reports, but also obtained through discovery notes of interviews that IG investigators had conducted with a number of high-level Justice Department officials.221 Five of the named plaintiffs in Turkmen eventually reached a $1.26 million settlement with the U.S. government.222

AT//Manipulated Findings

The IG has a *statutory obligation* to report its COMPLETE findings

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

Identifying rights violations and wrongful conduct. Where the object of concern is individual rights, an agency's compliance with laws or regulations put in place to protect rights is the logical starting point for evaluation. But in the national security context, legal doctrine itself might be underdeveloped as a result of procedural and substantive barriers to judicial review or because legislation lags behind fast-moving executive national security policymaking.199 Thus, a focus on legal compliance alone might not adequately protect individual liberty or equality interests. IGs have a **statutory obligation** to report on serious problems, not just legal abuses,200 permitting them to identify government conduct that unfairly harms individuals or constrains liberty even where the conduct does not violate existing law.

IGs know what the important issues are and don't avoid them

Project On Government Oversight, 9 (Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. 3/20/9. "Inspectors General: Accountability is a Balancing Act". http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf) KW

It is possible to prioritize appropriately. For instance, the DOJ IG seems to know which windows need washing: he conducted significant investigations into the FBI's involvement in interrogations at Guantanamo, and then-Attorney General Alberto Gonzales's mishandling of classified documents.46 The OIG also issued three reports on investigations conducted jointly with the Department's Office of Professional Responsibility into allegations of politicized hiring practices and the firing of nine U.S. Attorneys.47

Similarly, the now-departing IG at CIA has managed to focus on sensitive and controversial issues—programs whose scrutiny did not win the IG any love from his agency—that go to the agency's fundamental mission and let the American people know what is being done in their name. For instance, the CIA IG investigated the Agency's interrogation methods for alleged terrorists; issued a blistering report on its failure to prevent or warn about the attacks of September 11, 2001; and issued a report on the circumstances surrounding the shoot-down of a U.S. missionary plane over Peru, based on CIA officers' mistaken identification of the aircraft, and the subsequent cover-up.48

Sometimes what appear to be small windows are actually indications of a systemic problem. But former NSF IG Boesz cautioned:

Unfortunately IGs must get into "internal issues" when there is a broad management failure. Inappropriate use of computers, postage and other agency resources are symptoms of such

management failure. An IG fails when he or she does not use this information to point out the broader issue. Sometimes pebbles turn into boulders—even mountains. It depends on the IG to put the story together.49

AT//IG Fails (General)

2008 IG reform act solves any issues regarding IGs.

Project On Government Oversight, 9 (Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. 3/20/9. "Inspectors General: Accountability is a Balancing Act". http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf) KW

The 2008 IG Reform Act generally buttressed IGs' independence, increased their resources, and held them more accountable for their performance. The changes to the IG law made the system a much better tool for the U.S. taxpayer; the watchdogs now had keener eyes and sharper teeth, and were to be held to tougher standards. Major provisions of the amended law of particular interest to this report are:

• The appointment of all IGs "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations."4

• The newly created council of all IGs—the Council of the Inspectors General on Integrity and Efficiency (CIGIE or IG Council)—which will now finally be given resources.5

• Compromise language that, because the Senate and Bush administration balked at the idea of dismissal of IGs only for cause, merely requires that the President notify both Chambers of Congress at least 30 days in advance before the transfer or removal of any Inspector General.6 (Appendix B)

IGs work with prosecutors and form task forces to make sure change is implemented

Project On Government Oversight, 9 (Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. 3/20/9. "Inspectors General: Accountability is a Balancing Act". http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf) KW

Since then, the mantra has largely become early cooperation and consultation. Both OIGs and prosecutors' shops have reached out to each other, and in the very best relationships the cases are worked together. POGO heard particularly good comments from prosecutors about working with investigators from the IGs at HUD, HHS, Education, and the Social Security Administration. The Small Business Administration and General Services Administration were also mentioned by one. In response to POGO's questionnaire, only one IG office said it waits until an investigation is largely completed before consulting with prosecutors.

Thus, as more than one source pointed out, the statistics of cases referred could be lower than a decade ago, but the cases are of higher quality and may be declined for prosecution less often. Nowadays the focus is on task forces, to leverage not only expertise but also scarce resources. Multi-agency task forces combining OIGs with other federal, state, and local agencies have become a force multiplier. Good examples of the task forces are the Medicare Fraud Strike Force, Gulf Coast Hurricane-related Fraud Task Force, and the National Procurement Fraud Task Force.40 The most significant joint effort by IGs

may well turn out to be the Recovery Accountability and Transparency Board (Recovery Board), chaired by a former longtime IG, to oversee the spending of the $787 billion Recovery Act.41

Solvency Common to Any Mechanism

AT//CIA Key

The CIA cannot be trusted to restrain itself

Buttar 14

Shahid Buttar, civil rights lawyer who also leads the Bill of Rights Defense committee and is the Co-director of the Rule of Law Institute, "Beyond CIA and NSA Spying: Corruption," May 19, 2014, The Huffington Post, http://www.huffingtonpost.com/shahid-buttar/beyond-cia-and-nsa-spying-corruption_b_4981558.html/NV

Even before open war erupted last week between the CIA and Senate Intelligence Committee Chair Dianne Feinstein (D-Calif.), embattled NSA officials had woven tangled skeins to downplay public crimes including lying to Congress. Many observers have noted the double standard apparent in Feinstein challenging the CIA while deferring to the NSA. Few have recognized that both the NSA's pattern of spying and then lying about it and the CIA's trajectory of first committing torture crimes, then spying on Congress to cover it up, then lying about the spying when caught, can be described in a single word: corruption. CIA: Spying on Congress to Cover Up Criminal Human-Rights Violations Sen. Feinstein knows as much about the CIA's detention and torture programs under the Bush administration -- which went well beyond the acts depicted in photographs from Abu Ghraib -- as anyone outside the CIA. She described them as "un-American and brutal," and her colleague Mark Udall (D-Colo.) called them both "brutal and ineffective." **Beyond their brutality, their ineffectiveness as an intelligence tool, and the fact that they violated fundamental American values and foreign-policy interests**, the programs were also international crimes at least partly responsible for the deaths of U.S. military servicemembers. Releasing the Senate's authoritative, 6,000-page, $40-million report to the public is long overdue -- **especially for an administration that falsely champions transparency while routinely undermining it**. While the CIA's torture program prompted Feinstein to begin her committee's investigation, it was the agency's continuing coverup that prompted her to voice her concerns on the Senate floor in a speech described by her colleague Patrick Leahy (D-Vt.) as the most important he had ever witnessed in his 40-year career in the Senate. Feinstein revealed that CIA personnel had removed files from the computers used by Senate staff to conduct their investigation, and that a CIA lawyer himself complicit in human-rights abuses has tried to intimidate Senate investigators by outrageously seeking their prosecution -- for obtaining an internal CIA document confirming facts that the agency is trying to continue covering up. Ultimately, the CIA's attempt to limit what material its congressional overseers can review smacks of self-interest and reflects an evasion of accountability for severe institutional crimes. Brennan's confirmation by the committee last spring entitled him to lead the CIA, not to place it above the law.

Internal attempts to restrain the CIA fail – empirics

Sledge 14

Matt Sledge, writer for the Huffington Post, "Mark Udall Says The CIA Is Still Lying," December 10, 2014, The Huffington Post, http://www.huffingtonpost.com/2014/12/10/mark-udall-cia-lying_n_6302894.html/NV

The CIA is still lying about its post-9/11 torture program, even in the face of a devastating Senate report, Sen. Mark Udall (D-Colo.) said Wednesday. In a dramatic floor speech during his final month in the Senate, Udall said the CIA's lies have been aided and abetted by President Barack Obama's White House and called on the president to "purge" his administration of CIA officials who were involved in the interrogation program detailed in the report. “It’s bad enough to not prosecute these officials, but to reward and promote them is incomprehensible,” Udall said. “The president needs to purge his administration.” Udall said the lies are "not a problem of the past," citing the CIA's response to the 6,000-page torture report. He said the agency took seven months to write a formal comment after the Senate Intelligence Committee approved the report in December 2012 -- and when it did, it was full of lies and half-truths meant to justify the agency's actions. "The CIA's formal response to this study under Director Brennan clings to false narratives about the CIA's effectiveness when it comes to the CIA's detention and interrogation program. It includes many factual inaccuracies, defends the use of torture and attacks the committee's oversight and findings," Udall said. "I believe its flippant and dismissive tone represents the CIA's approach to oversight, and the White House's willingness to let the CIA to do whatever it likes -- even if it's actively undermining the president's stated policies." Udall said a never-released internal CIA report begun under the agency's previous director, Leon Panetta, in fact supported many of the Senate's findings. But, he said, the CIA sought to bury it -- even taking the inflammatory step of spying on Senate staffers to find out how they gained access to it. That surveillance was the subject of a CIA inspector general report that found the agency had acted improperly. The only solution for the CIA, Udall said, is a culture change, which should start with the departure of Brennan. Udall previously called for his resignation in July. "**While the study clearly shows that the CIA detention and interrogation program itself was deeply flawed, the deeper, more endemic problem lies in the CIA,** assisted by a White House, **that continues to try to cover up the truth**," Udall said. Brennan has defended the agency and criticized the Senate report, claiming it provided "an incomplete and selective picture of what occurred." Shortly after the Senate Intelligence Committee released its summary of the report Tuesday, Obama said the interrogation program was "troubling" and included practices "contrary to our values." "That is why I unequivocally banned torture when I took office, because one of our most effective tools in fighting terrorism and keeping Americans safe is staying true to our ideals at home and abroad," the president said.

AT//Congress Key

Congress can't check the executive—polarization and ideology

Bendix and Quirk 15 (William Bendix and Paul J. Quirk , assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, "Secrecy and negligence: How Congress lost control of domestic surveillance", Issues in Governance Studies, March 2015, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)//DBI

We argue that Congress as an institution has **great difficulty acting in any consistent, balanced way** to protect privacy interests on surveillance issues. On one hand, when setting broad priorities in general terms, it attaches considerable weight to privacy interests. On the other hand, when faced with specific issues of investigatory authority, it readily makes sweeping, indiscriminate sacrifices of those same interests—even without distinct evidence of serious threat.¶ The lack of consistency in defending privacy interests has several sources. Most fundamental, **legislators reflect the attitudes and demands of their constituencies**. The American public has generally been quite willing to surrender privacy rights for the sake of enhanced security, against even unspecified, highly indefinite terrorist threats.1 In addition, there are generally no well-organized, powerful constituencies for privacy interests.2¶ But several factors exaggerate the effect. First, decisions on surveillance are largely about risk (for example, the probability of an abusive "fishing expedition" versus that of a major terrorist attack). Congress members have **strong temptations to defer to the executive branch on decisions that could, therefore, turn out badly**. Second, the president's party is **more interested in defending the executive than in checking its decisions**.3 Third, surveillance politics is complicated by **long-term partisan and ideological divisions** that were shaped by the particular conflicts of the Cold War era. For generations, the main targets of intelligence-agency surveillance have been mostly on the political left. This history may inhibit the response of many Republicans to the threat of intrusive government, even though the main targets and likely victims of intrusive surveillance are no longer a well-defined ideological category. Fourth, the committee system has been another impediment: overlapping jurisdictions among the Homeland Security, Intelligence, and Judiciary panels **prevent any one of them from being held accountable** for stalled policy or lapses in oversight.4¶ Finally, and very important, Congress has **particular difficulties with policies that must be decided in secret**—such as those for controlling technologically advanced surveillance methods. To prevent profuse leaks, Congress and the executive have imposed severe restrictions on members' access to information. When the full House or Senate decides policy, however, the restricted information encourages some members to opt out of serious participation, degrading the intelligence of deliberation and promoting deference to the executive.¶ Lacking any settled disposition on surveillance issues, Congress will respond to the leadership, and sometimes merely the political cover, provided by other institutions—especially the president, the intelligence agencies, and the FISA Court. It may take cues from the Justice Department or other executive agencies, and it will defer to rulings by the regular federal courts. In the end, Congress's performance in protecting privacy may depend on the design of the legislative arrangements for dealing with secret programs and on the structures and missions of relevant administrative and judicial institutions.

Congress fails

Sudha **Setty 15**, Professor at Western New England University School of Law, 2015, "Surveillance, Secrecy, and the Search for Meaningful Accountability", 51 STAN. J. INT'L L 16, http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol

One of the most intractable problems in the debate around maintaining¶ the rule of law while combating the threat of terrorism is the question of¶ secrecy and transparency. In peacetime,

important tenets to the rule of law¶ include transparency of the law, limits on government power, and consistency¶ of the law as applied to individuals in the polity. Yet the post-9/11 decision making¶ by the Bush and Obama administrations has been characterized by¶ excessive secrecy that stymies most efforts to hold the government¶ accountable for its abuses. Executive branch policy with regard to detention,¶ interrogation, targeted killing, and surveillance are kept secret, and that¶ secrecy has been largely validated by a compliant judicial that has¶ dismissed almost all suits challenging human and civil rights abuses resulting¶ from counterterrorism programs. Efforts by Congress to engage in¶ meaningful oversight have met with mixed results; **in the area of government¶ surveillance, such efforts have been fruitless** without the benefit of leaked¶ information on warrantless surveillance by government insiders. The¶ executive branch has generally refused to make public vital aspects of its¶ surveillance programs in ways that could give oversight efforts more muscle.¶ At the same time, the executive branch has consistently defended the legality¶ and efficacy of these surveillance programs.¶ This paper considers the nature and effect of the warrantless surveillance¶ infrastructure constructed in the United States since the terrorist attacks of¶ September 11, 2001, and discusses surveillance-related powers and¶ accountability measures in the United Kingdom and India as comparative¶ examples.

Congressional reforms lack credibility too

Eric **Posner 7**, Professor of Law at The University of Chicago Law School, 8/10/2007, "The Credible Executive", University of Chicago Law Review, 74 U. Chi. L. Rev. 865, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles

5. Congressional motivation and credibility.

Like the executive, Congress has a credibility problem. Members¶ of Congress may be well motivated or ill motivated; the public does¶ not know. Thus, when Congress passes a resolution criticizing presidential¶ action or refuses to delegate power that he seeks, observers do¶ not know whether Congress or the president is right. Ill-motivated¶ members of Congress will constrain public-spirited presidents; thus¶ the Madisonian cure for the problem of executive credibility could be¶ worse than the disease.¶ Even if members of Congress are generally well motivated, Congress¶ has a problem of institutional credibility that the president lacks.¶ Although a voter might trust the member of Congress for whom she¶ voted because she knows about his efforts on his district's behalf, she¶ will usually know nothing about other members of Congress, so when¶ her representative is outvoted, she might well believe that the other¶ members are ill motivated. And, with respect to her own representative,¶ he will often lack credibility compared to the president because he has¶ much less information. Further, the reputation of congressional leaders¶ is only very loosely tied to the reputation of the institution, while there¶ is a closer tie between the president's reputation and the presidency. As¶ a result, Congress is likely to act less consistently than the president,¶ further reducing its relative credibility. Congressional lack of credibility¶ undermines its ability to constrain the president: Congress can monitor¶ the president and tell the public that the president has acted properly or¶ improperly, but if the public does not believe Congress, then Congress's¶ power to

check the president is limited.¶ We neither make, nor need to make, any general empirical claim¶ that Congress has no control over executive discretion. That is surely¶ not the case; there is a large debate, or set of related debates, about¶ the extent of congressional dominance." We have reviewed the institutional¶ problems piecemeal; perhaps some of them are mutually offsetting,¶ although we do not see any concrete examples. Our assertion is¶ just that there is at least a real gap, and during emergencies and wars¶ an even larger gap, between the extent of executive discretion and¶ legislative capacity for monitoring. It is hard to say how great that gap¶ is, but we know of no one who thinks it is nonexistent. Within that gap,¶ the dilemma of executive credibility arises. To the extent that legislators¶ cannot monitor the executive's exercise of discretion, they must¶ either withhold discretion from an executive who might be well motivated,¶ or grant discretion to an executive who might be ill motivated.

Congressional checks on the executive fail—structural barriers

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

The expansion of presidential power is only part of the story. Because the constitutional commitment to separation of powers depends on a balance between the executive and legislative branches,86 the related question that must be addressed is how the expansion of presidential power relates to the powers of the Congress. In this respect, **it does not appear that any expansion in the powers of Congress have kept pace with the increasing power of the President**.87

At least two significant changes since the Founding have worked to Congress's advantage in its battles with the Presidency. First, the Supreme Court has recognized Congress's non-textual power to investigate and oversee the executive branch.88 This power is significant and, indeed, has at times been enormously effective in uncovering executive branch malfeasance.89 But the power to investigate has not, and likely cannot, fully compensate for the power the Presidency enjoys in controlling information. After all, Congress's oversight authority is not self-executing, and, as the experience of both the Clinton and Bush II presidencies have shown, frequently can be frustrated by a combative President. Moreover, even if Congress has the political will to force a recalcitrant administration to turn over information, the President's control over information may be so absolute that Congress does not even know what to ask for.90 **How can Congress, for example, request materials relating to a domestic surveillance program if it does not know that such a program exists**?

Congress fails – no expertise

Eric **Posner 7**, Professor of Law at The University of Chicago Law School, 8/10/2007, "The Credible Executive", University of Chicago Law Review, 74 U. Chi. L. Rev. 865, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles

1. Information asymmetries.¶ Monitoring the executive requires expertise in the area being¶ monitored. In many cases, Congress lacks the information necessary to¶ monitor discretionary policy choices by the executive. Although the¶ committee system has the effect, among others, of generating legislative¶ information and expertise, 2 and although Congress has a large¶ internal staff, there are domains in which no amount of legislative expertise¶ suffices for effective oversight. Prime among these are areas of¶ foreign policy and national security. Here legislative expertise is beside¶ the point, because the legislature lacks the raw information that¶ experts need to make assessments.¶ The problem would disappear if legislators could cheaply acquire¶ information from the president, but they cannot. One obstacle is a¶ suite of legal doctrines protecting executive secrecy and creating deliberative¶ privileges43 -doctrines which may or may not be justified¶ from some higher-order systemic point of view as means for producing¶ optimal deliberation within the executive branch. Although such privileges¶ are waivable, the executive often fears to set a bad institutional¶ precedent. Another obstacle is the standard executive claim that Congress¶ leaks like a sieve, so that sharing secret information with legislators¶ will result in public disclosure. The credibility dilemma becomes¶ most acute when, as in the recent controversy over surveillance by the¶ National Security Agency, the executive claims that the very scope or¶ rationale of a program cannot be discussed with Congress, because to¶ do so would vitiate the very secrecy that makes the program possible¶ and beneficial. In any particular case the claim might be right or¶ wrong; legislators have no real way to judge, and they know that the¶ claim might be made either by a well-motivated executive or an illmotivated¶ executive, albeit for very different reasons.

Congress comparatively fails--- lack of interest and ulterior motives

McGinnis 93 [John O., Assistant Professor, Benjamin N. Cardozo School of Law. From 1985-1987 1 was an attorney-adviser and from 1987-1991 Deputy Assistant Attorney General in the Office of Legal Counsel, Department of Justice. I thus participated in drafting some of the materials discussed in this article, CONSTITUTIONAL REVIEW BY THE EXECUTIVE IN FOREIGN AFFAIRS AND WAR POWERS: A CONSEQUENCE OF RATIONAL CHOICE IN THE SEPARATION OF POWERS, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4213&context=lcp] Schloss

On the other hand, Congress's structure is so much more diffuse than the executive that it impedes the rapid decisionmaking necessary in the fluctuating world of foreign affairs.63 Thus, because of its comparative disadvantage as an institution, operational control of foreign affairs may actually be at odds with its interests because such control threatens Congress with responsibilities it is not well-equipped to handle. In determining how much interest Congress has in exercising this power as compared to the executive, one must compare this interest to other rights of governance. Spending on constituents, for example, is more highly prized by Congress since it can directly help individual members of Congress retain office.' Of course, even if Congress rationally shuns operational control of war and foreign policy matters, it may be interested in increasing its mechanisms to criticize the executive's performance after the fact, so that it can act in effect as the ululating Greek chorus that comments on the executive's tragic choices.'

Not all models are credible but most suggest that the largest check on presidential power is the president

Moe and Howell 99 [Terry and William, a professor of political science at Stanford University and a senior fellow at the Hoover Institution, Howell is a graduate student in political science at Stanford University. He is currently writing a dissertation on the politics of unilateral action, Unilateral Action and Presidential Power: A Theory, http://onlinelibrary.wiley.com/doi/10.1111/1741-5705.00070/epdf] Schloss

This is a simple model that leaves out key aspects of the power struggle. Congress, for instance, can write restrictive statutes in an effort to limit the president's ability to act unilaterally, and the courts can declare a president's actions illegal if he goes too far. If these were put to effective use—a big if, as we will see—they would obviously introduce additional constraints on the president that need to be recognized. Far and away the most important factor omitted from this model, however, and indeed from virtually all spatial models, would have the effect of expanding the scope for presidential power considerably. This is that Congress is burdened by collective action problems and heavy transaction costs that make it extremely difficult for that institution to fashion a timely, coherent response to presidential action or even to respond at all. Until spatial models can incorporate these fundamental features of Congress, they will **systematically overstate Congress's capacity for taking strategic action—and understate presidential power.**¶ We have to be wary, then, of putting too much stock in simple models. Still, the one we have employed here does help to illustrate two points that are quite central to our theoretical argument. The first is that unilateral action can make a big difference in determining what presidents are able to achieve—and this is why they value it and want more of it. The second is that, even when they can act unilaterally, they are constrained to act strategically and with moderation. They cannot have everything they want.

AT//Courts Key

Executive self-restraint shapes executive powers—judicial vagueness proves courts fail

Atkinson 13 – US Department of Justice, National Security Division, JD in law (Lawrence, "The Fourth Amendment's National Security Exception: Its History and Limits", Vanderbilt Law Review, October 2013, http://www.vanderbiltlawreview.org/content/articles/2013/10/Atkinson_66_Vand_L_Rev_1343.pdf)// DBI

C. The Constitutional Gloss of Early Executive Practice

To help address the uncertainty surrounding security investigations, this Article surveys the historical boundaries of such operations. The history examined here primarily involves executive conduct, which can carry precedential weight in matters of constitutional law.44 In Youngstown Sheet & Tube Co. v. Sawyer, Justice Frankfurter explained in his concurrence how executive practice informs our constitutional understanding:

[A] systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution, making as it were such exercise of power part of the structure of our government, may be treated as a gloss on "executive Power" vested in the President by §1 of Art. II.45

Subsequent Supreme Court decisions have embraced the probative value of longstanding executive practice.46

When identifying the constitutional parameters of the executive's power, historical moments of restraint are particularly instructive. When congressional prohibition draws executive power to its "ebb," for example, one can identify the executive's core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases where the executive branch limits its own conduct.48 Specifically, the **executive's self-restraint is precedential** when it stems from a sense of constitutional obligation.49 Such executive branch fealty toward the Constitution might be unprompted by a coordinate branch's action, so there may be no record as evident as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris shapes executive action, we should consider such legal opinion both for its persuasive power and for its reflection of historical understandings about what protections the Constitution establishes.50

Historical conduct is particularly important in the national security context. "National security law and foreign affairs law," Julian Mortenson explains, have a "pronounced concern for post-enactment history as a source of constitutional meaning."51 Neil Katyal and Richard Caplan note that "[i]n the crucible of legal questions surrounding war and peace, **few judicial precedents will provide concrete answers," making executive practice one of the few constitutional guides**.52

Judiciary cannot check the executive, especially on questions of surveillance – no expertise

Eric **Posner 7**, Professor of Law at The University of Chicago Law School, 8/10/2007, "The Credible Executive", University of Chicago Law Review, 74 U. Chi. L. Rev. 865, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles

The gap between the executive and the judiciary, in information¶ and expertise, is even wider than between the executive and Congress.¶ Whereas many legislators have a narrowly defined field of policy expertise,¶ particularly in the House, federal judges are mostly generalists, barring¶ a few specialized courts. Furthermore, the partial insulation from¶ current politics that federal judges enjoy, by virtue of life tenure and¶ salary protection, brings with it a kind of informational impoverishment.6¶ Legislators, who must please other people at least some of the¶ time, interact with the outside world far more systematically than generalist¶ judges, whose main source of information is the briefs and arguments¶ of litigants. The credibility dilemma thus appears quite acutely¶ in judicial proceedings. When the executive says that resolving a plaintiff's¶ claim would require disclosure of "state secrets,"61 with dangerous¶ consequences for national security, judges know that either an illmotivated¶ or a well-motivated executive might be making the claim and¶ that they have no easy means to assess whether the claim is credible.¶

Executive restraint sets a precedent as long as it is constitutional

Atkinson 13 [Rush, U.S. Department of Justice, National Security Division. A.B., University of Chicago; M.Phil., University of Cambridge; J.D., New York University, The Fourth Amendment's National Security Exception: Its History and Limits, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2226404] Schloss

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Executive action doesn't change the judicial recourse which preserves the constitutionality of the action

Gaziano 01 [Todd, Senior Fellow in Legal Studies and the Director of the Center for Legal and Judicial Studies at The Heritage Foundation, The Use and Abuse of Executive Orders and Other Presidential Directives, http://www.heritage.org/research/reports/2001/02/the-use-and-abuse-of-executive-orders-and-other-presidential-directives] Schloss

Some directives may not be subject to judicial review if the effect on private citizens is indirect or if the directive is implemented through agency regulations or other agency action. Both President Reagan's and President Clinton's regulatory review executive orders (Executive Orders 12291 and 12866, respectively) are examples of orders with indirect effects on private citizens. The orders required regulatory agencies to prepare certain analyses of proposed rules and to take various factors into account in their regulatory decisions, and they allowed the Office of Management and Budget to oversee the rulemaking process. However, neither order altered the statutory obligations of the regulatory agencies to issue particular substantive rules. A citizen adversely affected by a regulation (or lack thereof) has the same judicial recourse regardless of the type of executive branch review the rule underwent. Thus, the citizen may challenge the resulting substantive rule but may not challenge the type of executive branch review it received.

The lack of judicial review to challenge a regulatory review executive order does not mean that such orders have no impact on the regulations issued. Presidents Reagan and Clinton would not have altered the type of review if they did not think it mattered. But it would be highly speculative to predict ex ante (assuming it can be discerned at all) what effect OMB review will have on a particular rule in the future. More important, the type of executive branch review, in itself, does not alter the rights of the private citizens who are regulated to challenge the regulation directly in court.

Even if the order doesn't have a constitutional effect it won't be challenged on the basis of constitutionality

Posner 14 [Eric, professor at the University of Chicago Law School, Executive Orders on Immigration Is Clear, http://www.nytimes.com/roomfordebate/2014/11/18/constitutional-limits-of-presidential-action-on-immigration-12/the-constitutional-authority-for-executive-orders-on-immigration-is-clear] Schloss

Critics of the plan the president is reported to be considering argue that the Constitution obliges him to "take care that the laws be faithfully executed," an obligation that seems to give the lawmaker, Congress, the primary authority to set policy. They say that refusing to enforce immigration law against millions of illegal immigrants violates that constitutional duty.

Executive power has always included the power to allocate resources among enforcement efforts. The power has grown over the years.

Yet the Constitution also gives the president "executive power," which has always been understood to include the discretionary power to allocate resources among enforcement efforts. The significance of this power has grown over the last century, as Congress has created vast regulatory agencies and given the president control over them.

Congress typically appropriates money for regulators, gives the president some vague guidelines and enacts far more laws than he could possibly enforce, and then allows him to set enforcement priorities as he sees fit. That's why different administrations can pursue such different policies from each other without getting Congress's permission first. The Reagan administration came to power promising to deregulate the economy, which often meant not enforcing the law, whether it was antitrust, environmental or financial.

If, under the Constitution, the president must enforce much of the law but need not enforce all of it, where should the line be drawn? It might be surprising that after two centuries of constitutional experience, we don't know the answer. Probably the reason is that most of the time, the president's nonenforcement decisions are not controversial. Every day, an executive branch official decides to drop an investigation, or not to prosecute a case, because resources are scarce and the harm caused by a particular legal violation does not seem serious. We don't object because that's a sensible thing to do.

And the sensible thing to do in the area of immigration law is to bring removal proceedings against the most serious violators — typically, criminals — while leaving otherwise law-abiding noncitizens alone. Given that Congress has not appropriated nearly enough money to deport 10 million or more people, this type of priority-setting is unavoidable, and not merely wise. Indeed, the president is just following in the footsteps of his predecessors, who also focused removal efforts on dangerous aliens. Congress has acquiesced in this practice for years. The president's discretion over immigration is deeply interwoven in our law. As the Supreme Court recognized just two years ago, in the course of summarizing the statutory scheme: "A principal feature of the removal system is the broad discretion exercised by immigration officials."

The only difference between the president and his predecessors is that the president has openly declared the de facto policy of his predecessors. We might disagree about whether this move is wise, but it's not a constitutional violation.

Court rulings lead to legislation changes – causes greater decrease of executive powers.

Bellia '11 (Patricia L, Notre Dame Law School, Arizona State Law Journal, Vol. 43, No. 293, 2011, Notre Dame Legal Studies Paper No. 12-58, 2011, "Designing Surveillance Law," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033217) KW

Reactive statutes can take two quite different forms, depending upon whether the initial judicial decision approves or disapproves of the executive practice that preceded it. If the initial judicial decision finds existing procedures inadequate, the legislature must attempt to meet whatever constitutional bar the court sets. In a sense, the statute codifies the standards the court has articulated. If, however, the initial judicial decision finds existing procedures fully adequate (as, for example, by determining that the executive conduct in question is not a "search" for Fourth Amendment purposes), the legislature may seek to provide more procedural protections than a court has deemed the Fourth Amendment to require. We might regard the statute as **corrective** - as intended to reset the level of privacy protection to what the legislature perceives to be a more appropriate level.

The Wiretap Act and arguably FISA fit the former category. Congress adopted each statute in the wake of a Supreme Court decision that **directly limited executive discretion to use certain surveillance tactics** - in particular, to acquire communications in which a target could reasonably expect privacy. The judicial decisions left some room for legislative discretion, but made clear that the Fourth Amendment required robust constraints on executive conduct. In the case of the Wiretap Act, the protections Congress set essentially tracked those the Supreme Court outlined in Berger v. New York. n53 The statute at issue in Berger had allowed court authorization of eavesdropping activities, but the Court found the statutory procedures deficient in several respects. First, although the statute required a showing of reasonable grounds to believe that the surveillance would reveal evidence of criminal activity, the statute failed to satisfy the Fourth Amendment requirement that the crime to be investigated, the place to be searched, and the persons or things to be seized be particularly described. n54 Second, the statute imposed no limitations on which conversations could be seized or the duration of the surveillance, nor did it require termination of surveillance activities once the goals of the surveillance were met. n55 Third, the statute allowed law enforcement officials to secure renewal of a surveillance order on the basis of the initial showing. n56 Fourth, the statute did not provide for prior notice of the search [*307] to the subject of the surveillance and required no showing of exigency to justify the lack of notice. n57 Finally, the statute did not provide for a "return" on the warrant to a judge, "thereby leaving full discretion in the officer as to the use of seized conversations of innocent as well as guilty parties." n58

With the Wiretap Act, Congress sought to overcome each of these deficiencies. The Wiretap Act requires that the application specify the offense being investigated, the nature and location of the facilities where the communications are to be intercepted, and a particular description of the communications sought to be intercepted. n59 To grant the order, the court must find probable cause to believe that a particular enumerated offense is being committed and that targeting the specified facility will yield particular communications concerning that offense. n60 Congress dealt with Berger's objection to the indeterminate length of surveillance under the New York statute by providing that orders may authorize surveillance only as long as necessary for achievement of the objective, **up to thirty days**. n61 A court may grant an extension, but only subject to the same showings and findings as the original order. The statute also requires a court to order officials to "minimize" the interception of communications unrelated to criminal activity. n62

In light of Berger's objection that the New York statute required no showing of exigency to justify the lack of notice, the Wiretap Act requires a finding that normal investigative procedures are unlikely to be successful or are too dangerous, and generally requires notice to the target of the investigation within ninety days of the termination of the surveillance. n63 Finally, Congress required law enforcement officials to take a variety of steps that provide the functional equivalent of a return to a judge. For example, the Wiretap Act requires law enforcement officials to record intercepted communications and to make the recordings available to the judge. n64 The statute also authorizes a judge to require periodic reports on the progress of the surveillance. n65

The circumstances surrounding FISA's passage were slightly different, because the Supreme Court never spoke directly to the question whether warrantless national security surveillance of a foreign power or its agent [*308] violated the Fourth Amendment. n66 In Keith, however, the Court clarified that national security surveillance of a domestic target must comply with the Fourth Amendment. The Court acknowledged both that Congress could tailor specific statutory requirements to the peculiarities of national security surveillance n67 and that Congress could properly place the power to review surveillance applications in a specially designated court. n68 Although Congress never took up the Supreme Court's invitation to legislate distinct standards for national security surveillance of a domestic target, it enacted in FISA a special framework for surveillance of a foreign power or an agent of a foreign power. n69 More specifically, it established a specialized court, the FISC, to hear applications for electronic surveillance within the United States to gather foreign intelligence information. n70 In light of the Keith court's acknowledgement that special standards could be appropriate even for national security surveillance of domestic targets, FISA can be understood as Congress's attempt to map the Court's reasoning in Keith onto foreign intelligence gathering. n71

[*309] Several statutes fall within the second, "corrective" category of reactive statutes - that is, providing additional statutory protection in response to a judicial decision that approves executive conduct undertaken with few procedural protections. As noted earlier, ECPA's pen/trap provisions were in part a legislative response to the Supreme Court's decision in Smith v. Maryland. n72 The Court's holding would have permitted federal and state officials (absent statutory constraints) to use pen registers and similar devices without prior judicial authorization. The pen/trap device statute is one of several statutes in which Congress sought to restore a measure of procedural protection to activities that the Supreme Court deemed not to constitute a search for Fourth Amendment purposes. n73

Courts limit presidential powers more than Congress

Bellia ’11 (Patricia L, Notre Dame Law School, Arizona State Law Journal, Vol. 43, No. 293, 2011, Notre Dame Legal Studies Paper No. 12-58, 2011, “Designing Surveillance Law,” http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033217) KW

Apart from these general observations about the problems of institutional competence arguments in cases where the legislature has chosen the rule that constrains the executive, it is worth making two additional points with respect to proactive statutes. First, I noted that Congress often confides important statutory questions in courts, but in the particular context of ECPA, Congress has limited courts' ability to interpret the relevant provisions by withholding a statutory suppression

remedy. Without such a remedy, statutory challenges to executive action do not arise in criminal proceedings. No doubt the omission of a suppression remedy was motivated in part by a belief that no such remedy was warranted, n154 not a specific desire to foreclose judicial interpretation. The absence of a tool for courts to evaluate the SCA's terms in a criminal context, however, can hamper not only judicial evaluation, but also legislative evaluation. To the extent that judicial decision-making exposes an executive interpretation of the law, it facilitates public and legislative oversight. The paucity of judicial decisions under the SCA makes it unsurprising that Congress has made few significant changes to the SCA. Executive interpretations of the statute are largely shielded from view in the absence of other more direct oversight mechanisms. Although Congress has updated ECPA on nearly a dozen occasions over the last twenty-five years, most of the amendments other than the Patriot Act reflect fairly technical changes to the existing statutory framework.

Limitations make it impossible for the executive to act – Wiretap Act proves

Bellia ’11 (Patricia L, Notre Dame Law School, Arizona State Law Journal, Vol. 43, No. 293, 2011, Notre Dame Legal Studies Paper No. 12-58, 2011, “Designing Surveillance Law,” http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033217) KW

Consider the limitation that information gathered under the Wiretap Act must pertain to a crime. By statute, applications for surveillance of wire and oral communications require the approval of a high-level Justice Department official, and thus proceed through a centralized executive [*334] branch review process. n156 In theory, the effect of such a requirement is to centralize decision-making and vest it in politically accountable officials, and perhaps even to place certain executive officials in a quasi-judicial rule. By most accounts, in practice this requirement has had the effect of making the wiretap application process a fairly **burdensome** one for investigators. n157 The Wiretap Act's high-level executive review requirements no doubt contributed to the institutional evolution within the Justice Department, with the Criminal Division's Office of Enforcement Operations serving as a gatekeeper for the Title III order process. The statute, however, does not rest on executive assessment alone; it requires a judicial finding of probable cause, and at the federal level even confines that authority to district court judges (rather than magistrates). n158 Other aspects of the statute reflect a different allocation of responsibility. Law enforcement officials must "minimize" interception of communications not authorized to be intercepted, but judicial checks on whether they have done so are limited. n159 Indeed, the statute does not require judicial evaluation of whether evidence of crimes other than those set forth in the application should be disclosed, thus leaving the matter to executive discretion. n160 The statute does, however, require judicial evaluation of whether other-crimes evidence should be admitted into court. n161

It should be obvious that second-order design mechanisms will often move with first-order preferences, in the sense that a preference for greater limits on executive discretion will lead to the selection of design mechanisms that rely less on executive policy and more on other institutional arrangements. Nevertheless, many different design combinations are available to meet

first-order preferences. A goal of preventing unlawful executive surveillance, for example, might be achieved equally well through a statutory suppression mechanism and through the availability of a civil damages remedy against executive officials who authorize the surveillance.

AT//DEA Key

The DEA cannot check itself – corrupt, lies and no internal checks
Granick and Sprigman 14

Jennifer Granick, Director of Civil Liberties at the Stanford Center for Internet and Society and former director of the EFF, Christopher Sprigman, professor of law at NYU, "NSA, DEA, IRS Lie About Fact That Americans Are Routinely Spied On By Our Government: Time For A Special Prosecutor," October 14, 2013, Forbes, http://www.forbes.com/sites/jennifergranick/2013/08/14/nsa-dea-irs-lie-about-fact-that-americans-are-routinely-spied-on-by-our-government-time-for-a-special-prosecutor-2/NV

It seems that every day brings a new revelation about the scope of the NSA's heretofore secret warrantless mass surveillance programs. And as we learn more, the picture becomes increasingly alarming. Last week we discovered that the NSA shares information with a division of the Drug Enforcement Administration called the Special Operations Division (SOD). **The DEA uses the information in drug investigations. But it also gives NSA data out to other agencies** – in particular, the Internal Revenue Service, which, as you might imagine, is always looking for information on tax cheats. The Obama Administration repeatedly has assured us that the NSA does not collect the private information of ordinary Americans. Those statements simply are not true. We now know that the agency regularly intercepts and inspects Americans' phone calls, emails, and other communications, and it shares this information with other federal agencies that use it to investigate drug trafficking and tax evasion. Worse, DEA and IRS agents are told to lie to judges and defense attorneys about their use of NSA data, and about the very existence of the SOD, and to make up stories about how these investigations started so that no one will know information is coming from the NSA's top secret surveillance programs. "Now, wait a minute," you might be saying. "How does a foreign intelligence agency which supposedly is looking for terrorists and only targets non-U.S. persons get ahold of information useful in IRS investigations of American tax cheats?" To answer that question, let's review this week's revelations. Back in 2005, several media outlets reported that NSA has direct access to the stream of communications data, carried over fiber optic cables that connect central telephone switching facilities in the U.S. with one another and with networks in foreign countries. Reports suggested that the NSA had installed equipment referred to as "splitter cabinets" at main phone company offices, where they make a copy of all data traveling on the fiber optic cable and route it into a secret room where computers scan through the information – searching for names and terms that are themselves secret — as it goes by. For years, the federal government refused to comment on these reports. But on August 8, an unnamed senior administration official confirmed this practice to the New York Times. We also learned that the NSA can grab information off these fiber optic cables in near real time using a tool called XKeyscore (XKS). Searching the firehose of Internet and telephone data as it flows takes an immense amount of computing power. The XKS system dumps a portion of the communications information NSA snatches into a truly immense local storage "cache." This cache can keep network information for a few days, depending on the amount of traffic. This gives the NSA's computers time to search through what otherwise would be an unmanageable torrent of emails, phone calls, chats, social network posts, and other communications. And importantly, XKS searches do not involve just communications "metadata". The XKS system searches the contents of our Internet and telephone communications. Which is directly at odds with repeated Administration statements suggesting that NSA mass surveillance was limited to metadata. To seize and search through all of this information without a warrant, the agency must comply with just a few legal limitations. Under the FISA Amendments Act, the NSA is not allowed to intentionally collect purely domestic information. That is, the NSA can search communications it believes begin or terminate in another country, either based on the facility where the information is collected (for example, an undersea cable) or other signifier, like an IP address that suggests origination abroad. Of course, these determinations are subject to error, particularly when the surveilled facility is in the U.S. and carries a substantial amount of purely domestic traffic. To reduce the amount of purely domestic traffic that ends up on the desks of NSA analysts, the agency relies on post-seizure "minimization" procedures. For several reasons, however, these procedures are fundamentally inadequate to protect communications privacy. First, the minimization procedures are themselves secret. Moreover, by law, purely domestic communications that the NSA inadvertently collects need be deleted only if they "could not be" foreign intelligence information – a provision that requires the NSA to delete very little. Some minimization procedures have been leaked to the public, and these show that the government may

"retain and make use of "inadvertently acquired" domestic communications if they contain usable intelligence, information on criminal activity, threat of harm to people or property, are encrypted, or are believed to contain any information relevant to cybersecurity." Even otherwise privileged communications between individuals and their lawyers are not deleted. The agency merely stores those in a separate database so they are not sent to a law enforcement agency for use in a criminal case. Once the NSA identifies the subset of international or "one-end" foreign communications (i.e., those where a foreigner is either a sender or recipient), analysts are supposed to search only for "foreign intelligence" information. But since "foreign intelligence" includes anything relevant to the conduct of U.S. foreign affairs, this limitation alone imposes no real restraint on NSA's warrantless spying. Certainly, the NSA isn't limited to counterterrorism operations. In undertaking their searches, NSA analysts use either "strong" or "soft" selectors. "Soft" selectors are a broad kind of search that pulls up messages based on content or even the language in which a message is written. When the NSA uses soft selectors, it can search the vast amounts of information it collects to retrieve all Internet users' discussions of particular topics or in particular languages. The potentially very broad scope of searches using soft selectors is quite frightening, as ordinary Americans' communications are likely to show up in search results. "Strong" selectors pull up information associated with a particular known individual. The Obama Administration has repeatedly assured us that these strong selectors may only target non-U.S. persons. But screenshots of the user interface for submitting selector queries tell a different story. Published by the Guardian, they show that NSA analysts are presented with dropdown lists of preapproved factors the NSA accepts as sufficient proof that a person is a foreigner, including being "in direct contact with (a) target overseas" or the use of storage media (like a server located abroad) seized outside the U.S. So any U.S. person who talks to a foreigner that the NSA has identified as a target, or who stores data on a server outside the U.S. (as someone might well do if emailing from a foreign hotel room) may be presumed to be a foreigner. And that's not even the worst of it. Leaked NSA documents also suggest that the agency will presume that a person is a foreigner whenever there is no information suggesting otherwise. That sort of willful blindness gives the NSA a lot of leeway to target Americans. Worse, we now know that the NSA's assertion that it does not "target" U.S. persons is either a lie, or is about to become one. Leaked NSA documents show that in 2011, the NSA changed its "minimization" rules to allow its operatives to search for individual Americans' communications using their name or other identifying information. Such a change would turn "minimization" into a blanket authority to warrantlessly spy on Americans – in defiance of specific legal restrictions prohibiting this sort of domestic spying. Senator Ron Wyden has said that the law provides the NSA with a loophole potentially allowing "warrantless searches for the phone calls or emails of law-abiding Americans", and raised the issue when he met with President Obama on August 1. This is the first time we've had evidence that the NSA has — or will have — the authority to warrantlessly search its databases with the specific intent of digging up information on specific U.S. individuals. We can sum up very simply – at this moment, the NSA enjoys virtually unrestricted power to spy on Americans, without a warrant or any particular suspicion that any person spied upon has done anything wrong. Our phone, email and potentially other records are fair game for bulk collection. The contents of our communications with people overseas are also fair game, so long as there is an approved foreign intelligence purpose for the collection. The NSA does not believe that any stored emails are protected by the Fourth Amendment, so it can collect them from providers with little restraint. As far as we know, the only category of information the NSA currently believes is off limits to mass surveillance are the contents of phone calls it knows in advance are solely between Americans. This is an astonishing development in the U.S., a nation that, until recently, carefully restricted the power of its domestic spying agencies by forcing them to submit narrow requests for spying authority to a court, which would issue a warrant if the government showed probable cause to believe that the surveillance target was engaged in some sort of wrongdoing. At this point, it's clear those limits are gone. The United States is now a mass surveillance state. In last week's press conference, President Obama reassured the nation that "America isn't interested in spying on ordinary people." In other words, do not worry, because the information will only be used for narrow counterterrorism or broader foreign intelligence purposes. But the latest revelations show that these assurances too are a lie. Under current U.S. surveillance law, the NSA may share with domestic law enforcement information obtained both through authorized surveillance, and information unlawfully but unintentionally collected, if it contains evidence of a crime. This rule was worrisome when the NSA was only conducting targeted surveillance of foreign powers. It is terrifying now that the NSA scans virtually all American cross-border communications. And this is especially true in light of the recent reports showing that any number of other three-letter agencies are howling for access to NSA data for use in investigations of Americans' drug use, tax evasion, and even copyright infringement. Usually, these agencies would need at least warrants based on probable cause that an individual was committing a crime before they could obtain the contents of our communications, and would need to certify to a public court that email or phone records are relevant to an ongoing criminal investigation before it could collect such traffic data. But if they get their hands on NSA data, all these bothersome civil liberties protections simply vanish. Which brings us to the Drug Enforcement Administration (DEA). As we noted previously, the DEA has a secret division called the Special Operations Division or SOD. The SOD receives intelligence intercepts, wiretaps, informants and a massive database of telephone records from its partner agencies, of which the NSA is just one, to distribute to authorities across the nation to help them launch criminal investigations of Americans. The SOD gets information from the NSA and shares it with, among other agencies, the IRS. And this is where things get truly ugly. When agents receive SOD information and rely on it to trigger investigations, they are directed to omit the SOD's involvement from investigative reports, affidavits, discussions with prosecutors and courtroom testimony. Agents are instructed to then use "normal investigative techniques to recreate the information provided by SOD." IRS agents receiving SOD data, which presumably can include information from the NSA, have been similarly instructed. They are instructed, in other words, to create a fake investigative file, and to lie. To lie, in particular, to defense lawyers and to judges, about the source of the evidence used in criminal prosecutions. By hiding the fact that information comes from NSA surveillance, the government both masks the extent to which NSA's domestic spying is used to trigger investigations of Americans, and prevents legal challenges to highly questionable surveillance practices like bulk phone record collection, warrantless access to American communications with friends and family overseas, and retention and use of illegally obtained domestic calls and emails. This is outrageous conduct. It is the sort of thing you expect from the Chinese government, or one of the now-vanished governments of the Warsaw Pact. And there is no stronger proof of the dangers of the NSA's domestic spying effort than the fact that the government has consistently lied about it and attempted to cover it up. Think for just a moment about the

stories J. Edgar Hoover could have plausibly concocted about Dr. Martin Luther King, Jr. or any other civil rights activist with this kind of detailed information. The Obama Administration has gone after leakers, and the journalists at outlets like the Associated Press or the New York Times who use them as sources, with unprecedented force. Think about what the current Attorney General, Eric Holder, could do to bring down these reporters who cover – sometimes in ways the Obama Administration doesn't like — the conduct of American foreign policy. **At this point, it's plain to see that the Obama Administration has no intention of honestly fixing this mess. So it's time now for Congress to act**. A good first step would be to appoint a Special Prosecutor with wide power to subpoena Administration officials, and to bring criminal indictments where appropriate. Congress should then begin the process of reforming surveillance law to make absolutely clear that the NSA has no power to conduct warrantless mass surveillance of Americans. First they came for the terrorists and the foreigners, and no one did anything. Then they came for the drug dealers. Then the tax cheats. Then the journalists. And that's just what we know about. How much worse does it have to get before we say enough is enough?

Parallel construction undermines any internal solvency – our ev is predictive

Masnick 14

Mike Masnick, is the founder and CEO of Floor64 and editor of Tech Dirt, "Parallel Construction Revealed: How The DEA Is Trained To Launder Classified Surveillance Info," February 3, 2014, Tech Dirt, https://www.techdirt.com/articles/20140203/11143926078/parallel-construction-revealed-how-dea-is-trained-to-launder-classified-surveillance-info.shtml/NV

Last summer, Reuters revealed how the NSA and other surveillance organizations would share info with the DEA and other law enforcement agencies, but then tell them to reconstruct the evidence via a process called "parallel construction," so that the surveillance would not then be discussed in court. This is highly questionable, and probably illegal, as a defendant has the right to know all of the evidence being used against him or her, and should also be told how that evidence was gathered, to make sure the collection was legal. But what's being done with parallel construction, is that the intelligence community is able to give "hints" to law enforcement, allowing them to come up with various pretenses for an investigation, avoiding ever having to reveal that the NSA or others used potentially illegal surveillance efforts. One example given in that Reuters report was how DEA agents would suddenly be given a tip like this: "Be at a certain truck stop at a certain time and look for a certain vehicle." The DEA would then have the local police come up with some pretense to stop the truck... and then when evidence is found they can claim it was a random traffic stop, when the reality is anything but that. After the Reuters report, C.J. Ciaramella used Muckrock to request all DEA training material and official policies concerning "parallel construction" and recently received nearly 300 pages of documents, much of it redacted, but still which reveals that this is common practice at the DEA and widely known. Much of it is in the form of PowerPoint presentations, complete with speaker notes, which say things like how careful DEA agents need to be around classified information because "it can screw up your investigation." Another slide notes "the devil's in the details" and explains: Our friends in the military and intelligence community never have to prove anything to the general public. They can act upon classified information without ever divulging their sources or methods to anyway [sic] outside their

community. If they find Bin Laden's satellite phone and then pin point his location, they don't have to go to a court to get permission to put a missile up his nose. We are bound, however, by different rules. Our investigations must be transparent. We must be able to take our information to court and prove to a jury that our bad guy did the bad things we say he did. No hiding here. However, we are also bound to protect certain pieces of information so as to protect the sources and methods. To use it....we must properly protect it. There are also training materials that discuss how parallel construction works, as well as the fact that in "the new post-9/11" era, a "national consensus" has been formed making it easier for the intelligence community and law enforcement to share information. **It even refers to the federal courts as the intelligence community's "nemesis**." A lot of the documentation deals with how to deal with having classified information, and the focus seems to be on keeping that information away from anyone involved in the case. There is -- I kid you not -- a special group of prosecutors called "the Taint Review Team" -- to be called in when things get... well... tainted. In one part of the presentation, they talk about all sorts of ways to try to get a judge to avoid revealing classified information to defendants, and then have a plan "if all else fails" which includes redoing the indictment or dropping the case. That same presentation shows that there should be a "see no evil" plan -- which explains why DEA agents are often just told "go to this truck stop and look for this truck" without knowing any more. That way they "saw no evil" with evil being defined as questionably obtained intelligence. It appears that much of the DEA's arguments here rely on the Supreme Court's ruling in 1938 in Scher v. United States, in which a law enforcement agent was told some things by a source, and used that information to find and arrest the defendant handling whiskey (during Prohibition). The court said that how the agent found out about the information doesn't matter, so long as the agent saw illegal acts himself. And thus, the Supreme Court "enabled" the idea of parallel construction. That case pops up repeatedly throughout the documents, basically telling DEA agents: expect information to come from intelligence sources, but do your best to never find out why they know this stuff. Another presentation asks "what is the problem with combining IC (Intelligence Community) collection efforts & LEA (Law Enforcement Agency) investigations in US courtrooms?" and then explains that it presents constitutional problems... and that "Americans don't like it!" The note on that one points out that "even though we seek to protect our citizens, generally, we can only use techniques to achieve that objective, which are acceptable to our citizens." But that's not what they're actually doing or teaching. Instead, they're teaching how to keep doing the constitutionally questionable things that Americans don't like... and then hiding it from the courts, the American public and even the law enforcement folks themselves, in order to create a sort of plausible deniability that launders the fact that potentially illegal and unconstitutional surveillance was used to create the basis of the legal case. There's some more information in the documents, but it all basically points to the same basic thing: the less that law enforcement folks know, the better. If the law enforcement knows too much, call in the "Taint Review Team" to see what they can do to clean up, and see what you can use to get the judge to exclude classified evidence. All in all, it adds up to a nice little plan to allow the NSA to illegally spy on people, tell law enforcement just enough to target people, without ever revealing how they were caught via unconstitutional means.

AT//Delay

Presidential action more effective than Congressional – based on the Constitution

Huq, 12 (Aziz, Assistant professor of law, University of Chicago Law School, "Structural Constitutionalism as Counterterrorism", 8/23/12, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2135249) KW

The first presumption derived from the Separation of Powers turns on the executive's assumed comparative advantage in national security matters. This argument for executive primacy is rooted in the textual allocation of "the" executive power in the President and the concomitant authorizations of the "Take Care" Clause and the "Commander in Chief' Clause.20 It further finds support in Founding-era writings of Alexander Hamilton, an early advocate of broad executive prerogatives. 21 In the Federalist No. 70, Hamilton famously emphasized the capacity of the President to act with "[**d]ecision, activity, secrecy, and dispatch**., 22 Modem commentators amplify the Hamiltonianposition by underscoring the functional advantages of the presidency over the legislature in matters of security. 23 They assert that the executive has "critical advantages over a multi-member legislature in reaching foreign policy and national security decisions." 24 To exploit these advantages, "**the executive branch needs the flexibility to act quickly, possibly in situations where congressional consent cannot be obtained in time to act on the intelligence.**" 25

AT//FBI Key

The FBI cannot restraint itself
Lynch 11

Jennifer Lynch, is a senior staff attorney with the Electronic Frontier Foundation, "FBI Sanctioned for Lying About Existence of Surveillance Records," November 21, 2011, Electronic Frontier Foundation, https://www.eff.org/deeplinks/2011/05/fbi-chastised-court-lying-about-existence/NV

An order from the U.S. District Court for the Central District of California has revealed the FBI lied to the court about the existence of records requested under the Freedom of Information Act (FOIA), taking the position that FOIA allows it to withhold information from the court whenever it thinks this is in the interest of national security. Using the strongest possible language, the court disagreed: "The Government cannot, under any circumstance, affirmatively mislead the Court." Islamic Shura Council of S. Cal. v. FBI ("Shura Council I"), No. 07-1088, 3 (C.D. Cal. April 27, 2011) (emphasis added). This case may prove relevant in EFF's ongoing FOIA litigation against the FBI. As discussed further below, one of the issues in Shura Council was the FBI's extensive and improper use of "outside the scope" redactions. The agency has also used these heavily in at least one of our current cases — in areas where it is highly unlikely the material blocked out is actually outside the scope of our FOIA request. (see example to the left from our case seeking records on the government's push to expand federal surveillance laws). We'll be writing more about that case in the coming weeks and posting the documents we received on this site soon. Shura Council started five years ago in May 2006, after widespread reporting on the FBI's programs targeting Muslims after September 11, 2001. At that time, several Muslim citizens and organizations in Southern California, including the Islamic Shura Council of Southern California and the Council on American Islamic Relations (CAIR), submitted a broad joint FOIA request to the FBI seeking "[a]ny records relating or referring" to themselves, "including . . . records that document any collection of information about monitoring, surveillance, observation, questioning, interrogation, investigation and/or infiltration[.]" Shura Council I at 4. In 2008, after the FBI produced only minimal records, the requesters filed a federal lawsuit. The FBI then searched for and located additional records for nine of the plaintiffs, but these records were heavily redacted, with much of the information withheld as "outside the scope" of the plaintiffs' FOIA request. The FBI attested, in documents and declarations it submitted under oath to the court, that these were all the records that existed about the plaintiffs and that the materials labeled "outside the scope" were "not responsive" to the plaintiffs' FOIA request. After court ordered the FBI to submit full versions of the records in camera, along with a new declaration about the agency's search, the FBI revealed for the first time that it had materially and fundamentally mislead the court in its earlier filings. The unaltered versions of the documents showed that the information the agency had withheld as "outside the scope" was actually well within the scope of the plaintiffs' FOIA request. The government also admitted it had a large number of additional responsive documents that it hadn't told the plaintiffs or the court about. Id. at 7-8. If these revelations weren't bad enough, the FBI also argued FOIA allows it to mislead the court where it believes revealing information would "compromise national security." Id. at 9. The FBI also argued, that "its initial representations to the Court were not technically false" because although the information might have been "factually" responsive to the plaintiffs' FOIA request, it was "legally nonresponsive." Id. at 9, n. 4 (emphasis added).

The court noted, this “argument is indefensible,” id. at 9-10, and held, “the FOIA does not permit the government to withhold responsive information from the court.” (Id.)(upheld on appeal in Islamic Shura Council of S. Cal. v. FBI, __ F.3d __, No. 09-56035, at 4280-81 (9th Cir. Mar. 30, 2011) (“Shura Council II”).1 The court stated: The Government argues that there are times when the interests of national security require the Government to mislead the Court. The Court strongly disagrees. The Government’s duty of honesty to the Court can never be excused, no matter what the circumstance. The Court is charged with the humbling task of defending the Constitution and ensuring that the Government does not falsely accuse people, needlessly invade their privacy or wrongfully deprive them of their liberty. The Court simply cannot perform this important task if the Government lies to it. Deception perverts justice. Truth always promotes it. (Shura Council I at 17) (emphasis added). This is an important opinion for FOIA requesters because sometimes the only protection a FOIA requester has from the government's potentially arbitrary withholding of information is a court's in camera review of the full versions of documents. If the government were allowed to withhold information from the court, this protection would be meaningless and the role of judicial oversight in FOIA cases would be compromised. Unfortunately for the plaintiffs in Shura Council, this seems to be a hollow victory. Although the court did not restrain itself from using the strongest possible language to criticize the government’s actions (calling the FBI’s arguments “untenable,” id. at 3, “indefensible,” id. at 10, and “not credible” id. at 17) it also held that “disclosing the number and nature of the documents the Government possesses could reasonably be expected to compromise national security.” Id. 18. Therefore it did not order the government to release the records to the plaintiffs or even to reveal how many records turned up in the second search. And on appeal, the Ninth Circuit held that neither the plaintiffs nor their attorneys had the right to see the original version of the district court’s order (filed under seal) because it contained information the FBI considered to be “national security and sensitive law enforcement information.” (Shura Council II at 4286). It seems unlikely that, five years after the plaintiffs filed their FOIA request, the release of the information the FBI has on these individuals and organizations would truly threaten national security or an ongoing criminal investigation. None of the plaintiffs appears to have been arrested or retained in conjunction with a crime or foreign terrorist plot, so it seems more likely that this is yet another example of the government valuing secrecy over transparency. The district court’s April 27, 2011 order after remand is here, and the Ninth Circuit opinion remanding the case is here. UPDATE (November 21, 2011): In a later opinion, the district court sanctioned the government for lying. In issuing monetary sanctions against the DOJ, the court held, "the Government’s deception of the Court was without any factual or legal basis and simply wrong." (p. 19). The court noted issuing sanctions was necessary to "deter the Government from deceiving the Court again." (p. 2). Unfortunately, it's not clear this practice will end any time soon. The DOJ has been attempting to change its FOIA regulations to codify the procedures it used in this case. As the court noted, even though the proposed changes were withdrawn, "**the deceptive policy and practice of the DOJ with respect to asserting and applying exclusions under FOIA apparently remains intact."** (p. 19).

Laws will do nothing to stop FBI spying
Cushing 15

Tim Cushing, writer on technology misusage for Techdirt, “New York's Top Prosecutor Says We Need New Laws To Fight iPhone/Android Encryption,” January 13, 2015, Tech Dirt,

https://www.techdirt.com/articles/20150109/06144429646/new-yorks-top-prosecutor-says-we-need-new-laws-to-fight-iphoneandroid-encryption.shtml/NV

The greatest threat to law enforcement since the motocar continues to receive attention from entities aghast at the notion that peoples' communications and data might not be instantly accessible by law enforcement. Apple's decision (followed shortly thereafter by Google) to offer default encryption for phone users has kicked off an avalanche of paranoid hyperbole declaring this effort to be a boon for pedophiles, murders and drug dealers. New laws have been called for and efforts are being made to modify existing laws to force Apple and Google into providing "law enforcement-only" backdoors, as if such a thing were actually possible. New York County's top prosecutor, Manhattan DA Cyrus Vance -- speaking at an FBI-hosted cybersecurity conference -- is the latest to offer up a version of "there ought to be a law." Federal and state governments should consider passing laws that forbid smartphones, tablets and other such devices from being "sealed off from law enforcement," Manhattan District Attorney Cyrus Vance said today in an interview at a cybersecurity conference in New York. Sure. These entities could "consider" this. And then swiftly discard the idea. There's no good reason why millions of people's data and communications should be made less secure just to make capturing criminals -- a small minority of the population -- easier. There are only law enforcement reasons. And those reasons are specious, at best. Cops have been catching criminals since long before the rise of the cellphone and they'll continue to do so long after default encryption becomes standard operating procedure. But to hear opponents of Apple's move tell it, encryption-by-default is an unfair impediment to investigative and law enforcement agencies. "It's developed into a sort of high-stakes game," Vance said. "They've eliminated accessibility in order to market the product. Now that means we have to figure out how to solve a problem that we didn't create." Vance's portrayal of this decision is dishonest and self-serving, but it's his last sentence that is the most skewed. Law enforcement (along with investigative and national security agencies) did create this problem. They abused their powers to obtain warrantless access to metadata, data, communications, and anything stored locally on the phone. Cops routinely searched phones of those they detained without a warrant, something that was finally curbed by a Supreme Court decison. The NSA, FBI and law enforcement agencies all use the Third Party Doctrine to access call records, cell site location data and anything else that can be easily had without ever approaching a judge. So, they did bring this on themselves. And that's why (as the oft-used quote goes) the "pendulum" has "swung the other way." It's not marketing. It's a very specific reaction to years of unchecked government power. It's obvious the government can't restrain itself. So, these companies have made it "easier" for the government to refrain from abusing its power by making this decision for them. Sure, there's a limited market for more security, but making it default going forward gains these companies nothing in terms of new customers. It's not an option that's only available to people who buy certain phones or certain service contracts. It's for everyone who buys a phone. Vance echoes the statements of others in his attempt to portray this as a purely mercenary decision but the only thing this does is make him look stupider. After ticking the mandatory "crimes against children/murderers" emotional-plea checkbox, Vance goes on to cross "public safety" off the list of talking points. "This is an issue of public safety," Vance said. "The companies made a conscious decision -- which they marketed -- to make these devices inaccessible. Now it's our job to figure out how we can do our job in that environment." Incredibly, Vance portrays his deployment of every anti-encryption cliche as special and unique, claiming he's "going rogue" by speaking up on the subject. (Because everyone else has been oh so silent...) But there's nothing new being said here. Again, Vance pushes the "greed" angle, but it's his last sentence that's the most ridiculous. Vance -- and others like him -- aren't "figuring out" how to do their jobs in "this environment." They have no desire to do that. What they want is to change the environment. The new environment doesn't cater to their instant access desires, but rather than deal with the limitations and approach them intelligently, they've chosen to portray encryption-by-default as Google and Apple's new plan to make a ton of money selling smartphones to child molesters and murderers. They want the laws to change, rather than law enforcement. And all they've offered in support are panic-button-mashing "arguments" and heated hyperbole. The problem is that panic buttons and hyperbole are effective legislative mobilizers. As bad as Vance's ideas are, there's a good chance he'll be able to find a number of politicians that agree with him. **In all likelihood, the environment will be forced to adapt to law enforcement, rather than the other way around.**

AT//FISA Fails

FISA is not a rubber stamp, it can check the executive
Sales 14

Nathan Alexander Sales 14, Associate Professor of Law, Syracuse University College of Law, Summer 2014, "NSA SURVEILLANCE: ISSUES OF SECURITY, PRIVACY AND CIVIL LIBERTY: ARTICLE: Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", LexisNexis, 10 ISJLP 523/NV

The FISA court is often derided as a rubber stamp. But there are a number of indications that it does in fact serve as a real constraint on the executive branch. Over the three month period between July and September 2013, the court refused to approve nearly a quarter of the government's surveillance requests, insisting on "substantive changes" before okaying the applications—e.g., requiring officials to submit more information to justify the monitoring or altering the scope of the authority sought.92 The FISA court may not say "no" very often, but it pretty frequently says "not yet." Recently declassified documents suggest that the FISA court has meaningfully checked NSA bulk collection in particular.93 In May 2011, the administration told the FISA court about an over-collection problem in the PRISM program. Because of the way some communications are bundled, the NSA had been collecting some purely domestic communications (which may not be intercepted under section 702) in the course of collecting communications involving persons reasonably believed to be outside the United States (which may). After a series of written submissions, meetings between court and government personnel, and a hearing, the court on October 3, 2011 issued an 81-page opinion concluding that the program violated both the Fourth Amendment and section 702, principally because the NSA's minimization procedures were inadequate.94 The government responded by developing new procedures to segregate the permissible intercepts from the impermissible ones, applying the procedures to previous acquisitions, and purging tainted records from its database. The FISA court then ruled in opinions dated November 30, 2011 and September 25, 2012 that the revised program passed muster. A 2009 episode involving the telephony metadata program followed a similar pattern—the executive's discovery of violations, disclosure to the FISA court, judicial rebuke, institution of reforms, and judicial approval of the revised program.95

Executive self-restraint solves - FISA and other oversight mechanisms ensure accountability
Sales 14

Nathan Alexander Sales 14, Associate Professor of Law, Syracuse University College of Law, Summer 2014, "NSA SURVEILLANCE: ISSUES OF SECURITY, PRIVACY AND CIVIL LIBERTY: ARTICLE: Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", LexisNexis, 10 ISJLP 523/NV

At one level this is a dishearteningly familiar story of government misconduct. But the deeper lesson the episode reveals is that, when confronted with such errors, the FISA court is willing to intervene and enforce basic constitutional and statutory guarantees—which is exactly what we would expect an Article III court to do. **The PRISM incident also suggests that the government takes seriously**

its obligations to self-police and disclose problems to the court. Indeed, officials have an interest in doing so. **The government's ability to persuade the FISA court to approve its surveillance requests depends in large part on its credibility** with the judges. And that goodwill would dissipate if the court independently learned, such as though leaks, about violations that officials had failed to disclose. It would be a mistake to take too much comfort from this incident, since it is impossible to say how representative it is. Still, it provides some reason for optimism that FISA court oversight—and the internal oversight on which it depends—is more than perfunctory. A third noteworthy feature of PRISM, though not the metadata program, is the unusual transparency surrounding its adoption. PRISM appears to be a straightforward application of FISA section 702, which Congress enacted in 2008. The legislation was the result of a lengthy and detailed public debate touched off by revelations in late 2005 that the Terrorist Surveillance Program was intercepting certain international communications without judicial approval. During the ensuing three year national conversation, intelligence officials repeatedly explained to Congress and the public why they thought new statutory authority was necessary, and advocacy groups and other interested parties repeatedly challenged these representations and urged Congress to reject, or at least curtail, any new surveillance powers. Newspaper editorial pages, blogs, talk radio programs, and many other media organs hashed out the legal and policy issues. FISA was front-page news. In short, the section 702 program shouldn't come as a surprise because the nation thoroughly debated it for three years before Congress expressly approved it.

AT//Future President Rollback

The counterplan's binding and causes reticent agencies to follow on Duncan '10

[Prof Law Florida A&M. "A Critical Consideration of Executive Orders" *The Vermont Law Review*, 2010 ln]

Executive orders can serve the purpose of allowing the President to generate favorable publicity, such as when President Clinton signed an executive order on ethics, n493 and when President George W. Bush signed the first of a series of executive orders to launch his Faith-Based and Community Initiatives. n494 While these orders pay off political debts and thus may seem trivial, they nevertheless **create both infrastructural and regulatory precedents for future administrations**. Hence, they create an avenue for key constituencies of each administration to influence the executive structure as a whole without necessarily permitting that influence to extend to arenas of reserved for Congress. That is, while the President can act more swiftly and precisely to satisfy political commitments, the impact of his action will fall considerably short of analogous congressional action. This in turn serves to satisfy selected constituencies without giving them undue power via the presidency.¶

Executive orders have even served to create presidential commissions to investigate and research problems, and have been instrumental in solving remedial issues. n495 **Commission reports** that result from such orders can in [*398] turn **put pressure on Congress to enact legislation to respond to those problems**. President Franklin Roosevelt pursued this process when he issued a report of the Committee on Economic Security studying financial insecurity due to "unemployment, old age, disability, and health." n496 This report led to the Social Security Act. n497

No rollback of executive orders---empirics prove

Kraus and Cohen 2000 [George and Jeffrey, Chemistry Professor at University of Southern Carolina, Ph. D. in Political Science in 1979 from the University of Michigan and his major teaching and research interests include American Political Institutions and Public Policy, more particularly the Presidency, the Mass Media, and Economic Policy, Opportunity, Constraints, and the Development of the Institutional Presidency: The Issuance of Executive Orders, 1939-96, http://www.jstor.org/stable/2647599?seq=1#page_scan_tab_contents] Schloss

We use the annual number of executive orders issued by presidents from 1939 to 1996 to test our hypotheses. Executive orders possess a number of properties that make them appropriate for our purposes. First, the series of executive orders is long, and we can cover the entirety of the institutionalizing and institutionalized eras to date.6 Second, unlike research on presidential vetoes (Shields and Huang 1997) and public activities (Hager and Sullivan 1994), which have found support for presidency-centered variables but not president-centered factors, executive orders offer a stronger possibility that the latter set of factors will be more prominent in explaining their use. One, they are more highly discretionary than vetoes.7 More critically, presidents take action first and unilaterally. In addition, Congress has tended to allow executive orders to stand due to its own collective action problems and the cumbersomeness of using the legislative process to reverse or stop such presidential actions. Moe and Howell (1998) report that between 1973 and 1997, Congress challenged only 36 of more than 1,000 executive orders issued. And only two of these 36 challenges led to overturning the president's executive order. Therefore, presidents are likely to be very successful in implementing their own agendas through such actions. In fact, the nature of executive orders leads one to surmise that idiopathic factors will be relatively more important than presidency-centered variables in explaining this form of presidential action. Finally, executive orders have rarely been studied quantitatively (see Gleiber and Shull 1992; Gomez and Shull 1995; Krause and Cohen 1997)8, so a description of the factors motivating their use is worthwhile.9 Such a

description will allow us to determine the relative efficacy of these competing perspectives on presidential behavior.10

Empirics prove there are political barriers that check future rollbacks

Branum 02 [Tara, Associate, Fulbright & Jaworski L.L.P., Houston, Texas. J.D. University of Texas; Austin, Texas (2001); B.A. Rice University; Houston, Texas (1994). Texas Review of Law & Politics; Editor-in-Chief (Spring 2000-Spring 2001), Managing Editor, PRESIDENT OR KING? THE USE AND ABUSE OF

EXECUTIVE ORDERS IN MODERN-DAY AMERICA,
http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1163&context=jleg] Schloss

The public perception problem is not limited to promises by political candidates. Congressmen and private citizens besiege the President with demands that action be taken on various issues.273 To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office.274 Many were controversial and the need for the policies he instituted was debatable.7 5 Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. 276 A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

AT//IRS Key

The IRS cannot check itself – corrupt, lies and no internal checks
Granick and Sprigman 14

Jennifer Granick, Director of Civil Liberties at the Stanford Center for Internet and Society and former director of the EFF, Christopher Sprigman, professor of law at NYU, "NSA, DEA, IRS Lie About Fact That Americans Are Routinely Spied On By Our Government: Time For A Special Prosecutor," October 14, 2013, Forbes, http://www.forbes.com/sites/jennifergranick/2013/08/14/nsa-dea-irs-lie-about-fact-that-americans-are-routinely-spied-on-by-our-government-time-for-a-special-prosecutor-2/NV

It seems that every day brings a new revelation about the scope of the NSA's heretofore secret warrantless mass surveillance programs. And as we learn more, the picture becomes increasingly alarming. Last week we discovered that the NSA shares information with a division of the Drug Enforcement Administration called the Special Operations Division (SOD). The DEA uses the information in drug investigations. But it also gives NSA data out to other agencies – in particular, **the Internal Revenue Service, which, as you might imagine, is always looking for information on tax cheats.** The Obama Administration repeatedly has assured us that the NSA does not collect the private information of ordinary Americans. Those statements simply are not true. We now know that the agency regularly intercepts and inspects Americans' phone calls, emails, and other communications, and it shares this information with other federal agencies that use it to investigate drug trafficking and tax evasion. Worse, DEA and **IRS agents** are told to lie to judges and defense attorneys about their use of NSA data, and about the very existence of the SOD, and to make up stories about how these investigations started so that no one will know information is coming from the NSA's top secret surveillance programs. "Now, wait a minute," you might be saying. "How does a foreign intelligence agency which supposedly is looking for terrorists and only targets non-U.S. persons get ahold of information useful in IRS investigations of American tax cheats?" To answer that question, let's review this week's revelations. Back in 2005, several media outlets reported that NSA has direct access to the stream of communications data, carried over fiber optic cables that connect central telephone switching facilities in the U.S. with one another and with networks in foreign countries. Reports suggested that the NSA had installed equipment referred to as "splitter cabinets" at main phone company offices, where they make a copy of all data traveling on the fiber optic cable and route it into a secret room where computers scan through the information – searching for names and terms that are themselves secret — as it goes by. For years, the federal government refused to comment on these reports. But on August 8, an unnamed senior administration official confirmed this practice to the New York Times. We also learned that the NSA can grab information off these fiber optic cables in near real time using a tool called XKeyscore (XKS). Searching the firehose of Internet and telephone data as it flows takes an immense amount of computing power. The XKS system dumps a portion of the communications information NSA snatches into a truly immense local storage "cache." This cache can keep network information for a few days, depending on the amount of traffic. This gives the NSA's computers time to search through what otherwise would be an unmanageable torrent of emails, phone calls, chats, social network posts, and other communications. And importantly, XKS searches do not involve just communications "metadata". The XKS system searches the contents of our Internet and telephone communications. Which is directly at odds with

repeated Administration statements suggesting that NSA mass surveillance was limited to metadata. To seize and search through all of this information without a warrant, the agency must comply with just a few legal limitations. Under the FISA Amendments Act, the NSA is not allowed to intentionally collect purely domestic information. That is, the NSA can search communications it believes begin or terminate in another country, either based on the facility where the information is collected (for example, an undersea cable) or other signifier, like an IP address that suggests origination abroad. Of course, these determinations are subject to error, particularly when the surveilled facility is in the U.S. and carries a substantial amount of purely domestic traffic. To reduce the amount of purely domestic traffic that ends up on the desks of NSA analysts, the agency relies on post-seizure "minimization" procedures. For several reasons, however, these procedures are fundamentally inadequate to protect communications privacy. First, the minimization procedures are themselves secret. Moreover, by law, purely domestic communications that the NSA inadvertently collects need be deleted only if they "could not be" foreign intelligence information – a provision that requires the NSA to delete very little. Some minimization procedures have been leaked to the public, and these show that the government may "retain and make use of "inadvertently acquired" domestic communications if they contain usable intelligence, information on criminal activity, threat of harm to people or property, are encrypted, or are believed to contain any information relevant to cybersecurity." Even otherwise privileged communications between individuals and their lawyers are not deleted. The agency merely stores those in a separate database so they are not sent to a law enforcement agency for use in a criminal case. Once the NSA identifies the subset of international or "one-end" foreign communications (i.e., those where a foreigner is either a sender or recipient), analysts are supposed to search only for "foreign intelligence" information. But since "foreign intelligence" includes anything relevant to the conduct of U.S. foreign affairs, this limitation alone imposes no real restraint on NSA's warrantless spying. Certainly, the NSA isn't limited to counterterrorism operations. In undertaking their searches, NSA analysts use either "strong" or "soft" selectors. "Soft" selectors are a broad kind of search that pulls up messages based on content or even the language in which a message is written. When the NSA uses soft selectors, it can search the vast amounts of information it collects to retrieve all Internet users' discussions of particular topics or in particular languages. The potentially very broad scope of searches using soft selectors is quite frightening, as ordinary Americans' communications are likely to show up in search results. "Strong" selectors pull up information associated with a particular known individual. The Obama Administration has repeatedly assured us that these strong selectors may only target non-U.S. persons. But screenshots of the user interface for submitting selector queries tell a different story. Published by the Guardian, they show that NSA analysts are presented with dropdown lists of preapproved factors the NSA accepts as sufficient proof that a person is a foreigner, including being "in direct contact with (a) target overseas" or the use of storage media (like a server located abroad) seized outside the U.S. So any U.S. person who talks to a foreigner that the NSA has identified as a target, or who stores data on a server outside the U.S. (as someone might well do if emailing from a foreign hotel room) may be presumed to be a foreigner. And that's not even the worst of it. Leaked NSA documents also suggest that the agency will presume that a person is a foreigner whenever there is no information suggesting otherwise. That sort of willful blindness gives the NSA a lot of leeway to target Americans. Worse, we now know that the NSA's assertion that it does not "target" U.S. persons is either a lie, or is about to become one. Leaked NSA documents show that in 2011, the NSA changed its "minimization" rules to allow its operatives to search for individual Americans' communications using their name or other identifying information. Such a change would turn "minimization" into a blanket authority to

warrantlessly spy on Americans – in defiance of specific legal restrictions prohibiting this sort of domestic spying. Senator Ron Wyden has said that the law provides the NSA with a loophole potentially allowing "warrantless searches for the phone calls or emails of law-abiding Americans", and raised the issue when he met with President Obama on August 1. This is the first time we've had evidence that the NSA has — or will have — the authority to warrantlessly search its databases with the specific intent of digging up information on specific U.S. individuals. We can sum up very simply – at this moment, the NSA enjoys virtually unrestricted power to spy on Americans, without a warrant or any particular suspicion that any person spied upon has done anything wrong. Our phone, email and potentially other records are fair game for bulk collection. The contents of our communications with people overseas are also fair game, so long as there is an approved foreign intelligence purpose for the collection. The NSA does not believe that any stored emails are protected by the Fourth Amendment, so it can collect them from providers with little restraint. As far as we know, the only category of information the NSA currently believes is off limits to mass surveillance are the contents of phone calls it knows in advance are solely between Americans. This is an astonishing development in the U.S., a nation that, until recently, carefully restricted the power of its domestic spying agencies by forcing them to submit narrow requests for spying authority to a court, which would issue a warrant if the government showed probable cause to believe that the surveillance target was engaged in some sort of wrongdoing. At this point, it's clear those limits are gone. The United States is now a mass surveillance state. In last week's press conference, President Obama reassured the nation that "America isn't interested in spying on ordinary people." In other words, do not worry, because the information will only be used for narrow counterterrorism or broader foreign intelligence purposes. But the latest revelations show that these assurances too are a lie. Under current U.S. surveillance law, the NSA may share with domestic law enforcement information obtained both through authorized surveillance, and information unlawfully but unintentionally collected, if it contains evidence of a crime. This rule was worrisome when the NSA was only conducting targeted surveillance of foreign powers. It is terrifying now that the NSA scans virtually all American cross-border communications. And this is especially true in light of the recent reports showing that any number of other three-letter agencies are howling for access to NSA data for use in investigations of Americans' drug use, tax evasion, and even copyright infringement. Usually, these agencies would need at least warrants based on probable cause that an individual was committing a crime before they could obtain the contents of our communications, and would need to certify to a public court that email or phone records are relevant to an ongoing criminal investigation before it could collect such traffic data. But if they get their hands on NSA data, all these bothersome civil liberties protections simply vanish. Which brings us to the Drug Enforcement Administration (DEA). As we noted previously, the DEA has a secret division called the Special Operations Division or SOD. The SOD receives intelligence intercepts, wiretaps, informants and a massive database of telephone records from its partner agencies, of which the NSA is just one, to distribute to authorities across the nation to help them launch criminal investigations of Americans. The SOD gets information from the NSA and **shares it with, among other agencies, the IRS. And this is where things get truly ugly. When agents receive SOD information and rely on it to trigger investigations, they are directed to omit the SOD's involvement from investigative reports,** affidavits, discussions with prosecutors and courtroom testimony. Agents are instructed to then use "normal investigative techniques to recreate the information provided by SOD." IRS agents receiving SOD data, which presumably can include information from the NSA, have been

similarly instructed. They are instructed, in other words, to create a fake investigative file, and to lie. To lie, in particular, to defense lawyers and to judges, about the source of the evidence used in criminal prosecutions. By hiding the fact that information comes from NSA surveillance, the government both masks the extent to which NSA's domestic spying is used to trigger investigations of Americans, and prevents legal challenges to highly questionable surveillance practices like bulk phone record collection, warrantless access to American communications with friends and family overseas, and retention and use of illegally obtained domestic calls and emails. This is outrageous conduct. It is the sort of thing you expect from the Chinese government, or one of the now-vanished governments of the Warsaw Pact. And there is no stronger proof of the dangers of the NSA's domestic spying effort than the fact that the government has consistently lied about it and attempted to cover it up. Think for just a moment about the stories J. Edgar Hoover could have plausibly concocted about Dr. Martin Luther King, Jr. or any other civil rights activist with this kind of detailed information. The Obama Administration has gone after leakers, and the journalists at outlets like the Associated Press or the New York Times who use them as sources, with unprecedented force. Think about what the current Attorney General, Eric Holder, could do to bring down these reporters who cover – sometimes in ways the Obama Administration doesn't like — the conduct of American foreign policy. **At this point, it's plain to see that the Obama Administration has no intention of honestly fixing this mess. So it's time now for Congress to act**. A good first step would be to appoint a Special Prosecutor with wide power to subpoena Administration officials, and to bring criminal indictments where appropriate. Congress should then begin the process of reforming surveillance law to make absolutely clear that the NSA has no power to conduct warrantless mass surveillance of Americans. First they came for the terrorists and the foreigners, and no one did anything. Then they came for the drug dealers. Then the tax cheats. Then the journalists. And that's just what we know about. How much worse does it have to get before we say enough is enough?

AT//No Authority

President has the authority – Congressional authorization is unnecessary and doesn't have necessary expertise.

Yoo, 7 (John, Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute, 3/27/7, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=975333) KW

Critics have argued that the NSA's electronic surveillance is illegal because the AUMF did not explicitly mention wiretapping or surveillance. ' 2 Of course it does not mention detentions, either, which the Supreme Court later upheld as authorized by Congress, in spite of a law on the books known as the Anti-Detention Act.'83 Critics essentially argue that Congress must enact a grocery list of specific powers and otherwise the President cannot fight a war. For instance, FISA prohibits electronic surveillance within the United States **without congressional permission**.' However, in the AUMF, Congress authorized the President "to use all necessary and appropriate force . . . [against those] he determines" were involved with the 9/11 attacks, or those who aid, support, or harbor those involved.'85 Individuals who are communicating with suspected al Qaeda operatives after 9/11 are likely to fall within the scope of the AUMF. The power to use force impliedly includes the power to use surveillance and intelligence to find the targets.'86 According to the critics, Congress authorized the President to pull the trigger, but also ordered him to wear a blindfold.

Obviously, Congress cannot legislate in anticipation of every circumstance that may arise in the future. That is one of the reasons, along with the executive branch's advantages in expertise and structural organization, why Congress delegates authority. Those who consider themselves legal progressives generally support the administrative state and vigorously defend broad grants of authority from Congress to the agencies of the executive branch." 7 Agencies such as the Federal Communications Commission or the Environmental Protection Agency exercise powers over broad sectors of the economy under the incredibly vague and broad congressional mandate that they regulate in the "public interest."' s These agencies make decisions with enormous effects, such as which parts of the radio spectrum to sell, s9 or how much pollution to allow into the air, 9° all with little explicit guidance or thought from Congress.

Yet, when Congress delegates broad authority to the President to defend the nation from attack, critics demand that Congress list every power it wishes to authorize.' While the threats to individual liberty may be greater in this setting, it makes little sense to place Congress under a heavier burden to describe every conceivable future contingency that might arise when we are fighting a war, perhaps the most unpredictable and certainly the most dangerous of human endeavors. Rather, we would expect and want Congress to delegate power to that branch, the Executive, which is best able to act with speed to combat threats to our national security.'92 War is too difficult to plan for with fixed, antecedent legislative rules, and war also is better run by the executive, which is structurally designed to take quick, decisive action. If the AUMF

authorized the President to detain and kill the enemy,'93 the ability to search for them is necessarily included.

Constitutional framers intentionally gave Executive more power than Congress.

Yoo, 7 (John, Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute, 3/27/7, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=975333) KW

The Framers well understood this principle. They rejected extreme republicanism, which concentrated power in the legislature, and created an executive with its own independent powers to manage foreign affairs and address emergencies which, almost by definition, cannot be addressed by existing laws."' The power to protect the nation, Hamilton wrote in the Federalist Papers, "ought to exist without limitation," because "it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them."2'13 It would be foolhardy to limit the constitutional power to protect the nation from foreign threats: "[t]he circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed."2 4

The Framers located the responsibility to respond to emergency and war in the Presidency because of its ability to act with unity, speed, and secrecy.2 "5 In the Federalist Papers, Hamilton observed that "[d]ecision, activity, secrecy, and dispatch will generally characterise [sic] the proceedings of one man, in a much more eminent degree, than the proceedings of any greater number."2 6 "Energy in the executive," said Hamilton, "is essential to the protection of the community against foreign attacks."2 7 Wartime, that most unpredictable and dangerous of human endeavors, therefore ought to be managed by the President.218 "Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand."2'19

Congress defers to the president – Constitutional practice and action proves

Yoo, 7 (John, Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute, 3/27/7, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=975333) KW

If ever there were an emergency that Congress could not prepare for, it was the war brought upon the United States on 9/11. FISA was a law written with Soviet spies working out of their embassy in Washington, D.C. in mind. 2 ° No one then anticipated war with an international terrorist organization wielding the destructive power of a nation. The Presidency was the institution of government **best able to respond quickly to the 9/11 attacks and to take measures to defeat al Qaeda's further efforts**. While the certainty and openness of a congressional act would certainly be desirable, the success of the NSA surveillance program depends on secrecy and agility, two characteristics Congress as an institution lacks.

But, critics respond, Congress foresaw that war might increase demands for domestic wiretapping, and still prohibited the President from using electronic surveillance without its permission. Why should Con gress's view not prevail here, as it would prevail in any other domestic question? It is simply not the case that the President must carry out every law enacted by Congress. 222 The Constitution is the supreme law of the land, and neither an act of Congress nor an act of the President can supersede it.223 If Congress passes an unconstitutional act, such as a law ordering the imprisonment of those who criticize the government, the President must give force to the higher law, that of the Constitution. 24 Jefferson did just that as President when faced with the Alien and Sedition Acts. 25 He took the position that he, "believing the law to be unconstitutional, was bound to remit the execution of it, because that power has been confided to him by the Constitution. '226 That does not mean that the President is "above the law, ' 227 it only means that the Constitution is above the Congress, and the President. FISA might be unconstitutional if it were read to forbid the President from gathering information necessary to prevent attacks on the United States in wartime.2 8

If the critics were right, and Presidents are duty bound to obey any and all acts of Congress, even those involving the Commander-in-Chief power, Congress could have ordered FDR not to attempt an amphibious landing in France in World War II, Truman to attack China during the Korean War, or JFK to invade Cuba in 1962. But Presidents such as Jefferson, Jackson, Lincoln, and FDR believed that they had the right to take action, following their interpretation of the Constitution rather than the views of Congress or the Supreme Court, especially in their role as Commander-in-Chief.229 Decades of American constitutional practice **reject the notion of an omnipotent Congress**. While Congress has the sole power to declare war, neither Presidents nor Congresses have acted under the belief that a declaration of war must come before military hostilities abroad.23° Without declarations of war or any other congressional authorization, Presidents have sent troops into hostilities abroad many times.' Other conflicts, such as both Persian Gulf Wars, received "authorization" from Congress but not declarations of war.232

AT//No Empirics

CP solves--- empirics prove that self-restraint is possible especially when there could be large scale losses

Sales 10 [Nathan, Assistant Professor of Law, George Mason University School of Law, SELF RESTRAINT AND NATIONAL SECURITY, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664610] Schloss

The wall offers a third example of how worries about excessive operational costs can produce self restraints. A good deal of information sharing between intelligence officials and criminal investigators would have been permissible under the law as it stood in the 1990s. FISA itself contained no express limits on data exchange, and a pair of Justice Department directives established a mechanism for information to flow between the department's cops and spies. From the standpoint of operators, information sharing was utility-maximizing. It enabled analysts to piece together the entire intelligence "mosaic" – the bits and pieces of information that, taken individually, might not signify much at all, but that take on new meaning when seen in light of other data points.169 Yet officials nevertheless restricted data exchange between the intelligence and law enforcement worlds. In their eyes, sharing was utility-reducing.

Consider first the decision to interpret FISA as barring surveillance unless its primary purpose was foreign intelligence, as well as their use of sharing as the metric by which the purpose of an operation was judged. Policymakers plausibly could have construed FISA as permitting "hybrid" operations – i.e., where the government has a dual purpose of collecting foreign intelligence and enforcing criminal laws against national security offenses – just as the FISA court of review did in 2002.170 Their reluctance to do so may have stemmed from a belief that the expected costs of such a reading were excessive. If the FISA court disagreed with that interpretation – i.e., if the court concluded that information sharing had so altered the nature of an operation that its primary purpose was no longer foreign intelligence – it would reject the agency's surveillance applications. The consequences would be dire indeed: DOJ's wiretaps would go dark. With those consequences looming, the expected benefits of sharing must have seemed inchoate and remote. Intelligence analysts theoretically could improve their products by "connecting the dots," but no one could point to a particular terrorist plot that had ever been disrupted as a result. By contrast, the expected costs of pursuing an aggressive interpretation of FISA were concrete and immediate – an adverse ruling from the FISA court might bring much (if not all) of the department's national security surveillance to a screeching halt.

Empirics prove the executive can establish self-restraint--- blockade on info sharing

Sales 10 [Nathan, Assistant Professor of Law, George Mason University School of Law, SELF RESTRAINT AND NATIONAL SECURITY, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664610] Schloss

A final example of self-restraint concerns information sharing. On its face, the Foreign Intelligence Surveillance Act does nothing to restrict agencies from exchanging data with one another. Yet over the course of several decades, the Justice Department applied that statute to erect a "wall" between intelligence officials and criminal investigators. Two related developments were instrumental in the wall's construction. First, the Justice Department as a whole concluded that FISA's

surveillance tools were unavailable in situations where the government had a hybrid purpose of both collecting foreign intelligence and enforcing federal criminal laws; FISA could only be used if the government's purpose did not have a significant law enforcement element. Second, the DOJ division responsible for overseeing FISA matters began to police the flow of information between law-enforcement officers and intelligence agents. The result was to choke off information sharing and other forms of coordination between cops and spies. The USA PATRIOT Act of 2001 proverbially "tore down the wall," but the now moribund restrictions remain an illuminating example of how and why the government ties its own hands.

Enacted in 1978, FISA established a legal framework for wiretapping foreign national security threats. While the executive branch previously conducted such surveillance unilaterally, FISA required it to receive approval from a special tribunal known as the Foreign Intelligence Surveillance Court. FISA's standards for electronic surveillance are similar to Title III, the federal law that governs wiretaps in ordinary criminal investigations, but they are looser in several important respects. Perhaps the most important difference is that, while criminal investigators ordinarily must establish probable cause to believe that a crime has been, is being, or is about to be committed, FISA requires only probable cause to believe that the target is a foreign power or an agent of a foreign power.99 Because of FISA's lower standards, there was a risk that investigators might use it to circumvent Title III's more rigorous requirements.100 To minimize that danger, Congress provided that FISA tools would only be available if the government certified to the FISA court that "the purpose" of the proposed surveillance was foreign intelligence.101

The first major development in the wall's construction occurred in the 1980s, when the executive branch, along with some courts and members of Congress, began to interpret FISA as requiring that foreign intelligence be "the primary purpose" of proposed surveillance.102 How did one discern purpose? A great deal hinged on that question. If a wiretap's aim was foreign intelligence, authorities were allowed to use FISA. If not – e.g., if an intelligence-related purpose was diluted by the presence of an ancillary purpose of, say, enforcing federal narcotics laws – then FISA was off the table. Investigators would have to make do with the ordinary Title III authorities. The Justice Department answered the question by measuring the amount of information sharing between law-enforcement and intelligence officials. The more sharing there was, the less likely the primary purpose of the surveillance was to gather foreign intelligence (and the more likely the FISA court would reject the surveillance application). By contrast, the more rigidly intelligence operations were cordoned off from law enforcement, the more likely it was that the surveillance would have foreign intelligence as its primary purpose (and the more likely it was to receive the FISA court's blessing).

This reading of FISA's purpose requirement was not the only plausible way to parse that statutory language. As the Foreign Intelligence Surveillance Court of Review pointed out in 2002, enforcing criminal laws and pursuing foreign intelligence objectives are not mutually exclusive.103 Sometimes criminal prosecution will serve the government's intelligence needs; one way to neutralize the threat posed by a spy would be to indict him for espionage. One can imagine the Justice Department adopting a broad interpretation that would permit FISA tools to be used in a wide range of cases – and, derivatively, that would permit extensive information sharing. This is not to say that the court's aggressive interpretation of FISA is more persuasive than DOJ's cramped reading. What's significant is that, instead of adopting a (plausible) reading that would have maximized its discretion to coordinate

intelligence and criminal investigations, DOJ embraced an (equally plausible) interpretation that sharply limited its discretion.

By the mid-1990s the wall's foundation had been laid. The second development occurred in 1995, when the Justice Department issued a pair of internal information-sharing directives. The first, issued by Deputy Attorney General Jamie Gorelick, applied to the parallel criminal and intelligence investigations of the 1993 World Trade Center bombing. The directive's purpose was to "clearly separate the counterintelligence investigation from the more limited . . . criminal investigations" in order to "prevent any risk of creating an unwarranted appearance that FISA is being used to avoid procedural safeguards which would apply in a criminal investigation."104 Toward that end, DOJ directed that information uncovered by intelligence officials in the course of their investigation "will not be provided either to the criminal agents, the [U.S. Attorney's office], or the Criminal Division" except in special circumstances. That "include[ed] all foreign counterintelligence relating to future terrorist activities."105 DOJ was quite clear that the guidelines were not an interpretation of what was required by FISA, but rather "go beyond what is legally required."106

Though the Gorelick memo imposed severe information-sharing limits on agents working the World Trade Center investigations, they weren't supposed to be insurmountable. The directive expressly contemplated that intelligence and law-enforcement officials would share information about their parallel investigations in certain circumstances. In particular, FBI intelligence officials were ordered to notify criminal investigators if, during their investigation of the bombing, "facts or circumstances are developed that reasonably indicate that a significant federal crime has been, is being, or may be committed."107

The second set of guidelines, issued by Attorney General Janet Reno on July 19, 1995, applied to all DOJ criminal and intelligence investigations. It directed that criminal investigators "shall not . . . instruct the FBI on the operation, continuation, or expansion of FISA electronic surveillance."108 It further insisted that cops and spies must avoid "either the fact or the appearance of the Criminal Division's directing or controlling the [foreign intelligence] or [foreign counterintelligence] investigation toward law enforcement objectives."109 The Reno guidelines did not impose strong limits on information sharing between cops and spies. Instead, they were aimed squarely at the one type of coordination that was likely to raise the FISA court's hackles – criminal investigators directing an intelligence operation. Indeed, the Reno guidelines affirmatively directed cops and spies to share information in certain circumstances. Echoing the Gorelick memo, the Reno directive provided that if "facts or circumstances are developed that reasonably indicate that a significant federal crime has been, is being, or may be committed," the FBI was to share the information with the criminal division.110

Despite these escape valves, cops and spies did not in fact exchange information freely.111 A fair amount of the responsibility can be laid at the feet of the Office of Intelligence Policy and Review. OIPR is the DOJ component charged with overseeing FISA matters. Its lawyers present surveillance applications to the FISA court and otherwise represent the government in proceedings before that body. They also serve an internal screening function, reviewing proposed applications to ensure compliance with the applicable legal rules, and weeding out the ones they don't think will pass muster before the court.

OIPR took three steps that solidified its role as DOJ's information-sharing watchdog. First, almost immediately after the 1995 directives were issued, OIPR began applying the Gorelick memo's strict limits

to all foreign intelligence investigations, not merely the 1993 World Trade Center investigation. The Gorelick restrictions metastasized; rules that were adopted for a single investigation came to govern all cases. "As a result, there was far less information sharing and coordination between the FBI and the Criminal Division in practice than was allowed under the department's procedures."112 Second, OIRP played "gatekeeper,"113 policing whatever information flow did take place. Neither the Gorelick nor Reno directives mentioned any role for OIPR in regulating exchanges of information tending to suggest "that a significant federal crime has been, is being, or may be committed." But OIPR assumed responsibility for doing so, apparently on the basis of a threat. According to the 9/11 Commission, "[t]he Office threatened that if it could not regulate the flow of information to criminal prosecutors, it would no longer present the FBI's warrant requests to the FISA Court."114 OIPR used its status as the government's sole representative before the FISA court as leverage to establish a role for itself in policing internal information flow.

The office's third move was the boldest of all. At some point in late 1998, as the Justice Department was ramping up its investigation of the East Africa embassy bombings, a senior OIPR lawyer met with the chief judge of the FISA court and encouraged him to issue an order adopting the wall restrictions, solidifying them into a firm legal requirement. The judge agreed; "[t]he FISA court simply annexed the attorney general's guidelines, making the wall a matter of court order."115 The court wasn't shy about enforcing those restrictions. In 2000, the court went even further. Now assisted by the same lawyer who had lobbied it to adopt the OIPR restrictions (he'd left DOJ and now was serving as the FISA court's first clerk in several decades), the court issued a standing order that "every [FBI] agent who had access to FISA-derived intelligence would have to sign a special certification, promising that none of the information would be conveyed to criminal investigators without the FISA court's permission."116 In effect, the court had become OIPR's surrogate; it was enforcing as a matter of law the information-sharing limits that OIPR had developed and applied internally within the Justice Department.

It's now become conventional wisdom that the wall resulted in chronic information sharing failures. Yet it was not legally required – at least not until OIPR's crafty lobbying of the FISA court. FISA itself did not restrict information sharing. Neither did the Justice Department's internal directives – one applied only to the 1993 World Trade Center investigation, the other only barred prosecutors from directing intelligence investigations, and both allowed officials to share evidence that significant crimes were afoot. Instead, the wall was built by bureaucratic choice. Rather than applying FISA and the 1995 directives according to their literal terms – to say nothing of aggressively construing them to have even less bite – OIPR embraced a maximalist vision of the limits on information sharing. The wall thus represents a classic case of self restraint – one element within the government imposed restrictions on other elements' ability to conduct national security operations, restrictions that the governing law did not clearly require.

AT//Internal Restraints Fail

Distributed checks and balances solve

Bodansky, 12 (Daniel, Lincoln Professor of Law, Ethics and Sustainability Arizona State University Sandra Day O'Connor College of Law; "Book Review of Jack Goldsmith, Power and Constraint: The Accountable Presidency after 9/11"; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2296192)//JPM

Power and Constrain analyzes the system of "distributed checks and¶ balances" that led to these results – suggesting a new way of thinking about¶ who is doing the checks and balances. Goldsmith goes beyond the traditional¶ focus on the interactions between the three branches of the federal¶ government. As he describes it, **many of the checks on the President came¶ not from Congress or the Courts but from "giant distributed networks of¶ lawyers, investigators, and auditors, both inside and outside the executive¶ branch**" (xi-xii): from within the executive branch, military and national¶ security lawyers and inspector generals; from without, the press and the¶ human rights bar.

Internal checks are sufficient to solve – and external restrains fail

Johnsen 07 [Dawn - Professor of Law, Indiana University School of Law - Bloomington; Acting Assistant Attorney General (1997-98), Deputy Assistant Attorney General (1993-96), Office of Legal Counsel, U.S. Department of Justice. "SYMPOSIUM: Constitutional "Niches": The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power", The Regents of the University of California UCLA Law Review, August 2007, lexis] BJS

The most obvious checks on the President are the other two branches of the federal government: the U.S. Congress and the courts. Our constitutional system of separate and overlapping powers creates the potential for a vibrant legislature and judiciary to check a President who transgresses legal [*1561] boundaries and violates rights in order to accomplish policy ends. n1 Debate has raged, domestically and internationally, about the details of desirable external checks on the Bush Administration's counterterrorism policies. While the Republicans controlled Congress prior to 2007, most attention understandably focused on the courts, with commentators differing passionately about the level of deference the courts should afford the political branches n2 and about the judiciary's potential to safeguard civil liberties in times of emergency. n3 Thus far, the U.S. Supreme Court has taken a relatively aggressive and nondeferential stance in favor of protecting those whose rights the President's policies may have violated. n4 The Court's approach is warranted: Regardless of the underlying policies' substantive merits, the courts as well as Congress should hold the President [*1562] accountable for attempts to implement policies with arrogant disrespect for legal constraints and for the coordinate branches' constitutional authorities. Our recent history, though, has demonstrated the **inherent inadequacies of the courts and Congress as external checks on the President. An approach of issue-by-issue review and oversight even by a vigilant judiciary and Congress will incompletely constrain a President who, in the name of national security, is willing to undermine the rule of law**. This Article therefore seeks to elevate an essential source of constraint that often is underappreciated and underestimated: legal advisors within the executive branch. The obstacles to judicial or congressional

review of particular executive branch actions on matters of war and national security - especially during times of crisis - are familiar. The courts face (and create) difficult justiciability requirements, in part out of respect for executive authority and expertise. These impediments to judicial review mean, for example, that there may be no party who ever has standing to challenge a clearly unlawful governmental action. Courts may deny or delay relief even to parties with standing because of the political question doctrine, the state secrets privilege, deferential standards of review, or years of complex litigation. With regard to Congress, oversight obviously tends to be least effective when the President's political party dominates, but even with the shift to Democratic control in 2007, significant obstacles remain to Congress's ability to check executive action. Congress tends to defer strongly to the commander-in-chief on matters of war and national security even in times of divided government. Legislative efforts face the possibility of a filibuster or a presidential veto. Perhaps the greatest challenge to legislative oversight is that Congress has already enacted legislation with regard to many of the Bush Administration's most objectionable policies. Much of the controversy in fact stems from President Bush's claimed authority to refuse to comply with congressional statutes, including the Foreign Intelligence Surveillance Act (FISA), n5 the anti-torture statute, n6 and the numerous other laws that are [*1563] the subjects of signing statements in which Bush asserts the right to refuse to enforce the laws in ways that conflict with his view of his office's constitutional authority. n7 When Congress already has legislated and the President unjustifiably threatens nonenforcement, Congress is left with the options of resource-intensive oversight to attempt to police compliance, indirect retribution (such as through appropriations and appointments), and the blunt instrument of impeachment. Executive branch secrecy further hinders both judicial and congressional review. **At times, of course, secrecy is essential to preserving national security**, but the Bush Administration has taken the level of executive branch secrecy to a new and unwarranted extreme. By its nature, secrecy undercuts the efficacy of external checks. Congress or potential litigants may not even know about unlawful executive action unless someone in the government violates administration policy, and perhaps statutory prohibitions, to leak information. Such leaks were responsible for the public disclosure of the Bush Administration's legal opinions and policies on coercive interrogations and torture, n8 the National Security Administration's domestic surveillance program that operated outside the requirements of FISA, n9 and the use of secret prisons overseas to detain and interrogate suspected terrorists. n10 Ultimately, even with the current Supreme Court's relatively strong willingness to protect rights in the face of unlawful executive action, coupled with scrutiny from the press and advocacy organizations, the Bush Administration has engaged in years of largely unconstrained illegal practices. [*1564] On a daily basis, the President engages in decisionmaking that implicates important questions of constitutionality and legality. Whether to seek congressional authorization before committing the nation to war or other hostilities, what limits, if any, to set (or when set by Congress, to respect) on torture and other coercive interrogation techniques, when to publicly release information regarding the course of war or counterterrorism efforts - all are issues over which the President exercises enormous practical control, and all can profoundly affect individual lives and the course of history. The possibility of after-the-fact external review of questionable executive action is an inadequate check on executive excesses. Presidents also must face effective internal constraints in the form of executive branch processes and advice aimed at ensuring the legality of the multitude of executive decisions. The proposition that the President's own legal advisors can provide an effective constraint on unlawful action understandably engenders a high degree of skepticism - especially in light of recent events. One of President Bush's legacies undoubtedly will be the deepening of Americans' cynicism about presidential adherence to the rule of law. The Bush

Administration, however, also provides some evidence to the contrary, for example, in the resistance to advice given by the U.S. Department of Justice's Office of Legal Counsel (OLC) regarding torture from lawyers and other advisors elsewhere in the executive branch and later from within OLC itself. n11 Internal checks alone, of course, are insufficient. But we debase our commitment to democracy and justice if we do not view legal advice from within the executive branch as an essential component of efforts to safeguard civil liberties, the constitutional allocation of governmental authority, and the rule of law. We invite failure if we allow our cynicism to excuse presidential abuses as simply expected - in effect relieving Presidents (and those who serve them) of their obligation to take care that the laws be faithfully executed, as the U.S. Constitution commands. [*1565] This Article therefore considers questions of executive branch legal interpretation. How can internal interpretive processes and standards foster or undermine adherence to the rule of law? What norms and procedures should govern executive action? What may be gleaned from recent strains and failures? How might the courts and Congress not only hold Presidents accountable for particular failures to uphold the law, but also encourage processes that generally enhance the quality of executive branch legal advice and decision making?

The executive can check itself – many mechanisms

1. Inter-agencies

Raven-Hansen 09

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The first internal control or check is the check of inter-agency process. By this, I mean nothing more than sending a proposed decision out of an agency to obtain approval or input from other agencies. Inter-agency process is common across the government, but particularly common in matters of national security that fall to an iron triangle of the Defense, State, and Justice Departments, all of which ordinarily would have to be consulted on many national security decisions. The details of this internal check vary, but typically the inter-agency consultation operates at a relatively unseen and unglamorous level of inter-agency working groups. Even more prosaically, it can take the highly informal form of circulating drafts among agencies for comment. Occasionally, it will operate at a higher level in principals' committees involving Cabinet-level or subcabinet people and their deputies. The designation of U.S. citizen enemy combatants may seem an unlikely example of this check, given the seemingly haphazard way in which alien enemy combatants have been designated according to press accounts and the fitful Combatant Status Review Tribunal process. But the former designation process was described in detail by then-Attorney General Alberto Gonzales.2 Judge Gonzales told a Bar Association meeting that the process begins with a written assessment of intelligence by the CIA and its recommendation to the Department of Defense about whether a U.S. citizen should be designated an enemy combatant for purposes of military detention. The Department of Defense then makes an independent written assessment, which it forwards with the CIA package to the Attorney General. The Attorney General solicits a formal legal opinion from the

Office of Legal Counsel, based in part on the materials supplied by the CIA and Department of Defense. He also gets a factual recommendation from his Criminal Division. All of these materials are then sent back to the Secretary of Defense with a recommendation. The Secretary of Defense assembles this package and the CIA package and sends the whole thing over to the President with his final recommendation. The White House Counsel reviews the package, repackages it, and makes his own recommendation to the President. The President reviews the package (this is perhaps the least credible part of this account), gets briefed, and then makes his decision. Even if, at this remove from 9/11, you are skeptical of Bush Administration assertions about national security processes, and therefore doubt the details of this one, I would wager that something like this must go on. No administration designates U.S. citizens as enemy combatants with a dartboard, given the dire consequences (military detention and possibly trial and even execution, without the protections of the ordinary criminal process). So what? Exactly how does the inter-agency process serve as a check on the abuse of power? First, the overlap of interested agency jurisdictions brings different constituencies of lawyers and other experts into play. They supply some diversity of viewpoints, even if the involved agencies have no veto. Although the President calls the final shots, even Presidents desire consensus, which generates some pressure in the process to accommodate divergent views. A search for consensus or even more limited agreement, in turn, empowers dissidents within the agencies because it provides allies, influence, and cover. The net result is less group think and, in theory, better decisions.

2. Intra-agencies

Raven-Hansen 09

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A second internal check is afforded by intra-agency process, which presumably works in much the same way and with the same consequences as the inter-agency process. The circulation of proposed decisions within the agency also empowers dissidents and harnesses diversity of thinking. And, if nothing else, it catches errors, or at least increases the odds of avoiding them. Consider, for example, the reported process for preparing and submitting an application to the Foreign Intelligence Surveillance Court (FISC) for electronic surveillance under the Foreign Intelligence Surveillance Act (FISA). The statute actually doesn't specify any internal process, other than requiring the Attorney General to sign off on an application; but the FBI and the Department of Justice have necessarily created one anyway. Oversimplifying, I understand that an application or request is made at the field agent level. A supervisor has to sign off on it. It goes up to the next layer of command. They sign off on it, and they, in turn, send it over to the National Security Law Section of the FBI or its successor for approval and to package the application. Then it goes to independent lawyers at Justice. They sign off on it and then it goes to the Attorney General for approval, before it is finally submitted to the FISC. The result is another check on the government's use of FISA,3 indeed, one that may well be more effective, as a practical matter, in policing illfounded or overbroad applications than the external check of judicial approval by the FISC itself.4

3. Agency culture
Raven-Hansen 09

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http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1051&context=jcred/NV

Agency culture is another internal check, perhaps the most important, but at the same time, the most nebulous. I am referring to an institutional self-awareness, almost an institutional ego about the quality of its products (decisions, opinions, etc.) and about how its professional personnel differ from (are better than) everybody else in the Executive Branch. A classic example with which most of us (lawyers) are familiar is the "officer-of-the Court" culture of Solicitor General's Office. 5 The Office of the Legal Adviser to the State Department also has a distinctive culture.6 The Legal Adviser is the highest authority in international law. The Adviser is a representative of international law in the U.S. government - a voice not just for interpreting but, consistent with U.S. national interests, for advocating international law. 7 The Office of Legal Counsel [hereinafter "OLC"] notoriously in the loop in the torture debate and other major national security initiatives by this Administration, historically had a distinctive culture, too, to which I will turn shortly. The bedrock attributes of all these agency cultures is what I would call the lawyer culture. What is it? Well, we've all in this room been trained in it, so you can answer this for yourself. But as both a long-time trainer and long-past trainee, I can attest that the number one principle that we bring out without fail in every class in every law school in the United States is competency. It's no accident that the first rule of the ABA Model Rules of Professional Conduct is that "[a] lawyer shall provide competent representation to a client." 8 A competent lawyer researches thoroughly. She anticipates contrary arguments. She deals carefully with precedent. She analyzes and advises objectively. Thus, OLC alumnae declared as first principle that the OLC provide "accurate and honest appraisals of applicable law." 9 The competent lawyer looks at the bad precedent, as well as the good, and tells the client about both. Business clients may hate their lawyers for being "nay-sayers," but the opposite of nay-sayer is "yes-man." Nay-saying objectivity is especially important in the small inner circle of presidential decisionmaking to counter the tendency towards groupthink and a vulnerability to sycophancy. Finally, a competent lawyer also respects precedent, at least so far as to explain it away when the client contemplates a departure. In national security law, where there are fewer relevant judicial precedents, prior OLC opinions may substitute, and respect for this "precedent" requires explaining away or distinguishing them. The drag of precedent may well make legal analysis inherently conservative, but that is just another way of saying that it serves as an internal check on government conduct informed by such analysis.

4. Blackmailing
Raven-Hansen 09

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Fourth (and appropriately last because this is really an internal check that only comes into play when the rest have failed), is the check provided by threats to "go public" by leaking embarrassing information or publicly resigning. After 9/11, we have seen a series of leaks of OLC and Department of Defense legal analyses, and of details of legally controversial national security initiatives, such as the Terrorist Surveillance Program and coercive interrogation. While we have had almost no public protest resignations by senior government officers since the Saturday night massacre in the Watergate era, the press reported that then-Deputy Attorney General James Comey and thirty other Justice Department lawyers successfully threatened to resign in order to get the Terrorist Surveillance Program changed. 10

5. Self-interest
Raven-Hansen 09

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A final answer to the Cheney objection is that many of the internal checks are imposed by the Executive in its own self-interest - the interest of avoiding an external check. The intra-agency FISA procedures which I summarized are driven by the prospect of FISC disapproval. The Executive uses the process in part to earn deference from the court. Other inter-agency and intra-agency procedures are driven by the possibility of due process review. They anticipate procedures that courts might impose. Internal checks are also put in place and enforced to forestall new legislation, should Congress eventually examine the initiatives that result. It gives the President the argument that, "We vetted this carefully and oversaw it closely, so there is no need for new legislation [that is, a statutory check]."

The executive imposes privacy barriers for communication on itself
Sales 12

Sales 2012 – Assistant Professor of Law, George Mason University School of Law (7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, "Self-Restraint and National Security/NV

A final example of self-restraint concerns information sharing. On its face, the Foreign Intelligence Surveillance Act does not restrict agencies from exchanging data with one another. Yet over the course of several decades, Justice Department officials applied that statute to erect a "wall" between intelligence analysts and criminal investigators. Two related developments

were instrumental in the wall's construction. First, the Justice Department as a whole concluded that FISA's surveillance tools were unavailable in situations where the government had a hybrid purpose of both collecting foreign intelligence and enforcing federal criminal laws; FISA could only be used if the government's purpose did not have a significant law enforcement element. Second, the DOJ division responsible for overseeing FISA matters began to police the flow of data between the law enforcement and intelligence worlds. The result was to choke off information sharing and other forms of coordination between cops and spies. The USA PATRIOT Act of 2001 proverbially "tore down the wall," but the now moribund restrictions remain an illuminating example of how and why officials tie their own hands. Enacted in 1978, FISA established a legal framework for wiretapping foreign national security threats. While the executive branch previously conducted such surveillance unilaterally, FISA required it to receive approval from a special tribunal known as the Foreign Intelligence Surveillance Court. FISA's standards for electronic surveillance are similar to Title III, the federal law that governs wiretaps in ordinary criminal investigations, but they are looser in several important respects. Perhaps the most important difference is that, while criminal investigators ordinarily must establish probable cause to believe that a crime has been, is being, or is about to be committed, FISA requires only probable cause to believe that the target is a foreign power or an agent of a foreign power.134 To minimize the danger that investigators might use FISA to circumvent Title III's more rigorous requirements,135 Congress provided that FISA tools would only be available if the government certified to the FISA Court that "the purpose" of the proposed surveillance was foreign intelligence.136

AT//NSA Key

Self-restraint solves NSA advantages

Risen 13 [Tom, technology and business reporter for U.S. News & World Report, President Obama Proposing 'Self-Restraint' on NSA, http://www.usnews.com/news/articles/2013/12/06/president-obama-proposing-self-restraint-on-nsa] Schloss

President Barack Obama said he will propose new limits on the surveillance of the National Security Agency during an interview when he defended the national security importance of the spying while conceding it has been "more aggressive" overseas.¶ Obama in August ordered a review group of legal and technology experts to "assess whether, in light of advancement in communications technologies," national security surveillance by U.S. intelligence agencies fails to maintain the public trust. The five-member group, consisting of academics and former government officials, is scheduled to submit its final report to Obama by Dec. 15.¶ "I'll be proposing some self-restraint on the NSA, and to initiate some reforms that can give people more confidence," Obama said during an interview with MSNBC on Thursday. "The NSA actually does a very good job about not engaging in domestic surveillance, not reading people's emails, not listening to the contents of their phone calls. Outside of our borders, the NSA's more aggressive. It's not constrained by laws."¶ This interview came on the heels of the Washington Post's report on Wednesday that the NSA is collecting nearly 5 billion records each day on the location of cell phones around the world. The media has reported numerous similar examples of the NSA's extensive monitoring of Internet traffic and phone calls, citing classified documents leaked to the press by former agency contractor Edward Snowden. Since those reports began in June, the Obama administration ordered increased transparency of documents related to the surveillance, including opinions from the Foreign Intelligence Surveillance Court, which oversees requests for data from intelligence agencies. During the MSNBC interview, Obama said "we do have people who are trying to hurt us," but added that national security needs can be balanced with oversight on privacy rights from the FISC and Congress.¶ "Young people, rightly, are sensitive to the needs to preserve their privacy and to retain Internet freedom," Obama said. "And by the way, so am I."¶ Obama may announce increased transparency, along with new limits and oversight on the NSA, but that may not be enough to address the privacy concerns of the agency's bulk data collection, said Kevin Bankston, policy director of the New America Foundation's Open Technology Institute.¶ "Rather than allowing the NSA to engage in mass surveillance to collect everyone's data and then decide who to target, the president should ensure that the NSA engages only in targeted surveillance; that is, first deciding who to target and then collecting only their data," said Bankston, a privacy and free expression lawyer. "**True leadership in this moment would be for President Obama to say to the American people and to the rest of the world 'I am putting an end to the NSA's bulk collection programs**, because it is contrary to the American way to treat every person who uses the telephone or the Internet like a terrorism suspect."

The NSA cannot restrain itself
Friedersdorf 13

Conor Friedersdorf, is a staff writer at the Atlantic for national affairs and politics, “The High Likelihood That Future NSA Abuses Will Occur,” August 1, 2013, The Atlantic, http://www.theatlantic.com/politics/archive/2013/08/the-high-likelihood-that-future-nsa-abuses-will-occur/278261/NV

The Guardian's latest scoop concerns the ability of National Security Agency analysts to search vast databases of emails, online chats, and web browsing histories, among other online activity. Glenn Greenwald notes that the NSA is lawfully required to obtain a FISA warrant if the target of surveillance is

a U.S. person. But it provides analysts "the technological capability, if not the legal authority, to target even US persons for extensive electronic surveillance without a warrant," he reports, and to reveal IP addresses of everyone who visits "any website the analyst specifies." That alarms many Americans. The Guardian article doesn't provide any evidence of NSA analysts targeting U.S. persons without a warrant, as critics of the newspaper are quick to note. Yet there is still ample reason to worry. It is naive -- in fact, it is absurd -- to imagine that the scores or hundreds of NSA analysts given access to these databases will never commit abuses. There are bad apples in every human enterprise. Agencies that operate under the cover of secrecy are that much more vulnerable to abuses. U.S. surveillance agencies have a particularly sordid history of abusing the power given them. Illegal, warrantless spying on Americans was secretly conducted as recently as the Bush years, and the people responsible for the illegal abuses were granted retroactive immunity. Edward Snowden himself demonstrated that the NSA cannot predict when one of its own might suddenly abscond with top secret information that no one planned to be made public. Then there is the lesson that 9/11 taught us. In its aftermath, the U.S. government panicked. Federal officials institutionalized behavior, including the torture of other humans, that would've been unthinkable before the terrorist attack, and a traumatized nation required years of reflection to turn against the most extreme practices. Could the NSA be trusted to restrain itself after a future terrorist attack, or would the safeguards its defenders keep referencing be swept away by a new generation of panicked officials? Or what if a higher-up at the NSA didn't panic, but exploited the panic of everyone else? Unless the NSA is reined in, it is all but certain that future abuses will occur. The question its defenders ought to be asked is, "Would you support these programs even if you knew future abuses were inevitable?" True, every law-enforcement tool is abused at one time or another. But the consequences of NSA abuses are catastrophic in a way without precedent in American history because their law enforcement tool contains private information about almost every citizen. How many government officials could be blackmailed with already collected material that no one has looked at ... yet? The NSA is nevertheless out with another defense of its program. The statement, posted online Wednesday, is worth a close look. "The implication that NSA's collection is arbitrary and unconstrained is false," it begins. Recall that this is an agency that collects metadata on all phone calls. In other words, its approach to data collection isn't "arbitrary," it's virtually comprehensive. "NSA's activities are focused and specifically deployed against -- and only against -- legitimate foreign intelligence targets in response to requirements that our leaders need for information necessary to protect our nation and its interest," the NSA's statement continues. Let's read carefully. The NSA's activities may be "focused and specifically deployed against -- and only against" foreign targets. But the fact that it isn't "focused" on American citizens doesn't mean their phone data, Internet behavior, and other information isn't being collected in vast, searchable databases. If and when access to that information is abused, the focus of the program that first collected it won't matter. The NSA says: XKEYSCORE is used as part of NSA's lawful foreign signals intelligence collection system. By the nature of NSA's mission, which is the collection of foreign intelligence, all of our analytic tools are aimed at information we collect pursuant to lawful authority to respond to foreign intelligence requirements - nothing more. The analytic tools may be "aimed at" information relevant to foreign intelligence. That doesn't mean that those same tools aren't hoovering up lots of domestic information with no relevance to foreign intelligence, or that an abuse-minded NSA employee couldn't aim the tools elsewhere. NSA: Allegations of

widespread, unchecked analyst access to NSA collection data are simply not true. Access to XKEYSCORE, as well as all of NSA's analytic tools, is limited to only those personnel who require access for their assigned tasks. Those personnel must complete appropriate training prior to being granted such access - training which must be repeated on a regular basis. This training not only covers the mechanics of the tool but also each analyst's ethical and legal obligations. In addition, there are multiple technical, manual and supervisory checks and balances within the system to prevent deliberate misuse from occurring. In other words, analyst access to the data isn't "widespread and unchecked," it is widespread and checked. Given the secrecy surrounding the agency, it is actually impossible to verify the system of checks. But even presuming that there is excellent ethical training, as well as "multiple technical, manual and supervisory checks and balances within the system to prevent deliberate misuse," the same can be said of the U.S. military, the IRS, the NYPD, the prison at Gitmo -- **serious abuses happen all the time in government agencies despite government training and checks and balances. Operating as if they won't ever happen is ahistorical and reckless**. "Our tools have stringent oversight and compliance mechanisms built in at several levels," the NSA states. Similarly, there were stringent oversight and compliance mechanisms to prevent telecom companies from conspiring with the government to wiretap Americans without warrants. But it still happened after 9/11. So long as the NSA operates largely in secret, with tools that enable intrusions into privacy on an extreme scale, the odds that there will eventually be serious abuses approach 100 percent. If and when that happens, Presidents Bush and Obama, NSA Director General Keith Alexander, Senator Dianne Feinstein, and many others will share the responsibility for the totally preventable catastrophe they enabled. The annals of history encompass people who helped to build vast surveillance states. Do we think well of any of them?

Internal restraints for the NSA will not work – five warrants

Waldman 13

Paul Waldman, is a senior writer for the American Prospect who also blogs for the Washington Post and the Week, "Is It Already Too Late to Stop the NSA?" December 16, 2013, American Prospect, http://prospect.org/article/it-already-too-late-stop-nsa/NV

The revelations about the scope of National Security Agency surveillance from the documents released to the public by Edward Snowden have been so numerous and so extraordinary that I fear we may be becoming numb to them. That's partly because there's just been so much, one revelation after another to the point where the latest one doesn't surprise us anymore. It's also partly because mixed in with the genuinely distressing surveillance programs are some things that seem almost ridiculous, like the idea of NSA agents trying to unearth terrorist plots in World of Warcraft. But there are some basic facts about this whole affair that should make us all frightened. We can sum it up as follows: 1. The scope of the NSA's surveillance is far greater than almost anyone imagined. 2. Barack Obama is not only perfectly fine with that surveillance, he was perfectly fine with it being kept secret from the American public. 3. As much discussion and consternation as Snowden's revelations produced, there has been no restraint on those surveillance powers, nor is there likely to be any time soon. 4. As new technologies and techniques of surveillance are developed, the NSA will incorporate them into its arsenal, continually expanding its reach. 5. Before long, there will be a Republican president who will appoint hundreds of other Republicans to high-

ranking positions within the intelligence apparatus. Many of these will be former Bush administration officials and/or people who would like nothing more than to expand the NSA's surveillance of both foreigners and Americans as much as is technologically feasible. We may have no more than three years to do something about it. Or it may be too late already. Most of this you don't need to be reminded of. Every day, the NSA gathers information on who we call and who we email. They're exploiting browser cookies and the location-tracking information in smartphones to monitor people's movements online and in the real world. They're using social media to reconstruct Americans' social networks, to keep tabs on who they're associating with. They track text messages and credit-card purchases. They tap into phone and data lines. President Obama responded to these revelations by appointing an advisory panel to assess the situation; that panel's findings will be released soon. They're going to recommend some modest oversight, but they're not going to recommend that the NSA stop any of the surveillance it's currently doing. The administration will probably take one or two of the recommendations they find least inconvenient, then throw the rest of it in the trash. The NSA will continue to use every kind of surveillance it was using before the Snowden revelations. That brings us to the future. Imagine it's five years from now, and some new technology (or advancement in an existing technology) allows a whole new kind of data collection. For instance, let's say that face-recognition software takes a dramatic leap forward. Let's also say that new kinds of data-sorting algorithms allow the huge amount of face-recognition data available from the millions of security cameras spread throughout the country to be gathered, arranged, and analyzed, to the point where the government can assemble a comprehensive record of where much of the population of the United States is at any given time, so long as they're outside. If and when that becomes possible, do you think the NSA will say, "We really shouldn't gather this information; the privacy concerns are too great"? Not on your life. They'll say, "Just think of how valuable this will be in stopping the next terrorist attack!" We don't know how long it will be before the government can do that, but we can be all but certain that they will be able to do it eventually. Now I want you to imagine one more thing. As disappointed as many liberals are with how aggressive the Obama administration has been in conducting surveillance, what do you think will happen when the next Republican administration comes into office and finds itself in possession of all these wonderful toys? In case you've forgotten what the last Republican administration was like, you can get a nice refresher from Ryan Lizza's recent article in the New Yorker on the development of our surveillance state. I want to point to just one extraordinary excerpt:

Despite attempts at transparency, the NSA will not stop squo surveillance

Turley 15

Jonathan Turley, is a national recognized legal scholar who has lead journals from famous schools such as Harvard, Duke, Northwestern and Cornell, "NSA Abuses Never End," January 4, 2015, Jonathan Turley.com, http://jonathanturley.org/2015/01/04/nsa-abuses-never-end/NV

We do not support the ableist language in this card

The instances of reported abuse of our country's laws by our Intelligence services seems never-ending. The National Security Agency, or NSA is at the top of the list when it comes to violations of our laws and even its own rules and procedures that are allegedly designed to protect our

privacy. Pursuant to a court order in a case brought by the ACLU, the NSA is required to provide a list of its abuses on a quarterly basis. Of course, the NSA redacts most of what it puts in its own disclosures. "Every quarter, the National Security Agency generates a report on its own lawbreaking and policy violations. The reports are classified and sent to the President's Intelligence Oversight Board. It's unclear what happens once they get there. Those reports are now online dating back to late 2001. The NSA has posted redacted versions of the documents to its website. "These materials show, over a sustained period of time, the depth and rigor of NSA's commitment to compliance," the agency's self-congratulatory introduction declares. "By emphasizing accountability across all levels of the enterprise, and transparently reporting errors and violations to outside oversight authorities, NSA protects privacy and civil liberties while safeguarding the nation and our allies." These NSA characterizations are not credible. Even the uninformed observer will be suspicious of the spy agency's account upon learning that far from voluntarily releasing redacted versions of these documents, it was forced to do so by Freedom of Information Act requests filed by the ACLU. The NSA fought to continue suppressing these documents from the public, even though the redacted versions in no way harm U.S. national security. A court ordered the documents released." Reader Supported News Only in Washington, D.C., would anyone, let alone a government agency, claim it is being transparent in reporting its mistakes, when it refused to release a listing of those "errors" until a court ordered them to do so! This is the same agency that the New York Times disclosed in February of 2014 was caught spying on American attorneys working on behalf of a foreign government. Professor Turley discussed this case here. It shouldn't surprise anyone that this willful violation of the law was only learned through the Snowden document disclosures. **So much for willing transparency.** The NSA has been caught violating a client's right to discuss their legal case with their attorneys in private and numerous instances of spying on individual citizens and what repercussions have resulted? It is hard to find any substantial penalties or sanctions due to exposed or disclosed illegal activities by the NSA. To further the point that the NSA seems immune to prosecution or sanctions for its illegal activities is one case that was uncovered in the quarterly reports discussed earlier. "For the most part, the reports don't appear to contain anything especially new, but I was struck by this particular violation: The OIG's Office of Investigation initiated an investigation of an allegation than an NSA analyst had conducted an unauthorized intelligence activity. In an interview conducted by the NSA/CSS Office of Security and Counterintelligence, the analyst reported that, during the past two or three years, she had searched her spouse's personal telephone directory without his knowledge to obtain names and telephone numbers for targeting….Although the investigation is ongoing, the analyst has been advised to cease her activities. Wait a second. She was caught using NSA surveillance facilities to spy on her husband and was merely told to cease her activities? Wouldn't it be more appropriate to, say, fire her instantly and bar her from possessing any kind of security clearance ever again in her life? What am I missing here?" Mother Jones While the idea of spying on a spouse or maybe a significant other might not be a danger to National Security, it is still an obvious violation of the law, or at the least, a violation of the NSA's rules that this analyst was supposed to be working under. As the Mother Jones link above suggests, shouldn't this analyst be fired or maybe, God forbid, be prosecuted for illegally spying? Who can forget the case Professor Turley discussed in 2009 when it was discovered that the NSA was illegally attempting to wiretap members of Congress? Of course, Congress was outraged, just like Sen. Diane Feinstein was outraged when it was

discovered that the CIA has been spying on the Senate's computers. Of course heads rolled when the CIA admitted hacking into Senate computers, right? Uh, no, just a few apologies and the Senate moved on. The same immunity to the law and to common sense can be found at the NSA. What do we have to do to bring the NSA into legal bounds and prevent illegal and unauthorized spying on ordinary citizens and other agencies and branches of the government while at the same time acknowledging our need to spy on legitimate enemies? It seems obvious to this observer that the internal controls that are in place at the NSA are ineffective at best and likely useless at worst. Can The NSA or any intelligence agency investigate itself? Are internal agency watchdogs a waste of time? Would a civilian agency or board set up to oversee these rogue intelligence agencies be useful in bringing these agencies into compliance, and is that even possible in our current political climate? A quick review before the pop quiz; the NSA admits to spying illegally and not doing anything about it and there are no repercussions. How ~~stupid~~ are we to allow this to happen? Additional Source: Bloomberg "The views expressed in this posting are the author's alone and not those of the blog, the host, or other bloggers. As an open forum, weekend bloggers post independently without pre-approval or review. Content and any displays or art are solely their decision and responsibility."

Specifically the executive fails to restrain the NSA

Buttar 14

Shahid Buttar, civil rights lawyer who also leads the Bill of Rights Defense committee and is the Co-director of the Rule of Law Institute, "Beyond CIA and NSA Spying: Corruption," May 19, 2014, The Huffington Post, http://www.huffingtonpost.com/shahid-buttar/beyond-cia-and-nsa-spying-corruption_b_4981558.html/NV

NSA: Lies to Congress and the Public to Cover Up Mass Surveillance Observers from across the political spectrum have agreed that Director of National Intelligence James Clapper either misled Congress or lied outright when asked a straightforward question by Sen. Ron Wyden (D-Ore.) in a March 2013 Senate hearing. With advance notice, Clapper was asked whether the NSA collects "any type of data at all on millions ... of Americans." He answered, "No sir. Not wittingly." In June the Snowden revelations shocked the globe and proved that his statement was simply not true, not to mention self-serving. Many people have gone to prison for less-significant lies than that. Responding to Clapper's admittedly false answer to Wyden, seven Republican members of Congress wrote to the attorney general in December seeking a Justice Department investigation into potential perjury. They correctly noted, "Congressional oversight depends on truthful testimony," which is why "witnesses cannot be allowed to lie to Congress." Members of Congress from both parties and both chambers are not alone in calling for accountability: Citizens for Responsibility and Ethics in Washington called for an investigation nearly a year ago, followed by the Bill of Rights Defense Committee and grassroots activists and organizations from across the country. Obama: On the Sidelines While His Legacy Is Sealed How else might we describe demonstrably false, self-serving statements by NSA officials paid by taxpayers to perform a public service, or CIA efforts to secretly hamstring investigations into their activities by the elected officials charged with overseeing them? In any country that claims to be a democracy, the most elegant answer is a single word -- corruption -- with crucial connotations for a contemporary debate that remains limited, even after the Snowden revelations. As members of Congress have challenged executive agencies covering up their crimes, President Obama has absurdly

attempted to evade responsibility. This maneuver, like his initial decision to "look forward, not back" on torture, is what I described then as "an illegal capitulation to illegitimate political interests carrying profound consequences for human rights and freedom both in the U.S. and around the world." President Obama's evasion is the antithesis of President Truman's reminder that "the buck stops here" and undermines his own prior commitment to releasing at least parts of the Senate's torture report. Coming from an administration that has accepted poorly deserved awards for transparency in ironically appropriate secret meetings, this tacit support for executive lawlessness is a spectacular -- though entirely unsurprising -- failure.

AT//Perception/Signal Solvency Deficits

The counterplan may be process-based, but it still requires Presidential implementation of the aff – that solves any signaling args
Brzezinski '12

[Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas_moment]

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the **ultimate definer** of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the **authentic voice of America**. To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But **no one in the government** or outside it **can match the president's authoritative voice when he speaks and then decisively acts for America**. This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

Obama's sufficiently credible to

Goldsmith, 12 (Jack, Professor of Law at Harvard University, former assistant Attorney General to the Office of Legal Counsel under the Bush Administration; March 12, 2012; "Power and Constraint: The Accountable Presidency After 9/11"; W. W. Norton & Company; 1 edition)//JPM

the Obama team early on developed a reputation for restraint and commitment to the rule of law in its counterterrorism policies. This reputation helped legitimate the extraordinary powers the President must exercise in the long war against Islamist terrorists. The President simply cannot exercise these war powers over an indefinite period unless Congress and the courts support him. And they will not support him unless they think he is exercising his powers responsibly, under law, with real constraints, to address a real threat. The Obama administration successfully conveyed this impression and was rewarded for it. The administration's superficial changes to the military detention rationale, combined with President Obama's reputation for commitment to the rule of law, helped to make military detention relatively uncontroversial to judges. New internal procedures for employing the state secrets doctrine brought no apparent

change in the executive branch's employment of the doctrine. But it did help in the courts, one of which cited the procedures to support its conclusion that "the government is not invoking the privilege to avoid embarrassment or escape scrutiny" of its policies.50 The mall changes that Obama helped to foster in military commis-ions, combined with his robust embrace of them, put the commissions on a much stronger footing than they were under Bud . In these and other ways, the Obama administrations self-imposed checks combined with its reputation for law-abidingness and rhetoric of self-constraint to strengthen—and validate—the Bush counterterrorism program as it stood in late 2008.

Executive unilateral action solves the same signal of credibility

Eric **Posner 7**, Professor of Law at The University of Chicago Law School, 8/10/2007, "The Credible Executive", University of Chicago Law Review, 74 U. Chi. L. Rev. 865, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles

Where the executive is indeed ill motivated in any of these ways, constraining his discretion (more than the voters would otherwise choose) may be sensible. But the executive may not be ill motivated at all. Where the executive is in fact a faithful agent, using his increased discretion to promote the public good according to whatever concep- tion of the public good voters hold, then constraints on executive discretion are all cost and no benefit. Voters, legislators, and judges know that different executive officials have different motivations. Not all presidents are power maximizers or empire builders.' Of course, the executive need not be pure of heart; his devotion to the public interest may in turn be based on concern for the judgment of history. But so long as that motivation makes him a faithful agent of the principal(s), he counts as well motivated. The problem, however, is that the public has no simple way to know which type of executive it is dealing with. An ill-motivated executive will just mimic the statements of a well-motivated one, saying the right things and offering plausible rationales for policies that outsiders, lacking crucial information, find difficult to evaluate-policies that turn out not to be in the public interest. The ability of the illmotivated executive to mimic the public-spirited executive's statements gives rise to the executive's dilemma of credibility: the wellmotivated executive has no simple way to identify himself as such. Distrust causes voters (and the legislators they elect) to withhold discretion that they would like to grant and that the well-motivated executive would like to receive. Of course, the ill-motivated executive might also want discretion. The problem is that voters who would want to give discretion (only) to the well-motivated executive may choose not to do so, because they are not sure what type he actually is. The risk that the public and legislators will fail to trust a well-motivated president is just as serious as the risk that they will trust an ill-motivated president, yet legal scholars have felled forests on the second topic while largely neglecting the first.' Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain

resources to allow a wellmotivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of **executive self-binding** that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.

Self-restraint solves credibility

Eric **Posner 7**, Professor of Law at The University of Chicago Law School, 8/10/2007, "The Credible Executive", University of Chicago Law Review, 74 U. Chi. L. Rev. 865, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles

More schematically, we may speak of formal and informal means of self-binding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding." However, there may be large political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a nodessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive's issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president's own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.

AT//Presidential Overreach / Circumvention

Internal checks ensure a culture of compliance
Katyal '6

[Prof National Security Law @ Georgetown. "Toward Internal Separation of Powers" *Yale Law Journal* 2006 ln]

The downside of incorporating a presidential-overrule mechanism is that it may politicize the Director. The Director might fear being overruled and tailor opinions accordingly. But that dark scenario is unlikely to unfold—a rational Director would appreciate the myriad reasons why a President's formal power would not be exercised, such as fear of publicity and lack of expertise.89 Yet the formality trap looms far larger in executive power debates than it should. We do not clamor for legislation to restrict federal courts from issuing advisory opinions simply because they are the only ones to have announced this restriction on their jurisdiction. So too we do not clamor for legislation to prevent Congress from easily declaring war simply because it could. Instead, in both cases we rely on **obvious internal checks**. Here, too, publicity, expertise, and good judgment will make it **structurally difficult** for the President to overrule the Director in many instances. ¶ Government has confronted a similar problem before. The Ethics in Government Act of 1978 created something akin to a Director of Adjudication, albeit in the form of a prosecutor instead of a judge.90 The Independent Counsel lacked accountability and was often insensitive to a decision's longterm cost.91 Congress eventually let these powers return to the Justice Department. But the Department then issued regulations creating Special Prosecutors removed from the day-to-day control and influence of political actors.92 Special Prosecutors are free to conduct their investigations and, after deciding on particular courses of action, must present their proposals to the Attorney General, who retains a veto power. ¶ Critics relied on the formality trap, arguing that internal regulations would falter under the Attorney General's veto power. In response, the regulations required the Attorney General to notify Congress if he interfered with a Special Prosecutor. As a result, lines of accountability were preserved, so much that the Attorney General could be held responsible for trying to bury an investigation. Thus, the matter would receive political, though perhaps not public, oversight. Similarly, a presidential overruling of the Director of Adjudication could trigger reporting to Congress. Congress, though unlikely to begin legislating after a single override (for reasons offered in Part I), could use formal pressures of oversight hearings and informal pressures through the media to demand some accountability. While the executive would therefore be accountable to the other branches, instead of directly to the public, these mechanisms would nevertheless function as a valuable constraint. Over time, a **culture of compliance** might emerge, in which Presidents would not second-guess the opinions of the Director except in extreme instances.

No Presidential abuse of power
Raven-Hansen 09

Peter Raven-Hansen, received his B.A. and J.D. at Harvard University and teaches national security law, counterterrorism law and civil procedure and evidence at Georgetown Washington University, "Executive Self-Controls: Madison's Other Check on National Security Initiatives By The Executive," Spring of 2009, Journal of Civil Rights and Economic Development Volume 23 Issue 4, http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1051&context=jcred/NV

First, neither the President nor the Vice President can systematically bypass such internal checks because neither actually does anything. They are only "Deciders." The President, after all, is not charged by the Constitution with executing the law, although we often say that in a sloppy paraphrase of the actual text. He's charged with "tak[ing] care that the laws be faithfully executed."19 The Decider is inevitably dependent on others to carry out his decision. He can issue a military order ordering trial by military commission for enemy combatants, but he must use the JAG lawyers ultimately to develop the procedures by which the commissions operate and to operate the commissions. He can order surveillance, but has to use career lawyers in the

Justice Department to implement FISA, or even to circumvent it to operate the Terrorist Surveillance Program. The result is that he necessarily is going to run into some of the internal checks I have described, no matter how bent he is on blowing through them. Secondly, while the President or Vice President, or their delegates, can try to change the architecture of decision making, (alter the inter-agency process), they cannot change the agency or lawyer culture nearly as quickly. The lawyer culture is implanted in law school and nurtured in practice, taking years and years to develop. As a result, it also takes years and years to root it out.

Internal constraints check
Metzger 09

Gillian E. Metzger, is a United States Constitutional Law scholar and a professor of law at Columbia University, "THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS," October 7, 2009, Columbia Law School Public Law and Legal Theory Working Paper Group, Google Scholar/NV

Yet it does not follow that efforts to strengthen internal checking mechanisms are necessarily misdirected. The potential separation of powers benefits of such mechanisms, particularly given the limitations of external checks, makes these efforts worthwhile.85 Moreover, high profile political disputes are too narrow a frame against which to assess the effectiveness of internal constraints. Even if unable to check a determined president in contexts of deep political disagreement, internal constraints may still prove potent in more run of the mill policy disputes or in contexts in which political allegiances are more divided. Nor does this mean that internal constraints are ineffective just when it counts. To the contrary, high-profile political disputes are arguably situations in which presidents should be able to implement their policies of choice in order to ensure democratic accountability of the executive branch, assuming these policies accord with governing law. In such contexts, success and effectiveness for internal constraints may be better understood not as forestalling presidential control of policy but rather as ensuring that contentious policy choices are made by the president and that the president's role.

The Executive can check itself – incentives will stay their hand
Sales 12

Sales 2012 – Assistant Professor of Law, George Mason University School of Law (7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, "Self-Restraint and National Security/NV

Much of the caselaw and scholarship concerning national security rests on the assumption that the executive branch is institutionally prone to overreach - that, left to its own devices, it will inch ever closer to the line that separates illegal from legal, and sometimes enthusiastically leap across it. The obvious conclusion is that external, principally judicial, checks are needed to keep the Executive in line.2 In many cases the Executive does indeed push the envelope. But not always.' **The government often has powerful incentives to stay its own hand** - to forbear from military and intelligence operations that it believes are perfectly legal. Officials may conclude that a proposed

mission - a decapitation strike on al Qaeda's leadership, say, or the use of mildly coercive interrogation techniques on a captured terrorist - is entirely permissible under domestic and international law. Yet they nevertheless might rule it out. In other words, the government sometimes adopts self-restraints that limit its ability to conduct operations it regards as legally justified; it "fight[s] with one hand behind its back," to borrow Aharon Barak's memorable phrase.4 This article tries to explain these restraints by consulting public choice theory - in particular, the notion that government officials are rationally self-interested actors who seek to maximize their respective welfare. Part I develops an analytical framework. Part II identifies four examples of self- restraint. Parts III and IV offer hypotheses for why the government adopts them. One example of self-restraint is Executive Order 13,491, which limits counterterrorism interrogations, including those conducted by the CIA, to the techniques listed in the Army Field Manual. The AFM prohibits or severely restricts a number of fairly mild interrogation methods such as low-grade threats, the "good cop, bad cop" routine, and other staples of garden-variety law enforcement investigations. A second example, sketched above, is the White House's onetime reluctance to use targeted killings against Osama bin Laden, despite its belief that doing so would be consistent with domestic and international laws against assassination. Third, lawyers in the Judge Advocate General corps sometimes reject military strikes that would be permissible under the law of war, but that they regard as problematic for moral, economic, social, or political reasons. A fourth example is the Justice Department's erection of a "wall" that restricted information sharing between intelligence officials and criminal investigators, despite the fact that the applicable statute (the Foreign Intelligence Surveillance Act of 1978) contained no such limits, and despite the fact that the governing DOJ guidelines established mechanisms for swapping such data. The question then becomes why officials adopt these restraints even when they believe them to be legally unnecessary. Public choice theory suggests two possible explanations. First, self-restraint might result from systematic asymmetries in military and intelligence officials' expected value calculations. The expected costs of a given national security operation often dwarf the expected benefits; officials have more to lose from being aggressive than they have to gain. In particular, operations – even concededly lawful ones – can inspire adversaries to launch demoralizing propaganda campaigns accusing the United States of war crimes, can sap the willingness of allies to assist this country, and can even result in criminal prosecutions or private lawsuits against the responsible officials. In addition, the resulting costs can be internalized onto the responsible officials more easily than the resulting benefits. While all national security players experience a degree of costbenefit asymmetry, some experience more than others. In particular, the senior policymakers who approve operations, and the lawyers who review them, seem even more cautious than the operators who actually carry them out. This may be because policymakers and lawyers discount some of the benefits that operators expect to gain (e.g., certain forms of psychic income), and also account for certain costs that operators overlook (e.g., ramifications for the country's broader strategic priorities). Policymakers and lawyers therefore will veto proposed missions when they calculate – as they often will – that their costs exceed their benefits. Second, self-restraint might result from bureaucratic "empire building,"5 as lawyers and other officials seek to magnify their clout by rejecting operations planned by their inter- and intra-agency competitors. Military and intelligence figures seek to maximize, among other values, the influence they hold over senior policymakers as well as autonomy to pursue the priorities they deem important. One way for an official to do that is to interfere with a rival's plans. A bureaucratic player typically gains no power by serving as a competitor's yes man. Often, it gains by saying no, because its obstruction

forces the rival to be responsive to its concerns. Reviewers in the government's national security apparatus therefore will veto operations planned by other entities when doing so will enhance their welfare.

Presidents restrict themselves – credibility
Sales 12

Sales 2012 – Assistant Professor of Law, George Mason University School of Law (7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, "Self-Restraint and National Security/NV

My use of this analytical framework is not intended to deny the validity of other possible explanations for self-restraint. For instance, Eric Posner and Adrian Vermeule argue that Presidents have an incentive to engage in "self binding," because it will enhance their credibility and "generate support from the public and other members of the government."45 Elizabeth Magill likewise argues that bureaucrats sometimes find it advantageous to "self-regulate" – i.e., "limit their options when no source of authority requires them to do so" – **as a means of controlling subordinates**, inducing reliance by outside parties, and entrenching today's policy choices.46 Still more accounts emerge if we widen the analytical lens beyond public choice principles. One might explain self-restraints by consulting theories of bounded rationality – the notion that imperfect information, cognitive failures, and other factors prevent bureaucratic players from accurately measuring the expected costs and benefits of a given action.47 Or one might look to new institutionalism – the notion that bureaucratic outputs are determined in large part by organizations' cultures, histories, and structures.48 And, of course, there are the public interest explanations: Officials might embrace a particular restraint because they believe in good faith that it represents sound public policy. The public interest framework may actually complement, not contradict, this article's public choice story. One of the reasons officials might build their bureaucratic empires is because they calculate that doing so will position them to achieve desirable policy outcomes. In any event, the point of this article is to generate hypotheses that can account for the occasional tendency of national security figures to restrain themselves. Other frameworks are likely to yield equally plausible alternative hypotheses.

Qualified studies support out point
Sales 12

Sales 2012 – Assistant Professor of Law, George Mason University School of Law (7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, "Self-Restraint and National Security/NV

This Part identifies four examples of self-restraint in military and intelligence operations – that is, circumstances in which officials vetoed a mission despite their belief that it was perfectly lawful. In 2009, the White House barred counterterrorism investigators from using any interrogation technique other than the limited methods in the Army Field Manual. In the late 1990s, Clinton administration officials rejected the CIA's plans to kill Osama bin Laden. Members of the military's JAG Corps have recommended against air strikes that might result in adverse publicity or other harms. And in the mid-1990s, Justice Department officials erected a "wall" that kept the DOJ's intelligence analysts from sharing information with its criminal investigators.49 In each instance, the government's reason for adopting these restraints was not that it believed them to be legally

necessary. To the contrary, officials – often but not always lawyers – concluded that the relevant laws allowed them to carry out the operation in question, but they nevertheless vetoed it. Self-restraints thus supplement what the law requires; officials proscribe conduct that the applicable laws do not actually reach. In other words, military and intelligence figures sometimes overenforce the relevant legal norms. I do not mean to suggest that the quantity of legal enforcement is suboptimally high – i.e., that it would be efficient or otherwise preferable for some conduct that is unlawful to go unpunished. Rather, by overenforcement I mean officials' occasional tendency to restrict themselves from acting in ways that are not in fact unlawful (or, more precisely, that they do not regard as unlawful).50 A. Interrogation The first example of self-restraint is also the most recent. On January 22, 2009, his second full day in office, President Barack Obama announced a clean break from his predecessor's interrogation policies. The George W. Bush administration had incurred widespread condemnation for authorizing the CIA to subject several captured al Qaeda leaders to aggressive questioning methods, including waterboarding, a form of simulated drowning. Executive Order 13,491 – which reportedly was the brainchild of lawyers in the White House Counsel's Office51 – directed that anyone detained by the United States in an armed conflict "shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2- 22.3."52 The AFM, the current version of which was adopted in 2006, is quite restrictive. In addition to prohibiting severe coercion like waterboarding, it rules out mildly coercive methods that are commonly used in ordinary criminal investigations in precincts throughout the country. These new limits are hailed by many as sound policy, but they probably are not legally necessary. Or, to be more precise, the Army Field Manual restrictions almost certainly go farther than what the White House believes is legally required. Administration lawyers thus supplemented the domestic and international prohibitions on torture and coercion, ruling out some relatively benign techniques that they likely do not regard as illegal.

AT//Private Sector Circumvention

The private sector is restrained and anti-surveillance

Wyatt and Miller 13 [Edward and Claire Cain, New York Times Financial Reporter, Ms. Miller is a graduate of Yale University and the University of California at Berkeley's Graduate School of Journalism., Tech Giants Issue Call for Limits on Government Surveillance of Users, http://www.nytimes.com/2013/12/09/technology/tech-giants-issue-call-for-limits-on-government-surveillance-of-users.html?pagewanted=all&_r=0] Schloss

Eight prominent technology companies, bruised by revelations of government spying on their customers' data and scrambling to repair the damage to their reputations, are mounting a public campaign to urge President Obama and Congress to set new limits on government surveillance.¶ Executive Appeal¶ Executives from prominent technology companies called for greater limits on government surveillance of their users.¶ Reports about government surveillance have shown there is a real need for greater disclosure and new limits on how governments collect information. The U.S. government should take this opportunity to lead this reform effort and make things right.¶ —Mark Zuckerberg, Facebook¶ Larry Page, chief of Google, called for reform of security laws worldwide, saying, "We urge the U.S. government to lead the way."¶ On Monday the companies, led by Google and Microsoft, presented a plan to regulate online spying and urged the United States to lead a worldwide effort to restrict it. They accompanied it with an open letter, in the form of full-page ads in national newspapers, including The New York Times, and a website detailing their concerns.¶ It is the broadest and strongest effort by the companies, often archrivals, to speak with one voice to pressure the government. The tech industry, whose billionaire founders and executives are highly sought as political donors, forms a powerful interest group that is increasingly flexing its muscle in Washington.¶ "It's now in their business and economic interest to protect their users' privacy and to aggressively push for changes," said Trevor Timm, an activist at the Electronic Frontier Foundation. "The N.S.A. mass-surveillance programs exist for a simple reason: cooperation with the tech and telecom companies. If the tech companies no longer want to cooperate, they have a lot of leverage to force significant reform."¶ The political push by the technology companies opens a third front in their battle against government surveillance, which has escalated with recent revelations about government spying without the companies' knowledge. The companies have also been making technical changes to try to thwart spying and have been waging a public-relations campaign to convince users that they are protecting their privacy.¶ "People won't use technology they don't trust," Brad Smith, Microsoft's general counsel, said in a statement. "Governments have put this trust at risk, and governments need to help restore it."¶ Apple, Yahoo, Facebook, Twitter, AOL and LinkedIn joined Google and Microsoft in saying that they believed in governments' right to protect their citizens. But, they said, the spying revelations that began last summer with leaks of National Security Agency materials by Edward J. Snowden showed that "the balance in many countries has tipped too far in favor of the state and away from the rights of the individual."¶ The Obama administration has already begun a review of N.S.A. procedures in reaction to public outrage. The results of that review could be presented to the White House as soon as this week.¶ "Having done an independent review and brought in a whole bunch of folks — civil libertarians and lawyers and others — to examine what's being done, I'll be proposing some self-restraint on the N.S.A., and you know, to initiate some reforms that can give people more confidence," Mr. Obama said Thursday on the MSNBC program "Hardball."¶ While the Internet companies fight to maintain authority over their customers' data, their business models depend on collecting the same information that the spy agencies want, and they have long cooperated with the government to some extent by handing over data in response to legal requests.¶ The new principles outlined by the companies contain little information and few promises about their own practices, which privacy advocates say contribute to the government's desire to tap into the companies' data systems.¶ "The companies are placing their users at risk by collecting and retaining so much information," said Marc Rotenberg, president and executive director of the Electronic Privacy Information Center, a nonprofit research and advocacy organization. "As long as this much personal data is collected and kept by these companies, they are always going to be the target of government collection efforts."¶ For instance, Internet companies store email messages, search queries, payment details and other personal information to provide online services and show personalized ads.¶ They are trying to blunt the spying revelations' effects on their businesses. Each disclosure risks alienating users, and foreign governments are considering laws that would discourage their citizens from using services from American Internet companies. The cloud computing industry could lose $180 billion, or a quarter of its revenue, by 2016, according to Forrester Research.¶ Telecom companies, which were not included in the proposal to Congress, have had a closer working relationship with the government than the Internet companies, such as longstanding partnerships to hand over customer information. While the Internet companies have published so-called transparency reports about government requests, for example, the telecoms have not.¶ "For the phone companies," said Tim Wu, a professor at Columbia studying the Internet and the law, "help with federal spying is a longstanding tradition with roots in the Cold War. It's another area where there's a split between old tech and new tech — the latter taking a much more libertarian position."¶ The new surveillance principles, the Internet companies said, should include limiting governments' authority to collect users' information, setting up a legal system of oversight and accountability for that authority, allowing the

companies to publish the number and nature of the demands for data, ensuring that users' online data can be stored in different countries and establishing a framework to govern data requests between countries.¶ In a statement, Larry Page, Google's co-founder and chief executive, criticized governments for the "apparent wholesale collection of data, in secret and without independent oversight." He added, "It's time for reform and we urge the U.S. government to lead the way."¶ In their open letter, the companies maintain they are fighting for their customers' privacy. "We are focused on keeping users' data secure," the letter said, "deploying the latest encryption technology to prevent unauthorized surveillance on our networks, and by pushing back on government requests to ensure that they are legal and reasonable in scope."¶ The global principles outlined by the companies make no specific mention of any country and call on "the world's governments to address the practices and laws regulating government surveillance of individuals and access to their information." But the open letter to American officials specifically cites the United States Constitution as the guidepost for new restrictions on government surveillance.¶ Chief among the companies' proposals is a demand to write "sensible limitations" on the ability of government agencies to compel Internet companies to disclose user data, forbidding the wholesale vacuuming of user information.

Executive Flexibility Net Benefit

***note: lots more link and impact work for this in the MAGS “war powers DA”

1nc Exec Flex N/B

The counterplan sufficiently curtails surveillance while maintaining crisis flexibility

Neal **Katyal 6**, prof, Georgetown law, Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within, 115 Yale L.J. 2314

This Essay's proposed reforms reflect a more textured conception of the presidency than either the unitary executivists or their critics espouse. In contrast to the unitary executivists, I believe that the simple fact that the President should be in control of the executive branch does not answer the question of how institutions should be structured to encourage the most robust flow of advice to the President. **Nor does that fact weigh against modest internal checks that, while subject to presidential override, could constrain presidential adventurism** on a day-to-day basis. And in contrast to the doubters of the unitary executive, I believe a unitary executive serves important values, **particularly in times of crisis**. Speed and dispatch are often virtues to be celebrated.¶ **Instead of doing away with the unitary executive**, this Essay proposes designs that force internal checks but **permit temporary departures when the need is great**. Of course, the risk of incorporating a presidential override is that its great formal power will eclipse everything else, leading agency officials to fear that the President will overrule or fire them. But just as a filibuster does not tremendously constrain presidential action, modest internal checks, buoyed by reporting requirements, can create **sufficient deterrent costs.**¶ [*2319] Let me offer a brief word about what this Essay does not attempt. It does not propose a far-reaching internal checking system on all presidential power, domestic and foreign. Instead, this Essay takes a case study, the war on terror, and **uses the collapse of external checks and balances to demonstrate the need for internal ones**. In this arena, public accountability is low - not only because decisions are made in secret, but also because they routinely impact only people who cannot vote (such as detainees). In addition to these process defects, decisions in this area often have subtle long-term consequences that short-term executivists may not fully appreciate. n9

The alternative to executive flexibility is a laundry list of conflicts that escalate to war

Yoo 13 - Emanuel S. Heller Professor of Law at UC-Berkeley Law, visiting scholar at the American Enterprise Institute, former Fulbright Distinguished Chair in Law at the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, J.D. from Yale and degree from Harvard (John, "Like it or not, Constitution allows Obama to strike Syria without Congressional approval," Fox News, 8-30-13, http://www.foxnews.com/opinion/2013/08/30/constitution-allows-obama-to-strike-syria-without-congressional-approval/) //AD

The most important of the president's powers are commander-in-chief and chief executive.¶ As Alexander Hamilton wrote in Federalist 74, "The direction of war implies the direction of the common strength, and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority."¶ Presidents should conduct war, he wrote, because they could act with "decision, activity, secrecy, and dispatch." In perhaps his most famous words, Hamilton wrote: "Energy in the executive is a leading character in the definition of good government. . . It is essential to the protection of the community against foreign attacks."¶ The Framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action, sometimes under pressured or even emergency circumstances, that are best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. ¶ Congress is too large and unwieldy to take the swift and decisive action required in wartime. ¶ Our Framers replaced the Articles

of Confederation, which had failed in the management of foreign relations because it had no single executive, with the Constitution's single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress's loose, decentralized structure would paralyze American policy while foreign threats grow. ¶ Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure.¶ Congress's track record when it has opposed presidential leadership has not been a happy one.¶ Perhaps the most telling example was the Senate's rejection of the Treaty of Versailles at the end of World War I. Congress's isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed Neutrality Acts designed to keep the United States out of the conflict.¶ President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president's foreign adventurism, the real threat to our national security may come from inaction and isolationism.¶ Many point to the Vietnam War as an example of the faults of the "imperial presidency." Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War, and the passage of the ineffectual War Powers Resolution. Congress passed the Resolution in 1973 over President Nixon's veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it.¶ Despite the record of practice and the Constitution's institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to "declare War." But these observers read the eighteenth-century constitutional text through a modern lens by interpreting "declare War" to mean "start war." ¶ When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain – where the Framers got the idea of the declare-war power – fought numerous major conflicts but declared war only once beforehand.¶ Our Constitution sets out specific procedures for passing laws, appointing officers, and making treaties. There are none for waging war, because the Framers expected the president and Congress to struggle over war through the national political process.¶ In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not "engage" in war "without the consent of Congress" unless "actually invaded, or in such imminent Danger as will not admit of delay." ¶ This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the Framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive.¶ Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. ¶ Only Congress can raise the military, which gives it the power to block, delay, or modify war plans.¶ Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. ¶ Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive,

operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. ¶ If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military.¶ Congress's check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse.¶ If Congress feels it has been misled in authorizing war, or it disagrees with the president's decisions, all it need do is cut off funds, either all at once or gradually.¶ It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action.¶ Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. ¶ Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation.¶ The Framers expected Congress's power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: "The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist." Congress ended America's involvement in Vietnam by cutting off all funds for the war.¶ Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress's funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo, or Korea, it is only because Congress has chosen not to exercise its easy check.¶ We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security.¶ In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility.¶ It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy.¶ The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security.¶ Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the Framers left war to politics.¶ As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

AT//Permutation – Do Both

Executive action ALONE is key to effective flexibility – the counterplan is *superior* to the permutation because it keeps Congress and the Courts out of the equation

Bellia 2 [Patricia, Professor of Law Notre Dame, "Executive Power in Youngstown's Shadows" Constitutional Commentary, http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1089&context=law_faculty_scholarship] Schloss

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal en- 287 actment, or if Congress displaces the state law by occupying the field,"'8 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect.289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. The combination of **congressional silence and judicial inaction** has the practical effect of creating power.¶ Courts' reluctance to face questions about the scope of the President's constitutional powers-express and implied-creates three other problems. First, the implied presidential power given effect by virtue of congressional silence and judicial inaction can **solidify into a broader claim.** When the Executive exercises an "initiating" or "concurrent" power, it will **tie that power to a textual provision or to a claim about the structure of the Constitution**. Congress's silence as a practical matter tends to **validate the executive rationale**, and the Executive Branch may then claim a power not only to exercise the disputed authority in the face of congressional silence, but also to exercise the disputed authority in the face of congressional opposition. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a ready example. The Executive's claim that the President has the power to terminate a treaty-the power in controversy in Goldwater v. Carter, where Congress was silent-now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional.29 °

The permutation links to our flexibility DA

Deats '10 (Caleb, J.D. Candidate, Columbia Law School, 7/2/10, "Obliging The Executive Branch To Control Itself," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633922)

2. Restraining the Executive's Interpretive Power Weakens the Government's Ability to Respond to Crises. --- Second, one might argue that restraining the executive's interpretive power might devastatingly weaken the country's ability to confront emergencies, particularly threats to national security. As Professor Goldsmith notes, "sharp disagreement over the requirements of national security law and the meaning of the imponderable phrases of the U.S. Constitution" exists even within the executive branch: "Whether and how aggressively to check the terrorist threat, and whether and how far to push the law in so doing, are rarely obvious, especially during blizzards of frightening reports, when one is blinded by ignorance and desperately worried about not doing enough."51 **Disagreement in Congress** over these issues **would** presumably **prove more intractable than that within the executive branch**. Moreover, **airing these issues in courts would likely require disclosure of classified information**. Thus, requiring the executive to defer to other branches when parsing these "imponderable phrases" prevents the swift resolution of controversy

that results from consolidating authority in the President. As Hamilton writes, "A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution . . . ."52 However, while the this paper's proposal may prescribe procedures that cannot adequately resolve emergencies, designing procedures with emergencies in mind seems more likely to pervert normal politics than it does to adequately resolve such extraordinary situations. No set of procedures can provide for every eventuality. Moreover, as Justice Jackson wrote, dissenting in Korematsu, "if we cannot confine military expedients by the Constitution, neither would I distort the Constitution to approve all that the military may deem expedient."53 Once we incorporate emergency exceptions into the Constitution, such exceptions will increase in number until they cease to be exceptional.54 Professor Goldsmith adverts to the danger of confusing the exception with the norm when he describes the terrorist threat as a "permanent emergency."55 Thus, if we must in emergencies rely on "leaders who will be beholden to constitutional values," we should do so completely, i.e. without creating procedural justifications for doing so. A different approach might substitute "leaders" for procedures simply by making the two indistinguishable.

Unimpeded executive authority over domestic surveillance is key

Yoo, 14 (John C., Harvard alma mater, Yale Law grad, clerked for Justice Clarence Thomas of the U.S. Supreme Court, served as general counsel of the U.S. Senate Judiciary Committee from 1995-96. From 2001 to 2003, he served as a deputy assistant attorney general in the Office of Legal Counsel at the U.S. Department of Justice, where he worked on issues involving foreign affairs, national security and the separation of powers; 2014; The Legality of the National Security Agency's Bulk Data Surveillance Programs;
http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3432&context=facpubs)//JPM

The need for executive authority over electronic intelligence gathering becomes apparent when we consider the facts of the war against al Qaeda. In the hours and days after 9/11, members of the government thought that al Qaeda would try to crash other airliners or use a weapon of mass destruction in a major East Coast city, probably Washington, D.C. In response, combat air patrols began flying above New York and Washington. Suppose a plane was hijacked and would not respond to air traffic controllers. It would be reasonable for U.S. anti-terrorism personnel to intercept any radio or cell phone calls to or from the airliner, in order to discover the hijackers' intentions, what was happening on the plane, and ultimately whether it would be necessary for the fighters to shoot down the plane. Under the civil libertarian approach to privacy, the government could not monitor the suspected hijackers' phone or radio calls unless they received a judicial warrant first-the calls, after all, are electronic communications within the United States. A warrant would be hard to get because it is unlikely that the government would then know the identities of all the hijackers, who might be U.S. citizens or permanent resident aliens. But because the U.S. is in a state of war, the military can intercept the communications of the plane to see if it poses a threat, and target the enemy if necessary-without a judicial warrant, because the purpose is not arrest and trial, but to prevent an attack. This comports far better with the principle of reasonableness that guides the Fourth Amendment. As Commander-in-Chief, the President has the constitutional power and the responsibility to wage war in response to a direct attack against the United States. In the Civil War, President Lincoln undertook several actions-raised an army,

withdrew money from the¶ treasury, launched a blockade-on his own authority in response to¶ the Confederate attack on Fort Sumter. Congress and the Supreme¶ Court later approved Lincoln's moves.8 4 During World War II, the¶ Supreme Court similarly recognized that once war began, the¶ President's authority as Commander-in-Chief and Chief Executive¶ gave him the tools necessary to effectively wage war. 5 In the wake of¶ the 9/11 attacks, Congress agreed that "the President has authority¶ under the Constitution to take action to deter and prevent acts of¶ international terrorism against the United States," which recognizes¶ the President's authority to use force to respond to al Qaeda, and any¶ powers necessary and proper to that end.86¶ Even legal scholars who argue against this historical practice¶ concede that once the United States has been attacked, the President¶ can respond immediately with force. The ability to collect intelligence¶ is intrinsic to the use of military force**. It is inconceivable that the¶ Constitution would vest in the President the powers of Commander in-Chief¶ and Chief Executive, give him the responsibility to protect the¶ nation from attack, but then disable him from gathering intelligence¶ to use the military most effectively to defeat the enemy.** All evidence of¶ the Framers' understanding of the Constitution supports the notion¶ that the government would have every ability to meet a foreign¶ danger. As James Madison wrote in The Federalist, "security against foreign danger is one of the primitive objects of civil society."8 7¶ Therefore, the "powers requisite for attaining it must be effectually¶ confided to the federal councils."88 After World War II, the Supreme¶ Court declared, "this grant of war power includes all that is necessary¶ and proper for carrying these powers into execution." Covert¶ operations and electronic surveillance are clearly part of this¶ authority.¶ During the writing of the Constitution, some Framers believed that¶ the President alone should manage intelligence because only he could¶ keep secrets. 90 Several Supreme Court cases have recognized that **the¶ President's role as Commander-in-Chief and the sole organ of the¶ nation in its foreign relations must include the power to collect¶ intelligence**.91 These authorities agree that **intelligence rests with the¶ President because its structure allows it to act with unity, secrecy, and¶ speed.**¶ Presidents have long ordered electronic surveillance without any¶ judicial or congressional participation.

Keeping congress *out* of the equation is key

Yoo, 7 (John, Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute, 3/27/7, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=975333) KW

Critics of the NSA program want to overturn American historical practice in favor of a new and untested theory about the wartime powers of the President and Congress.256 We should encourage innovation and creativity in our intelligence and military-and the NSA program is precisely that-to confront the unprecedented challenges of al Qaeda. For too long, our system retarded aggressive measures to pre-empt terrorist attacks. 257 But **seeking to give Congress the dominant hand** in setting wartime policy would render our tactics against al Qaeda **less, rather than more, effective**. It would slow down decisions, make sensitive policies and intelligence public, and encourage risk aversion rather than risk taking. Requiring the President to obtain Congressional approval prior to every important policy change **ignores the reality the al Qaeda challenge presents**.

Executive CIC powers vital to deter conflict – the plan and permutation both undermine crucial tools in the fight against terrorism

Yoo, 14 (John C., Harvard alma mater, Yale Law grad, clerked for Justice Clarence Thomas of the U.S. Supreme Court, served as general counsel of the U.S. Senate Judiciary Committee from 1995-96. From 2001 to 2003, he served as a deputy assistant attorney general in the Office of Legal Counsel at the U.S. Department of Justice, where he worked on issues involving foreign affairs, national security and the separation of powers; 2014; The Legality of the National Security Agency's Bulk Data Surveillance Programs; http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3432&context=facpubs)//JPM

It is al Qaeda's nature as a decentralized network that pressures the normal division between military and intelligence surveillance and the warrant-based approach of the criminal justice system. The Constitution vests the President with the executive power and designates him Commander-in-Chief.2 The Framers understood these powers to place the duty on the executive to protect the nation from foreign attack and the right to control the conduct of military hostilities.3 **To exercise that power effectively, the President must have the ability to engage in electronic surveillance that gathers intelligence on the enemy**. Regular military intelligence need not follow standards of probable cause for a warrant or reasonableness for a search, just as the use of force against the enemy does not have to comply with the Fourth Amendment. During war, **military signals intelligence might throw out a broad net to capture all communications within a certain area or by an enemy nation**. Unlike the criminal justice system, which seeks to detain criminals, protection of national security need not rest on particularized suspicion of a specific individual. This approach applies to national security activity that occurs within the United States as well as outside it. In 1972, the Supreme Court refused to subject surveillance for national security purposes to the Fourth Amendment warrant requirement.4 It has extended these protections to purely domestic terrorist groups, out of concern that the government might use its powers to suppress political liberties. Lower courts, however, have found that when the government conducts a search of a foreign power or its agents, it need not meet the requirements that apply to criminal law enforcement. In a leading 1980 case, the Fourth Circuit held that "**the needs of the executive are so compelling in the area of foreign intelligence, unlike the area of domestic security, that a uniform warrant requirement would unduly frustrate the President in carrying out his foreign affairs responsibilities.**"5 **A warrant for national security searches would reduce the flexibility of the executive branch, which possesses "unparalleled expertise to make the decision whether to conduct foreign intelligence surveillance" and is "constitutionally designated as the pre-eminent authority in foreign affairs**." 6 A warrant requirement would place the national security decisions in the hands of the judiciary, which "is largely inexperienced in making the delicate and complex decisions that lie behind foreign intelligence surveillance. "7 Under this framework, Presidents had conducted national security surveillance under their executive authority for decades. President Nixon's abuses, however, led Congress to enact the FISA in 1978.s

President best suited to deal with threats – only one that can act quickly and secretly

Yoo, 7 (John, Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute, 3/27/7, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=975333) KW

Critics of the NSA program appeal to the Constitution as it works in peacetime, when Congress authorizes a policy and the President carries it out.2 " Critics imagine that the Constitution requires the President to check back with Congress on every strategy and tactic in the war on terrorism.2 5 The NSA program is thus illegal, they say, because President Bush neglected to obtain yet another amendment to FISA approving it.206 It is true that Congress offers more transparency and perhaps greater accountability to the public.0 7 But it should also be clear that, over time, the Presidency has gained the leading role in war and national security because of its superior ability to take the initiative in response to emergencies.0 8

War's unpredictability makes unique demands for decisive and often secret action. John Locke first observed that a constitution ought to give the foreign affairs power to the executive because foreign threats are "much less capable to be directed by antecedent, standing, positive [f]aws" and the executive can act to protect the "security and interest of the public .... Legislatures are too slow and its members too numerous to respond effectively to unforeseen situations."0 "Many things there are, which the [1]aw can by no means provide for; and those must necessarily be left to the discretion of him that has the [e]xecutive power in his hands, to be ordered by him as the public good and advantage shall require."2 " 1

Presidents empirically had control over intelligence gathering – any changes kills current balance of powers

Yoo, 7 (John, Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute, 3/27/7, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=975333) KW

Some of the Framers of the Constitution believed that the President needed to manage intelligence because only he could keep secrets. 5 Several Supreme Court cases have recognized that the President's role as the sole organ of the nation in foreign relations and as Commander-in-Chief must include the power to collect intelligence. 5 9 These authorities agree that intelligence rests with the President because the office's structure allows the President to act with unity, secrecy, and speed. 6 °¶ Presidents have long ordered electronic surveillance without any judicial or congressional participation. More than a year before the Pearl Harbor attacks, but with war clearly looming with the Axis powers, President Franklin Roosevelt authorized the FBI to intercept any communications, whether wholly inside the country or international, of persons "suspected of subversive activities against the Government of the United States, including suspected spies."'' FDR was concerned that "fifth columns"-those people believed to be loyalists who clandestinely undermine the nation-could wreak havoc on the war effort. 6 "It is too late to do anything about it after sabotage, assassinations and 'fifth column' activities are completed," FDR wrote in his order.'63 FDR ordered the

surveillance even though a Supreme Court decision and a federal statute at the time prohibited electronic surveillance without a warrant." FDR continued to authorize the interception of electronic communications even after Congress rejected proposals for wiretapping for national security reasons.'65¶ Until FISA, Presidents continued to monitor the communications of national security threats on their own authority, even in peacetime.'66 If Presidents could order surveillance of spies and terrorists **during peacetime**, as President Roosevelt did in 1940, or as Presidents from Truman through Carter did during the Cold War, then **executive authority is all the more certain now, after the events of September 11**. This is a view held by the Justice Departments in several recent administrations. The Clinton Justice Department, for example, held a similar view of the executive branch's authority to conduct surveillance outside the FISA framework.'67 Courts have **never** opposed a President's authority to engage in warrantless electronic surveillance to protect national security. When the Supreme Court first considered this question in 1972, it held that the Fourth Amendment required a judicial warrant if a President wanted to conduct surveillance of a purely domestic group, but it refused to address surveillance of foreign threats to national security.'68 In the years since, every federal appeals court to address the question, including the FISA Appeals Court, has "held that the President did have inherent authority to conduct warrantless searches to obtain foreign intelligence information."' 6 9 The FISA Appeals Court did not even feel that it was worth much discussion. It took the President's power to do so "for granted," and observed that "FISA could not encroach on the President's constitutional power.' 17°

The counterplan doesn't link to the terror DA – president's unique powers allow for surveillance of those believed to be agents of a foreign power like ISIS or Al Qaeda.

Yoo, 7 (John, Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute, 3/27/7, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=975333) KW

In United States v. Truong Dinh Hung, for example, the Fourth Circuit observed that "the needs of the Executive are so compelling in the area of foreign intelligence, unlike the area of domestic security, that a uniform warrant requirement would, following Keith, 'unduly frustrate,' the President in carrying out his foreign affairs responsibilities.''7 Several reasons led the Fourth Circuit to find that the warrant requirement did not apply to searches for foreign intelligence information:

(1) A warrant requirement ... would reduce the flexibility of executive foreign intelligence initiatives, in some cases delay executive response to foreign intelligence threats, and increase the chance of leaks regarding sensitive executive operations[;] (2) the executive possesses unparalleled expertise to make the decision whether to conduct foreign intelligence surveillance, whereas **the judiciary is largely inexperienced** in making the delicate and complex decisions that lie behind foreign intelligence surveillance ...[flew, if any, district courts would be truly competent to judge the importance of particular information to the security of the United States or the 'probable cause' to demonstrate that the government in fact needs to recover that information from one particular source[;] and (3) the executive branch. is also constitutionally designated as the pre-eminent authority in foreign affairs. 72

To summarize, the Fourth Circuit held that the government was relieved of the warrant requirement when the surveillance involves both a foreign power and a foreign intelligence motive. First, warrants are not required when the object of the search or surveillance is a foreign power, its agents, or its

collaborators since such cases are "most likely to call into play difficult and subtle judgments about foreign and military affairs."' 74 Second, "when the surveillance is conducted 'primarily' for foreign intelligence reasons," warrants are unnecessary for two reasons: (1) "once surveillance becomes primarily a criminal investigation, the courts are entirely competent to make the usual probable cause determination[;]" and (2) "individual privacy interests come to the fore and government foreign policy concerns recede when the government is primarily attempting to form the basis for a criminal prosecution."' 75 Several other circuits have employed a similar logic, and no federal appeals court has taken a different view.'76 The factors favoring warrantless searches for national security reasons are compelling under the current circumstances created by the war on terrorism.

After the attacks on September 11, 2001, the government interest in conducting searches related to fighting terrorism is perhaps of the highest order-to defend the nation from direct attack. "It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation."'77

Congress also **implicitly authorized** the President to carry out electronic surveillance to prevent further attacks on the United States.'78 Congress's September 18, 2001 Authorization for Use of Military Force ("AUMF") is sweeping; it has no limitation on time or place-the only directive is that the President pursues terrorists, such as al Qaeda.'79 Although the President did not need, as a constitutional matter, Congress's permission to pursue and attack al Qaeda after the attacks on New York City and the Pentagon, 8' AUMF's passage shows that the President and Congress fully agreed that military action would be appropriate. Congress's support for the President cannot just be limited to the right to use force, but to all the necessary subcomponents that permit effective military action. 8' Congress's approval of the killing and capture of al Qaeda must obviously include the tools to locate them in the first place.

B. A Policy Analysis Affirms the Need for the NSA Surveillance Program

AT//Executive Flex Low

No meaningful check on flexibility now

Sudha **Setty 15**, Professor at Western New England University School of Law, 2015, "Surveillance, Secrecy, and the Search for Meaningful Accountability", 51 STAN. J. INT'L L 16, http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol

One of the most intractable problems in the debate around maintaining¶ the rule of law while combating the threat of terrorism is the question of¶ secrecy and transparency. In peacetime, important tenets to the rule of law¶ include transparency of the law, limits on government power, and consistency¶ of the law as applied to individuals in the polity. Yet the post-9/11 decision making¶ by the Bush and Obama administrations has been characterized by¶ excessive secrecy that stymies most efforts to hold the government¶ accountable for its abuses. Executive branch policy with regard to detention,¶ interrogation, targeted killing, and surveillance are kept secret, and that¶ secrecy has been largely validated by a compliant judicial that has¶ dismissed almost all suits challenging human and civil rights abuses resulting¶ from counterterrorism programs. Efforts by Congress to engage in¶ meaningful oversight have met with mixed results; **in the area of government¶ surveillance, such efforts have been fruitless** without the benefit of leaked¶ information on warrantless surveillance by government insiders. The¶ executive branch has generally refused to make public vital aspects of its¶ surveillance programs in ways that could give oversight efforts more muscle.¶ At the same time, the executive branch has consistently defended the legality¶ and efficacy of these surveillance programs.¶ This paper considers the nature and effect of the warrantless surveillance¶ infrastructure constructed in the United States since the terrorist attacks of¶ September 11, 2001, and discusses surveillance-related powers and¶ accountability measures in the United Kingdom and India as comparative¶ examples.

AT//IG Links to Exec Flex

IG reform avoids the war powers disad

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

A final reservation might come from those who fear that strengthening IGs' capacity for rights oversight might deflect more robust attempts to constrain the executive. Indeed, some scholars who defend expanded executive national security powers view the potential for **internal institutions** to ward off external checks on the executive as a strength: Eric Posner and Adrian Vermeule have argued that executive "self-binding" mechanisms help the executive gain public trust to pursue aggressive policies without undue constraint,309 while Goldsmith argues that IGs, in particular, can enhance executive power.310 Certainly, executive officials have invoked IGs in an attempt to abate civil liberties concerns and thereby **preserve or strengthen** executive power. The Bush Administration sought to defend the National Security Agency warrantless surveillance program by claiming it had been thoroughly vetted by the Justice Department and the NSA Inspector General.311 FBI Director Mueller sought to allay senators' concerns over FBI surveillance of a peaceful antiwar rally by inviting an IG review of the matter.312 And the Obama Administration sought to reassure courts that it could be trusted in invoking the state secrets privilege by issuing a policy that, among other provisions, required the Justice Department to refer "credible allegations of government wrongdoing" to IGs.313

Politics Net Benefit

Politics N/B – ESR

The executive solves better than Congress or the Courts
Metzger 09

Gillian E. Metzger, is a United States Constitutional Law scholar and a professor of law at Columbia University, "THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS," October 7, 2009, Columbia Law School Public Law and Legal Theory Working Paper Group, Google Scholar/NV

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. **Internal mechanisms operate ex ante**, at the time when the executive branch is formulating and implementing policy, **rather than ex post**; they are therefore able to **avoid the delay in application that can hamper both judicial and congressional oversight**.76 Internal mechanisms often operate continuously, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. Internal mechanisms 77 operate not just at the points **at which policy proposals originate and are implemented but also at higher managerial** levels, and thus can address policy and administration in both a granular and a systemic fashion. In addition, policy recommendations generated through internal checks **may face less resistance than those offered externally**, because the latter frequently arise after executive officials **have already decided upon a policy course** and are more likely to take an adversarial form. Internal mechanisms may also gain credibility with executive branch officials 78 to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking.79

CP avoids politics--- takes too long for congress to review and preserves other topics
Sovacool 10 [Ben and Kelly, Dr. Benjamin K. Sovacool is a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization. He is also an Assistant Professor at the Lee Kuan Yew School of Public Policy at the National University of Singapore., Kelly E. Sovacool is a Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of Singapore. She received her MS in geography from the Virginia Polytechnic Institute & State University in Blacksburg, "Crisis Areas in the United States", http://www.circleofblue.org/waternews/wp-content/uploads/2010/08/sovacool-and-sovacool-water-columbia.pdf] Schloss

Executive Orders also save time in a second sense. The **President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal**. Executive Orders thus save presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horse trading and compromise such legislative activity entails.292 Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September 11, 2001 attacks on the Pentagon and World Trade Center, for instance, the Bush Administration almost immediately passed Executive Orders forcing airlines to reinforce cockpit doors and freezing the U.S. based assets of individuals and organizations involved with terrorist groups.293 These actions took Congress nearly four months to debate and subsequently endorse with legislation. Executive Orders therefore enable presidents to rapidly change law without having to wait for congressional action or agency regulatory rulemaking.

No backlash against executive action---Obama is uniquely different

Ramsey 12 [Michael, Professor of Law, University of San Diego School of Law, THE FEDERALIST SOCIETY NATIONAL LAWYERS CONVENTION--2011: MEET THE NEW BOSS: CONTINUITY IN PRESIDENTIAL WAR POWERS?, Harvard Journal of Law & Public Policy, 35 Harv. J.L. & Pub. Pol'y 863, http://www.lexisnexis.com.proxy.lib.umich.edu/hottopics/lnacademic/] Schloss

Thus there has been an escalation in the use of unconstitutional executive war power under President Obama, yet there has not been an outcry against him resembling the outcry against the Bush Administration, which was routinely attacked for exceeding the limits of executive power. n29 Although some voices have been raised against President Obama's claims of executive power, n30 they have been marginalized. They have not [*871] been taken up by the mainstream in the manner of similar criticisms of President Bush. My speculation is that there is an identification by legal and media elites with the establishment Democratic Party that makes it difficult for these criticisms to gain traction in the way they did in the Bush Administration.¶ I think this makes it easier for Democratic presidents than for Republican presidents to unconstitutionally extend executive power. Thus Obama's policies, which are much more deserving of constitutional criticism, do not generate the popular pushback that we saw, perhaps unjustifiably, against President Bush. In any event, what is most striking about executive war power under President Obama is not the commonly recognized continuity as compared to the prior administration, but rather the increased disregard of constitutional limits.

Politics N/B – IG

IG changes get implemented at the agency level – doesn't require congressional involvement

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

Revising agency rules to prevent future abuses. The ultimate objective of any system of oversight is to prevent future abuses. IGs can support prospective **reform** by recommending changes to agency **managerial or oversight processes** or new **statutory or administrative substantive rules**, such as heightened legal constraints on agency discretion. Such proposals fall within IGs' mandate to prevent future abuse by recommending **policy changes** and commenting on existing and proposed legislation and regulations.204 **Procedural reforms** might include requiring higher-level approval of actions implicating rights, **greater oversight** by agency counsel, or **improving agency databases** or systems to enable better oversight. IGs can also recommend greater **substantive constraints** on agency discretion, such as the **prohibition of a controversial practice** or a requirement of ex ante judicial approval.

Inspector General review shields the link

Sinnar, 13 (Shirin; Assistant Professor of Law, Stanford Law School; "Protecting Rights from Within? Inspectors General and National Security Oversight"; June 11, 2013; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025186) KW

For Congress, too, the promise of IG oversight may attract, or at least allow members to justify, support for legislation to expand executive counterterrorism powers that threaten civil liberties. In a committee hearing on the September 11 detainees report, Senator Arlen Specter argued that an aggressive IG would "ease the public concern so that when [the Attorney General] comes back for the next PATRIOT Act we do not have a wave of public opposition."314 Indeed, Congress has **often required IG reviews of national security programs** in the course of increasing government investigative or surveillance powers,315 and some members of Congress have cited these provisions, among other checks, **as enabling broader support for the legislation**.316

Competition/Theory

AT//PDCP – Top

The counterplan's competitive –

Curtail means to restrict

Oxford 15 – Oxford Dictionaries, "curtail", http://www.oxforddictionaries.com/us/definition/american_english/curtail

Definition of curtail in English:

verb

[WITH OBJECT]

1Reduce in extent or quantity; impose a restriction on:

civil liberties were further curtailed

That's distinct from the counterplan's reduction

Randall 7 (Judge – Court of Appeals of the State of Minnesota, "Dee Marie Duckwall, Petitioner, Respondent, vs. Adam Andrew Duckwall, Appellant", 3-13, http://law.justia.com/cases/minnesota/court-of-appeals/2007/opa0606 95-0313.html#_ftnref2)

[2] When referring to parenting time, the term "restriction[,]" is a **term of art** that is **not the equivalent of "reduction"** of parenting time. "A modification of visitation that **results in** a reduction of total visitation time, is not necessarily a restriction' of visitation.' Danielson v. Danielson, 393 N.W.2d 405, 407 (Minn. App. 1986). When determining **whether a reduction constitutes a restriction**, the court should consider the **reasons** for the change as well as the amount of the reduction." Anderson v. Archer, 510 N.W.2d 1, 4 (Minn. App. 1993).

It mandates that the aff *discontinue the authority or program*

Dembling, 78 – General Counsel, General Accounting Office; (Paul, "OVERSIGHT HEARING ON THE IMPOUNDMENT CONTROL ACT OF 1974" HEARING BEFORE THE TASK FORCE ON BUDGET PROCESS OF THE COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES NINETY-FIFTH CONGRESS SECOND SESSION JUNE 29, 1978, Hein Online)

(3) "Curtail" means to **discontinue, in whole or in part, the execution of a program**, resulting in the application of less budget authority in furtherance of the program than provided by law.

There must be a *third party restriction* on domestic surveillance – executive self-restraint *cannot be an example of the plan*

8th Circuit Court of Appeals 10

(Public Water Supply Dist. No. 3 v. City of Leb., 605 F.3d 511, Lexis)

HN9 7 U.S.C.S. § 1926(b) provides that a rural district's service shall not be curtailed or limited. In this context, the verbs "curtail" and "limit" connote something being **taken from** the current holder,

rather than something being retained by the holder to the exclusion of another. "Curtail" is defined as shorten in extent or amount; abridge; "limit" is defined as set bounds to; restrict. The available cases and fragments of legislative history all seem to have in mind **curtailment** resulting from substitution of **some third party** as a water-supplier for the rural district. Shepardize - Narrow by this Headnote

Prefer this interpretation in the context of domestic surveillance

Ackerman 14 (Spencer, national security editor for Guardian US. A former senior writer for Wired, "Failure to pass US surveillance reform bill could still curtail NSA powers," October 3rd, 2014, http://www.theguardian.com/world/2014/oct/03/usa-freedom-act-house-surveillance-powers)

Two members of the US House of Representatives are warning that a failure to pass landmark surveillance reform will result in a far more drastic curtailment of US surveillance powers – one that will occur simply by the House doing nothing at all. As the clock ticks down on the 113th Congress, time is running out for the USA Freedom Act, the first legislative attempt at reining in the National Security Agency during the 9/11 era. Unless the Senate passes the stalled bill in the brief session following November's midterm elections, the NSA will keep all of its existing powers to collect US phone records in bulk, despite support for the bill from the White House, the House of Representatives and, formally, the NSA itself. But supporters of the Freedom Act are warning that the intelligence agencies and their congressional allies will find the reform bill's legislative death to be a cold comfort. On 1 June 2015, Section 215 of the Patriot Act will expire. The loss of Section 215 will deprive the NSA of the legal pretext for its bulk domestic phone records dragnet. But it will cut deeper than that: the Federal Bureau of Investigation will lose its controversial post-9/11 powers to obtain vast amounts of business records relevant to terrorism or espionage investigations. Those are investigative authorities the USA Freedom Act leaves largely untouched. Section 215's expiration will occur through simple legislative inertia, a characteristic of the House of Representatives in recent years. Already, the House has voted to sharply **curtail domestic** dragnet **surveillance**, both by passing the Freedom Act in May and voting the following month **to ban** the NSA from warrantlessly searching through its troves of international communications for Americans' identifying information. Legislators are warning that the next Congress, expected to be more Republican and more hostile to domestic spying, is unlikely to reauthorise Section 215.

Context is key

O'Niell 45 – O'Niell, Chief Justice, Supreme Court of Louisiana, "STATE v. EDWARDS", 207 La. 506; 21 So. 2d 624; 1945 La. LEXIS 783, 2-19, Lexis

The argument for the prosecution is that the ordinance abolished the three open seasons, namely, the open season from October 1, 1943, to January 15, [*511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the [***6] period of three years. The ordinance does not read that way, or convey any such meaning. According to Webster's New International Dictionary, 2 Ed., unabridged, the word "curtail" means "to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce." The word "abolish" or the word "suspend" is not given in the dictionaries as one of the definitions of the

word "curtail". In fact, in common parlance, or in law composition, the word "curtail" has no such meaning as "abolish". The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. **To declare** that these three open **seasons**, 1943-1944, 1944-1945, and 1945-1946, **"are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing**.¶ Conceding, for the sake of argument, that the authority given by the statute, to each parish, "to curtail the open season, but for not more than three consecutive [***7] years", includes the authority to "abolish" the open season for a continuous period not exceeding three years, the [*512] ordinance in this instance does not purport to "abolish" the open season for the three [**626] consecutive years, or to suspend the right to hunt wild deer, bear or squirrels for the continuous period of three years. If the author of the ordinance intended to abolish the open seasons for hunting wild deer, bear and squirrels for a period of three years, he need not have specified the three annual open seasons, 1943-1944, 1944-1945, and 1945-1946; nor should he have used the word "curtail", with reference to the three annual open seasons, and without indicating the **extent** of the curtailment. It would have been an easy matter to word the ordinance so as to have no open season for hunting wild deer, bear and squirrels in the parish for a period of three years, if the police jury intended -- and if the statute gave the authority to the police jury -- to suspend the right to hunt wild deer, bear and squirrels in the parish for a period of three years.

Also vital to *affirmative ground* – affs that don't terminate the authority will just lose to circumvention

Bendix & Quirk, 15 --- *assistant professor of political science at Keene State College, AND **Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia (March 2015, William Bendix and Paul J. Quirk, "Secrecy and negligence: How Congress lost control of domestic surveillance," http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf, JMP)

Even if Congress at some point enacted new restrictions on surveillance, **the executive might ignore the law and continue to make policy unilaterally**. The job of reviewing executive conduct would again fall to the FISA Court.56 In view of **this court's history of broad deference to the executive**, Congress would have a challenge to ensure that legislative policies were **faithfully implemented**.

"Substantial" means durable

Ballantine's 94 (Thesaurus for Legal Research and Writing, p. 173)

substantial [sub . *stan* . shel] *adj*. abundant, consequential, durable, extraordinary, heavyweight, plentiful ("a substantial supply"); actual, concrete, existent, physical, righteous, sensible, tangible ("substantial problem"); affluent, comfortable, easy, opulent, prosperous, **solvent**.

Ext. Curtail = Remove Authority / Terminate

Curtail means reducing the budget authority for a program – the aff is only a regulatory change

Dembling, 78 – General Counsel, General Accounting Office; (Paul, "OVERSIGHT HEARING ON THE IMPOUNDMENT CONTROL ACT OF 1974" HEARING BEFORE THE TASK FORCE ON BUDGET PROCESS OF THE COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES NINETY-FIFTH CONGRESS SECOND SESSION JUNE 29, 1978, Hein Online)

Application of curtailment procedure.-The review procedure is triggered by an executive branch decision to 'curtail" a program which has been made subject to the bill. The definition of "curtail" (subsection (a)(3)) requires that the executive branch decision result in a **reduction of budget authority** applied in furtherance of the program. As noted above, the level of budget authority for this purpose would be the amount so specified in an appropriation act. The reduction relates to the use of funds "in furtherance of the program." Thus, although the full amount of budget authority may be spent in some manner, e.g., to pay contract termination costs or other liabilities incident to the curtailment, such a use of funds still involves a reduction in funding for affirmative program purposes which triggers the review provisions.

Curtailment review procedure.-The review procedure would generally be similar to the procedure for reviewing deferrals of budget authority under the Impoundment Control Act, except that congressional disapproval would take the form of a concurrent resolution. The President would report a proposed curtailment decision to Congress, together with appropriate information (subsection (b)), and supplementary reports would be made for any revisions (subsection (c)(3)). The proposal, and any supplementary reports, would be printed in the Federal Register (subsection (c)(4)).

Curtailment requires a removal of authority

May and Ides 7 - James P. Bradley Professor of Constitutional Law at Loyola Law School; Professor of Law at Loyola Law School and former Chief Judge of the United States Court of Appeals for the Fourth Circuit (Christopher and Allan, Constitutional Law National Power and Federalism: Examples and Explanations, Aspen Publishers, 2007, p. 312-313)//DBI

Assigning Removal Authority to an Executive Official Other Than the President

While Congress cannot participate directly in the removal of executive or judicial officers other than through impeachment, Congress can in other ways **curtail the President's ability to remove executive officers**. One possibility is to **vest the authority to remove a particular official in some executive branch official other than the President**. For example, federal law provides that "[e]ach assistant United States attorney is subject to removal by the Attorney General" 28 U.S.C. §542(b). If the President wanted to fire an assistant US attorney, she could not dismiss that officer herself but would have to go through the attorney general. If the attorney general refused to comply with the President's wishes, the President would have to dismiss the attorney general and name a successor willing to carry out the President's wishes. By thus shielding front-line federal prosecutors from direct

removal by the President, Congress has to a limited degree insulated federal law enforcement operations from executive or political control.

To curtail means to end

Merriam-Webster, 15 ('curtail', http://www.merriam-webster.com/dictionary/curtail

Full Definition of CURTAIL

transitive verb

: to make less by or as if by **cutting off or away some part** <curtail the power of the executive branch> <curtail inflation>

Ext. Must Include 3rd Party

Curtailment must be done by a third party—prefer contextual definitions

Sugiyama and Perry 6 - *University of Michigan Law School, expected JD 2007; **University of Michigan Law School, JD 2006 (Tara and Marisa, "THE NSA DOMESTIC SURVEILLANCE PROGRAM: AN ANALYSIS OF CONGRESSIONAL OVERSIGHT DURING AN ERA OF ONE-PARTY RULE", University of Michigan Journal of Law Reform, Fall 2006, http://heinonline.org/HOL/Page?handle=hein.journals/umijlr40&div=10&g_sent=1&collection=journals) //DBI

Congress designed FISA to curtail executive authority for surveillance rather than for law enforcement purposes.6 FISA limited warrantless surveillance to "foreign powers" and surveillance under court order to situations where probable cause justified surveillance of a "foreign power" or an "agent of a foreign power."3 7 As a result, Congress approved surveillance under FISA only where its purpose was intelligence gathering. That limitation fell with the Twin Towers on September 11,2001.

It's predictable—Congress empirically curtails executive powers

Zelizer 8 - Professor of History and Public Affairs at Princeton University (Julian, "THE CONSERVATIVE EMBRACE OF PRESIDENTIAL POWER", Boston University Law Review, April 2008, http://heinonline.org/HOL/Page?handle=hein.journals/bulr88&div=23&g_sent=1&collection=journals)// DBI

Richard Nixon demonstrated how the executive could use presidential power as a force against liberalism when he relied on that power to implement budget cuts and achieve his military objectives.6 Conservative interest in presidential power accelerated between 1973 and 1978 as **Congress passed reforms to curtail the executive branch's power**. During Gerald Ford's and Jimmy Carter's presidencies, congressional reforms to constrain the extra-constitutional powers and common abuses of presidents angered many conservatives. In 1978, for example, Congress passed the Foreign Intelligence Surveillance Act ("FISA"), subjecting domestic surveillance to court supervision. 7 Given the battles of the era, conservatives saw the congressional reforms of the executive branch as a liberal objective.

Theory

The counterplan's a core question on in the context of domestic surveillance and national security

Sales 12

Sales 2012 – Assistant Professor of Law, George Mason University School of Law (7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, "Self-Restraint and National Security/NV

With this framework in mind, we can begin to offer some preliminary hypotheses about why national security officials sometimes adopt selfrestraints. From a policymaker's standpoint, the expected benefits of a **national security operation** often will be dwarfed by its expected costs (enemy propaganda, loss of national prestige, individual criminal liability, and so on). **For rational policymakers, the welfare maximizing choice sometimes will be to avoid bold and aggressive operations**. Reviewers likewise can find inaction to be welfare maximizing. For an influence- and autonomy-maximizing reviewer, vetoing an operation proposed by a bureaucratic competitor can redistribute power and turf away from one's rival and to oneself. Operators, by contrast, are likely to have a very different cost-benefit calculus. An operator's expected benefits typically will be larger than a policymaker's or a reviewer's, because he will account for the psychic income (such as feelings of exhilaration and satisfaction) that accrues to those who personally participate in a mission. As a result, rational operators may regard a given operation as welfare-enhancing even when policymakers and reviewers regard the same mission as welfare reducing.

Executive Self-Restraint---NDI 2015

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The President of the United States, through an Executive Order, should <plan>

Executive orders are the most flexible tool to change current legislation

Erica **Newland 15,** Yale Law School, J.D., April 2015, "Executive Orders in Court", Yale Law Review, http://www.yalelawjournal.org/note/executive-orders-in-court

This Note has discussed the doctrinal asymmetries that characterize the "jurisprudence" of executive orders. Just like statutory law, executive orders can impose legal obligations on citizens and create new powers for the federal government, and they can be harnessed to alter the judicially acknowledged meaning of statutory language. At least some, and possibly all, valid executive orders can preempt conflicting state law.

But unlike statutes, under current doctrine and practice, executive orders do not similarly constrain those who do the governing. Their imprecision about the sources and boundaries of their authority, especially in "[t]he absence of a framework for review," does "nothing to check the incentives of the president and his counsel to seek the widest possible construction of the president's authority."242 Indeed, the courts have generally, and generously, affirmed these capacious constructions, at least where courts lack direct guidance from other areas of the law. Meanwhile, the President can wish away many uncooperative executive orders, without risk of lawsuit, rendering these instruments fair-weather friends for everyone but the President himself.

This Note has suggested that this jurisprudence of executive orders may not derive from any coherent doctrine of presidential exceptionalism but instead from an under-theorized understanding of the role of executive orders and how they should function as part of our separation of powers. The doctrinal imbalances highlighted here should motivate further study of executive orders and of the doctrine that has developed around them. Does this doctrine, some of it quite old, suggest that the aforementioned asymmetries have become a gloss on our constitutional design? Given the diverse genealogies of different types of executive orders, is the term "executive order" itself misleadingly broad? Are courts in fact intentionally buttressing the executive order—perhaps as a tool that preserves flexibility that the modern presidency requires?243 Or have courts failed to realize that in the shadows of this inchoate doctrine, executive orders—as repeat players in the push and pull of debates over the separation of powers—have taken on a life of their own?

Executive action on surveillance involves internal checks on the executive branch which solves the aff

Nathan Alexander **Sales 14**, Associate Professor of Law, Syracuse University College of Law, Summer 2014, "NSA SURVEILLANCE: ISSUES OF SECURITY, PRIVACY AND CIVIL LIBERTY: ARTICLE: Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", LexisNexis, 10 ISJLP 523

In addition to oversight by outsiders, a programmatic surveillance regime also should feature a system of internal checks within the executive branch, to review collection before it occurs, after the fact, or both. As for the ex ante checks, internal watchdogs should be charged with scrutinizing proposed bulk collection to verify that it complies with the applicable constitutional and statutory rules, and also to ensure that appropriate protections are in place for privacy and civil liberties. The Justice Department's Office of Intelligence is a well known example. The unit, which presents the government's surveillance

applications to the FISA court, subjects these requests to exacting scrutiny with the goal of increasing the likelihood of surviving judicial review. n65 Indeed, the office has a strong incentive to ensure that the applications it presents are airtight, so as to preserve its credibility with the FISA court. n66 Ex post checks include such commonplace mechanisms as agency-level inspectors general, who can audit bulk collection programs, assess their legality, and make policy recommendations to improve their operation, as well as entities like the Privacy and Civil Liberties Oversight Board, which perform similar functions across the executive branch as a whole. Another important ex post check is to offer meaningful whistleblower protections to officials who know about programs that violate constitutional or statutory requirements. Allowing officials to bring their concerns to ombudsmen within the executive branch (and then eventually to Congress) can help root out lawlessness and also relieve [*539] the felt necessity of leaking information about highly classified programs to the media. These and other internal checks can achieve all three of the benefits promised by traditional judicial and legislative oversight--executive branch watchdogs can veto surveillance they conclude would be unlawful, the mere possibility of such vetoes can chill overreach, and increasing the costs of monitoring can redirect scarce resources toward truly important surveillance. External and internal checks thus operate together as a system; the two types of restraints are rough substitutes for one another. If outside players like Congress and the courts are subjecting the executive's programmatic surveillance activities to especially rigorous scrutiny, the need for comparably robust safeguards within the executive branch tends to diminish. Conversely, if the executive's discretion is constrained internally through strict approval processes, audit requirements, and so on, the legislature and judiciary may choose not to hold the executive to the exacting standards they otherwise would. In short, certain situations may have less need to use traditional interbranch separation of powers and checks and balances to protect privacy and civil liberties because the executive branch is subject to an "internal separation of powers" n67 that can accomplish much the same thing.

Mechanism

XO

Solvency---General

Presidents use XOs to make policy and exercise emergency power – key to administrative procedures

Kenneth R. **Mayer '99**, Political science professor at the University of Wisconsin-Madison, "Executive Orders and Presidential Power", http://www.jstor.org/stable/pdf/2647511.pdf?acceptTC=true

Executive orders are important to presidents, and their use reflects much more than simple administrative routines or random noise. Presidents use them to make substantive policy, exercise emergency powers, strengthen their control over executive branch agencies and administrative processes, emphasize important symbolic stances, and maintain their electoral and governing coalitions. Their use varies in predictable ways in accordance with substantive changes in political context.

The president's power to make policy through executive orders has grown along with, and has reinforced, the expansion of executive branch responsibilities. Some of this authority has been delegated to the president by Congress, but presidents have also simply assumed unilateral policymaking powers, especially in national security and foreign policy matters (Koh 1990; Fisher 1995). The expansion of the executive branch and the institutionalization of the presidency has provided the president with increased power over policy implementation and administrative procedures. One proponent of this "Administrative Presidency" thesis is Moe (1985, 1993, 1995; see also Nathan 1983; Durant 1992), who argues that presidents have a substantial reservoir of authority that allows them to make many substantive decisions on their own. Even within the narrower confines of their executive authority, presidents can make significant policy choices. "They can organize and direct the presidency as they see fit, create public agencies, reorganize them, move them around, coordinate them, impose rules on their behavior, put their own people in top positions, and otherwise place their structural stamp on the executive branch" (Moe 1993, 366).

Executive Orders can solve for important policy issues- empirics prove

Kevin **Stack 5,** Assistant Professor of Law, Benjamin N. Cardozo School of Law, January 2005, "The Statutory President", Iowa Law Review, 90 Iowa L. Rev. 539, https://discoverarchive.vanderbilt.edu/bitstream/handle/1803/6465/Statutory%20President.pdf?sequence=1

Modern presidents have used presidential orders to initiate many of their most important policies. n20 The president may issue or repeal prior presidential orders on his own initiative, and in almost all cases, may do so without having to satisfy any procedural requirements. n21 Moreover, with appropriate constitutional or statutory authorization, these orders may have the force and effect of law. n22 As a result, presidential orders often leave other institutions, such as Congress, administrative agencies and the courts, as well as the public in the position of responding to or implementing the policy and law they embody.

Scope of Use. Presidents have asserted power unilaterally through presidential orders since the time of the Founding. n23 In 1793, Washington issued the Neutrality Proclamation, which proclaimed the neutrality of the United States in the conflict between Britain and France, without statutory authority to do so. n24 Marbury v. Madison itself arose from a challenge to the validity of an order from President

Jefferson to his Secretary of State, James Madison, to withhold William Marbury's judicial commission. n25 Executive and other presidential orders have been the source of a wide range of significant moments in national life. n26 Executive orders or proclamations [*549] declared the emancipation of slaves in confederate states, n27 the suspension of the writ of habeas corpus during the Civil War, n28 the internment of the Japanese-Americans during World War II, n29 the desegregation of the military, n30 the establishment of the government's security classification system, n31 and the imposition of centralized executive review of agency regulations. n32 Presidential orders are clearly a significant source of law and policy.

[*550] The patterns of presidents' use of executive orders have been the subject of recent empirical studies. n33 The sheer number of executive orders issued per year has declined from the peak it reached during the New Deal and World War II. n34 This decline in the gross number of orders does not, however, correspond to a diminution in the importance of executive orders as a policymaking tool. On the contrary, the significance of the president's assertions of authority through executive and other presidential orders has increased in the twentieth century. "Whereas at the turn of the century presidents issued only a handful of important executive orders in their entire term," Terry Moe and William Howell report, "now presidents can be expected to issue between 15 and 20 important orders every year." n35 Likewise, using slightly different criteria to judge significance, Kenneth Mayer concludes that since the 1970s, on average, presidents have issued about fourteen significant executive orders per year. n36 Moreover, the percentage of presidential orders that apply to the general public has increased dramatically. n37 Nor are there indications that the perceived importance of presidential orders to the president is declining. n38

Solvency---Gridlock/Effectiveness

XOs let the president enact a policy agenda despite gridlock

Megan **Covington 12**, School of Engineering, Vanderbilt University, "Executive Legislation and the Expansion of Presidential Power", http://ejournals.library.vanderbilt.edu/index.php/vurj/article/view/3556

Presidents in recent years have had more opportunities to expand their power and authority, largely through the use of executive legislation. Allowing the president to act decisively and without consulting Congress, executive orders and the other forms of executive legislation provide the president with a variety of options to enact in order to accomplish his policy agenda, especially in the event of gridlock or divided government. This expansion of presidential power comes at a time when the decline of party strength and increase in polarization have made Congress less able and less willing to respond to executive legislation. With the Supreme Court generally unwilling to overturn executive orders and the public largely ignorant of their existence – not to mention the existence of proclamations, signing statements, memoranda, or executive agreements – there is no viable way to challenge the president's increased ability to act unilaterally. Although it does not enable the president to rule as a dictator, executive legislation is dangerous in that it remains unchecked and has been used to violate the constitutional principles of separation of powers and checks and balances, principles the Founding Fathers intended to keep any one of the three branches of government from becoming more powerful than the others and thus threatening the stability of the nation. The president's ability to act unilaterally to accomplish his goals, both domestically and in terms of foreign policy, has sharply increased since the presidency of Ronald Reagan and will continue to rise, providing the potential for continued and more serious abuses of executive authority in the future.

Solvency---History/Empirics

History proves- Executive orders allow government self restraint

Nathan Alexander **Sales, 12**, Associate Professor of Law, Syracuse University College of Law, "Self restraint and National Security", http://jnslp.com/wp-content/uploads/2012/08/08__Sales_Master_6-28-12-NS.pdf

A prime example of how bureaucratic jockeying for influence and autonomy can result in self restraint is Executive Order 13491, which holds all counterterrorism interrogations to the Army Field Manual standards. During the presidential transition from late 2008 into early 2009, the incoming White House Counsel's Office prepared a draft executive order that would extend the AFM restrictions to the CIA. Officials at Langley and other intelligence agencies bitterly contested the proposal, but their arguments ultimately fell on deaf ears; the President signed the order his second full day in office.202 By successfully lobbying the President to adopt the AFM restrictions, and by vetoing the CIA's preferred interrogation practices, the lawyers in the Counsel's Office magnified their turf; their victory expanded their share of the influence pie and shrunk the CIA's by a corresponding amount. When the President sat down to chart a new course in the nation's interrogation policies, it wasn't the CIA Director or even the Director of National Intelligence, the titular head of the intelligence community, who was whispering in his ear. It was his lawyer. Indeed, the Counsel's Office managed the interagency policymaking process so tightly that Michael Hayden, then the head of the CIA, never actually saw a draft of the order before it was issued. "You didn't ask," he reportedly told the White House the morning the directive would be issued, "but this is the CIA officially nonconcurring."203 The Counsel's Office had combined a clear policy vision and savvy bureaucratic maneuvering to make itself "an instant power center" in the young administration.204

Drones

Drone Court

Executive branch National security court is the best option for curtailing drone surveillance

Neal K. **Katyal 2/22/13**, former acting solicitor general, is a professor of national security law at Georgetown and a partner at the law firm Hogan Lovells, “Who will mind the drones?”, Lexis Nexis

In the wake of revelations about the Obama administration's drone program, politicians from both parties have taken up the idea of creating a ''drone court'' within the federal judiciary, which would review executive decisions to target individuals.

But the drone court idea is a mistake. It is hard to think of something less suitable for a federal judge to rule on than the fast-moving and protean nature of targeting decisions.

Fortunately, a better solution exists: a ''national security court'' housed within the executive branch itself. Experts, not generalists, would rule; pressing concerns about classified information would be minimized; and speedy decisions would be easier to reach.

There is, of course, a role for federal courts in national security. In 2006, I argued and won Hamdan v. Rumsfeld, a Supreme Court case that struck down President George W. Bush's use of military tribunals at Guantánamo Bay. But military trials are a far cry from wartime targeting decisions.

And the Foreign Intelligence Surveillance Court, which reviews administration requests to collect intelligence involving foreign agents inside the country and which some have advocated as a model for the drone court, is likewise appropriately housed within the judicial system - it rules on surveillance operations that raise questions much like those in Fourth Amendment ''search and seizure'' cases, a subject federal judges know well.

But there is no true precedent for interposing courts into military decisions about who, what and when to strike militarily. Putting aside the serious constitutional implications of such a proposal, courts are simply not institutionally equipped to play such a role.

There are many reasons a drone court composed of generalist federal judges will not work. They lack national security expertise, they are not accustomed to ruling on lightning-fast timetables, they are used to being in absolute control, their primary work is on domestic matters and they usually rule on matters after the fact, not beforehand.

Even the questions placed before the FISA Court aren't comparable to what a drone court would face; they involve more traditional constitutional issues - not rapidly developing questions about whether to target an individual for assassination by a drone strike.

Imagine instead that the president had an internal court, staffed by expert lawyers to represent both sides. Those lawyers, like the Judge Advocate General's Corps in the military, would switch sides every few years, to develop both expertise as repeat players and the ability to understand the other point of view.

Other

PCLOB Attorney Pool

PCLOB attorney pool will solve constitutional implications of FISA court

Greg **Sargent 7/25/13**, former reporter for The New York Observer and a former columnist for New York magazine , "Reform of NSA surveillance is probably inevitable", http://www.washingtonpost.com/blogs/plum-line/wp/2013/07/25/reform-of-nsa-surveillance-is-probably-inevitable/

Here's the latest: Dem Rep. Adam Schiff of California — one of the lawmakers leading the push for NSA reform — plans to introduce a new proposal that would deal with one of the worst problems with the programs: The fact that the Foreign Intelligence Surveillance Court only hears from the government when deciding whether to authorize surveillance.

Schiff's proposal will require the Privacy and Civil Liberties Board — an agency within the Executive Branch that is supposed to monitor the balance between anti-terror policies and civil liberties — to create a pool of attorneys with experience in Fourth Amendment or national security law to argue the side of the public when the government requests a surveillance warrant. Under the proposal, the FISA court would be required to appoint a lawyer to act as a kind of "public advocate" for cases that would have broad constitutional implications.

"What we have in mind is to use the Privacy and Civil Liberties board to generate a pool of attorneys, in consultation with the Justice Department, that will be cleared and can provide a contrary view in significant FISA court cases," Schiff told me today. "The court will have the benefit of hearing contrary views and contrary case law."

"These attorneys that would have the same access to classified material and same right of appeal as would the government's attorneys," Schiff continued. He noted that the proposal was still being drafted, and key details — such as how to define the cases that would require this step, and how to ensure that the FISA court follows this directive — are still being worked out.

"There has to be a mechanism to ensure the presentation of contrary views," Schiff continued. "If it is entirely left to the FISA court there won't be a lot of public confidence in it."

Solvency

General

Executive Action Good

Solves and avoids the link to politics

Dino P. **Christenson and** Douglas L. **Kriner, 15**, Assistant Professors of Political Science, Boston University, Spring 2015, "SYMPOSIUM: EXECUTIVE DISCRETION AND THE ADMINISTRATIVE STATE: POLITICAL CONSTRAINTS ON UNILATERAL EXECUTIVE ACTION", LexisNexis, 65 Case W. Res. 897

Recent presidents have boldly acted unilaterally to effect major changes in public policy on issues ranging from the prosecution of the [*931] war on terror to overhauling the nation's immigration system. These seemingly brazen assertions of unilateral presidential power are frequently decried as evidence of presidential aggrandizement that threatens to upset the delicate balance of power between the branches carefully erected by the Framers. It is little wonder that contemporary presidents have increasingly turned to unilateral measures to pursue their policy objectives. As the dominant paradigm in the literature clearly articulates, presidents enjoy significant institutional advantages vis-à-vis the legislature when acting unilaterally. By acting first, presidents seize the initiative and force other politicalactors to overcome their own institutional barriers to overturn policy changes effected by the executive with the stroke of a pen. Given the collective action dilemma that hinders congressional efforts at institutional self-defense, a legislative process riddled with transaction costs, and the looming threat of a presidential veto, Congress has always faced long odds when endeavoring to undo a presidential unilateral action through legislation. In a highly polarized polity, in all but the rarest of circumstances Congress would appear all but incapable of doing so.

ESR solves—Obama does this all the time

Nathan Alexander **Sales 12**, Associate Professor of Law, Syracuse University College of Law, August 29, 2012, "SELF RESTRAINT AND NATIONAL SECURITY", http://www.law.gmu.edu/assets/files/publications/working_papers/1041SelfRestraintandNationalSecurity.pdf

One example of a self-imposed restraint is Executive Order 13491, which limits counterterrorism interrogations – including those conducted by intelligence agencies like the CIA – to the techniques listed in the Army Field Manual. The AFM prohibits or severely restricts a number of fairly mild interrogation methods such as shouting, low-grade threats, the "good cop bad cop" routine, solitary confinement, and other staples of garden-variety law enforcement investigations. A second example, sketched above, is the government's onetime reluctance to use targeted killings against Osama bin Laden and other figures, despite its belief that doing so would be consistent with domestic and international laws against assassination. Third, lawyers in the Judge Advocate General corps sometimes reject military strikes that would be permissible under the laws of war, but that they regard as problematic for moral, economic, social, or political reasons. A fourth example is the Justice Department's erection of a "wall" that restricted information sharing between intelligence officials and criminal investigators, despite the fact that the governing statute (the Foreign Intelligence Surveillance Act of 1978) contained no such limits, and despite the fact that the governing DOJ guidelines established mechanisms for swapping such data. The question then becomes why officials adopt these restraints even when they believe them to be legally unnecessary. Two possible explanations come to mind. First, self restraint might result from systematic risk aversion within military and intelligence agencies. This aversion stems from the asymmetry between the expected costs and benefits of national security operations; officials usually have more to lose from being aggressive than they have to gain. In particular, operations – even concededly lawful ones – can inspire (describing the "cycles of timidity and aggression" in intelligence operations). The rational choice principles applied in this article can help explain why. See infra Part II.A.2 (discussing costs of national security operations). During a crisis, officials' expected

costs of inaction can be quite significant. Policymakers justifiably worry that, if the nation's security suffers on their watch, voters will hold them accountable at the ballot box. These concerns can influence the behavior of the lawyers who review proposed national security operations. To the extent lawyers approve or reject operations based on whether they would promote policymakers' welfare, see infra Part II.C, policymaker concerns about being perceived as "weak on security" will tend to yield fewer restraints. Alternatively, to the extent lawyers issue vetoes to promote their own welfare, see infra Part III.C, policymakers' preferences for aggressive operations likewise will tend to yield fewer restraints. (A lawyer who vetoes a course of action favored by policymakers risks alienating them. See infra note 200 and accompanying text.) Absent such a crisis environment, policymakers' expected costs of inaction may seem lower. In these circumstances, we should expect to see more self restraint. 4 adversaries to launch demoralizing propaganda campaigns accusing the United States of war crimes, can sap the willingness of allies to assist this country, and can even result in criminal prosecutions or private lawsuits against the responsible officials.5 While all national security players exhibit some degree of risk aversion, some are more averse than others. In particular, the senior government officials who ultimately approve operations, and the lawyers who review them for legality, seem to have even less appetite for risk than the operators who actually carry them out. Military and intelligence lawyers therefore will veto interrogation methods, targeted killings, military strikes, or information-sharing arrangements when they calculate – as they often will – that their costs exceed their benefits. Second, self restraint might result from bureaucratic "empire building,"6 as lawyers and other officials seek to magnify their clout by vetoing operations planned by their inter-agency (and sometimes intra-agency) competitors. Military and intelligence officials seek to maximize the influence they hold over senior policymakers, as well as their autonomy to pursue the priorities they deem important. One way for an agency to do that is to interfere with rivals' plans. A bureaucratic player doesn't gain power by approving whatever mission its competitor wants. It gains power by saying no, because its obstruction forces the competitor to be responsive to its concerns. Reviewers in the government's national security apparatus therefore will tend to veto operations planned by other entities in a bid to enhance their own welfare. A few preliminary observations are needed. First, the restraints described in this article aren't simply examples of officials dutifully adhering to the legal requirements spelled out in statute books and judicial decisions. Instead, officials are supplementing those requirements. They are invoking non-legal norms such as moral and diplomatic considerations to constrain operations that the law authorizes them to conduct (or, more precisely, that they believe the law authorizes them to conduct). Second, this is not a normative analysis. I am not concerned with the question whether coercive interrogations, targeted killings, free-wheeling military strikes, or permissive information sharing arrangements represent sound policy. Nor do I express any opinion on whether self restraint in general, or any particular operational limit, is desirable. Opinions vary widely on those issues.7 The questions this article poses and tries to answer are 5 Commentators have a term for these kinds of accusations: "lawfare." The concept, which was popularized in a 2001 paper by Air Force Major General (then-Colonel) Charles Dunlap, refers to "a method of warfare where law is used as a means of realizing a military objective." Charles J. Dunlap, Jr., Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts 5 (2001) [hereinafter Dunlap, Military Interventions]. Lawfare is said to encompass a wide range of conduct, from mere propaganda, to using lawyers to communicate with captured combatants, to challenging military or intelligence operations in court. See GOLDSMITH, supra note 3, at 58-64; Tung Yin, Boumediene and Lawfare, 43 RICH. L. REV. 895, 879-87 (2009). To the extent that selfimposed restraints seek to preempt adversaries from making lawfare allegations, they may be thought of as a form of "friendly fire lawfare." descriptive (To what extent is the government tying its own hands?) and analytical (What accounts for the government's tendency to tie its own hands?). Third, this article ventures no opinion on whether officials are actually correct in believing that the applicable legal principles allow them to undertake the operations in question. Those conclusions are all debatable. My point of departure is that the government believes – rightly or not – that the conduct at issue is permissible. The question then becomes why officials nevertheless rule out national security operations that, by their lights, are perfectly legal.

Obama can stop enforcement of the law

Rachel E. **Barkow 15**, Segal Family Professor of Regulatory Law and Policy and Faculty Director, Center on the Administration of Criminal Law, New York University School of Law, June 2015, "CLEMENCY AND PRESIDENTIAL ADMINISTRATION OF CRIMINAL LAW", http://www.lexisnexis.com.turing.library.northwestern.edu/hottopics/lnacademic/

Several of President Obama's most important domestic policy initiatives involve decisions not to enforce federal law. n1 In 2012, the Obama Administration announced that it would not enforce removal provisions in the Immigration and Nationality Act against "certain young people who were brought to

this country as children and know only this country as home." n2 In 2014, President Obama went even further on the immigration front by issuing an executive directive that [*804] would allow up to five million people to avoid deportation. n3 President Obama also turned to his enforcement discretion to address the backlash from those who discovered they could not keep their health insurance policies for failure to meet minimal requirements under the Affordable Care Act (ACA). President Obama campaigned for the law with a pledge that under the ACA, "if you like your plan, you can keep it." n4 To keep that promise, he told insurance companies he would refuse to enforce those provisions of the law that would require cancellation of the policies, at least through 2014. Enforcement discretion has been equally important in criminal policymaking in the Obama Administration. In the wake of state legislation in Washington and Colorado to legalize marijuana, the Department of Justice (DOJ) announced that the federal government would focus its enforcement actions to prevent specific harms. n5 The DOJ suggested that if a case fell outside those areas, it would not be prosecuted even if it violated the letter of the Controlled Substances Act. n6 The DOJ provided similar guidance about what cases would be prosecuted federally in those states that have legalized medical marijuana. n7 [*805] DOJ's enforcement policies have not been limited to federalism issues. In the summer of 2013, the DOJ announced new charging policies in all drug cases that could trigger mandatory minimum sentences. n8 Whereas previous DOJ policies had required prosecutors to charge the most serious readily provable offense, n9 the current charging policy instructs prosecutors that "severe mandatory minimum penalties are reserved for serious, high-level, or violent drug traffickers" - thus, prosecutors should not charge quantities necessary to trigger mandatory minimum sentences as long as certain criteria are met. n10

Internal Checks

Plenty of internal checks means executive curtailing of surveillance solves best

Nathan Alexander **Sales 14**, Associate Professor of Law, Syracuse University College of Law, , "NSA SURVEILLANCE: ISSUES OF SECURITY, PRIVACY AND CIVIL LIBERTY: ARTICLE: Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", LexisNexis, 10 ISJLP 523

In addition to oversight by outsiders, a programmatic surveillance regime also should feature a system of internal checks within the executive branch, to review collection before it occurs, after the fact, or both. As for the ex ante checks, internal watchdogs should be charged with scrutinizing proposed bulk collection to verify that it complies with the applicable constitutional and statutory rules, and also to ensure that appropriate protections are in place for privacy and civil liberties. The Justice Department's Office of Intelligence is a well known example. The unit, which presents the government's surveillance applications to the FISA court, subjects these requests to exacting scrutiny with the goal of increasing the likelihood of surviving judicial review. n65 Indeed, the office has a strong incentive to ensure that the applications it presents are airtight, so as to preserve its credibility with the FISA court. n66 Ex post checks include such commonplace mechanisms as agency-level inspectors general, who can audit bulk collection programs, assess their legality, and make policy recommendations to improve their operation, as well as entities like the Privacy and Civil Liberties Oversight Board, which perform similar functions across the executive branch as a whole. Another important ex post check is to offer meaningful whistleblower protections to officials who know about programs that violate constitutional or statutory requirements. Allowing officials to bring their concerns to ombudsmen within the executive branch (and then eventually to Congress) can help root out lawlessness and also relieve [*539] the felt necessity of leaking information about highly classified programs to the media. These and other internal checks can achieve all three of the benefits promised by traditional judicial and legislative oversight--executive branch watchdogs can veto surveillance they conclude would be unlawful, the mere possibility of such vetoes can chill overreach, and increasing the costs of monitoring can redirect scarce resources toward truly important surveillance. External and internal checks thus operate together as a system; the two types of restraints are rough substitutes for one another. If outside players like Congress and the courts are subjecting the executive's programmatic surveillance activities to especially rigorous scrutiny, the need for comparably robust safeguards within the executive branch tends to diminish. Conversely, if the executive's discretion is constrained internally through strict approval processes, audit requirements, and so on, the legislature and judiciary may choose not to hold the executive to the exacting standards they otherwise would. In short, certain situations may have less need to use traditional interbranch separation of powers and checks and balances to protect privacy and civil liberties because the executive branch is subject to an "internal separation of powers" n67 that can accomplish much the same thing.

Executive action solves internal self restraint

GILLIAN E. **METZGER, 15**, Professor of Law, Columbia Law School, April 2015, "ARTICLE: The Constitutional Duty To Supervise", Yale Law Review, LexisNexis, 124 Yale L.J. 1836

These limits to congressional and judicial review do not mean that the executive branch operates essentially unconstrained in instances of crisis governance or presidential action. But the relevant constraints come largely from within the executive branch itself, through what is sometimes called the

internal separation of powers: internal review structures, involvement of multiple agencies, inspectors general, agency-generated procedural and substantive limitations, professional commitments and reputational concerns, and executive branch adherence to governing law. n84 In other words, systemic features of internal administration are again critical to ensuring accountable government. Moreover, it bears emphasizing that presidential administration and supervision themselves can be key mechanisms for ensuring executive branch accountability. Justice (then-Professor) Kagan famously emphasized the political accountability benefits of presidential administration, and others have focused on the ways that presidential or centralized review can check agency capture or excessive tunnel vision. n85 In some instances, such as the Obama Administration's instructions to agencies to grant same-sex couples equal rights in a range of contexts after United States v. Windsor, presidential direction helps enforce legal constraints. n86 Hence, assessing the constitutionality of the President's expanded role entails close attention to systemic administrative features and their full impact on how the government operates.

Threat Handling

Executive Action is necessary to handle immediate threats-Temporality of threats prevents their DAs to the Executive

Victor **Hansen 9,** Professor of Law, New England Law, Boston, 2009, "PART I: TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS", William Mitchell Law Review, 35 Wm. Mitchell L. Rev. 5041, Lexis

Assessment of national security exigencies, like their Fourth Amendment counterparts, also must consider the seriousness of the threat and the potential harm to American interests. National security threats pose various degrees of harm, and not every action to prevent future harm requires unilateral executive action. Efforts to gather evidence and information about terrorist cells and future terrorist activity may be more like normal law enforcement investigatory and evidence-gathering activities, all of which we know may be effectively accomplished within the strictures of the warrant requirement and like legal regimes.

Similarly, the fact that the United States has suffered terrorist attacks in the past does not create an ongoing exigent circumstance that lasts in perpetuity. At some point after a threat comes to fruition, the immediate danger will end. When it does, the exigency no longer exists, and the need for unilateral executive action also ends. Were this not the case, the President would enjoy unchecked authority to act unilaterally from first contact with the enemy until the President alone decided the threat no longer existed, effectively delaying any real possibility of timely assessments of the efficacy of his actions.

The freshness and credibility of the information and evidence giving rise to a national security threat should also be considered in determining whether a true exigency exists. Information that is recent and specific may justify emergency executive action. As in the Fourth Amendment context, however, stale information, evidence, or intelligence alluding to events that have already taken [*5046] place, or information that is of uncertain reliability would not justify either a warrantless search or the unilateral exercise of exigent-circumstances authority by the executive.

Further, in considering the scope of exigent circumstances, the U.S. Supreme Court has often sought to determine the availability of less intrusive alternatives to warrantless searches. Similar considerations are appropriate in respect to the President's response to national security threats. Those threats might run the spectrum from true exigencies to inconsequential information, and there are likely to be many threats which should be taken seriously, but do not rise to the level of an exigency. In these cases, the President should look for alternatives to unilateral action that allow Congress to both consult and perform its oversight functions.

In those cases in which an exigency does exist and unilateral executive action is justified, care must be taken to honor appropriate limits on the scope and proportionality of the President's actions lest the exigency exception swallow the constitutional requirements of oversight and accountability. It is equally important to ensure that unilateral actions by the President in response to national security threats are commensurate with the scope of the exigency. Police in hot pursuit of a suspect may search a home where they believe the suspect is hiding, to locate the suspect or his confederates and to eliminate potential threats to police safety. But the police may not engage in a warrantless search of the entire home to look for contraband or other possible evidence of the crime. So, too, when U.S. forces are

pursuing terrorists, their actions must be limited to ensure that the exigency does not become an excuse - or a subterfuge - to engage in actions unrelated to the exigency at hand, particularly actions that potentially infringe upon the rights and interests of American citizens.

Finally, perhaps the signal check on the executive's exigent circumstances authority is the most obvious: temporality. Once a threat in fact dissipates, for whatever reason, so too does the President's need to act unilaterally. At that point, the President must honor the requirements of our constitutional structure and seek congressional authorization and the oversight that comes with such authorization.

Speed

CP's key to speed and rapid response to national security issues

Kenneth R. **Mayer, 1**, Professor of Political Science at Wisconsin University, "With the stroke of a Pen", 2001 Pg. 75-6

The second presidential advantage in the institutional setting is the ability to act first, leaving it up to other institutions to reverse what presidents have done. Whether presidents have effective plenary executive authority or not (an open question), there is no doubt that they can take action faster and more efficiently than either Congress or the courts. Congress as a collective organization takes definitive action through the legislative process, which is cumbersome, difficult to navigate, and characterized by multiple veto points. Even when Congress can create and sustain majorities at the subcommittee, committee, floor, and conference stages, the president can use the veto power to raise the bar from a simple majority to a two-thirds majority necessary to enact legislation over the president's objection. The president, at the same time, "has a trump card of great consequence in his struggle against Congress for control of government. He can act unilaterally in many matters of structure."'' The president, in effect, can often make the first move in these disputes, forcing Congress to take positive action to undo what the president has created. Similarly, the judiciary can overturn executive actions (as it did in rejecting Clinton's 1995 replacement worker executive order[…]"

Specific Internal Links/Affs

Transparency

Transparent Executive decision making is crucial to signaling honesty and integrity as well as building presidential credibility

Eric **Posner 7,** Professor of Law at The University of Chicago Law School, 8/10/2007, "The Credible Executive", University of Chicago Law Review, 74 U. Chi. L. Rev. 865, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles

The well-motivated executive might commit to transparency as a way to reduce the costs to outsiders of monitoring his actions." The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive's decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will tend to exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.

Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political preferences opposite to those of the president. Thus, George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking and perhaps even to classified intelligence,' with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency-no one expects meetings of the National Security Council to appear on C-SPAN-but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.

Executive transparency is key to develop credibility for surveillance negotiations

Sudha **Setty 15,** Professor at Western New England University School of Law, 2015, "Surveillance, Secrecy, and the Search for Meaningful Accountability", 51 STAN. J. INT'L L 16, http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol

These rights-protective perspectives-offered by justices with different political and theoretical perspectives-may offer a preview of a significant jurisprudential shift not only in hearing security-related cases on their merits, but in finding for plaintiffs alleging privacy and civil liberties infringements. However, the historically deferential attitude of courts toward matters of national security, a stance that has only compounded in the post-9/11 context, suggests that this may continue to be an uphill battle for civil libertarians. 105

More troubling to proponents of the efficacy of existing legislative and executive accountability mechanisms are the disclosures made by Snowden. These mechanisms were revealed to be either theoretical or passive until significant leaks forced a public discourse that demanded a more active accountability regime. In fact, the federal government exploited the lack of transparency and effective

accountability mechanisms until the start of the Snowden disclosures to secure dismissals like that in Clapper I and to circumvent efforts of criminal defendants to discover whether they had been actually surveilled. 106

Reliance on sporadic leaks to trigger genuine accountability is structurally problematic. 107 Our reliance on leaks thus far should force us to reconsider the extreme secrecy under which intelligence-gathering programs, like the NSA Metadata Program, are administered, and to consider means by which institutional actors can exert meaningful and regular oversight and control over these programs. Such change would force politicians to take ownership over secret counterterrorism programs, weighing their expediency against possible constitutional defects or the judgment of public opinion. An atmosphere in which accountability mechanisms are not merely ersatz pending an illegal leak could provide space for genuine public discourse and at least the possibility of greater protection of civil liberties.

Executive transparency is key to solve-Rebalances constitutional powers and allows media watchdog fuctions

Sudha **Setty 8,** Professor at Western New England University School of Law, Spring 2008, "THE PRESIDENT'S QUESTION TIME: POWER, INFORMATION, AND THE EXECUTIVE CREDIBILITY GAP", Cornell Journal of Law and Public Policy, 17 Cornell J. L. & Pub. Pol'y 247, Lexis

The current Administration has limited information disclosure in response to inquiries from other parts of the government in numerous ways, each of which is a small step in aggregating political power within the executive branch. Some instances relate to the Administration's efforts in the war on terror, which arguably offers a heightened justification for nondisclosure. n44 For example, the White House prevented an official inquiry into the accuracy of U.S. intelligence on Iraq's weapons programs, which had been offered as the primary justification for the invasion of Iraq; n45 President Bush refused to respond to a May 2005 letter, signed by over 100 members of Congress, n46 asking questions about the [*257] Downing Street Memo; n47 and the President refused to appear before the September 11 Commission unless accompanied by Vice President Cheney, assured that no transcript would be made of the interview, and promised that the public release of the finalized report was contingent on White House review. n48

Other examples of the current Administration's nondisclosure are unrelated or have only an attenuated connection to the war on terror: the White House refused to provide the Senate with documents regarding John Bolton during the proceedings to confirm Bolton as United Nations ambassador despite the long-standing practice granting senators access to such papers prior to voting on nominations; n49 Vice President Cheney refused to turn over documents to the Government Accountability Office (GAO) related to a White House energy task force in which he participated in 2000 and 2001, impeding the GAO from overseeing the executive branch. n50 In his refusal, Cheney asserted that his activities related to those of the executive branch and implied that he could exercise executive privilege under the Recommendations Clause. n51 In another example, the White House labeled a record number of documents "classified" to [*258] immunize them from Freedom of Information Act (FOIA) requests, n52 and rolled back the Clinton Administration policy of encouraging broader and faster disclosure in response to FOIA requests. n53

The executive branch compounds its failure to disclose information by attempting to manipulate the press into providing a favorable portrayal, undermining the media's role in increasing transparency of the political process and governmental institutions. An illustrative example was the creation and dissemination of "video news releases" by the government - pro-administration segments which looked similar to actual news reports. The GAO found that these violated the government's own policies because they "constitute covert propaganda." n54 Further, the President's public appearances are carefully controlled to weed out those who might disagree with his policies, creating an impression that little media or public opposition exists to administration policies. n55

[*259] Each of these shifts in policy or practice, taken individually, may seem insignificant. Together, however, they paint a picture of a major shift in the disclosure practices of the Administration on both the defensive and offensive fronts. Defensively, the Administration curbs the provision of information to Congress and limits the release of documents in response to FOIA requests. Offensively, unless information has already been disclosed, the Administration looks to influence the media and public perception through conventional and unconventional means.

The manipulation of information disclosure extends beyond the current administration, n56 and has not been effectively combated by the press. n57 The President, under most circumstances, is under no constitutional or legal obligation to volunteer information to the press. However, the media's perceived role as an informal "fourth branch" of government, n58 exercising a watchdog function particularly over the executive branch, is severely compromised under such circumstances. n59

The consolidation of power in the executive branch unbalances the constitutional model of co-equal branches of government. The inability of the media to consistently unearth information and documents for public scrutiny compounds this problem. Consequently, without vigorous action on the part of Congress to exercise its constitutional powers, the executive branch is able to take actions that are largely unpublicized and unchecked. Regardless of which political party holds power in the White [*260] House, this situation poses a major systemic challenge which becomes even more problematic in the case of unified government.

DHS/Immigration

Executive oversight solves DHS immigrant abuse

Maunica **Sthanki, 13**, Clinical Instructor, Immigration and Human Rights Clinic, University of the District of Columbia David A. Clarke School of Law "Deconstructing Detention: Structural Impunity and the Need for an Intervention", Lexis Nexis, 65 Rutgers L. Rev. 447

The key to establishing accountability and oversight of civil rights abuses is externalization. In the context of the NOPD reform, the externalization of investigation, prosecution, and ultimately the judicial consent decree were key factors leading to reform. Although the NOPD had a notorious reputation for abuse, local New Orleans officials had not demonstrated the political will to truly reform the system prior to Hurricane Katrina. n342 After the storm, the local New Orleans district attorney failed to prosecute officers for misconduct and the extent of officer malfeasance was only exposed after a federal investigation and prosecution. The externalization of oversight is crucial because an agency is less likely to prosecute its own agents or give an unbiased opinion of a potential act of wrongdoing. This conflict of interest is a common occurrence in police brutality cases where local law enforcement agencies are unwilling to investigate abuse within their own agency (or in some cases engage in attempts to cover up allegations of abuse). n343 For example, the district attorney in Screws "blamed his inability to prosecute" the police officers "on the fact that he had no substantial independent investigative facilities, and had to rely upon local sheriffs and policemen to conduct investigations." n344 He explained that the local sheriffs and policemen would not investigate abuse because they were either involved in the incident or [*498] sympathized with the individuals accused of abuse. In the prosecutions of police officers in the aftermath of Hurricane Katrina, several supervising NOPD officers were convicted of covering up the abusive acts of other officers. n345 The culture of the NOPD in the aftermath of Katrina was one that celebrated abuse and the misuse of power. In 2007 when the NOPD officers involved in the shooting turned themselves in, they were patted on the back and called heroes by their fellow officers. n346 A similar culture exists within DHS and immigration detention facilities. DHS cannot be relied upon to investigate and/or prosecute its own agency. n347 ICE officials have repeatedly engaged in attempts to cover up misconduct, and a culture of abuse within detention centers celebrates and even condones detainee abuse. n348 The structure of oversight and accountability within DHS only fosters the culture of abuse. Presently, cases of detainee abuse are purportedly investigated by the DHS Office of Inspector General ("OIG"). n349 In the current scheme, a detainee with a civil rights complaint would be directed to an OIG agent who would investigate the matter and consider whether to refer it to DOJ for further investigation and/or prosecution. n350 Although this is a stated purpose of DHS-OIG, they have not been effective in their mission. n351 Few prosecutions for detainee abuse have been pursued, and it is unclear how DHS-OIG determines whether or not a case is suitable for referral. For example, in the case of sexual abuse allegations at the Willacy Detention Center, it took several years from the time of the [*499] allegation to the conviction of the guard. n352 In the interim, several cases of sexual abuse were reported at the Willacy Detention Center - more than any other detention center. n353 A former Customs and Border Protection ("CBP") commissioner explained, "What happens is - and in my opinion it's disgraceful - [the DHS-OIG] get around to investigate these things, and the witnesses are gone." n354 This is particularly troubling in the context of immigrant detention where detainees are deported at a rapid pace. n355 In addition, DHS-OIG is currently being investigated for alleged acts of internal corruption and misconduct. The McAllen, Texas office of DHS-OIG is currently the subject of a federal grand jury investigation to determine whether agents "fabricated "investigative activity' to show progress on misconduct cases." n356 As a result of the grand jury investigation, DHS-OIG transferred about half of its backlog cases to internal affairs agencies at ICE and CBP. n357 The investigation and backlog are additional indicators that DHS is unable to police its own agency, and as a result, the claims of abuse by immigrant detainees are not sufficiently investigated or referred for criminal prosecution and sanction. In the case of NOPD reform, the externalization of oversight has arisen through a judicial consent decree. n358 It is highly unlikely that DHS would agree to a consent decree of oversight from the DOJ; however, alternative forms of oversight could potentially be pursued. DHS-OIG could be relocated out of DHS and either become a separate ombudsman-like agency or could be relocated to DOJ. n359 The role of DHS-CRCL could be changed to collaborate with DOJ to obtain prosecutorial power. Another option is that DOJ could unilaterally request to oversee and investigate DHS functions. While this oversight would likely be politically challenging, if DHS as an agency is harboring criminal actors and potentially

condoning (or ignoring) criminal acts, there should be no legal barrier to a DOJ led investigation. It is admittedly perilous to rely on federal agencies to [*500] act on their own volition, even when it is within the purview of their legislative mandate, and therefore, another option is for the immigrants' rights community to request oversight of DOJ through injunctive relief. n360 Prior consent decrees between police departments and municipalities have arisen through requests for injunctive relief and a similar path could be pursued in the context of immigration detention.n361

Prisons

Clemency solves prisons

Rachel E. **Barkow, 15**, Segal Family Professor of Regulatory Law and Policy and Faculty Director, Center on the Administration of Criminal Law, New York University School of Law, June 2015, "CLEMENCY AND PRESIDENTIAL ADMINISTRATION OF CRIMINAL LAW", http://www.lexisnexis.com.turing.library.northwestern.edu/hottopics/lnacademic/

Clemency is a key tool for the President to control the executive department. Those in favor of a unitary executive - the theory which [*808] holds that "all federal officers exercising executive power must be subject to the direct control of the President" n18 - should encourage its more robust employment. It is a mechanism just as powerful - if not more so - as the power to remove executive officers with whom the President disagrees as a policy matter, or as the ability to provide front-end enforcement guidance. Similarly, advocates of strong presidential administration should applaud the greater accountability and effectiveness that comes with presidential oversight of federal criminal law policy. n19 Even critics of unitary executive theory or those with concerns about robust presidential decision-making authority should embrace clemency as a mechanism of control because it is explicitly and unambiguously grounded in the Constitution's text, and it comes with an established historical pedigree. Moreover, it is a presidential tool that provides a checking mechanism that is otherwise absent in our current political environment. The clemency power is critical given the federal criminal justice system we have today. The problem of overbroad federal criminal laws and excessive charging by federal prosecutors in recent decades has been well documented. n20 At the same time, the limits of front-end enforcement guidance and a convention against removal have made it difficult for Presidents to control federal prosecutors. n21 The pathologies associated with federal criminal lawmaking have produced a federal [*809] criminal justice system of unprecedented size and scope n22 with overcrowded n23 and expensive n24 federal prisons and hundreds of thousands of individuals hindered from reentering society because of a federal record. n25 Clemency alone cannot solve these problems, of course, but it is one way to address poor enforcement decisions and injustices in this system, as well as to check disparities in how different U.S. Attorneys enforce the law.

Signaling/Credibility

Executive Self Restraint is necessary to send a signal of credibility and benignity that motivates action on the plan

Eric **Posner 7,** Professor of Law at The University of Chicago Law School, 8/10/2007, "The Credible Executive", University of Chicago Law Review, 74 U. Chi. L. Rev. 865, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles

We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well motivated ones, thus distinguishing themselves from their illmotivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.

This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decision making pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations." Whether or not this picture is coherent," it is not the question we examine here, although some of the relevant considerations are similar." We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government.

Growing dissent means that the executive needs to act on removing surveillance as an act of good will-Any other actor fails to capture the same legitimacy

Edieth **Wu 6**, Associate Dean and Professor, Thurgood Marshall School of Law, Fall 2006, "DOMESTIC SPYING AND WHY AMERICA SHOULD AVOID THE SLIPPERY SLOPE", Review of Law and Social Justice, http://weblaw.usc.edu/why/students/orgs/rlsj/assets/docs/Wu_Final.pdf

Today, as the paranoia following the September 11 attacks begins to fade, a process of self-realization is again occurring in American society. Unlike years past, however, the "enemy" in the war on terror is not clearly identifiable, causing dissenters to be more vocal and widespread. For instance, unlikely combinations of interest groups, from the American Civil Liberties Union to the U.S. Chamber of Commerce, are starting to demand more limits on the government's ability to intrude on the private lives of citizens.116 And members of Congress have also stepped in—some have challenged the NSA program directly, claiming it "contradicts longstanding restrictions on domestic spying and subverts constitutional guarantees against unwarranted invasions of privacy."117 Senator Russell Feingold of Wisconsin criticized the president's usurpation of congressional authority, stating that "[t]he president believes that he has the power to override the laws that Congress has passed . . . . He is a president, not a king."118 Similarly, Senator Patrick Leahy of Vermont accused the administration of "believ[ing] it is above the law."119 This growing dissent validates the need for the president to reevaluate his

administration's recent actions and recommit to protecting civil liberties by respecting the rule of law, which "has never been more critical"120 than at this juncture in America's history.

In an age where the American public is generally aware of the restrictions on presidential powers, people are increasingly reluctant to accept that "the commander in chief clause" of the Constitution trumps all others.121 The president must remember that the commander in chief powers are at their strongest when the president acts in conjunction with congressional authorization.122 Consequently, a divided nation, and thus a divided Congress, will make it difficult for the president to act within the "expressed or implied will of Congress, [and] his power [will be] at its lowest ebb."123

Private Sector Coop

The executive best balances Private sector concerns with liberty and safety

Eric Talbot **Jensen 10,** Assistant Professor, Fordham Law School, June 2010, "Cyber Warfare and Precautions Against the Effects of Attacks", Texas Law Review, 88 Tex. L. Rev. 1533, Lexis

Second, Congress and the President should expand the current policy and authorities, such as HSPD-7, to include protection not just from terrorists, but from state parties in armed conflicts. Congress should provide the Executive specific authority to protect those privately owned industries, systems, and networks that are anticipated to come under the control of the government during times of armed conflict. Part of this authority should include methods to monitor, implement, and enforce cybersecurity and survivability measures in those specific networks, systems, and industries now.

Such action is not without precedent. Congress has authorized the President to take similar actions with communications systems in times of armed conflict in the past. n195 Current law is insufficient to do so in the current age against the current threats. n196 Former Clinton Deputy Attorney General Jamie S. Gorelick recently urged the Obama Administration to "seek legislation for comprehensive authority to deal with a cyber emergency" including monitoring or cutting off private cell phones and other communications devices. n197 President Obama has shown a reluctance to take steps that invade personal privacy. n198 These situations are not mutually exclusive. Monitoring those systems selected above and taking necessary steps to [*1565] ensure their protection does not have to include invasions of privacy. Congress can provide authority and the President can implement that authority in a way that will meet our legal obligations; protect the necessary networks, systems, and industries; and preserve our individual rights.

Third, the President, after identifying those industries, networks, and systems that will become targetable and using the additional authority granted by Congress, should establish memoranda of agreement with these private entities to ensure sufficient protection of these industries and networks. This does not mandate government intrusion in civilian networks, industries, or systems. The government can establish the standard, put in place necessary safeguards, and establish effective monitoring systems and then allow these civilian entities to provide their own protection or opt for some combination of government and private security. Whatever method is agreed upon, the government should determine the sufficiency of the protection and then monitor implementation of the protective measures and have the authority to enforce compliance if necessary.

Drones

Executive Order solves non-disclosure of drone data

Craig **Whitlock 9/26/14** , staff writer at The Washington Post, "White House plans to require federal agencies to provide details about drones", https://www.washingtonpost.com/world/national-security/white-house-plans-to-require-federal-agencies-to-provide-details-about-drones/2014/09/26/5f55ac24-4581-11e4-b47c-f5889e061e5f_story.html

The White House is preparing a directive that would require federal agencies to publicly disclose for the first time where they fly drones in the United States and what they do with the torrents of data collected from aerial surveillance.

The presidential executive order would force the Pentagon, the Justice Department, the Department of Homeland Security and other agencies to reveal more details about the size and surveillance capabilities of their growing drone fleets — information that until now has been largely kept under wraps.

The mandate would apply only to federal drone flights in U.S. airspace. Overseas military and intelligence operations would not be covered.

President Obama has yet to sign the executive order, but officials said that drafts have been distributed to federal agencies and that the process is in its final stages. "An interagency review of the issue is underway," said Ned Price, a White House spokesman. He declined to comment further.

Privacy advocates said the measure was long overdue. Little is known about the scope of the federal government's domestic drone operations and surveillance policies. Much of what has emerged was obtained under court order as a result of public-records lawsuits.

Answers

AT: Rollback

No congressional or judicial rollback

Dino P. **Christenson and** Douglas L. **Kriner, 15**, Assistant Professors of Political Science, Boston University, Spring 2015, "SYMPOSIUM: EXECUTIVE DISCRETION AND THE ADMINISTRATIVE STATE: POLITICAL CONSTRAINTS ON UNILATERAL EXECUTIVE ACTION", LexisNexis, 65 Case W. Res. 897

The dominant theoretical understanding of unilateral politics suggests that presidents have the capacity to act with veritable impunity to shift unilaterally a myriad of policies closer to their preferences, secure in the knowledge that Congress will only in the rarest of cases be able to overturn their actions legislatively. Similarly, empirical evidence suggests that the courts exercise at best a weak constraint on the use of unilateral power. For example, between 1942 and 1998, the [*907] federal courts heard only eighty-three cases challenging the legality of executive orders. Moreover, in 83 percent of those cases, the president's order was upheld. n34 Thus, presidents act unilaterally, secure in the knowledge that the probability of a legal challenge ever being heard in federal court is quite low; and if the judiciary does hear a case, the probability of the order being upheld is quite high.

AT: Congress Key---General

Congress fails—can't check the executive

William **Bendix and** Paul J**. Quirk, 15**, assistant professor of¶ political science at Keene¶ State College, Phil Lind Chair in U.S.¶ Politics and Representation¶ at the University of British¶ Columbia and a former¶ research associate at¶ the Brookings Institution, March 2014, "Secrecy and negligence:¶ How Congress lost control of domestic surveillance", http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf

In enacting the USA PATRIOT Act just weeks after the 9/11 terrorist attacks, Congress¶ sought to enhance investigations against specific, named persons suspected¶ of terrorism. As voluminous documents leaked by whistleblower Edward Snowden¶ have revealed, however, the president and the National Security Agency (NSA) have relied¶ on that law to authorize the daily, ongoing capture of all U.S. communication records.¶ These documents make clear that the Bush and Obama administrations ignored statutory¶ constraints to authorize exceptionally broad intelligence-gathering programs. But from our¶ review of legislative hearings and debates on the PATRIOT Act over the last five years,¶ along with numerous declassified documents on surveillance, we find that unilateral action¶ by the executive branch was only partly to blame for unrestrained domestic spying.¶ After the relatively balanced and cautious provisions of the 2001 PATRIOT Act, Congress¶ virtually absented itself from substantive decision making on surveillance. It failed to¶ conduct serious oversight of intelligence agencies, ignored government violations of law,¶ and worked harder to preserve the secrecy of surveillance practices than to control them.¶ Even after the Obama administration made the essential facts about phone and email¶ surveillance available in classified briefings to all members, Congress mostly ignored the¶ information and debated the reauthorizations on the basis of demonstrably false factual¶ premises. Until the Snowden revelations, only a handful of well-briefed and conscientious¶ legislators—too few to be effective in the legislative process—understood the full extent of¶ domestic intelligence gathering.

Congress can't check presidential powers—Distractions, party lines, and misinformation

NEIL **KINKOPF, 9**, Professor of Law, Georgia State University College of Law, 2009, "ARTICLE: IS IT BETTER TO BE LOVED OR FEARED? SOME THOUGHTS ON LESSONS LEARNED FROM THE PRESIDENCY OF GEORGE W. BUSH", Duke Journal of Constitutional Law & Public Policy, LexisNexis, 4 Duke J. Const. Law & Pub. Pol'y 45

One reason unilateralism is not bound to fail is that Congress is not a reliable check against presidential power. Congress capitulated on military commissions, on domestic surveillance, and on the surge in Iraq. Congress also largely capitulated on the bailout bill. Although the bailout bill Congress ultimately enacted included a few modest measures for oversight, Congress basically gave the Administration what it wanted. n40 But why doesn't Congress stand up as a check on the President? Madison's view, expressed in The Federalist and in the structure of the Constitution, was that parchment barriers and legal constraints on power would not be worth the parchment on which they were written. n41 Madison argued that the way to constrain power was to [*52] structure government so that each institution would have its own ambition, which would counteract the ambitions of the others. n42 Thus, Madison envisioned Congress' institutional ambitions counteracting the power of the Executive Branch. n43 But Madison's idealistic system of checks and balances relies on institutional loyalty, which does not take into account party loyalty. n44 Congressional members who want to get reelected, if they are from the President's own party, pursue their own ambition and self-interest by making sure the President is successful. n45 Thus, these self-interested members are less likely to check the President's power than

Madison envisioned. n46 Otherwise, the public would lose confidence in the President's decisions and in the political party he represents, which could cause Congress to change hands and which disserves the self-serving congressional party members. While this dynamic is important, for the last two years, we have had congressional majorities from a different party than the President. And yet Congress still has not acted as a significant check on presidential power. Why not? The Executive Branch enjoys three formidable institutional advantages that have undermined the capacity of Congress to act as a check on the President. First, the Executive Branch houses nearly all of the government's expertise and knowledge. This resides in the agencies of the federal government, and they are under the control of the President. So the Executive Branch controls the information collected by agencies and can, and over the last eight years certainly has, manipulated that information by disclosing what is useful and withholding what is not. n47 [*53] Second, members of the House of Representatives are perpetually campaigning for reelection, and therefore the institution is chronically distracted. Members of the House of Representatives have to run for reelection every two years and must constantly fundraise and campaign. They never stop running, so they always have one foot in their home district to campaign, and the other foot back in Washington to engage in policy deliberations. But that is a serious disadvantage. The demands of campaigning seriously impair the ability of even conscientious legislators to engage in continuing, rather than sporadic, oversight. A third factor that is sometimes undervalued is a competing ambition of many members of Congress. Their ambition is not to be powerful as members of Congress or as part of a coequal institution that checks the President's power, but to be powerful period. Ten senators considered running for President this time around, plus several Representatives. n48 So what position should these presidential hopefuls take while serving in the Congress? Because they may hold the Executive Office in the near future, they may be unwilling to limit the President's powers that they themselves may hope someday to employ. It is unlikely that Congress can act as a check on presidential power when so many of its members hope to one day hold the office of President, or would be happy to give up their current job to serve in a President's cabinet.

AT: Congress Key---Backlash/Circumvention

Congressional attempts at circumvention/restrictions on the executive fail

Kenneth R. **Mayer, 1**, Professor of Political Science at Wisconsin University, "With the stroke of a Pen", 2001 Pg. 55

Moreover, efforts to check presidential power through legislative restrictions often have had the counterproductive effect of legitimizing the very powers that Congress has tried to limit. I treat this problem in more detail in chapter two, but two examples highlight the problem that Congress faces. When Congress tried to limit the president's ability to carry out covert intelligence operations by imposing reporting requirements in the Hughes-Ryan amendments to the Foreign Assistance Act and the Intelligence Oversight Act in 1980, it inadvertently provided legislative recognition of the president's covert operations authority. The mere fact that Congress required the president to report on such activities was read by the courts as a congressional recognition of the president's right to conduct them. "So once again," concludes Gordon Silverstein, "Congress' attempt to control the executive's actions in foreign policy only provided fresh and unprecedented explicit authorization for executive prerogative. 11112 A similar dynamic occurred in 1977 when Congress tried to limit the way in which presidents exercised emergency economic powers. Since 1917, when Congress passed the Trading with the Enemy Act (TWEA), the president has had the legal authority to regulate aspects of foreign trade in emergency or wartime circumstances. Over the[…]

Obama doesn't listen to congress

Suzanne **Spaulding, 8,** Under Secretary for the National Protection and Programs Directorate (NPPD) at the Department of Homeland Security. She oversees the coordinated operational and policy functions of the Directorate's subcomponents, Fall 2008, "Building Checks and Balances¶ for National Security Policy:¶ The Role of Congress", http://www.acslaw.org/files/9%20Spaulding.pdf

There are many factors contributing to the failure of Congress in recent years to¶ exercise a robust and effective check on the executive branch in the area of national¶ security. Certainly the incentive for challenging executive assertions of power was reduced¶ when Congress and the White House were controlled by the same party.¶ Moreover, national security is traditionally an area in which both Congress and the¶ courts tend to be more deferential to the President, particularly during wartime.¶ Perhaps most significant, then, is the effect of the attacks of 9/11 and the constant reminders¶ that we are engaged in a "Global War on Terrorism" ("GWOT"). This climate¶ of fear puts tremendous pressure on Congress to be "tough" on national security;¶ describing the threat as a "war" implies that Congress can only be tough on¶ national security by deferring to the President as Commander in Chief.¶ The current Administration argues that with regard to this GWOT, the President's¶ authority cannot be constrained by Congress. His lawyers maintain that the President¶ is free to ignore laws that he decides infringe upon his Article II power, particularly his¶ power as Commander in Chief during wartime. This constitutional argument, most¶ clearly articulated in the now infamous August 2002 Department of Justice memo on¶ torture,1¶ has never been repudiated and has been repeated often since then.¶ The August 2002 memo asserts that, "Congress may no more regulate the President's¶ ability to detain and interrogate enemy combatants than it may regulate his ability to¶ direct troop movements on the battlefield. Accordingly, we would construe [the U.S.¶ law prohibiting torture] to avoid this constitutional difficulty, and conclude that it¶ does not apply to the President's detention and interrogation of enemy combatants¶ pursuant to his Commander-in-Chief authority." Similar arguments were made in the¶ Justice Department memo written after the National Security Agency ("NSA") warrantless¶ surveillance program was revealed.¶ The potential scope of this Commander-in-Chief authority to do whatever the¶ President believes necessary to protect the nation is breathtaking, particularly in the¶ context of the Global War on Terrorism ("GWOT"). The GWOT extends, by definition,¶ worldwide. The battlefield is wherever the terrorists are, or—for purposes of "preparing¶ the battlefield"—wherever they might be in the

future, including inside the¶ United States (U.S.). And, of course, the "enemy" against which this unchecked authority¶ can be exercised includes not just foreign terrorist suspects, but U.S. citizens as well.¶ Until very recently, the Administration used signing statements to signal its determination¶ to ignore the laws that Congress passed if the President decided they were¶ inconsistent with his authority. This growing practice has generated significant criticism.¶ Thus, when Congress hurriedly passed a bill in 2007 to expand the Foreign¶ Intelligence Surveillance Act ("FISA") just before leaving town for the August recess,¶ the President's signing statement contained no such qualification. Nevertheless, officials¶ have made it clear that the President still maintains the prerogative to ignore this¶ law if he decides it impermissibly interferes with his authority. The only thing that has¶ changed, apparently, is that the President's lawyers no longer feel the need to express¶ this in the signing statement.¶ So much for Congress's legislative authority acting as a check on executive¶ authority.

The executive will circumvent congressional action-Courts will uphold the circumvention-Means only the CP solve

John **McGinnis 93,** Professor at Northwestern University School of Law, Fall 1993, "Constitutional Review by the Executive in Foreign Affairs and War Powers: A Consequence of Rational Choice in the Separation of Powers", 56 Law and Contemporary Problems 293, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4213&context=lcp

Thus, although the executive branch has adopted a more subtle strategy of noncompliance with respect to the War Powers Resolution than in response to section 102(c) of the Foreign Relations Act, the effect is much the same: the statute is effectively nullified. In both instances, the president defies Congress's attempt to place a condition on the exercise of a core power (presidential power to choose negotiators or commit troops). By doing so, the president sends a signal to the Court of the importance attached to this right of governance. The model of separation of powers offered here suggests that the Court would weigh that signal heavily, particularly when Congress does not take concrete steps to confront the president.

The model also suggests that many of the reforms proposed for the War Powers Resolution will be ineffective because they cannot reorder the institutional interests that militated against the Resolution's efficacy in the first place. For instance, Dean Ely's proposal to grant one or more members of Congress standing to bring suit to start the sixty-day clock would not likely change the practices under the Resolution.1 " Despite this reform, the bargaining model predicts that the executive branch would act in the same manner as before, attempting both to raise the stakes by asserting its own prerogatives and providing Congress with information but no declaration that would unambiguously start the clock. Although members of Congress could attempt to sue the executive, the courts would have to entertain the suit on its merits for the proposal to be successful. Indeed, the Supreme Court has never recognized congressional standing,"' and its hesitancy about doing so is readily understandable within the separations of powers model offered here. Giving standing to members of Congress not only would risk the ire of the executive, but would also provide Congress with a mechanism for increasing the Court's docket of separation of powers disputes, a class of disputes the Court may well be less interested in adjudicating than those involving the Bill of Rights. 132 Moreover, the congressional standing would give Congress substantial control over the timing of court decisions, thus detracting from the Court's autonomy. 133

Even aside from indicating that the Court may be disinclined to permit congressional standing, the model of separation of powers offered here suggests that the judiciary may paradoxically be more likely

to invoke a justiciability doctrine and refuse to hear the merits of a suit based on a congressional standing provision. By enacting the standing provision, Congress would signal its weakness and relative unwillingness to spend its own political capital on obtaining more rights of governance in this area through direct confrontation with the executive in the hope that the Court would do its work for it." Thus, if the original accommodation was created by the Court's understanding that war powers are more important to the executive than to Congress, the introduction of a standing provision may reinforce rather than disturb the Court's calculus.13

AT: Congress Key---Secrecy/National Security

Secrecy and dispatch dealt with best by executive branch

John O. **McGinnis 93**, Professor in Constitutional Law at Northwestern Law School, former clerk on U.S. Court of Appeals for the District of Columbia, August 1993, "Constitutional Review By The Executive In Foreign Affairs And War Powers: A Consequence Of Rational Choice In The Separation Of Powers," http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4213&context=lcp

The output under the model depends on the relative interests and aptitudes of the institutions that will bargain with and accommodate each other. 8 These are partly defined by the textual provisions whose core is less likely to be disputed. 9 The president's power as commander-in-chief is relevant to his interests both because this gives him some power of initiative of action in war powers and because it creates the expectation that the president is immediately responsible for protecting the security of the nation and the safety of its citizens.' Given these expectations, the president will want to acquire the rights of governance over areas, such as diplomacy, which imminently affect the exercise of this responsibility. Additionally, the structure of the presidency as a single office possessed by one person also gives the executive unique capabilities of acting with "secrecy and dispatch,, 61 giving him a comparative advantage in carrying out these functions. Thus, because of the president's constitutional powers and because of expectations that have developed about his responsibilities in the area of foreign affairs and war powers, the president generally places a very high value on control of the rights of governance in foreign affairs.62

On the other hand, Congress's structure is so much more diffuse than the executive that it impedes the rapid decisionmaking necessary in the fluctuating world of foreign affairs.63 Thus, because of its comparative disadvantage as an institution, operational control of foreign affairs may actually be at odds with its interests because such control threatens Congress with responsibilities it is not well-equipped to handle. In determining how much interest Congress has in exercising this power as compared to the executive, one must compare this interest to other rights of governance. Spending on constituents, for example, is more highly prized by Congress since it can directly help individual members of Congress retain office.' Of course, even if Congress rationally shuns operational control of war and foreign policy matters, it may be interested in increasing its mechanisms to criticize the executive's performance after the fact, so that it can act in effect as the ululating Greek chorus that comments on the executive's tragic choices.'

AT: Courts Key

Independent Executive Actions are better than the Courts-Information and court decentralization

Eric **Posner 7,** Professor of Law at The University of Chicago Law School, 8/10/2007, "The Credible Executive", University of Chicago Law Review, 74 U. Chi. L. Rev. 865, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles

The gap between the executive and the judiciary, in information and expertise, is even wider than between the executive and Congress. Whereas many legislators have a narrowly defined field of policy expertise, particularly in the House, federal judges are mostly generalists, barring a few specialized courts. Furthermore, the partial insulation from current politics that federal judges enjoy, by virtue of life tenure and salary protection, brings with it a kind of informational impoverishment.6 Legislators, who must please other people at least some of the time, interact with the outside world far more systematically than generalist judges, whose main source of information is the briefs and arguments of litigants. The credibility dilemma thus appears quite acutely in judicial proceedings. When the executive says that resolving a plaintiff's claim would require disclosure of "state secrets,"61 with dangerous consequences for national security, judges know that either an illmotivated or a well-motivated executive might be making the claim and that they have no easy means to assess whether the claim is credible.

2. Collective action problems and decentralization. If congressional monitoring of executive discretion is hampered by collective action problems, judicial monitoring is hampered by a similar condition, the decentralized character of the federal judiciary. The judiciary really is a "they," not an "it," and is decentralized along mainly geographic lines. Different judges on different courts will have different prior estimates of the executive's credibility, and hence different views of the costs and benefits of oversight and of the appropriate level of monitoring. The Supreme Court is incapable of fully resolving these structural conflicts. Because the Court presides over a large institutional system and lacks the capacity to review more than a fraction of cases submitted to it, its role is restricted by necessity to the declaration of general principles of law and episodic, ad hoc intervention in the system.6

The Executive needs to act independently of the courts-Legitimacy and Judicial Credibility

Eric **Posner 7,** Professor of Law at The University of Chicago Law School, 8/10/2007, "The Credible Executive", University of Chicago Law Review, 74 U. Chi. L. Rev. 865, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles

In the federal system, appointed judges are not overtly partisan, though they are sometimes covertly so. The very condition that enables this relative lack of overt politicization-that federal judges are, at least in one familiar conception, legal technocrats appointed for their expertise rather than elected on a partisan basis-also creates a serious legitimacy deficit for the judiciary, understanding legitimacy in a strictly sociological sense." Aroused publics concerned about issues such as national security sometimes have little tolerance for robust judicial oversight of executive discretion, which can always be condemned as "activism" by "unelected judges." This charge sometimes succeeds and sometimes fails, but for the judges it is always a concern that acts as a drag on attempts to monitor executive behavior.

4. Judicial credibility. Judges rely on executive officials to carry out their orders and Congress to fund them, and thus ultimately rely on the public to impose sanctions on the political branches when the political branches do not obey a court order. But the public will support the judiciary only if the public believes that the judiciary is well motivated rather than ill motivated. Such is often the case, but the credibility of judges is not infinite.6' Lingering public suspicion of elite decisionmaking places a cap on judicial credibility, and indeed the evidence suggests that judges are often motivated by ideology, at least when it comes to opinion assignment.6 Thus, in extreme cases, as between a presidential determination that an emergency requires a course of action and a judge's claim to the contrary, the public might well believe the president.

Here too, we do not claim that judicial oversight is a total failure. Doctrinal lawyers focus, sometimes to excess, on a handful of great cases in which judges have checked or constrained discretionary executive action, even in domains involving foreign policy or national security. Cases such as Youngstown,6 the Pentagon Papers case,6 and recently Hamdanso head this list. Undoubtedly, however, there is a large gap between executive discretion and judicial capacities, or even between executive discretion and the sum of congressional and judicial capacities working in tandem. In times of emergency, especially, both Congress and the judiciary defer to the executive." Legislators and judges understand that the executive's comparative institutional advantages in secrecy, force, and unitariness are all the more useful during emergencies, so that it is worthwhile transferring more discretion to the executive even if it results in an increased risk of executive abuse. The result is that cases such as the ones we have listed are the exception, not the rule, at least during the heat of the emergency

AT: Circumvention/Rogue Exec

A2 circumvention

Nathan Alexander **Sales, 14**, Associate Professor of Law, Syracuse University College of Law, Summer 2014, "NSA SURVEILLANCE: ISSUES OF SECURITY, PRIVACY AND CIVIL LIBERTY: ARTICLE: Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", LexisNexis, 10 ISJLP 523

This sort of oversight by the courts and Congress provides an obvious, first-order level of protection for privacy and civil liberties--an external veto serves as a direct check on possible executive [*538] misconduct. Judicial and legislative checks also offer an important second-order form of protection. The mere possibility of an outsider's veto can have a chilling effect on executive misconduct, discouraging officials from questionable activities that would have to undergo, and might not survive, external review. n64 Moreover, external checks can channel the executive's scarce resources into truly important surveillance and away from relatively unimportant monitoring. This is so because oversight increases the administrative costs of collecting bulk data--e.g., preparing a surveillance application, persuading the judiciary to approve it, briefing the courts and Congress about how the program has been implemented, and so on. These increased costs encourage the executive to prioritize collection that is expected to yield truly valuable intelligence and, conversely, to forego collection that is expected to produce information of lesser value.

AT: Overreach

No overreach

Nathan Alexander **Sales, 12**, Associate Professor of Law, Syracuse University College of Law, August 29, 2012, "SELF RESTRAINT AND NATIONAL SECURITY", http://www.law.gmu.edu/assets/files/publications/working_papers/1041SelfRestraintandNationalSecurity.pdf

Much of the caselaw and scholarship concerning national security rests on the assumption that the executive branch is institutionally prone to overreach – that, left to its own devices, it will inch ever closer to the line that separates illegal from legal, and sometimes enthusiastically leap across it. The obvious conclusion is that external, principally judicial, checks are needed to keep the executive in line.2 In many cases the executive does indeed push the envelope. But not always. The government often has powerful incentives to stay its own hand – to forbear from military and intelligence operations that it believes are perfectly legal.3 Officials may conclude that a proposed mission – a decapitation strike on al Qaeda's leadership, say, or the use of mildly coercive interrogation techniques on a captured terrorist – is entirely permissible under domestic and international law. Yet they nevertheless might rule it out. In other words, the government sometimes adopts self restraints on its ability to conduct operations it regards as legally justified; it "fight[s] with one hand behind its back," to borrow Aharon Barak's memorable phrase.4 This article considers the reasons for that tendency by consulting rational choice theory – the notion that government officials are rationally self interested actors who seek to maximize their respective utility. Part I identifies four examples of self restraint in national security operations. Parts II and III then discuss possible explanations for why the government adopts them.

No overreach-The executive branch can balance internally, and the other branches also prevent presidential power grabs

Dawn **Johnsen 7,** Walter W. Foskett Professor of Constitutional law at Maurer School of Law, 1/1/2007, "Faithfully Executing the Laws: Internal Legal Constraints on Executive Power", UCLA Law Review, 54 UCLA LAW REVIEW 1559, http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1297&context=facpub2

Public cynicism notwithstanding, it is both possible and necessary for executive branch lawyers to constrain unlawful executive branch action. Ultimately, though, the President's own attitude toward the rule of law will go a long way toward setting the tone for the administration. If the President desires only a rubberstamp, OLC will have to struggle mightily to provide an effective check on unlawful action. In addition to being prepared to say no, therefore, the assistant attorney general for OLC and other top Department of Justice officials must also be prepared to resign in the extraordinary event the President persists in acting unlawfully or demands that OLC legitimize unlawful activity. Even from within the Bush Administration, some cause for optimism can be found in reports of internal opposition to extreme interrogation policies, as well as in the threatened resignation of up to thirty Department of Justice officials if Bush had persisted in a domestic surveillance program the Department had determined was unlawful.'69 This is as it should be: Commitment to the rule of law must not be a partisan issue. Congress, the courts, and the public should all work to empower principled executive branch legal advisors-in administrations of both political parties-to safeguard our constitutional democracy.

AT: No Authority

Judicial precedent grants the executive the authority to surveillance activities- definitions of emergencies and deference

Landon **Magnusson 9,** J.D. from Brigham Young University, 2009, "Note and Comment: Forget the Whales: Expanding the Twilight and Diminishing the Nadir of Youngstown", BYU Journal of Public Law, 24 BYU J. Pub. L. 149, http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1428&context=jpl

It may be tempting to brush Winter aside because the Supreme Court did not reach a decision on the merits due to the nature of the suit, but one should remember that fifty years ago, another case, more explicitly concerning the limits of presidential powers, sought after the same remedy. n108 Both cases occurred during a period when the United States was at war. n109 In each case, the Executive's actions were directly contrary to congressional will. n110 Most importantly, in both situations, because of emergency circumstances, the Executive Branch justified its actions as necessary in defense of the public good. n111

Nevertheless, in Winter, the Supreme Court departs from the standard set half a century ago in Youngstown. By finding in favor of the Navy, the Court altered the accepted Jackson taxonomy by expanding its zone of twilight, and diminishing its nadir. Winter accomplished this by first revising the definition of an emergency - eliminating its requirement of unforeseeability and permitting an Executive to seek the protection of emergency powers for manufactured emergencies caused by the reckless disregard of the law or negligence of that Executive. Second, the Winter decision allows the Executive to "be the judge in [its] own case," n112 [*165] deferring to [it] for a determination of when emergency circumstances are present, creating an incentive for Executives to call upon those powers more often and under circumstances that are less than public emergencies.

Executive branch has the ability to limit itself

L. Rush **Atkinson 10/13**, Attorney U.S. Department of Justice, "The Fourth Amendment's National Security Exception: Its History and Limits", LexisNexis, 66 Vand. L. Rev. 1343

When identifying the constitutional parameters of the executive's power, historical moments of restraint are particularly instructive. When congressional prohibition draws executive power to its "ebb," for example, one can identify the executive's core inextinguishable powers. n47 Constitutional boundaries are similarly discernible in some cases where the executive branch limits its own [*1354] conduct. n48 Specifically, the executive's self-restraint is precedential when it stems from a sense of constitutional obligation. n49 Such executive branch fealty toward the Constitution might be unprompted by a coordinate branch's action, so there may be no record as evident as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris shapes executive action, we should consider such legal opinion both for its persuasive power and for its reflection of historical understandings about what protections the Constitution establishes. n50

AT: "For Cause" Takes out Solvency

Even though the President does not have the ability to remove officers without cause, pressure and loyalty make enhorcement of executive action assured

Richard **Pierce 9,** Lyle T. Alverson Professor of Law at the George Washington University, "Saving the Unitary Executive Theory from Those Who Would Distort and Abuse it: A Review of the Unitary Executive, by Steven G. Calabresi and Christopher Yoo", George Washington Law Review, http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1951&context=faculty_publications

Calabresi and Yoo emphasize repeatedly their strong belief that the President has, and must have, an unqualified power to remove an executive branch subordinate.20 I agree that the President must have the power to remove any executive branch officer and that Congress cannot be allowed to give itself any role in the removal process. I am pleased that the Supreme Court has acted in a manner consistent with that view. I disagree with Calabresi and Yoo, however, to the extent that they argue that Congress cannot impose a for cause limit on the President's power to remove some executive branch officers and to the extent that they argue that the President can remove without cause executive branch employees who have no policy making responsibility. I believe that the President can control policy making within the executive branch even though he does not have plenary power to remove every executive branch subordinate.

In three cases, the Court has held that Congress can limit the president's power to remove an executive branch officer by requiring the president to state a cause for removal if Congress identifies an adequate functional rationale to support such a limitation, e.g., the agency adjudicates disputes involving private rights,21 the agency provides advice to Congress,22 or the agency has responsibility to investigate and/or prosecute alleged criminal wrongdoing at a high level in the executive branch.23 I do not believe that the for cause limits the Court upheld in those cases are inconsistent with the unitary executive theory or preclude the president from controlling policy making within the executive branch. In fact, I think they have little, if any, effect on the president's ability to control executive branch policy making.

The vast majority of executive branch officers have three reasons to act in accordance with the president's policy preferences that are independent of the president's removal power. All were either appointed or nominated by the president because of some combination of three characteristics – agreement with the president on policy issues related to their areas of responsibility, long-time loyalty to the president's political party, and/or personal loyalty to the president. As a result, presidents rarely need to resort to explicit or implicit threats to remove an officer to persuade the officer to act in accordance with the president's policy preferences. On the unusual occasion when an officer feels so strongly about a policy issue that the president is unable to persuade the officer to act in accordance with the president's policy preferences, I do not believe that the legal requirement that the president must state a cause for removing the officer has any effect at all on the president's ability to use the threat of removal as an added inducement to the officer to act in accordance with the president's policy preferences.

AT: Any DA to the CP

Non-unique---executive self-restraint happens all the time

Nathan Alexander **Sales 12**, Associate Professor of Law, Syracuse University College of Law, "Self restraint and National Security", http://jnslp.com/wp-content/uploads/2012/08/08__Sales_Master_6-28-12-NS.pdf

Why does the government sometimes tie its own hands in national security operations? Much of the caselaw and scholarship concerning national security rests on the assumption that the executive branch is institutionally prone to overreach – that, left to its own devices, it will inch ever closer to the line that separates illegal from legal, and sometimes enthusiastically leap across it. The obvious conclusion is that external, principally judicial, checks are needed to keep the Executive in line.2 In many cases the Executive does indeed push the envelope. But not always.3 The government often has powerful incentives to stay its own hand – to forbear from military and intelligence operations that it believes are perfectly legal. Officials may conclude that a proposed mission – a decapitation strike on al Qaeda's leadership, say, or the use of mildly coercive interrogation techniques on a captured terrorist – is entirely permissible under domestic and international law. Yet they nevertheless might rule it out. In other words, the government sometimes adopts self-restraints that limit its ability to conduct operations it regards as legally justified; it "fight[s] with one hand behind its back," to borrow Aharon Barak's memorable phrase.4

Topicality

1NC---T-Curtail

Curtail means cutting away the authority

Merriam-Webster, 15 ('curtail', http://www.merriam-webster.com/dictionary/curtail

Full Definition of CURTAIL

transitive verb

: to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation>

That requires a third party restriction – executive self-restraint isn't topical

8th Circuit Court of Appeals 10

(Public Water Supply Dist. No. 3 v. City of Leb., 605 F.3d 511, Lexis)

HN9 7 U.S.C.S. § 1926(b) provides that a rural district's service shall not be curtailed or limited. In this context, the verbs "curtail" and "limit" connote something being **taken from** the current holder, rather than something being retained by the holder to the exclusion of another. "Curtail" is defined as shorten in extent or amount; abridge; "limit" is defined as set bounds to; restrict. The available cases and fragments of legislative history all seem to have in mind **curtailment** resulting from substitution of **some third party** as a water-supplier for the rural district. Shepardize - Narrow by this Headnote

Vote neg for limits and ground---the objects of surveillance are potentially unlimited, which means restricting the mechanism the aff can use is essential to a manageable topic, and the ESR counterplan is a core negative generic necessary to check unlimited affs

Exts---Curtail = Limit

Curtail is a rule limiting action

Gibbons 99 – PhD in Statistics

(Jean, "Selecting and Ordering Populations: A New Statistical Methodology," p 178)

In general, **curtailment** is defined with respect to any **rule** as terminating the drawing of observations at a number smaller than n as soon as the final decision is determined; here n is the maximum number of observations that one is allowed to take. Thus curtailment is an "early stopping rule" and it yields a saving in the number of observations taken. Therefore we now discuss curtailment with respect to our sampling rule of looking for the cell with the highest frequency in n observations; we wish lo evaluate the amount of saving that may result for various values of k and n.

Exts---Curtail = Impose Restriction

Curtail means impose a restriction

Oxford Dictionaries, 15 ("curtail", http://www.oxforddictionaries.com/us/definition/american_english/curtail)

Definition of curtail in English:

verb

[WITH OBJECT]

1Reduce in extent or quantity; impose a restriction on: **civil liberties were further curtailed**

Curtail means place restrictions on

Vocabulary.com, 15 ('curtail' http://www.vocabulary.com/dictionary/curtail

DEFINITIONS OF:

curtail

v place restrictions on

"curtail drinking in school"

Synonyms:

curb, cut back, restrict

Competition/Net Benefit

AT: Perm do the CP (Against Courts/Congress Affs)

The perm severs the mechanism of the aff---executive self-restraint is obviously a distinct policy from passing a bill or having the court take an action---that's a voting issue because it destroys neg ground---all counterplans become uncompetitive

AT: Perm do the CP (Against General Affs)

The perm severs curtail---that means to cut away authority

Merriam-Webster, 15 ('curtail', http://www.merriam-webster.com/dictionary/curtail

Full Definition of CURTAIL

transitive verb

: to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation>

That requires a third party restriction---executive self-restraint isn't a curtailment of surveillance

8th Circuit Court of Appeals 10

(Public Water Supply Dist. No. 3 v. City of Leb., 605 F.3d 511, Lexis)

HN9 7 U.S.C.S. § 1926(b) provides that a rural district's service shall not be curtailed or limited. In this context, the verbs "curtail" and "limit" connote something being **taken from** the current holder, rather than something being retained by the holder to the exclusion of another. "Curtail" is defined as shorten in extent or amount; abridge; "limit" is defined as set bounds to; restrict. The available cases and fragments of legislative history all seem to have in mind **curtailment** resulting from substitution of **some third party** as a water-supplier for the rural district. Shepardize - Narrow by this Headnote

Voting issue---allowing affs to sever the mechanism of the plan destroys neg ground---most of the literature around curtailing surveillance involves how it should be done and by whom---means the counterplan is a necessary test of the aff and a key part of the negative arsenal

AT: Links to Politics---Leverage

Executive orders allow the president to gain leverage on the rest of the agenda- Altering strategy, Symbolic stands, and Authority

Kenneth **Mayer 1,** Government professor, University of Wisconsin-Madison, 2001, "With the Stroke of a Pen: Executive Orders and Presidential Power", Princeton University Press, p 31, http://press.princeton.edu/chapters/s7095.pdf

At the third level, presidents use their unilateral authority as a bargaining tool in an effort to shape the strategic context in which they operate. By taking symbolic stands, placing issues and policies on the public agenda, and providing political benefits to important constituencies, presidents can dramatically alter the strategic environment in which bargaining takes place. This type of authority comes closest to Neustadt's "persuasion" model of presidential power. Two recent examples are Clinton's 1995 order that barred government contractors from hiring replacement workers and a 1997 order prohibiting smoking in government buildings. In the first case Clinton was trying to mend the breach with organized labor that arose over his support of the North American Free Trade Agreement (which unions strongly opposed).Even though the president ultimately lost in the courts, he still gained considerable leverage by making the attempt. In the second case, the president's action was largely symbolic, and part of an effort to gain public credit by getting on the "right side" of an important public heath issue.

My focus is on the second and third categories of presidential action. Although presidents face limits on their ability to mandate direct change—indeed, in a separated system the lack of such limits would be, as Montesquieu put it, the very definition of tyranny—the focus in the presidency literature on the limits of command has obscured the president's ability to use executive authority to gain control of institutions, processes, and agendas. Even within this more narrow area presidents are not free to do whatever they want, and in any case Congress or the courts may step in to reverse what the president has done. I argue, though, that the president will win more of these battles than he loses, as Congress fails to overcome the collective dilemma and institutional inertia that make quick and decisive action difficult. Before I turn to the task of analyzing how presidents have used this power in particular policy areas, though, it is necessary first to define with more precision what the law says about executive orders, and provide an accurate and systematic account of the patterns of overall use.

AT: Links to Politics---No Debate/Backlash

Executive Orders don't link-speed of passage, difficulty to challenge, and avoidance of rulemaking

Phillip **Cooper 2,** Professor of Public Administration, Mark O. Hatfield School of Government, 2002, "By Order of the President: The Use and Abuse of Executive Direct Action", p 58-59

Executive orders are often used because they are quick, convenient, and relatively easy mechanisms for moving significant policy initiatives. Though it is certainly true that executive orders are employed for symbolic purposes, enough has been said by now to demonstrate that they are also used for serious policymaking or to lay the basis for important actions to be taken by executive branch agencies under the authority of the orders. Unfortunately, as is true of legislation, it is not always possible to know from the title of orders which are significant and which are not, particularly since presidents will often use an existing order as a base for action and then change it in ways that make it far more significant than its predecessors. The relative ease of the use of an order does not merely arise from the fact that presidents may employ one to avoid the cumbersome and time-consuming legislative process. They may also use this device to avoid sometimes equally timeconsuming administrative procedure, particularly the rulemaking processes required by the Administrative Procedure Act. Because these procedural requirements do not apply to the president, it is tempting for executive branch agencies to seek assistance from the White house to enact by executive order that which might be difficult for the agency itself to move through the process. Moreover, there is the added plus from the agency's perspective that it can be considerably more difficult for potential adversaries to obtain standing to launch a legal challenge to the president's order than it is to move an agency rule to judicial review. There is nothing new about the practice of generating executive orders outside the White house. President Kennedy's executive order on that process specifically provides for orders generated elsewhere.

AT: Links to Politics---No Accountability

Doesn't link to politics---Congress can't hold the executive accountable

Sudha **Setty 8,** Professor at Western New England University School of Law, Spring 2008, "THE PRESIDENT'S QUESTION TIME: POWER, INFORMATION, AND THE EXECUTIVE CREDIBILITY GAP", Cornell Journal of Law and Public Policy, 17 Cornell J. L. & Pub. Pol'y 247, Lexis

Significantly heightened access to the Executive would create a stronger culture of accountability and would work against the diffusion of responsibility within the bureaucracy of the administration. n144 Such diffusion often allows the President to dissociate with unsuccessful or controversial activities of the executive branch by claiming a lack of direct oversight or a lack of reporting by the various offices to him. n145 [*275] Further, a President's Question Time would assist in improving the function of the Legislature by allowing representatives to elevate issues of importance beyond House floor debates. Important issues could be aired before the President, addressed by the executive branch, and evaluated by the public in a relatively timely fashion, n146 even if the White House and both branches of Congress are controlled by one party. n147

The organization and role of political parties in the United States is significantly different than in the United States. The presidential system in the United States has no formal institution akin to the "opposition rights" that are found in parliamentary systems. n148 The difference in the role of parties, however, should not operate as an impediment to establishing a system by which members of a minority political party have a public forum enabling direct dialogue with the President.

In the case of unified government, the function of a Question Time is obvious and remarkably similar to that of the Prime Minister's Question Time in Britain: to restore a sense of balance in government in accordance with the Madisonian ideal promulgated at the time the Constitution was drafted. Although the framers of the Constitution hoped that political parties would never take root in the United States, n149 the modern reality is that the strength of political parties at times of unified government makes the U.S. system remarkably similar to the Westminster parliamentary system of a linked executive and legislative branch. n150 As such, similar measures should be considered to restore a greater degree of accountability of the executive branch.

FISA CP

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The United States Congress should require all-existing and future [plan object] be approved by the FISA courts before being implemented. FISA should modify its operating procedure including but not limited to:

*** increase transparency of the court proceedings**

*** ensure those affected by surveillance are represented during and in the proceedings,**

*** allow individuals to challenge surveillance programs in regular federal courts,**

*** require intelligence collection meet the rubric under 'foreign intelligence' and national security standards,**

*** and establish constitutional standards during criminal investigations.**

FISA has slowly crept and expanded to justify broad surveillance – they need to be reined in and reformed to save their original purpose and credibility.

Goitein & Patel 15 - ***Served as counsel to Sen. Russell Feingold, Chairman of the Constitution Subcommittee of the Senate Judiciary Committee, **Has testified before Congress opposing the dragnet surveillance of Muslims, organized advocacy efforts against state laws designed to incite fear of Islam, and developed legislation creating an independent Inspector General for the NYPD (Elizabeth, Faiza, What went wrong WITH THE FISA COURT, Brennan Center for Justice is a nonpartisan law and policy institute, http://litigation.utahbar.org/assets/materials/2015FedSymposium/3c_What_Went_%20Wrong_With_The_FISA_Court.pdf) NAR**

The FISA Court is a unique creature within the federal judiciary. Established by Congress in 1978 as part of the Foreign Intelligence Surveillance Act **(FISA),2** the court's original mandate was to review the government's **applications to collect "foreign intelligence" — information relating to foreign affairs and external threats — in individual cases. Its judges, who are drawn from among federal trial judges and selected by the Chief Justice of the United States, generally hear from just one party: the government.** Proceedings are closed and the court's decisions are classified. Most targets receive no notice of the surveillance, even after investigative activity has ceased. **At the time of its creation, many lawmakers** saw constitutional problems in a court that operated **in total secrecy and outside the normal "adversarial" process (i.e., with both parties present).** But the majority of Congress was reassured by similarities between FISA Court proceedings and the hearings that take place when the government seeks a search warrant in a criminal investigation. **Moreover,** the rules governing who could be targeted for "foreign intelligence" purposes were **narrow** enough to mitigate concerns that the FISA Court process might be used to suppress political dissent in the U.S. **— or to avoid the stricter standards that apply in domestic criminal cases.** In the years since **then, however,** changes in technology and the law **have altered the constitutional calculus. Technological advances have revolutionized communications.** People are communicating at a scale unimaginable **just a few years ago.** International phone calls**, once difficult and expensive,** are now as simple as flipping a light switch, **and**

the Internet provides countless additional means of international communication. Globalization makes such exchanges as necessary as they are easy. As a result of these changes, the amount of information about Americans that the NSA intercepts, **even when targeting foreigners overseas,** has exploded. Instead of increasing safeguards for Americans' privacy as technology advances, **the law has evolved in the opposite direction since 9/11**. It increasingly leaves Americans' information outside its protective shield. While surveillance involving Americans previously required individualized court orders, it now happens through massive collection programs (known as "programmatic surveillance") **involving no case-by-case judicial review.** The pool of permissible targets is no longer limited to foreign powers — such as foreign governments or terrorist groups — and their agents. Furthermore, the government may invoke the FISA Court process even if its primary purpose is to gather evidence for a domestic criminal prosecution rather than to thwart foreign threats. Much has been written about the effect of these developments on Americans' privacy, not to mention the lawfulness of the NSA's actions. But these developments also have had a profound effect **on the role exercised by the FISA Court**. They have caused the court to **veer off course**, departing from its traditional role of ensuring that the government has **sufficient cause** to intercept communications or obtain records in particular cases and instead authorizing broad surveillance programs. It is questionable whether the court's new role comports with Article III of the Constitution, which mandates that courts must adjudicate concrete disputes rather than issuing advisory opinions on abstract questions. The constitutional infirmity is compounded by the fact that the court generally hears only from the government, while the people whose communications are intercepted have no meaningful opportunity to challenge the surveillance, even after the fact. Moreover, under current law, the FISA Court **does not provide the check on executive action that the Fourth Amendment demands.** Interception of Americans' communications generally requires the government to obtain a warrant based on **probable cause** of criminal activity. Although some courts have held that a traditional warrant is not needed to collect foreign intelligence, they have imposed strict limits on the scope of such surveillance and have emphasized the importance of close judicial scrutiny in policing these limits. The FISA Court's **minimal involvement** in overseeing programmatic surveillance **does not meet these constitutional standards**. **Fundamental changes are needed to fix these flaws.** Following Snowden's disclosures, several bills were introduced to try to ensure that the court would hear the other side of the argument, generally from some type of public advocate. Other bills addressed the court's secrecy by requiring the executive branch to declassify significant opinions or release summaries. These proposals would make important improvements, but they do not address the full range of constitutional deficiencies resulting from the changes in law and technology detailed in this report. The problem with the FISA Court is far broader than a particular procedure or rule. **The problem with the FISA Court is FISA.**

Net Benefit

Politics NB

The senate will pass anything FISA-related

Antle 12 (Jim Antle is editor of the Daily Caller News Foundation and senior editor at The American Spectator, and the author of Devouring Freedom: Can Big Government Ever Be Stopped? He is a former associate editor at TAC and his work has appeared at The Guardian, Politico, and Taki Mag, What the Senate Doesn't Know about FISA, December 31, 2012, http://www.theamericanconservative.com/articles/what-the-senate-doesnt-know-about-fisa/ accessed 6/22/15) //CS

Nancy Pelosi once said that we had to pass Obamacare to see what's in it. Last week, Congress said we shouldn't ask what's in the federal surveillance law even after we've passed it. That's the most charitable way to interpret the Senate's votes reauthorizing expiring provisions of the Foreign Intelligence Surveillance Act (FISA) without any major changes or new checks and balances. The FISA amendments package of 2008 allows the kind of general warrants the Fourth Amendment was intended to prevent, giving the government a blank check for snooping on Americans. It's not so much that senators voted by lopsided margins to continue Bush-era warrantless wiretapping nearly five years into the age of hope and change (with the Obama administration's blessing, of course). More surprising is their lack of interest in how many people are being spied on and how likely irrelevant data belonging to innocent citizens is to be ensnared in terrorism investigations. FISA courts operate in secret, which is to be expected. What is not to be expected is that the elected branches of the federal government will conduct a debate about the proper scope of the law without knowing how the law is actually interpreted in practice. We might as well have a debate about the Constitution with a secret Supreme Court. (Well, that probably wouldn't be all that different from the current state of affairs.) Sen. Jeff Merkley asked that we be given some window into what the important rulings and precedents of the secret court might be, with the understanding that nothing endangering national security would be declassified. If we are going to discuss these issues, it would be awfully sporting to know what we are talking about. Nah, the Senate decided. Merkley's amendment was defeated by a vote of 54 to 37. Who needs to know these things anyway? That's why the government hires national-security professionals, who will always act in our interests.

Improving FISA transparency has bipartisan support

Peterson 13 (Andrea Peterson covers technology policy for The Washington Post, with an emphasis on cybersecurity, consumer privacy, transparency, surveillance and open government, The House is divided over almost everything. But FISA Court reform might be able to unite it, October 01, 2013, http://www.washingtonpost.com/blogs/the-switch/wp/2013/10/01/the-house-is-divided-over-almost-everything-but-fisa-court-reform-might-be-able-to-unite-it/ accessed 6/22/15)//CS

While the government remains shut down because Congress can't agree to keep it funded, a Democrat and a Republican are asking their colleagues to support legislation to bring more transparency to the process for approving NSA surveillance programs. Rep. Chris Van Hollen (D-Md.) and Jim Jordan (R-Ohio) sent a letter to their colleagues Tuesday asking them to join in co-sponsoring companion legislation to the FISA Court Reform Act (S.1467) introduced in the upper chamber by Sen. Richard Blumenthal (D-Conn.) this summer. Their legislation would create an Office of the Constitutional Advocate led by a citizen's advocate appointed by the judicial branch who would argue for civil liberties in the FISA Court process. It was also incorporated into the bipartisan proposal introduced by Blumenthal and Sens. Rand Paul (R-Ky.), Mark Udall (D-Colo.) and Ron Wyden (D-Ore.). "The basic idea behind the bill is that both sides of an argument should be represented before the FISA court," explained Van Hollen. "We believe the FISA court should head the position advanced by the intelligence agencies, but they should also hear from a citizen's advocate whose main purpose is to determine if individual's rights are being adequately protected." Similarly, Jordan argued that an "adversarial" approach with checks and balances was an appropriate reform approach for the FISA Court consistent with the "American system." The constitutional advocate In theory, the advocate would analyze all requests before the notoriously secret court and provide assistance to communications companies on request. But FISA judges would have the discretion to exclude the advocate from some cases. The advocate would also have the ability to appeal decisions made by the FISA Court to the FISA Court of Review, which would be required to decide on every appeal by the advocate. The Office of the Constitutional Advocate would also be required to make annual reports to Congress on its activities and proposals for legislation to improve the effectiveness of the FISA system. Click here for more information! This would clearly be a change from the current setup in the FISA Court, but it might not be enough to materially change the outcomes of the process. Former NSA chief Michael Hayden, one of the architects of current spying programs, recently called this particular type of reform a "cosmetic" change that would "make people feel better" but might not result in any actual changes to programs. And since the court itself complained in a since-declassified order that the NSA mislead it repeatedly about the extent and nature of surveillance, changes at that level might not make a difference. Jordan disagreed with Hayden's assessment of the advocate approach, saying "he can have his opinion, but the way we structured the legislation was not purely symbolic." Jordan also indicated that he was looking at a broader array of legislative responses to privacy concerns raised by the Edward Snowden leaks. Asked whether he would support a broader approach similar to the one proposed by Wyden, Paul, Blumenthal and Udall in the Senate, Van Hollen said he would "certainly look" at that kind of bill. But he said he was focused on taking it one step at a time. "This a very important piece of the overall issue and it signals important bipartisan cooperation in the House on this issue," he said. Van Hollen believes it's more important

to control who has access to data than to regulate how it's collected. "I really think that's the key issue when it comes to protecting civil liberties: What are the standards that apply when people are trying to search the data and do you have an advocate to protect individual liberties in that process," Van Hollen added. The legislation Van Hollen and Jordan are co-sponsoring would also require the Attorney General to declassify or summarize significant FISA Court decisions. That would fulfill a request some congressional civil liberties watchdogs including Wyden and Udall have been making since long before the Snowden leaks. Bipartisan support

Van Hollen and Jordan's bill is not the only legislative proposal to rein in the surveillance state. In July, an amendment offered by Michigan Reps. Justin Amash (R) and John Conyers Jr. (D) that would have defunded the NSA's practice of collecting domestic call records. It attracted support from both sides of the aisle with 94 Republican votes (including Jordan's) along with 111 Democratic votes — despite opposition by leadership on both sides and the White House. Its success shows that there's interest from members of both parties in changing the status quo, even if it's unpopular with leadership. As the ranking minority member on the House Budget Committee and a former chairman of the Democratic Congressional Campaign Committee, Van Hollen is often touted as a rising star in his party by the media. It's possible that his support of this FISA Court transparency initiative might be a signal that feelings on the Hill are changing.

Warrants with FISA is political cover

*this card isn't so good.

Rothschild 8 – (Matthew, Obama's FISAL Betrayal,

http://www.progressive.org/mag_wx0602408**, June 24th 2008) NAR**

Barack Obama's rightward sprint is nowhere more obvious than in his betrayal on the FISA bill. This bill allows the President to grab all incoming and outgoing international communications without a warrant. The ACLU says it represents "an unprecedented extension of governmental surveillance over Americans." Obama, sounding on Friday a lot like Bush, said: "Given the legitimate threats we face, providing effective intelligence collection tools with appropriate safeguards is too important to delay." Here's what Bush said the same day as Obama: The bill "allows our intelligence professionals to quickly and effectively monitor the plans of terrorists abroad, while protecting the liberties of Americans here at home." But it doesn't protect our liberties, and Obama ought to know that. Obama said it "firmly reestablishes basic judicial oversight over all domestic surveillance." But the ACLU notes that the bill "permits only minimal court oversight. The FISA Court only reviews general procedures for targeting and minimizing the use of information that is collected. The court may not know who, what, or where will actually be tapped, thereby undercutting any meaningful for the court and violating the Fourth Amendment." What's more, in the incredibly rare instances where the FISA Court denies a warrant to the President, under the new bill the President can go ahead and do the wiretapping anyway while the appeals process continues, a process that the ACLU says can take two months. Russ Feingold calls the idea that this is a good compromise "a farce" and "political cover.

Terrorism DA NB

FISA stopped overseas terrorism

Sullivan 13 (Sean Sullivan, NSA head: Surveillance helped thwart more than 50 terror plots, June 18, 2013, accessed 6/22/15)//CS

Joyce also said that the use of a FISA business record provision helped officials with an investigation involving an individual who was communicating with an overseas terrorist. "The NSA, using the business record FISA, tipped us off that this individual had indirect contacts with a known terrorist overseas," said Joyce. "We were able to reopen this investigation, identify additional individuals through a legal process and were able to disrupt this terrorist activity."

FISA surveillance has stopped terrorism in the past—it prevented a suicide bombing in a New York Subway

WP 13 (The Washington Post, US defends surveillance tactics in war on terrorism, http://www.scmp.com/news/world/article/1264602/us-defends-surveillance-tactics-war-terrorism accessed 6/22/15) //CS

In November 2008, Abid Naseer, a Pakistani student living in Manchester, England, began to e-mail a Yahoo account ultimately traced to his home country. The young man's e-mails appeared to be about four women - Nadia, Huma, Gulnaz and Fozia - and which one would make a "faithful and loving wife". Investigating terrorism is not an exact science. It's like a mosaic SEAN JOYCE, FBI DEPUTY DIRECTOR British investigators later determined that the four names were code for types of explosives. And they ascertained that a final April 2009 e-mail announcing a "marriage to Nadia" between the 15th and the 20th was a signal that a terrorist attack was imminent, according to British court documents. It is unclear exactly how British intelligence linked the Pakistani e-mail address to a senior al-Qaeda operative who communicated in a kind of code to his distant allies. But the intelligence helped stop the plot in England, and the address made its way to the US National Security Agency (NSA). A few months later, the NSA was monitoring the Yahoo user in Pakistan when a peculiar message arrived from a man named Najibullah Zazi, an Afghan American living in Colorado. He asked about "mixing of [flavor and ghee oil] and I do not know the amount, plz right away." Soon after, on September 9, 2009, a second message arrived that echoed the code used in the British plot: "The marriage is ready," Zazi wrote. The e-mails led the NSA to alert the FBI, which obtained a court order to place Zazi under more extensive surveillance. Officials learned that he had visited Pakistan in 2008, the same time as one of the British plotters. In the end, the e-mails and additional surveillance foiled a plot by Zazi and two others to conduct suicide bombings in the New York subway system just days after he sent the "marriage is ready" e-mail. In recent days, US intelligence and law enforcement officials, as well as congressional officials, have pointed to the authority that allowed them to target the Yahoo account - Section 702 of the Foreign Intelligence Surveillance Act (FISA) - as a critical tool in identifying and disrupting terrorist plots in the US and abroad. But some critics of NSA surveillance suggested that the collection of data under a programme called Prism was not essential to Zazi's capture because the British first obtained the critical e-mail address. Still, the case study provides a rare glimpse of how the broad surveillance practices of the United States, often in concert with allies, are deployed. "The 702 programme has been enormously useful in a large number of terrorist cases," said a US official who has access to classified records on NSA programmes. "It's beyond dispute that it is highly effective. It operates exactly as anyone paying attention would have expected it to operate based on floor debate and plain reading of law." Passage of Section 702 as an amendment to FISA in 2008 gave the government the authority to request information from US telecommunications companies on foreign targets located overseas without a court order for each individual case. The broad authority is reviewed and renewed annually by the FISA court, although the law does not preclude making a specific request for surveillance.

FISA Is Vitally Important To National Security

Kris, 2011

Assistant Attorney General, National Security Division, U.S. Department of Justice

We often hear that before 9/11, the United States took a “law enforcement approach” to counterterrorism. There is some truth in that, but I think it oversimplifies the situation. In fact, the 9/11 Commission found that before 9/11, “the CIA was plainly the lead agency confronting al Qaeda”; law enforcement played a “secondary” role; and military and diplomatic efforts were “episodic.” I was involved in national security before 9/11, and that seems roughly accurate to me. After 9/11, of course, all of our national security agencies ramped up their counterterrorism activities. As our troops deployed to foreign battlefields and the Intelligence Community expanded its operations, the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) also evolved. We began with the important legal change of tearing down the so-called “FISA wall,” under which law enforcement and intelligence were largely separate enterprises and law enforcement was correspondingly limited as a counterterrorism tool. The Foreign Intelligence Surveillance Act, or FISA, is a federal statute enacted by Congress in 1978 that governs electronic surveillance and physical searches of foreign intelligence targets in the United States. It is an extremely powerful investigative tool, and one that is vitally important to our national security. FISA does not allow, and never has allowed, surveillance or searches of ordinary criminals like Bonnie and Clyde. It applies only to foreign intelligence threats, such as Robert Hanssen or Osama bin Laden.

Lone Wolf Provision Will Be Used Against International Terrorists
Woods, 2005

Senior Executive Vice President for Legal Affairs with MZM

Critics of FISA's new "lone wolf' provision argue it is a dangerous expansion of authority, allowing the application of FISA to individuals lacking any connection to foreign powers. The language actually enacted, however, integrates a definition of "international terrorism' that preserves a sufficiently strong foreign nexus requirement. Therefore, the statute's parts, taken together and read in context, contain adequate safeguards to ensure that the lone wolf provision will be used against its intended targets—international terrorists. Before the lone wolf provision, there were two principal paths to obtain FISA surveillance of an international terrorist: first, by demonstrating probable cause that the target acts in the U.S. as a "member' of an international terrorist group (found in FISA section 101(b)(1)(A)); and second, by demonstrating probable cause that the target "knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power' (section 101(b)(2)(C)). The first option is difficult to establish given the informality of terrorist organizations and is not available where the target is a U.S. person. The second is the stock from which the present "lone wolf' provision is cut, and provides the conceptual foundation for the new provision.

FISA stops terrorism
Savage, 2013

Charlie Savage, 6/18/13, NY Times. “N.S.A. Chief Says Surveillance Has Stopped Dozens of Plots” Journalist at NY Times. http://www.nytimes.com/2013/06/19/us/politics/nsa-chief-says-surveillance-has-stopped-dozens-of-plots.html?_r=0

WASHINGTON - Top **national security officials** on Tuesday **promoted two newly declassified examples of what they portrayed as "potential terrorist events" disrupted by government surveillance.** The cases were made public as Congress and the Obama administration stepped up a campaign to explain and defend programs unveiled by recent leaks from a former intelligence contractor. **One case involved a group of men in San Diego convicted of sending money to an extremist group in Somalia. The other was presented as a nascent plan to bomb the New York Stock Exchange,** although its participants were not charged with any such plot. Both were describe by Sean Joyce, deputy director of the Federal Bureau of Investigation, at a rare public oversight hearing by the House Intelligence Committee. At the same hearing, Gen. Keith B. Alexander, the head of the National Security Agency, said that American surveillance had helped prevent "potential terrorist events over 50 times since 9/11," including at least 10 "homeland-based threats." But he said that a vast majority of the others must remain secret. "In the 12 years since the attacks on Sept. 11, we have lived in relative safety and security as a nation," General Alexander said. "That security is a direct result of the intelligence community's quiet efforts to better connect the dots and learn from the mistakes that permitted those attacks to occur on 9/11."

FISA stops two cases of terrorism
Savage, 2013

Charlie Savage, 6/18/13, NY Times. “N.S.A. Chief Says Surveillance Has Stopped Dozens of Plots” Journalist at NY Times. http://www.nytimes.com/2013/06/19/us/politics/nsa-chief-says-surveillance-has-stopped-dozens-of-plots.html?_r=0

Mr. Joyce also **invoked two cases officials have previously linked to surveillance conducted under the FISA Amendments Act - a plot to bomb the New York City subway and the discovery that David Headley, a Chicago man, was working on a plot to bomb a Danish newspaper that published cartoon depictions of the Prophet Muhammad.** Representative Jim Himes, Democrat of Connecticut, told General Alexander that he was "more troubled" by the domestic calling log program, which he called "historically unprecedented in the extent of the data that is being collected on potentially all American citizens," than with the gathering of foreign data. He pressed the officials to say how many attacks were stopped by it. Mr. Joyce replied that it was "an almost impossible question," but that "I can tell you, every tool is essential and vital. And the tools, as I outlined to you, and the uses today have been valuable to stopping some of those plots."

Legal Credibility/Hegemony

Opaque FISA proceedings destroy America's legal credibility.
Blumenthal 13 – Senator of the greatest state in the union, Connecticut (Richard, http://www.politico.com/story/2013/07/fisa-court-process-must-be-unveiled-94127.html**, FISA court secrecy must end, 7/14/13) NAR**

On any given day **in Washington,** 11 judges **— all designated by Chief Justice John Roberts,** without congressional advice or consent — convene to hear surveillance applications **from the United States government. Behind closed doors and** without checks or scrutiny**, they balance the threats of espionage and terrorism with Fourth Amendment protections from unreasonable searches and seizures. But the** odds are stacked strongly in favor of the federal government**. Last year alone, the Foreign Intelligence Surveillance Court, known as** the FISA court, heard nearly 1,800 **such** applications from the U.S. government; **not a single request was denied. In its entire 33-year history, the FISA court has rejected just 11 of 34,000 requests. Until recently, few Americans had heard of the FISA court. Yet this federal body, created by the Foreign Intelligence Surveillance Act of 1978 and expanded under the PATRIOT Act, wields tremendous power. FISA requires the government to obtain a judicial warrant prior to commencing particular kinds of intelligence operations within the United States, and the FISA court is empowered to provide these warrants. FISA court judges decide whether the government can tap phone calls, access business records and sweep up a wide array of data that can be used to map the contours of our daily lives.** After the court rules, its findings are almost never made public. **Americans whose privacy may be compromised by FISA court rulings cannot read those rulings, much less contest or appeal them. Created in the wake of Watergate-era revelations about executive-branch spying on domestic dissidents, the FISA court today operates in the shadows without public oversight. Members of most federal courts are selected by the president and confirmed by the Senate with public hearings and an extended opportunity for the public to comment. Members of the FISA court are selected by the chief justice alone, and the American people rarely learn their names or anything about their judicial philosophies until a scandal thrusts them into the public eye. This secretive process has given us a FISA court in which, at the very least, the appearance of effective, nonpolitical justice is gone, as 10 of 11 members were nominated by Republican presidents, and the executive branch almost never loses. The FISA court reviews domestic surveillance requests through a secretive process that denies the public an opportunity to influence or even understand opinions with immense implications for our privacy. In the domestic criminal context, the contours of Fourth Amendment limitations have been developed through a process in which advocates, officials and the public have a chance to identify flaws in the government's reasoning.**

While domestic criminal warrants are issued after proceedings in which only the government is able to make its case, the legal principles governing the decision to issue these warrants come from judicial decisions regarding their admissibility — decisions issued after public proceedings where both sides have a chance to be heard. By contrast, in the FISA **court context,** drastic expansions in government surveillance can occur without any party other than the government having an opportunity to know, much less to weigh in**. This has to stop. I am already working on legislation to reform the FISA court so it can perform effectively its crucial function as a check on the executive branch, while still allowing light to shine upon its proceedings. My proposal, which I plan to introduce this month, will bring transparency to the process for selecting FISA court judges and ensure a broader diversity of views on the bench. It also will ensure that FISA court rulings are the product of a process in which both sides have the opportunity to be heard, a process designed to keep the government honest and allow for balanced consideration of difficult issues. This process will include a special advocate with the power and responsibility to ensure that privacy rights are considered in FISA court opinions, and an opportunity for civil society organizations to weigh in before the court issues a ruling that substantially alters the balance between liberty and security in federal policy.** The FISA court serves a critical purpos**e in our national security apparatus, ensuring timely consideration of surveillance requests when seconds matter most.** But the court in its current form — **unaccountable, secretive, one-sided** — is broken. It not only lacks **any genuine** transparency and accountability, but it also **deprives the entire system of trust and credibility** in the eyes of the American people. The **FISA court is exactly the type of secret tribunal that fanned the flames of revolution we celebrate each July 4. It's time to change that.**

Credibility will make the difference in maintaining hegemonic standing

APSA 9 (American Political Science Association, The American Political Science Association is the leading professional organization for the study of political science and serves more than 15,000 members in over 80 countries. With a range of programs and services for individuals, departments and institutions, APSA brings together political scientists from all fields of inquiry, regions, and occupational endeavors within and outside academe in order to expand awareness and understanding of politics, " U.S. Standing in the World: ¶ Causes, Consequences, ¶ and the Future," Task Force Report, October 2009, http://www.apsanet.org/media/PDFs/APSAUSStandingShortFinal.pdf p. 3-4)

Unlike something a nation possesses and can easily measure, like wealth or military ¶ might, standing is an attribute assigned to the United States by actors beyond its ¶ borders—such as foreign leaders and peoples, international organizations, and transnational ¶ groups—and assessed by citizens within them. U.S. standing has both an absolute and a ¶ relative quality. It is absolute in the sense that it can be high or low and can vary over time. It ¶ is relative in that U.S. standing could be better or worse than that of other countries or actors, ¶ such as China or the European Union.¶ Standing has two major facets: credibility and esteem. Credibility refers to the U.S. ¶ government's ability to do what it says it is going to do—to "stand up" for what it believes, ¶ and to "stand against" threats to its interests and ideals. Esteem refers to America's stature, ¶ or what America is perceived to "stand for" in the hearts and minds of foreign publics and policymakers. Credibility and esteem can be mutually reinforcing, but they can also be ¶ difficult to pursue in tandem—a trade-off implied by Machiavelli's famous dictum: "it is much ¶ safer to be feared than loved." ¶ Standing is densely interwoven with U.S. "hard power"—the nation's material military ¶ and economic capabilities. U.S. capabilities help the nation

realize its interests, and a modern ¶ military and robust economy breed appeal and respect. Power and standing, however, are not ¶ the same thing. U.S. standing may vary even if U.S. hard power does not, as we have seen since ¶ 2000: standing has declined (see Figure 3), but relative American power has been steady (see ¶ Figure 5 below).. Likewise with "soft power": a country's standing can rise and fall even as the ¶ attractiveness of its system remains relatively constant. And unlike pro- or anti-Americanism, ¶ standing is not about whether others are ¶ for or against the United States, but instead ¶ whether they view the United States as a ¶ credible actor with traits that should be ¶ admired or emulated. ¶ Why should policymakers—or political scientists—care about standing at all?¶ First, recent history suggests that standing can play a fundamental role in the shaping ¶ of strategy. In the wake of the 9/11 attacks, President George W. Bush initiated a new ¶ national strategy for the United States that favored the credibility dimension of standing—¶ emphasizing a policy package of assertive unilateralism, preventive use of force, and aggressive ¶ democratization. The administration achieved some initial successes, swiftly toppling the ¶ Taliban in Afghanistan, securing dismantlement of Libya's nuclear program, and encouraging ¶ an apparent halt or slow-down in Iran's nuclear program. ¶ Yet, over time, despite the lack of further terrorist attacks on U.S. soil, American ¶ standing declined. The Bush administration's single-minded approach lost significant ¶ support at home and abroad, as the United States grew mired in Iraq, was accused of ¶ violations of international law, and drew international criticism and resentment—even as ¶ Osama bin Laden remained at large. This decline in standing only made it harder for the ¶ United States to be effective in foreign affairs—prompting the Bush administration to take ¶ what some saw as a reverse course after 2005 and return to the typical pattern of American ¶ internationalism since World War II. ¶ More distant history speaks to the significance of standing as well. In the long ¶ competition with the Soviet Union, the United States was anxious that its reputation to ¶ protect its allies, especially those in Europe, be seen as credible by both Soviet leaders and ¶ Europeans. U.S. participation in the Korean and Viet Nam wars was spurred by the fear that a ¶ perception of diminished U.S. credibility would lead others to join a rising Communist tide. ¶ As Lyndon Johnson explained to Martin Luther King, Jr. in early 1965, "If I pulled out [of ¶ Vietnam] ... I think the Germans would be scared to death that our commitment to them was ¶ no good, and God knows what we'd have in other places in the world...."¶ Standing is the everyday currency of America's existence in the world. Political standing ¶ is akin to long-term political capital (or "goodwill" in accounting). It has intrinsic value, ¶ including in the self-understanding of Americans, even when it has no readily observable ¶ behavioral implications.

Hegemony good- multiple scenarios for global war

Brooks et al. 13 (Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College "Don't Come Home America: The Case Against Retrenchment," International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51)

A core premise of **deep engagement** is that it prevents the **emergence** of a far more dangerous global security environment. For one thing, as noted above, the United States' overseas presence gives it the **leverage** to restrain partners from taking provocative action. Perhaps more important, its core **alliance commitments** also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged **U.S. power dampens the** baleful **effects of anarchy** is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the "American Pacifier" is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive war temptations, regional rivalries, and even runs at regional hegemony and **full-scale great power war.** 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia's security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia's major states could manage regional multipolarity peacefully without the American pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments

will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins to swing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia— might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimism regarding the region's prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by a still-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism's sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism's optimism about what would happen if the United States retrenched is very much dependent on its particular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. **Burgeoning** research across the social and other sciences, however, undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and they engage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world's key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts that **the withdrawal of** the **America**n pacifier **will yield** either a competitive regional **multipolarity complete with** associated insecurity, arms racing, **crisis instability, nuclear proliferation, and** the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional **great power war**). Hence it is unsurprising that retrenchment advocates are prone to focus on the second argument noted above: that avoiding wars and security dilemmas in the world's core regions is not a U.S. national interest. Few doubt that the United States could survive the return of insecurity and conflict among Eurasian powers, but at what cost? Much of the work in this area has focused on the economic externalities of a renewed threat of insecurity and war, which we discuss below. Focusing on the pure security ramifications, there are two main reasons why decisionmakers may be rationally reluctant to run the retrenchment experiment. First, overall higher levels of conflict make the world a more dangerous place. Were Eurasia to return to higher levels of interstate military competition, one would see overall higher levels of military spending and innovation and a higher likelihood of competitive regional **proxy wars and arming of client states**—all of which would be concerning, in part because it would promote a faster diffusion of military power away from the United States. Greater regional insecurity could well feed proliferation cascades, as states such as Egypt, Japan, South Korea, Taiwan, and Saudi Arabia all might choose to create nuclear forces. 78 It is unlikely that proliferation decisions by any of these actors would be the end of the game: they would likely generate pressure locally for more proliferation. Following Kenneth Waltz, many retrenchment advocates are proliferation optimists, assuming that nuclear deterrence solves the security problem. 79 Usually carried out in dyadic terms, the debate over the stability of proliferation changes as the numbers go up. Proliferation optimism rests on assumptions of rationality and narrow security preferences. In social science, however, such assumptions are inevitably probabilistic. Optimists assume that most states are led by rational leaders, most will overcome organizational problems and resist the temptation to preempt before feared neighbors nuclearize, and most pursue only security and are risk averse. Confidence in such probabilistic assumptions declines if the world were to move from nine to twenty, thirty, or forty nuclear states. In addition, many of the other dangers noted by analysts who are concerned about the destabilizing effects of nuclear proliferation—including the risk of accidents and the prospects that some new nuclear powers will not have truly survivable forces—seem prone to go up as the number of nuclear powers grows. 80 Moreover, the risk of "unforeseen crisis dynamics" that could **spin out of control** is also higher as the number of nuclear powers increases. Finally, add to these concerns the enhanced danger of nuclear leakage, and a world with overall higher levels of security competition becomes yet more worrisome. The argument that maintaining Eurasian peace is not a U.S. interest faces a second problem. On widely accepted realist assumptions, acknowledging that U.S. engagement preserves peace dramatically narrows the difference between retrenchment and deep engagement. For many supporters of retrenchment, the optimal strategy for a power such as the United States, which has attained regional hegemony and is separated from other great powers by oceans, is offshore balancing: stay over the horizon and "pass the buck" to local powers to do the dangerous work of counterbalancing any local rising power. The United States should commit to onshore balancing only when local balancing is likely to fail and a great power appears to be a credible contender for regional hegemony, as in the cases of Germany, Japan, and the Soviet Union in the midtwentieth century. The problem is that China's rise puts the possibility of its attaining regional hegemony on the table, at least in the medium to long term. As Mearsheimer notes, "The United States will have to play a key role in countering China, because its Asian neighbors are not strong enough to do it by themselves." 81 Therefore, unless China's rise stalls, "the United States is likely to act toward China similar to the way it behaved toward the Soviet Union during the Cold War." 82 It follows that the United States should take no action that would compromise its capacity to move to onshore balancing in the future. It will need to maintain key alliance relationships in Asia as well as the formidably

expensive military capacity to intervene there. The implication is to get out of Iraq and Afghanistan, reduce the presence in Europe, and pivot to Asia— just what the United States is doing. 83 In sum, **the argument that U.S.** security **commitments are unnecessary** for peace **is countered by a lot of scholarship**, including highly influential realist scholarship. In addition, the argument that Eurasian peace is unnecessary for U.S. security is weakened by the potential for a large number of nasty security consequences as well as the need to retain a latent onshore balancing capacity that dramatically reduces the savings retrenchment might bring. Moreover, switching between offshore and onshore balancing could well be difªcult. Bringing together the thrust of many of the arguments discussed so far underlines the degree to which **the case for retrenchment misses the** underlying **logic of** the **deep engagement** strategy. By supplying reassurance, deterrence, and active management, the United States lowers security competition in the world's key regions, thereby preventing the emergence of a hothouse atmosphere for growing new military capabilities. Alliance ties dissuade partners from ramping up and also provide leverage to prevent military transfers to potential rivals. On top of all this, the United States' formidable military machine may deter entry by potential rivals. Current great power military expenditures as a percentage of GDP are at historical lows, and thus far other major powers have shied away from seeking to match top-end U.S. military capabilities. In addition, they have so far been careful to avoid attracting the "focused enmity" of the United States. 84 All of the world's most modern militaries are U.S. allies (America's alliance system of more than sixty countries now accounts for some 80 percent of global military spending), and the gap between the U.S. military capability and that of potential rivals is by many measures growing rather than shrinking. 85

2nc/1nr extensions

FISC reform is key to increase credibility

ACLU, no date, https://www.aclu.org/support-oversight-secret-fisa-court

Under the Foreign Intelligence Surveillance Act (most commonly known as FISA), a secret intelligence court was created to authorize government wiretaps in foreign intelligence investigations. Since its initial enactment, FISA has been steadily expanded in ways that pose an increasing threat to individual rights. **Under FISA procedures, all hearings and decisions are conducted in secret. The Department of Justice has not disclosed even the most basic information about the court's activities despite repeated requests from Congress, the American Civil Liberties Union and other advocacy groups**. Furthermore, by skirting reports of illegal warrants and unlawful surveillance by the FISA court itself, the FISA Court of Appeals and the U.S. Supreme Court have failed to address several fundamental issues. **It is critical that the Congress ensure our judicial system is lawful and proper by providing proper oversight of this secret court.** A bipartisan group of Senators, including Charles Grassley (R-IA) and Patrick Leahy (D-VT), have introduced legislation called the FISA Oversight Bill (S. 436) that would ensure our elected officials are able to provide appropriate oversight over the secret FISA court. **This** bill **would not hinder law enforcement but instead would simply require the public accounting of basic information** such as the number of Americans subjected to surveillance under FISA and the number of times that FISA information has been used for law enforcement purposes. Take Action! Urge your Members of Congress to support the FISA Oversight Bill Secret intelligence courts should not be without appropriate oversight People from across the political spectrum agree that secret courts need oversight to prevent illegal surveillance and other invasions of our rights. FISA powers are broad, and the secrecy of the proceedings makes FISA powers susceptible to abuse. **Without oversight there is no accountability and this secret court could rampantly issue improper and illegal warrants.** Without this legislation, the government will not disclose appropriate information The government has not been forthcoming with even the most basic information about the operation of this secret court. **Without this** legislation, **the government will continue to operate in secret, in contradiction to traditions of fairness and open government that have been the hallmark of our democracy.** This legislation will prevent abuse and ensure democratic principles, without hindering law enforcement This bill does not undercut the effective and efficient operation of the FISA court. Instead it requests basic information about the scope of the court's activities, such as the number of American citizens under surveillance and the number of times that FISA information has been used for law enforcement purposes.

Solvency

A2: FISC Will Still Say Yes

Appeals solvency.

Goitein & Patel 15 - *Served as counsel to Sen. Russell Feingold, Chairman of the Constitution Subcommittee of the Senate Judiciary Committee, **Has testified before Congress opposing the dragnet surveillance of Muslims, organized advocacy efforts against state laws designed to incite fear of Islam, and developed legislation creating an independent Inspector General for the NYPD (Elizabeth, Faiza, What went wrong WITH THE FISA COURT, Brennan Center for Justice is a nonpartisan law and policy institute,

http://litigation.utahbar.org/assets/materials/2015FedSymposium/3c_What_Went_%20Wrong_With_The_FISA_Court.pdf**) NAR**

Several existing reform proposals would address the lack of a party opposing the government in FISA Court proceedings by establishing a permanent public interest advocate (or slate of advocates) to represent the interests of people affected by government surveillance.272 President Obama and two former judges of the court publicly support the appointment of such an attorney, commonly referred to as the "Special Advocate."273 An alternative approach would allow the FISA Court to hear from certain individuals or interest groups as amici curiae. 274 The court could call upon these outside representatives to weigh in on potential privacy and civil liberties concerns raised by a government application.275 The latter approach would not resolve the Article III problem, particularly if participation were left to the court to decide. The FISA Court already has discretion to solicit or permit amicus participation, and with few exceptions, has preferred to rely on the government's submissions alone.276 Article III would be best served by strengthening the special advocate concept to the greatest extent possible, including by ensuring that special advocates are notified of cases pending before the court, have the right to intervene in cases of their choosing, and are given access to all materials relevant to the controversy in which they are intervening. In addition, there must be a mechanism for appeal in cases where the court rules against the special advocate. Legitimate questions arise as to whether a special advocate would have standing to bring an appeal, given the advocate's lack of a personal stake in the outcome.277 Various solutions to this problem have been proposed: for example, the special advocate could serve as a guardian ad litem for third parties affected by the surveillance (such as those incidentally in communication with the target), or the court could be required to certify particular types of decisions to the FISA Appeals Court for review.278 The standing problem, while real, is not insurmountable.

Civil lawsuits and transparency.

Goitein & Patel 15 - *Served as counsel to Sen. Russell Feingold, Chairman of the Constitution Subcommittee of the Senate Judiciary Committee, **Has testified before Congress opposing the dragnet surveillance of Muslims, organized advocacy efforts against state laws designed to incite fear of Islam, and developed legislation creating an independent Inspector General for the NYPD (Elizabeth, Faiza, What went wrong

WITH THE FISA COURT, Brennan Center for Justice is a nonpartisan law and policy institute,

http://litigation.utahbar.org/assets/materials/2015FedSymposium/3c_What_Went_%20Wrong_With_The_FISA_Court.pdf**) NAR**

A defining feature of the FISA Court is that nearly all of its decisions are classified. This hampers democratic self-government and sound policymaking. It also has Article III implications: secret decisions cannot be challenged, and the opportunity to challenge a FISA Court order in collateral proceedings is critical to the legitimacy of the process. A number of existing proposals would introduce some transparency by requiring the executive branch to release full copies, redacted versions, or summaries of FISA Court opinions containing significant legal opinions.279 For both constitutional and policy reasons, Congress should establish a non-waiveable requirement that the government issue public versions of FISA Court opinions or summaries containing certain minimum information — including the legal questions addressed, as well as the construction or interpretation given to any legal authority on which the decision relies. Transparency alone cannot address the Article III defects in the FISA Court. Congress also must facilitate collateral challenges. One key step would be to prohibit the practice of "parallel construction," in which the government builds a criminal case based on FISA-derived evidence but then reconstructs the evidence using other means. This allows the government to avoid notifying defendants of the FISA surveillance and thus makes it impossible for them to challenge it. Any time the government uses the tools of FISA as part of an investigation, the subject of any resulting legal proceedings should be notified, and should be entitled to challenge any evidence that resulted either directly or indirectly from that surveillance. The special procedures governing a defendant's access to FISA application materials, under which a defendant is almost never given any hint of their contents, should be jettisoned. Instead, the process under the Classified Information Procedures Act (CIPA)280 — which has been used successfully in the most sensitive national security and espionage cases, and which allows the government to use summaries or admissions of fact in place of classified information — should apply.281 Finally, the government's attempt to shut down every civil lawsuit that has been brought to challenge the constitutionality of foreign intelligence surveillance must end. Even where plaintiffs have had reasonable grounds to fear that they were being surveilled282 — indeed, even where they have had irrefutable proof283 — the government has tried to have the lawsuit dismissed, arguing that the plaintiffs lacked evidence or that the evidence contained state secrets. Today, after Snowden's disclosures, many secret programs are public knowledge and dismissing plaintiffs' fears of surveillance as "speculative" is increasingly disingenuous. Moreover, warrantless surveillance is no longer a secret, it is the law — and, given the broad scope of collection, acknowledging that a plaintiff has standing to challenge FISA surveillance does not reveal the identity of any investigation's target. If ever the government's jurisdictional and national security defenses had merit, they no longer do.

A2: Judges Are Corrupt

The FISA court is stacked by a brigade of informed Judges – but the organizations function creep is threatening democracy.

Robertson 15 - Served on the U.S. District Court for the District of Columbia from 1994 to 2010. He also served on the Foreign Intelligence Surveillance Court from 2002 to 2005, resigning the day after The New York Times reported that the administration of President George W. Bush was conducting warrantless surveillance of Americans' electronic communications (James, What went wrong WITH THE FISA COURT, Brennan Center for Justice is a nonpartisan law and policy institute,

http://litigation.utahbar.org/assets/materials/2015FedSymposium/3c_What_Went_%20Wrong_With_The_FISA_Court.pdf**) NAR**

Many people are surprised to learn that there is no "right to privacy" in the Constitution. Privacy is more of a cultural construct than a legal one in this country, and we are aiding and abetting its steady erosion with our dependence on the Internet**, our credit cards** and **smartphones,** our flirtation with **social media, and our capitulation to commercial exploitation of** Big Data. **In a sense, we are all under surveillance, all the time — our whereabouts, activities, and transactions reduced to metadata and available to anyone who can break the code — and we have brought it upon ourselves. Surveillance by the government, however, is another matter. Distrust or at least wariness of a government that collects data about us lies deep in the amygdala of our civic consciousness. This administration may be operating lawfully and with full regard to our rights and privileges, but what about that one? Have we been reading too many novels, or is there a real threat of tyranny? Here, of course, is where the Constitution comes in, with the Fourth Amendment's guarantee of "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." And here is where concern about** the Foreign Intelligence Surveillance Act comes in. **Title III of the Omnibus Crime Control and Safe Streets Act of 1968 established the rules for domestic government wiretaps.** FISA**, enacted ten years later,** focused on foreign intelligence. But it is the use **(or misuse)** of FISA, and FISA's potential allowance of unreasonable domestic searches and seizures, that **the reporting of James Risen and Eric Lichtblau and the disclosures of Edward** Snowden have brought into sharp focus**. I have no criticism of the FISA Court**. I know and deeply respect every one of its presiding judges for the last 30 years, and I am well acquainted with many of the other FISA judges who have served. They are, every one of them, careful and scrupulous custodians of the extraordinary and sensitive power entrusted to them. **The staff that supports the FISA Court, the Justice Department lawyers who appear before the FISA Court, and the FBI, CIA and NSA personnel who present applications to the FISA Court are superb, dedicated professionals.** **What I do criticize is the mission creep of the statute** all of those people are implementing. This Brennan Center report makes an enormous contribution **to our understanding of that mission creep. It explains** clearly the history and development of FISA from its enactment following the Church Committee's exposure of uncontrolled domestic spying by the FBI**, through the Patriot Act amendments in the turbulent wake of the 9/11 attacks, to its present form. It explains, with a simplicity and clarity accessible to the layman but supported by a level of detail and citation of authority that will satisfy students of the subject, why** in its present form FISA is disturbing to civil libertarians and to constitutional scholars. And it distills its argument into plain, powerful recommendations for FISA's amendment. It is time**, and past time, for Congress to give serious attention to the FISA problems that are so clearly documented here, and to act. The Brennan Center's recommendations are not the only ones that have been put forth, but they are not doctrinaire, my-way-or-the-highway demands. They invite discussion, debate, and even (Heaven forfend) compromise. They need to be carefully considered.**

Theory Debate

A2: No Solvency Advocate

Here is one.

Goitein & Patel 15 - *Served as counsel to Sen. Russell Feingold, Chairman of the Constitution Subcommittee of the Senate Judiciary Committee, **Has testified before Congress opposing the dragnet surveillance of Muslims, organized advocacy efforts against state laws designed to incite fear of Islam, and developed legislation creating an independent Inspector General for the NYPD (Elizabeth, Faiza, What went wrong WITH THE FISA COURT, Brennan Center for Justice is a nonpartisan law and policy institute, http://litigation.utahbar.org/assets/materials/2015FedSymposium/3c_What_Went_%20Wrong_With_The_FISA_Court.pdf) NAR

The report proposes a set of key changes to FISA to help restore the court's legitimacy. • Congress should end programmatic surveillance and require the government to obtain **judicial approval** whenever it seeks to obtain communications or information involving Americans. This would resolve many constitutional concerns. • Congress should shore up the Article III soundness of the FISA Court by ensuring that the interests of those affected by surveillance are **represented in court proceedings**, **increasing transparency, and facilitating the ability of affected individuals to challenge surveillance programs in regular federal courts**. • Finally, Congress should address additional Fourth Amendment concerns by ensuring that the collection of information under the rubric of "foreign intelligence" actually relates to our national security and does not constitute an end-run around the constitutional standards for criminal investigations. Under today's foreign intelligence surveillance system, the government's ability to collect information about ordinary Americans' lives has increased exponentially while **judicial oversight has been reduced to near-nothingness**. **Nothing less than a fundamental overhaul of the type proposed here is needed to restore the system to its constitutional moorings.**

Executive CP-WSDI

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The President of the United States, through executive order, should publically declare that domestic drone surveillance will no longer be carried out without a warrant. The President of the United Stats should comply with this declaration.

Solves the case and avoids politics

Cooper-prof public administration Portland State**- 2** [Phillip, By Order of the President: The Use and Abuse of Executive Direct Action" p.59

Executive orders are often used because they are **quick, convenient, and relatively easy mechanisms for moving significant policy initiatives**. Though itis certainly true that executive orders are employed for symbolic purposes, enough has been said by now to demonstrate that they are also used for **serious policymaking** or to lay the basis for important actions to be taken by executive branch agencies under the authority of the orders. Unfortunately, as is true of legislation, it is not always possible to know from the title of orders which are significant and which are not, particularly since presidents will often use an existing order as a base for action and then change it in ways that make it far more significant than its predecessors.¶ The relative ease of the use of an order does not merely arise from the fact that presidents may employ one to **avoid the cumbersome and time consuming legislative process**. They may also use this device to avoid some times equally time-consuming administrative procedures, particularly the rulemaking processes required by the Administrative Procedure Act.84 Because those procedural requirements do not apply to the president, it is tempting for executive branch agencies to seek assistance from the White House to enact by executive order that which might be difficult for the agency itself to move through the process. Moreover, there is the added plus from the agency's perspective that it can be considerably **more difficult for potential adversaries to obtain standing to launch a legal challenge** to the president's order than it is to move an agency rule to judicial review. There is nothing new about the practice of generating executive orders outside the White House. President Kennedy's executive order on that process specifically provides for orders generated elsewhere.

2NC – Solvency

Executive orders solves for policymaking—that's Cooper—it's and easy solution to initiate reforms

Obama executive order can solve drone surveillance issues—solves and avoids the presidential powers link

Craig **Whitlock, 9-26-2014**, White House plans to require federal agencies to provide details about the drones they fly," Washington Post, http://www.washingtonpost.com/world/national-security/white-house-plans-to-require-federal-agencies-to-provide-details-about-drones/2014/09/26/5f55ac24-4581-11e4-b47c-f5889e061e5f_story.html, Accessed: 5-28-2015, /Bingham-MB

The White House is preparing a directive that would require federal agencies to publicly disclose for the first time where they fly drones in the United States and what they do with the torrents of data collected from aerial surveillance. **The presidential executive order would force the Pentagon**, the Justice Department, the Department of Homeland Security and other agencies to reveal more details about the size and surveillance capabilities of their growing drone fleets — information that until now has been largely kept under wraps. The mandate would apply only to federal drone flights in U.S. airspace. Overseas military and intelligence operations would not be covered. President Obama has yet to sign the executive order, but officials said that drafts have been distributed to federal agencies and that the process is in its final stages. "An interagency review of the issue is underway," said Ned Price, a White House spokesman. He declined to comment further. Privacy advocates said the measure was long overdue. Little is known about the scope of the federal government's domestic drone operations and surveillance policies. Much of what has emerged was obtained under court order as a result of public-records lawsuits. "We're undergoing a quiet revolution in aerial surveillance," said Chris Calabrese, legislative counsel for the American Civil Liberties Union. "But we haven't had all in one place a clear picture of how this technology is being used. Nor is it clear that the agencies themselves know how it is being used." Most affected by the executive order would be the Pentagon, which conducts drone training missions in most states, and Homeland Security, which flies surveillance drones along the nation's borders round-the-clock. It would also cover other agencies with little-known drone programs, including NASA, the Interior Department and the Commerce Department. Military and law enforcement agencies would not have to reveal sensitive operations. But they would have to post basic information about their privacy safeguards for the vast amount of full-motion video and other imagery collected by drones. Until now, the armed forces and federal law enforcement agencies have been reflexively secretive about drone flights and even less forthcoming about how often they use the aircraft to conduct domestic surveillance. Security officials are generally reluctant to disclose operational methods and techniques. But drones are in a special category of sensitivity, given the top-secret role they've long played in CIA and military counterterrorism missions. There's also evidence that federal agencies simply have been unable to develop internal guidelines and policies quickly enough to keep up with rapid advances in drone technology. "Federal use of drones has gone way up, but it's hard to document how much," said Jennifer Lynch, a lawyer with the Electronic Frontier Foundation, a San Francisco-based group that has sued the Federal Aviation Administration for records on government drone operations. "It's been in-cred-ibly difficult." Even Congress has struggled to uncover the extent to which the federal government uses drones as a surveillance tool in U.S. airspace. In March 2013, lawmakers directed the Defense Department to produce a report, within 90 days, describing its policies for sharing drone surveillance imagery with law enforcement agencies. Eighteen months later, the Pentagon still has not completed the report. Air Force Lt. Col. Thomas Crosson, a Defense Department spokesman, said officials hoped to provide an interim response next week and a full version "in the coming months." Department of Justice officials have also been reluctant to answer queries from lawmakers about their drone operations. The FBI first disclosed its use of small, unarmed surveillance drones to Congress in June 2013 and subsequently revealed that it had been flying them since 2006. The Justice Department inspector general reported last fall that the FBI had not developed new privacy guidelines for its drone surveillance and was relying instead on old rules for collecting imagery from regular aircraft. Since then, Justice officials have said they are reviewing their drone surveillance policies but have not disclosed any results. An FBI spokesman did not respond to a request for comment. The FBI has resisted other attempts to divulge details about the size of its drone fleet and its surveillance practices. Citizens for Responsibility and Ethics in Washington (CREW), a nonprofit group that pushes for transparency in government, sued the FBI last year under the Freedom of Information Act for records on its drone program. Although the FBI has turned over thousands of pages of documents, many have been redacted or provide only limited insights. "They've been dragging their feet from the outset, and it's been enormously frustrating," said Anne Weismann, CREW's chief counsel. "I don't know if it's because they don't want to expose the fact that they've been operating without any clear guidance or if they just don't like to talk about it." Another section of Obama's draft **executive order** would instruct the Commerce Department to help develop voluntary privacy guidelines for private-sector drone flights. The intent is to **shape nonbinding industry standards** for commercial surveillance instead of imposing new regulations by law. The executive order is an attempt to cope with a projected surge in drone flights in the United States.

De Facto and De Jure self-binding create accountability from the courts and risk political alienation for going back on promises

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 138-139//wyo-sc]

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.59 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is "yes, at least to the same extent that a legislature can." Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.60 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future**. A president might commit himself to a long-term project of defense procurement** or infrastructure **or foreign policy**, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of selfbinding: 1. **The president might use formal means to bind himself**. This is **possible in** the sense that **an executive order**, if otherwise valid, legally binds the president while it is in effect **and may be enforced by the courts. It is not possible** in the sense **that the president can always repeal the executive order if he can bear the political and reputational costs of doing so**. 2. **The president might use informal means to bind himself**. This is not only possible but frequent and important. **Issuing an executive rule providing for the appointment of special prosecutors**, as Nixon did, **is not a formal self-binding**.61 **However**, **there may be political costs to repealing the order**. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. **Court enforcement makes the order legally binding** while it is in place, **but only political and reputational enforcement can protect it from repeal**. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. **So long as policies are deliberately chosen with a view to generating credibility**, **and** do so by **constrain**ing **the president's** own **future choices in ways that impose greater costs on ill-motivated presidents** than on well-motivated ones, **it does not matter whether the constraint is formal or informal.**

Obama key to signal and sustainability

Singer 2013, director – Center for 21st Century Security and Intelligence @ Brookings, and Wright, senior fellow – Brookings, 2/7/'13

(Peter W. and Thomas, "Obama, own your secret wars", www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620)

It is time for a new approach. And **all that is required** of the President is to do the thing that he does perhaps best of all: to speak. Obama has a unique opportunity — in fact, an urgent obligation — to create a new doctrine, unveiled in a major presidential speech, for the use and deployment of these new tools of war. While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield. The U.S. military's unmanned systems, popularly known as "drones," now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size. This is not just a military matter. American intelligence agencies are increasingly using these technologies as the tips of the spear in a series of so-called "shadow wars." These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world's first known use of a specially designed cyber weapon. Throughout this period, the administration has tried to have it both ways — leaking out success stories of our growing use of these new technologies but not tying its hands with official statements and set policies. This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along. But that position has become unsustainable. The less the U.S. government now says about our

policies, the more that vacuum is becoming filled by others, in harmful ways. By acting but barely explaining our actions, we're creating precedents for other states to exploit. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps. In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties. Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power. The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims. Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument that we cannot confirm or deny our involvement, which no one believes, either. Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the "not sure" category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists. The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an "Alice in Wonderland" feel. The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. After years of silence, occasional statements by senior aides are acknowledging the use of drones, while lesser-noticed working level documents have been created to formalize strike policies and even to explore what to do about the next, far more autonomous generation of weapons. These efforts have been good starts, but they have been disjointed and partial. Most important, they are missing the **much-needed stamp of the President's voice and authority**, which is essential to turn tentative first steps into established policy. Much remains to be done — and said — out in the open. This is why it's time for Obama's voice to ring loud and clear. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, Obama should publicly lay out criteria by which the United States will develop, deploy and use these new weapons. The President has a strong case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods. But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond. It's also about finally defining where America truly stands on some of the most controversial questions. These include the tactics of "signature" strikes, where the identity is not firmly identified, and "double tap" strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far. The role of the President is not to conduct some kind of retrospective of what we have done and why, but to lay out a course of the future. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them? There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars. And, finally, the President must help resolve growing tensions between the executive branch and an increasingly restive Congress, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm's way. Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel Peace Prize winner! The President's voice on these issues won't be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations.

2NC – AT: Roll Back

President can show credibility by self-binding, and it puts heavy costs on future presidents for not representing public interests

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 101-103//wyo-sc]

Where the executive is indeed ill-motivated in any of these ways, constraining his discretion (more than the voters would otherwise choose) may be sensible. But **the executive may not be ill-motivated** at all. Where the executive would in fact be a faithful agent, **using** his increased **discretion to promote the public good** according to whatever conception of the public good voters hold, **then constraints on executive discretion are all cost and no benefit.** Voters, legislators, and judges know that different executive officials have different motivations. Not all presidents are power maximizers or empire-builders.20 Of course, the executive need not be pure of heart; his devotion to the public interest may in turn be based on concern for the judgment of history. But so long as that motivation makes him a faithful agent of the principal(s), he counts as well-motivated. The problem, however, is that the public has no simple way to know which type of executive it is dealing with. An ill-motivated executive will just mimic the statements of a well-motivated one, saying the right things and offering plausible rationales for policies that outsiders, lacking crucial information, find difficult to evaluate—policies that turn out not to be in the public interest. The ability of the ill-motivated executive to mimic the public-spirited executive's statements gives rise to the executive's dilemma of credibility: **the well-motivated executive has no simple way to identify himself as such.** Distrust causes voters (and the legislators they elect) to withhold discretion that they would like to grant and that the well-motivated executive would like to receive. Of course the ill-motivated executive might also want discretion; the problem is that voters who would want to give discretion (only) to the well-motivated executive may choose not to do so, because they are not sure what type he actually is. The risk that the public and legislators will fail to trust a well-motivated president is just as serious as the risk that they will trust an ill-motivated president, yet legal scholars have felled forests on the second topic while largely neglecting the first.21 Indeed, legal scholars assume (without evidence) that the executive's interests lead it to keep too many secrets, and thus endlessly debate how it should be compelled to disclose information that should be made public. It has not occurred to them that their premise might be wrong22—that **excessive secrecy undermines the executive by ruining its credibility** and thus does not serve its interest. Scholars of presidentialism have addressed credibility problems in general and anecdotal terms,23 but without providing social-scientific microfoundations for their analysis. Our basic claim is that **the credibility dilemma is best explored from the perspective of executive signaling. Without** any new constitutional amendments, **statutes, or** legislative action, **law** and **executive practice** already contain resources to **allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill-motivated actors** than on well-motivated ones, **the well-motivated executive can credibly signal his good intentions and** thus **persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.**

2NC – AT: Signal/Trust

The executive action solves a signal of trust

Michael **Aaronson 13**, Professorial Research Fellow and Executive Director of cii – the Centre for International Intervention – at the University of Surrey, and Adrian Johnson, Director of Publications at RUSI, the book reviews editor for the RUSI Journal, and chair of the RUSI Editorial Board, "Conclusion," in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting_the_Target.pdf

The Obama administration faces some tough dilemmas, and analysts should be careful not to downplay the security challenges it faces. It must balance the principles of justice and accountability with a very real terrorist threat; and reconcile the need to demonstrate a credibly tough security policy with the ending of a long occupation of Afghanistan while Al-Qa'ida still remains active in the region. Nevertheless, more transparency would provide demonstrable oversight and accountability without sacrificing the necessary operational secrecy of counter-terrorism. It might also help assuage the concern of allies and their publics who worry about what use the intelligence they provide might be put to. A wise long-term vision can balance the short-term demands to disrupt and disable terrorist groups with a longer-term focus to resolve the grievances that give rise to radicalism, and also preclude inadvertently developing norms of drone use that sit uneasily with the civilised conduct of war. Drones are but one kinetic element of a solution to terrorism that is, ultimately, political.

The counterplan solves global legitimacy—simply stating our policy goes a long way to solving the perception it is lawful

Kenneth **Anderson 10**, Professor of International Law at American University, 3/8/10, "Predators Over Pakistan," The Weekly Standard, http://www.weeklystandard.com/print/articles/predators-over-pakistan

But a thorough reading of the Predator coverage calls to mind how the detention, interrogation, and rendition debates proceeded over the years after 9/11. As Brookings scholar Benjamin Wittes observes, those arguments also had elements of both legal sense and sensibility. Ultimately the battle of international legal legitimacy was lost, even though detention at Guantánamo continues for lack of a better option. It is largely on account of having given up the argument over legitimacy, after all, that it never occurred to the Obama administration not to Mirandize the Christmas Bomber. Baseline perceptions of legitimacy have consequences. ¶ Nor is the campaign to delegitimize targeted killing only about the United States. Legal moves in European courts have already been made against Israeli officials involved in targeted killing against Hamas in the Gaza war. Unsavory members of the U.N. act alongside the world's most fatuously self-regarding human rights groups to press for war crimes prosecutions. All of this is merely an opening move in a larger campaign to stigmatize and delegitimize targeted killing and drone attacks. What can be done to Israelis can eventually be done to CIA officers. Perhaps a London bookmaker can offer odds on how soon after the Obama administration leaves office CIA officers will be investigated by a court, somewhere, on grounds related to targeted killing and Predator drone strikes. And whether the Obama administration's senior lawyers will rise to their defense—or, alternatively, submit an amicus brief calling for their prosecution. ¶ Thus it matters when the U.N. special rapporteur on extrajudicial execution, Philip Alston, demands, as he did recently, that the U.S. government **justify the legality of its targeted killing program.** Alston, a professor at New York University, is a measured professional and no ideologue, and he treads delicately with respect to the Obama administration—but he treads. Likewise it matters when, in mid-January, the ACLU handed the U.S. government a lengthy FOIA request seeking extensive information on every aspect of targeted killing through the use of UAVs. The FOIA request emphasizes the legal justification for the program as conducted by the U.S. military and the CIA. ¶ Legal justification matters, partly for reasons of legitimacy and partly because the United States is, and wants to be, a polity governed by law. This includes international law, at least insofar as it means something other than the opinions of professors and motley member-states at the U.N. seeking to extract concessions. International law, it is classically said, consists of what states consent to by treaty. Add to this "customary law"—as evidenced by how states actually behave and as provided in their statements, their so-called opinio juris. Customary law is evidenced when states do these things because they see them as binding obligations of law, done from a sense of legal obligation—not merely habit, policy, or convenience, practices that they might change at any moment because they did not engage in them as a matter of law. ¶ What the United States says regarding the lawfulness of its targeted killing practices matters. It matters both that it says it, and then of course it matters what it says. The fact of its practices is not enough, because they are subject to many different legal interpretations: **The United States has to assert those practices as lawful**, and declare its understanding of

the content of that law. This is for two important reasons: first to preserve the U.S. government's views and rights under the law; and second, to make clear what it regards as binding law not just for itself, but for others as well. ¶ Other states, the United Nations, international tribunals, NGOs, and academics can cavil and disagree with what the United States thinks is law. But no Great Power's consistently reiterated views of international law, particularly in the field of international security, can be dismissed out of hand. It is true of the United States and it is also true of China. It is not a matter of "good" Great Powers or "bad." Nor is it merely "might makes right." It is, rather, a mechanism that keeps international law grounded in reality, and not a plaything of utopian experts and enthusiasts, departing this earth for the City of God. It remains tethered to the real world both as law and practice, conditioned by how states see and act on the law. ¶ The venerable U.S. view of the "law of nations" is one of moderate moral realism—the world "as it is," as the president correctly put it in his Nobel Prize address. It is not the vision of radical utopians and idealists; neither is it that of radical skeptics about the very existence of law in international affairs. On the contrary, the time-honored American view has always been pragmatic about international law (thereby acting to preserve it from radical internationalism and radical skepticism). But upholding the American view requires more than simply dangling the inference that if the United States does it, it means the United States must intend it as law. Traditional international law requires more than that, for good reason. The U.S. government should provide an affirmative, aggressive, and uncompromising defense of the legal sense and sensibility of targeted killing. The U.S. government's interlocutors and critics are not wrong to demand one, even those whose own conclusions have long since been set in stone. ¶ A clear statement of legal position need not be an invitation to negotiate or alter it, even when others loudly disagree. In international law, a state's assertion that its policies are lawful, particularly such an assertion from a great power in matters of international security, **is an important element all by itself in making it lawful**, or at least not unlawful. But in vast areas of security, self-defense, and the use of force, the U.S. government has in recent years left a huge deficit as to how its actions constitute a coherent statement of international law. ¶ For once, Washington should move to get ahead of a contested issue of international legal legitimacy and "soft law." Why else have an Obama administration, if not to get out in front on a practice that it has ramped up on grounds of both necessity and humanitarian minimization of force? The CIA has taken a few baby steps by selectively leaking some collateral damage data to a few reporters. But the CIA is going to have to say more. The U.S. government needs to defend targeted killings as both lawful, and as an important step forward in the development of more sparing and discriminating—more humanitarian—weaponry.

2NC – AT: Cheating

Threat of publicity and backlash ensures internal compliance – solves signaling advantages

Radsan and Murphy 11 (Afsheen – Professor of Law, William Mitchell College of Law, former assistant general counsel at the Central Intelligence Agency, "MEASURE TWICE, SHOOT ONCE: HIGHER CARE FOR CIA-TARGETED KILLING", 2011, 11 U. Ill. L. Rev. 1201, lexis)

Notwithstanding the agency's reputation for playing fast and loose with the law, CIA officials have strong reasons to **ensure compliance** with IHL. One reason is that someday the CIA's targeted killings by drone, like other embarrassing "family jewels," will become **public**. n156 A stronger reason is that CIA officials must be acutely aware that, for many members of the **U**nited **S**tates and **international public**, targeted killings come close to prohibited acts of assassination. To stay on the safe side on controversial programs, CIA officials seek both **political** and **legal** cover. n157 From past lessons on other covert actions, CIA officials have learned to obtain presidential authorization in writing, to brief the oversight committees, and to obtain legal opinions. It is safe to bet that President Obama has blessed the CIA drone strikes; that the oversight committees have not been kept completely in the dark; that the CIA has developed internal procedures on targeted killing it hopes will withstand scrutiny; and that the agency has presented these procedures to the Justice Department's Office of Legal Counsel for approval. n158

2NC – AT: Perm Do Both

Links to the net benefit—

(___) Links to politics—forces congressional debates over the plan

(___) Links to pres powers—counterplan is non binding executive initiated action—the choice to do the counterplan means the executive is not legally constrained to act in the future, and avoids the precedent of other branches controlling the executive

Doesn't solve prez powers - congressional silence is key

Bellia 2

[Patricia, Professor of Law @ Notre Dame, "Executive Power in Youngstown's Shadows" Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. **The combination of congressional silence and judicial inaction has the practical effect of creating power.** Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, **the implied presidential power given effect by virtue of congressional silence and judicial inaction can solidify into a broader claim. When the Executive exercises an "initiating"** or "concurrent" **power, it will tie that power to a textual provision or to a claim about the structure of the Constitution. Congress's silence as a practical matter tends to validate the executive rationale, and the Executive Branch may then claim a power not only to exercise the disputed authority in the face of congressional silence, but also to exercise the disputed authority in the face of congressional opposition**. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a [*151] ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

2NC – AT: Perm Do the Counterplan

First, the counterplan is severance—it's a voting issue, severs out of the USFG portion of the plan.

THE U.S.F.G. is the three branches of government

Dictionary.com 2k6 [http://dictionary.reference.com/browse/united+states+government]

noun

the executive and legislative and judicial branches of the federal government of the United States

Voting issue for fairness and ground, we cant get links if they shift their agent because the agent is a critical locus for clash in the debate

And, interpretation, Curtail means to create laws to lessen power

Webster's dictionary, **no date**, curtail, http://www.merriam-webster.com/dictionary/curtail, Accessed: 5-28-2015, /Bingham-MB

Full Definition of CURTAIL transitive verb : to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation> — cur·tail·er \-ˈtā-lər\ noun See curtail defined for English-language learners See curtail defined for kids Examples of CURTAIL The new laws are an effort to curtail illegal drug use. School activities are being curtailed due to a lack of funds.

Curtail means rulemaking by congress to regulate an action

MEDICAID State Financing Schemes Again Drive Up Federal Payments Statement of Kathryn G. **Allen**, Associate Director Health Financing and Public Health Issues Health, Education, and Human Services Division, GAO Testimony Before the Committee on Finance, U.S. Senate, For Release on Delivery Expected at 10:00 a.m. Wednesday, September 6, **2000**, http://www.gao.gov/archive/2000/he00193t.pdf, /Bingham-MB

In our view, this financing practice violates the integrity of Medicaid's federal/state partnership. By receiving part of the money back from the provider and keeping the federal share associated with it, the state is—in effect—able to lower its own Medicaid contribution substantially below the share specified in federal law. We have not yet been able to specifically determine how much of an effect this current practice will have in any one state. However, our analysis of previous financing schemes showed that the effect can be substantial. For example, in 1994 we analyzed Michigan's use of similar funding mechanisms (including excessive payments to county nursing homes) and found they had the effect of raising the federal share for Medicaid expenditures from 56 percent to 68 percent. When related schemes came to light in years past, **steps were taken to curtail them** and restore the federal/state partnership as intended. HCFA has drafted a regulation that would curtail this scheme, but the draft has not moved far in the rulemaking process. We urge the Administration to finalize this regulation and reiterate a recommendation to the Congress, first made in 1994, that would close the door on financing practices that inflate the federal share by making excessive payments to government owned facilities.

Violation: The affirmative doesn't curtail power, they just lessen it

Prefer our interpretation:

Limits—if they are allowed to just stop doing a kind of surveillance it unlimits the topics, teams would read a don't do X aff every week

Ground—they don't link to any core disads, terror and pres powers require a restriction to hamper executive discretion—they skirt core debates in the literature

Voting issue for fairness

And here's more evidence to establish competition

Curtail means legislative restrictions

David W. **Opderbeck**, Professor of Law, Seton Hall University Law School, and Director, Gibbons Institute of Law, Science & Technology. The author wishes to thank Jonathan Haefetz, Edward Hartnett, and Barry Cushman for valuable comments on an earlier draft of this Article. Copyright (c) **2014** Rutgers School of Law-Camden Rutgers Law Journal Spring, 2014 Rutgers Law Journal 44 Rutgers L. J. 413 LENGTH: 27584 words ARTICLE: DRONE COURTS, Lexis, /Bingham-MB

Along parallel lines, in 1972, the Supreme Court held that surveillance could not be conducted against American citizens without a warrant. n269 The Court noted, however, that "this case involves only the domestic aspects of national security. We have not addressed, and express no opinion as to, the issues which may be involved with respect to activities of foreign powers or their agents." n270 The Court invited Congress **to consider legislation dealing with foreign surveillance**. [*455] These developments led to the enactment of the Foreign Intelligence Surveillance Act ("FISA"), **which sought to curtail such programs by imposing warrant-like restrictions** upon foreign surveillance activities. n271 FISA established the Foreign Intelligence Surveillance Court ("FISC"), comprised of sitting federal judges, to evaluate requests to conduct surveillance of foreign powers or agents. n272 Under the original FISA statute, the government was required to show that "the purpose" of the requested surveillance was to acquire foreign intelligence. n273

Curtail is legislative power to reduce jurisdiction

(BY Sam J. **Ervin**, Jr., of Morganton, N. C., a Former Justice of the North Carolina Supreme Court and a former United States Senator from North Carolina.) THE POWER OF CONGRESS UNDER THA CONSTITUTION TO DEFINE, LIMIT, OR CURTAIL THE APELLATE JURISDICTION OF TRE SUPREME COURT AND THE JURISDICTION OF FEDERAL COURTS INFERIOR TO IT, **No Date**, http://www.samervinlibrary.org/writings/Power%20of%20Congress%20to%20Limit%20Courts.pdf

Provisions 01' Articles I and I11 of the Constitution clearly reveal that Congress has the legislative power to define, limit, or curtail the appellate jurisdiction of the Supreme Court and the Jurisdiction of the federal courts inferior to it. They are as follows : 1. Article I, Section I, declares "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

2NC – Net Benefit – Pres Powers

Presidential power is zero-sum- the branches compete

Barilleaux and Kelley 2010 [Ryan J. , Professor of Political Science at Miami, OH; and Christopher S. , Lecturer (Political Science) at Miami, OH, The Unitary Executive and the Modern Presidency, Texas A&M Press, p. P 196-197, 2010// wyo-sc]

In their book *The Broken Branch*, Mann and Ornstein paint a different view. They discuss a wider range of public policy areas than just uses of force. Their argument is that although party is important as a conditioning factor for times when Congress might try to restrain an aggressive or noncompliant executive, **there has** also **been a broad**er **degrading of institutional power that has allowed, in a zero-sum context**, **the president to expand executive power at the expense of Congress**. Mann and Ornstein thus posit that congressional willingness to subordinate its collective power to that of the president has occurred across domestic politics and foreign affairs. They argue that a variety of factors are at fault for this trend, including the loss of institutional identity, the willingness to abdicate responsibility to the president, the demise of "regular order," and most importantly that **Congress has lost its one key advantage as a legislative body—the decay of the deliberative process.** Thus, they do recognize that party politics has played an important role in the degrading of congressional power, but they see a larger dynamic at work, one that reaches beyond partisanship. While we agree with Howell and Pevehouse that Congress retains important mechanisms for constraining the president, we tend to agree with the Mann and Ornstein view that there has been a significant and sustained decline in Congress's willingness to use these mechanisms to challenge presidential power. This tendency has been more prevalent in foreign affairs but has occurred noticeably across the spectrum of public policy issues. Building from both of those perspectives, and others, we argue that it is helpful to understand the pattern of congressional complicity in the rise of presidential power by viewing Congress's aiding and abetting as the logical outcomes of a collective action problem.31 By constitutional design, **the legislative** branch **is in competition with the president for** institutional **power**, **yet Congress is less than** ideally **suited for** such **a political conflict**. **Congress's** comparative **disadvantage begins with its 535 "interests**" **that are** very **rarely aligned,** and if so, only momentarily. **Because** individual **reelection overshadows all** other **goals**, members of Congress naturally seek to take as much credit and avoid as much blame from their constituencies as possible.32 The dilemma this creates for members is how to use or delegate its collective powers in order to maximize credit and minimize blame in the making of public policy. Congress can choose to delegate power internally to committees and party leaders or externally to the executive branch. **One can conceptualize** the strategic situation of members of **Congress in** terms of **a prisoner's dilemma**.33 **If members cooperate** (that is, in Mann and Ornstein's parlance, if members identify with the institution), **they could** maintain and **advance Congress's** institutional **power**. **But they would have to bypass** some potential **individual payoffs that could come from defection**, **such as "running against Congress" as an electoral strategy**. **A stronger institution should make** all members of **Congress better off, but it** also **makes them responsible for policymaking**. **If members defect** from the institution, **they** thus seek to **maximize constituency interests** either by simply allowing power to fall by the wayside or by simply **delegating it to the president**. **As more** and more **members choose to defect** over time, **the "public good" of a strong Congress is not provided** for or maintained—and **Congress's** institutional **authority erodes and presidential power fills in the gap**. Why, in other words, is congressional activism so often "less than meets the eye," as Barbara Hinckley maintained in her book by that title? Or why has the "culture of deference" that Stephen Weissman identified developed as it has?34 We argue that the collective action problem that exists in Congress leads to the development of these trends away from meaningful congressional stewardship of foreign policy and spending.

2NC – Net Benefit – Politics

CP is executive action—obviously avoids Congressional fights

Fine 12

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We also should expect presidents to prioritize and be strategic in the types of executive orders that they create to **maneuver around a hostile Congress**. There are a variety of reasons that can drive a president's decision. For example, presidents can use an executive order to move the status quo of a policy issue to a position that is closer to their ideal point. By doing so, presidents are able to pressure Congress to respond, perhaps by passing a new law that represents a compromise between the preferences of the president and Congress. Forcing Congress's hand to enact legislation might be a preferred option for the president, if he perceives Congress to be unable or unwilling to pass meaningful legislation in the first place. While it is possible that such unilateral actions might spur Congress to pass a law to modify or reverse a president's order, **such responses by Congress are rare** (Howell 2003, 113-117; Warber 2006, 119). Enacting a major policy executive order allows the president to move the equilibrium toward his preferred outcome **without having to spend time lining up votes or forming coalitions with legislators**. As a result, and since reversal from Congress is unlikely, presidents have a greater incentive to issue major policy orders **to overcome legislative hurdles.**

Unilateral action circumvents congressional gridlock and shields the president by allowing them to frame the debate over the policy

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However, the literature on presidential power has begun to expand beyond Neustadt's dominant framework by focusing on unilateralism. Modern **presidents have** increasingly **relied upon unilateral tools not penned in the Constitution**, **especially when the president's ability to persuade** or cajole **Congress has been diminished**.14 **Presidents can** use such tools to "**go it alone**" in order **to change the** policy **status quo in the face of congressional gridlock**. For example, this new literature has shown that **presidents** increasingly **use unilateral actions like executive orders**, proclamations, **national security directives**, **executive agreements, and signing statements to achieve their policy objectives**.15 The **tools of unilateral action offer presidents advantages in power** that are quite different from the powers derived from Neustadt's framework. For one, **unilateral action allows the president to** act alone by **initiat**ing **new policy commitments without congressional cooperation**.16 **By doing so, the president is able** not only to establish a new policy status quo but also **to frame the debate surrounding such policy moves. Once a new policy commitment is made** through unilateral action, **Congress is faced with the choice of acquiescing or taking on the collective burden of a statutory response**. **The latter is**, more often than not, **very difficult for Congress** to do, **given** the **limited time and resources** that must be dedicated to an ever-more demanding agenda. Of course, if Congress takes the path of least resistance by acquiescing, then the president succeeds in not only moving the policy status quo but also (re)creating the precedent of expanded presidential power.

ICJ-CP

1NC Text

The President of the United States should submit the US policy to [x] for binding and sole compulsory adjudication by the International Court of Justice. The President should ask that the case take priority.

Competes – it's not curtailment of surveillance

Solvency – General

Counterplan solves domestic and internationally – it's enforced and perceived

Casey 9 – JD, performs appellate work for clients, while also maintaining a practice in the areas of administrative law, compliance counseling, and foreign-related litigation. He works with companies to ensure compliance with federal and international regulations and agencies and develops the best strategies to avoid or fight litigation

(Lee, "ConUNdrum," Google book)

> For the time being, therefore, ICJ decisions are not directly binding on American courts. However, they do stand as **internationally recognized** statements indicating whether the **U**nited **S**tates and other countries have complied with their international **obligations**, and they are often cited as evidence of what international law requires. In this regard, they can be especially **powerful** and **persuasive** (even if not binding) in common law jurisdictions like the United States, where lawyers and judges are trained to seek authoritative statements of what the law is, or shall be, in judicial opinions and judgments.

Solvency – Courts follow

International courts are comparatively more valuable for shaping international norms

Romano 9 - Professor of Law, Loyola Law School Los Angeles. Co-Director, Project on International Courts and Tribunals

(Stephen, "THE NORMALIZING OF ADJUDICATION IN COMPLEX INTERNATIONAL GOVERNANCE REGIMES: PATTERNS, POSSIBILITIES, AND PROBLEMS: DECIPHERING THE GRAMMAR OF THE INTERNATIONAL JURISPRUDENTIAL DIALOGUE," 41 N.Y.U. J. Int'l L. & Pol. 755)

> C. Third Corollary: **National courts are no authority**¶ While the distinction between international and national courts has significant formal and practical significance, it obscures the fact that judicial dialogue on international law takes place also **between international and national courts**, and between various national courts. 65 Moreover, one could argue that when national courts apply international law to decide cases they are de facto acting as international courts, too. 66 If a truly viable theory of international jurisprudence ought to include all judicial institutions, national and international, what hypothesis can be articulated about how international courts will regard the decisions of national courts?¶ Much like the decisions of international courts, decisions of national courts are just a documentary source that can be used to provide evidence of a rule generated by one of the primary sources. 67 But while decisions of international courts do add to, or change, the fabric of international law, the impact on substantive international law of decisions by national courts is **limited** by several factors. First, domestic courts are relatively rarely called upon to apply rules of international law. 68 To the extent they do, often those rules have been incorporated [777] into the domestic legal system. At least formally, therefore, they are **no longer "international**." It follows that the jurisprudence of domestic courts can **rarely** offer much help to international courts in determining the content of specific rules of international law. They are a more useful source when it comes to searching for general principles of law, or for evidence of state practice when determining the content of a rule of customary international law.¶ Decisions by national courts, thus, will be considered purely as a last resort, to **be looked at only when international sources do not help.** One judge explains:¶ National case law will come into play mostly when international sources don't give an answer. For example, when there is a matter of what is impartiality, there is no need to go to a Canadian or German Supreme Court and find out what impartiality is when you have established case law at the global and regional level. So it becomes more subsidiary. But when it comes to, say, the question of a rather procedural issue that has never been dealt with in human rights case law, and which is very criminal law-oriented, then, why not look at the national level and try to distill, to find out what is the common denominator here, or what is the best solution, even if it is not the common denominator? 69

ICJ rulings force US judicial review – spills up to precedent

Murphy 8 - Professor of Law, George Washington University

(Sean, "The United States and the International Court of Justice: Coping with Antinomies," in THE UNITED STATES AND INTERNATIONAL COURTS AND TRIBUNALS)

The formal means for mediating antimonies have been largely unchanged since the inception of the Court: the Court has jurisdiction over many disputes, but that jurisdiction is circumscribed (as recognized in Yugoslavia's Legality of Use of Force cases); the judges reflect the global community, but also the major powers; etc. Yet, the Court may have entered a phase where it is more likely to resist the constraints on its power contained within those formal means and less likely to attempt to reconcile antinomies. Although only states may appear before the Court, the Court now finds that a non-state entity (Palestine) may do so if a dispute is submitted in the guise of an advisory opinion. While its jurisdiction is circumscribed, the Court is comfortable engaging in an extended review of the legality of the use of military force by the United States based on a treaty that the Court has found was not violated. While the Vienna Convention on Consular Relations, and other relevant treaties, contain no provisions regarding the effect of violations of the Convention upon national court proceedings, the Court sees no difficulty in determining that **U.S. courts must engage in further judicial review** of criminal convictions and sentences, **trumping local procedural rules**. One gets the impression that the Court —fifty years after its creation— is tired of some of the formal constraints that applied earlier in its life and —looking around at the robustness of dispute resolution in other international fora— is **ready to expand** the reach of its power. Moreover, it may be that some of the informal means for mediating antimonies have been lost in the past twenty years. While the Court's concern with its reputation and legitimacy in the first thirty years of its existence served as important political constraint in the Court's relationship with all states, including the United States, over the past twenty years that same concern has lead to several clashes with the United States foremost, but also the UK and France. Having stood up to the United States in the Nicaragua case, the Court became a hero to the states of the developing world, and ushered in a period of increased activity on its docket. Of the cases filed before the International Court since its inception, approximately forty percent were filed in the last fifteen years.167 Thus, while from 1947 to 1989, the Court received on its docket approximately two cases per year, after 1990 the Court received more than three cases per year. The U.S. withdrawal from the Court's compulsory jurisdiction has far from crippled the Court; arguably, it has enhanced the Court's stature as a place of authority in interstate relations unbeholden to the major powers. For the Court, the lesson may be not to tread lightly with respect to the United States but, rather, to tread heavily unless doing so would be viewed generally as bias. In its foreign policies, contemporary America appears to be going a different route than much of the world, even its former close allies in Europe. The consequence is that the judges of the ICJ now reflect predominantly the views of states with whom the United States often disagrees. Perhaps this reflects success in the prescription for the Court made by Richard Falk in his 1986 book, Reviving the World Court.168 Falk argued for the Court to turn away from what he viewed as Anglo-American and West European ways of thinking, and move more toward reflecting the viewpoints associated with non-Western legal traditions (including, at that time, Marxist outlooks on law). Arguably, this is now what has happened, which has strengthened the Court's position among most states of the world, but seriously alienated the United States. The antinomies identified in Part II are unlikely to be resolved through the further development of formal or informal techniques for mediation. While the United States is not happy with the decisions being rendered by the Court, there is no support in the global community for altering the formal mechanisms by which the Court operates. If the United States saw concrete benefits in being more closely associated with the Court, it might look for ways to improve relationships, but

for the world's premier superpower the benefits appear slim while the costs appear quite high. Consequently, the United States may take steps to further remove itself from the reach of the ICJ's jurisdiction, through terminating some or all of the outstanding treaties that provide for the Court's jurisdiction. In the near term, U.S. policymakers will seek to avoid any involvement in matters before the ICJ, while the Court may well welcome opportunities to speak to the legality of U.S. actions.

Solvency – President follows

CP is binding – ensures it solves- we submit to compulsory jurisdiction- that's what that means

The consent of the counterplan ensures it's binding

West's 8

(West's encyclopedia of law, "International Court of Justice," 2nd edition)

Many states have accepted the court's jurisdiction under the Optional Clause. A few states have done so with certain restrictions. The United States, for instance, has invoked the so called self-judging reservation, or Connally Reservation. This reservation allows states to avoid the court's jurisdiction previously accepted under the Optional Clause if they decide not to respond to a particular suit. It is commonly exercised when a state determines that a particular dispute is of domestic rather than international character, and thus domestic jurisdiction applies. If a state invokes the self-judging reservation, another state may also invoke this reservation against that state, and thus a suit against the second state would be dismissed. This is called the rule of reciprocity, and stands for the principle that a state has to respond to a suit brought against it before the ICJ only if the state bringing the suit has also accepted the court's jurisdiction.¶ Under the ICJ Statute, the ICJ must decide cases in accordance with International Law. This means that the ICJ must apply (1) any international conventions and treaties; (2) international custom; (3) general principles recognized as law by civilized nations; and (4) judicial decisions and the teachings of highly qualified publicists of the various nations.¶ One common type of conflict presented to the ICJ is treaty interpretation. In these cases the ICJ is asked to resolve disagreements over the meaning and application of terms in treaties formed between two or more countries. Other cases range from nuclear testing and water boundary disputes to conflicts over the military presence of a foreign country.¶ The ICJ is made up of 15 jurists from different countries. No two judges at any given time may be from the same country. The court's composition is static but generally includes jurists from a variety of cultures.¶ Despite this diversity in structure, the ICJ has been criticized for favoring established powers. Under articles 3 and 9 of the ICJ Statute, the judges on the ICJ should represent "the main forms of civilization and … principal legal systems of the world." This definition suggests that the ICJ does not represent the interests of developing countries. Indeed, few Latin American countries have acquiesced to the jurisdiction of the ICJ. Conversely, most developed countries accept the compulsory jurisdiction of the ICJ.¶ The judgment of the ICJ is **binding** and (technically) cannot be appealed (arts. 59, 60) once the parties have consented to its jurisdiction and the court has rendered a decision. However, a state's failure to comply with the judgment violates the U.N. Charter, article 94(2). Noncompliance can be appealed to the U.N. Security Council, which may either make recommendations or authorize other measures by which the judgment shall be enforced. A decision by the Security Council to enforce compliance with a judgment rendered by the court is subject to the Veto power of permanent members, and thus depends on the members' willingness not only to resort to enforcement measures but also to support the original judgment.

New icj ruling solves their warrants---the failure of the 96 opinion to bind states only proves that we need to revitalize international law on disarmament

Burroughs, Executive Director-Lawyers' Committee on Nuclear Policy, **7**

http://lcnp.org/wcourt/memoreturnICJhead.pdf

6) More than a decade after the 1996 opinion, a return to the Court would demonstrate that the 1996 opinion is not an anomaly, to be discarded in the dustbin of history, but rather a living reality. **It would revitalize the role of law in disarmament.** It should be remembered that the Court's affirmation that South Africa was obligated to terminate its occupation of Namibia and the accompanying legal condemnation of apartheid came only after a series of cases were brought to the Court.5 Thus the role of the Court in the disarmament process should be viewed as ongoing.

Solvency- Courts Take Nukes Cases

Previous nuclear weapons case proves the icj will accept jurisdiction even if there is adamant opposition from member states

Falk, Emeritus Professor of International Law—Princeton, **97**

(91 A.J.I.L. 64, January)

Also of great importance is the near-unanimity of the Court on the matter of complying with the request of the General Assembly for an advisory opinion on the legality of a threat or use of nuclear weapons. The judges voted thirteen to one in favor, with only Judge Shigeru Oda opposed, not on jurisdictional grounds but through reliance on the discretionary power of the Court to decline to respond. n13 The majority opinion convincingly explains the importance of responding to questions properly put to it by UN organs, as provided for by Article 96(1) and (2) of the Charter, and disregards the strongly argued objections of several states, including the United States, that the question was too vague and abstract, too fraught with political baggage, and too obstructive of other, more appropriate diplomatic efforts to control the dangers posed by the existence of nuclear weapons. The approach of the Court to the delimitation of its advisory role gains in clarity because of the reasoned refusal to respond in the companion case arising out of a request by the World Health Organization for an advisory opinion on the legality of using nuclear weapons, which was treated by an eleven-to-three majority as an inappropriate question, given the proper scope of WHO concerns. n14

The acceptance of the General Assembly's request in this instance is also important as an expression of judicial independence by the Court. After all, such an outcome was strongly opposed by all of the permanent members of the Security Council except China, [*67] both in the debates on the General Assembly resolution and in the written and oral pleadings before the Court. Not only did all but one of the judges support jurisdiction and refuse to use their discretion to refrain from issuing a response, but the Court as a whole **substantively affirmed the applicability of international law to the status of nuclear weapons**. n15 Part of the common ground among the judges, then, is a broad duty to respond to appropriate requests for advisory opinions, despite the objections of leading states and the political difficulties arising from the poor prospects that the advice proffered will be accepted, or even treated by affected governments with seriousness and respect.

Court explicitly stated its intentions to revisit the issue in the 96 opinion

Nagan, Director-Project for Advanced Studies and Research in Peace and HR-UF Law, **99**

(24 Yale J. Int'l L. 485, Summer)

The fifth major substantive holding makes a critical point about the continuing relevance of the rules relating to the ius in bello, especially the rules of humanitarian law. Here the court concludes that in general the threat or use of nuclear weapons would "be contrary to the rules of international law applicable in armed conflict." n163 A second part of this holding, however, is most vital. Here the court states:

in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake. n164

This could be seen as avoiding a core issue. Certainly it is possible to impute such a characterization to the slim majority role in this issue. However, the crucial interpretive word in this sentence is "and." This word supplies a conjunctive rather than disjunctive meaning to the words "international law" and "fact." Read conjunctively, the "and" suggests that the construction and interpretation of international law is not a purely doctrinal exercise, but its meaning, scope, and salience are often a function of context. This suggests that the central legal issue involves the construction and interpretation of fact and law. In this posture, the confirmation or modification of an international legal norm represents the challenge of managing change in the adjudicatory process of the ICJ, whether "molecular" or "molar." This point is important because it defines the prudential scope of judicial versus administrative, political, or executive competence. The deft gloss of this statement on the scope of the court's reviewing competence lies in the fact that the court has sought to exercise a degree of deference, which is subtly delimited. The implications are that **it cannot decide the issue now, but it is a matter that could be juridically determined in the future, under the right juridical circumstances**. This might include accounting for changing expectations regarding both treaty law and customary law, as well as making a clearer delineation of crucial factual contingencies, viewed as an important (expectation-creating) discourse. All of these factors **might in the future move the court to an outright declaration of illegality, consistent with major expectations of the international community as a whole**. In other words, this part of the holding does not need to be categorically construed as non liquet. In this I agree with Professor Burns H. Weston's characterization of the [*524] holding. n165 The language and context suggest a more subtle calculation of the judicial role in this advisory opinion.

Solvency – Congress follows

Congress follows

Brecher 12 - JD Candidate, University of Michigan Law

(Aaron, "Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations," October, http://www.michiganlawreview.org/assets/pdfs/111/3/Brecher.pdf)

> Cyberattacks present a challenge for U.S. policymakers: they are difficult to locate within a clear legal category and there is a significant risk of uncontrollable consequences associated with their use. As a result, policymakers must choose a paradigm to govern their use that will ensure that the executive branch is held accountable and shares information with legislators. This Part argues that the federal government should adopt the presumption that cyberattacks will be carried out under the covert action statute, and that the **best way forward** is for the president to issue an executive order making the covert action regime the presumptive framework for cyberattacks. It includes a brief discussion of why **a president might willingly constrain her discretion** by issuing the proposed executive order. It also shows that while the internal executive processes associated with both military and intelligence legal frameworks help mitigate the risk of cyberattacks' misuse by the executive, only the covert action regime provides an adequate role for Congress. Finally, this Part argues that the executive order option is preferable to one alternative proposed by scholars—enacting legislation—because of the practical difficulties of passing new legislation. The covert action regime is the best approach for committing cyberattacks under the current law, as it would facilitate cooperation among executive agencies. The debate over which agency and set of legal authorities govern cyberattacks has caused no small amount of confusion.145 Apparently, an Office of Legal Counsel ("OLC") memorandum declined to decide which legal regime should govern the use of cyberattacks, and the uncertainty has led to interagency squabbles, as well as confusion over how cyberattacks are to be regulated.146 Establishing a presumptive answer would go far toward resolving this dispute. Most importantly, adopting the covert action framework as the presumptive legal regime would be a principled way to help ensure constitutional legitimacy when the president orders a cyberattack.147 There is also reason to believe that presidential power is intimately bound up in credibility, which in turn is largely dependent on the perception of presidential compliance with applicable domestic law.148 A practice of complying with the covert action regime for cyberattacks, both when they do not constitute a use of force and when it is unclear whether they do, is most likely to be in compliance with the law. Compliance with the covert action regime would also encourage covert action procedures in close cases without unduly restricting the executive's choice to use military authorities in appropriate circumstances. The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of constraining **future administrations** or preempting legislative intervention.149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, **the information** shared with Congress **may give Congress the tools** and knowledge of the issue necessary **to craft related legislation**.150 Additionally, while executive orders are hardly binding, the inertia following adoption of an order may help **constrain future**

administrations, which may be more or less trustworthy than the current one. Creating a presumption through an executive order also **establishes a stable legal framework** for cyberattacks that **allows law to follow policy** in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

Solvency – ICJ Followed

A respected ICJ will be followed – their decisions will be perceived as binding

--prefer our ev, longitudinal quantitative analysis

Schultz 5 – PhD, Graduate School of Public Administration and Management, Hamline University

(David, Vol. 15 No.4, pp.282-285)

Similarly, the International Court of Justice (ICJ) is also a **major player** in world politics. Created in 1945 under the Charter of the United Nations, it was conceived as the principal judicial body entrusted with adjudicating international law disputes. It is the successor to the Permanent Court of International Justice (1922 -1946), created by the League of Nations. As of 2004, the ICJ was busy, with more than 20 cases on its docket, addressing issues ranging from territorial questions, criminal cases, to treaty disputes. While critics often argue that the ability of international law and the ICJ to bind state actors is weak, and that the dualist nature of many legal regimes limits the enforcement of international norms, Constanze Schulte seeks to set the record straight and investigate the history of compliance with this tribunal. One of the major surprises to emerge is that **the ICJ actually has a great record of securing compliance**, despite some notable failures.¶ To study compliance with decisions of the ICJ, Schulte examines all of the final judgments and interim orders issued by the Court from 1946 until 2003. Chapter One describes her methodology. Excluded from the study are advisory opinions and interlocutory decisions. Chapter Two is a detailed discussion of the legal framework surrounding the ICJ, mandatory compliance, and enforcement. The basis for mandatory compliance with decisions (final judgments) of the ICJ was first located in Article 13 (4) of the League of Nations Covenant. Schulte describes the process of how Australia and Cuba took the original language of 13 (4) and fashioned it into Article 94 of the current UN Charter, mandating that parties, both member states as well as non-members to the UN under 93 (2)—if the latter wish—are to comply with orders of the ICJ. Similarly, interim orders are considered decisions under Article 94 and are also binding upon UN member states and upon non-members who opt to resolve their disputes with the ICJ.¶ Primary enforcement of ICJ orders is covered by Article 94 (2), giving the [*283] Security Council a range of options to compel or encourage compliance. These options, as Schulte points out, are recommendations for specific measures that may include simple appeals for compliance and other peaceful options—a request to the World Bank to withdraw funds from a country, for example. The author also argues that the Security Council's enforcement options are purely peaceful, such that it would appear to rule out authorizing the use of force. Hence, had the United States sought an ICJ directive to Iraq to comply with orders to let UN inspectors in, Bush would not have been able to rely upon Security Council authority to use military force to enforce the court's decision.¶ In addition, the enforcement options of the General Assembly, the Secretary-General, the winning party in the case, and third parties are also examined. In light of Iraq, one wishes the author had spent more time examining these issues, but they were beyond the scope of the book's project. Finally, Schulte's Security Council-ICJ discussion also provides an interesting analysis of whether the former could modify or refuse to enforce the decisions of the latter.¶ How might losing parties avoid compliance with ICJ orders? The author offers some suggestions that include feigning compliance or delaying it. But otherwise, strictly speaking, ICJ orders are binding, and parties who ascent to its jurisdiction must comply with its directives. This means that the only effective way to defeat compliance resides in a party's modifying its ascent to the jurisdiction of the ICJ under Article 36 of the Statutes of the Court. This is exactly what the United States did in 1984 when it refused to recognize the ICJ's authority to hear the dispute brought by Nicaragua, contesting the legality of the CIA's activities against it, including the mining of its harbors and the aiding of the Contras. Eventually, the United States lost its argument that the ICJ lacked jurisdiction to hear the case, it refused to participate in arguments on the merits, and finally lost. Efforts to secure compliance proved futile, and it was only with the change of regime in Nicaragua with the 1991 election of President Chamorro and her decision to withdraw the complaint from the Court, that the matter was settled.¶ Chapter Three is over 300 pages long! This is the heart of the compliance study, where the author undertakes a detailed examination of all the final orders and interim measures. A total of 27 cases with final orders are examined, as well as 11 provisional measures. The discussion in is historically rich in detail and law, producing some surprises and questions. First the surprise: Only one case where the ICJ issued a final order is listed as one where non-compliance occurred. This is the 1949 Corfu Channel case, growing out of a 1946 incident where two British destroyers struck land mines off of Albania. The UK held Albania responsible, the ICJ ruled for the former, and ordered compensation to be paid. Albania refused, and the case was unresolved for more forty years. It was only in 1992—after the fall of its communist regime—that Albania agreed to terms, eventually resolving the case in 1996. With that resolution, Schulte considers compliance to have been secured—47 years later!¶ For most readers, two other cases of [*284] dubious compliance with final orders stand out. **First**, as noted above, is the United States-Nicaragua dispute. Schulte places this case in the unresolved category; whereas most might consider it a clear instance of non-compliance. Second, she considers the 1979 ICJ decision arising out of the taking of American embassy personnel by Iran as one eventually resulting in compliance. Schulte supports that conclusion by noting how the two countries in the long run reached agreement on the return of the hostages and for a settlement regarding US freezing of Iranian assets. Many might argue that Iran did not comply with the decision, but Schulte notes that the noncompliance was with an interim measure and not the final order. In fact, of the 11 provisional measures, only one secured compliance. Thus, unlike the final orders, provisional ones seem to be ignored with relative impunity.¶ What do we learn from this analysis? First, the **Nicaragua** case **is** seen as **a turning point for the ICJ.** Schulte argues that simply refusing to participate in ICJ proceedings became the **favorite tool of noncompliance**. Second, delaying is another tool frequently invoked to defeat acquiescence. Third, highly political cases were those most likely to involve noncompliance. But surprisingly, form of government—democratic or not—was not a significant variable in determining compliance, and the same was true with UN membership. Instead, Schulte argues that the attitude of the parties toward the Court was the single most important factor affecting compliance. If countries wanted to resolve a dispute and turned to the ICJ for decision, they complied, almost whatever the political repercussions or costs. For the interim measures, greater noncompliance may, as Schulte argues, rest simply in the fact that they were provisional and that a party to the dispute saw disobeying as perhaps a way of gaining leverage prior to a final judgment. Overall, Schulte's conclusion is that there is relatively high compliance with the ICJ, and such a record deserves to be publicized and noted.¶ COMPLIANCE WITH DECISIONS OF THE INTERNATIONAL COURT OF JUSTICE fills a major void in the scholarly literature in international law. It provides rich legal detail on the ICJ and the issues of enforcement, and it also offers a wealth of historical information on the decisions it has issued and reaction to them by the parties and the international community. Finally, the assessment of variables saffecting compliance is an important contribution to the international law literature, yet the conclusion that attitude toward the tribunal is the critical variable in determining compliance might not impress critics. But to show that the ICJ has a high record of compliance success is surely a surprise, and suggests that more studies of compliance with other international bodies are in order.

Solvency – AT: ICJ Useless

That's our uniqueness

Their rulings will be followed

Sofaer 4 – Senior Fellow, The Hoover Institution, Stanford University. Legal Adviser, U.S. Department of State, 1985-1990

(Abraham, "The International Court of Justice and Armed Conflict?," NU Journal of International Human Rights, 1.1)

Everyone agrees the ICJ is important. Its role is **especially important** when it ¶ comes to the use of force. Though it rarely makes a statement about the use of force, ¶ certainly a ruling about the use of force, when States submit to the ICJ's jurisdiction and ¶ do it deliberately, **they abide by what the ICJ tells them to do**. It's almost like night ¶ follows day. In addition to that, States and lawyers refer to ICJ rulings repeatedly as ¶ guides to their conduct. They don't always follow the Court's rulings, but they look at ¶ them and they consider them. If they find a decision lacking in logic and practicality, ¶ they make a judgment to that effect, and sometimes engage in conduct inconsistent with ¶ such a ruling. But that doesn't mean states—and the U.S. in particular—don't **take** those ¶ **rulings seriously**. So, when the ICJ speaks, each occasion is a great opportunity to ¶ influence those ends that are served potentially by an ICJ decision—peace, justice, and ¶ humanitarian rights.

Generic

Mass surveillance violates international law

Simon 6/17(Joel Simon, 6-17-2015, [executive director of the Committee to Protect Journalists and the author of The New Censorship: Inside the Global Battle for Media Freedom.] "Why Mass Surveillance Violates International Law," Slate Magazine, http://www.slate.com/articles/news_and_politics/foreigners/2015/06/mass_surveillance_violates_international_law_david_kaye_s_report_to_the.html)

Around the world repressive governments are trying to stop Internet users from either posting anonymously or using encryption to communicate securely. Russia requires bloggers with more than 3,000 visitors to register with the state and identify themselves; pseudonyms are outlawed in Vietnam; Ecuador requires commenters on websites to use their real name; Pakistan's government must grant approval for the use of encryption; and Ethiopia convicted members of the dissident blogging collective Zone 9 on terrorism charges based in part on participation in an online encryption workshop. In a groundbreaking report that was formally presented to the United Nation's Human Rights Council on Wednesday (and is already available on its website now), David Kaye, the U.N.'s special rapporteur for the freedom of expression, has determined that such actions violate international law. Kaye's argument is simple and elegant and basically goes like this: The ability to seek and receive information is a fundamental human right enshrined in international law. In order to fully exercise this right—particularly in an environment of growing state surveillance and targeted violence perpetrated by criminal and militant groups—people must be able to communicate securely. A government may only breach this private realm when its actions are established in law; when they serve to achieve a legitimate state objective, such as thwarting a terror plot or investigating criminal activity; when they are necessary to achieving this objective; and when they are a proportionate response, meaning the objective cannot be achieved through some less intrusive means. The opinions of the Special Rapporteur are non-binding, but highly influential. While Kaye's report won't stop repressive governments from doing whatever they want to do to restrict speech, it makes clear that such actions are neither legitimate nor legal. In the best-case scenario, his findings will spur countries committed to international legal principles to loosen restrictions on the use of anonymous speech and encryption to bring themselves into compliance. But what is not stated explicitly in Kaye's report may be the most consequential finding. The legal reasoning that Kaye uses to conclude encryption and anonymity are necessary to the exercise of freedom of expression leads pretty much in a straight line to the conclusion that mass surveillance violates international law. "The right to hold opinions without interference also includes the right to form opinions," Kaye notes. "Surveillance systems, both targeted and mass, may undermine the right to form an opinion." Targeted surveillance—in which governments monitor the communication of a specific individual—may be necessary and proportionate to thwart an identifiable threat. But mass surveillance by its nature is not proportionate because it involves governments sucking up vast quantities of information in response to vague threats in the hope of finding useful intelligence at some point in the future.

“Foreign” spying is a violation of international law—Brazil’s president says so

Bevins 6/16(Vincent Bevins, 6-16-2015, [Los Angeles Times’ Brazil correspondent] "Why Did Brazil’s President Change Her Tune on Spying?," Foreign Policy, http://foreignpolicy.com/2015/06/16/brazil-nsa-spying-surveillance-economy-dilma-rousseff-barack-obama/)

After Rousseff canceled her planned 2013 meeting with Obama, she took her case to the United Nations. During that September’s General Assembly, she delivered a lengthy scolding against a “global electronic spying network” based in the United States. “Meddling this way in the lives of other countries violates international law and is an affront to the principles that should govern relations among nations, especially allies…. [T]he security of one country’s citizens can never be guaranteed by violating the fundamental human and civic rights of citizens in other countries,” she said from the podium in Turtle Bay. “We have informed the U.S. government of our protest, demanding explanations, apology, and guarantees that these actions will not be repeated.”

NSA surveillance programs violate international law

Newman 14(Zak Newman,, 4-17-2014, "NSA Surveillance Unravels International Law," American Civil Liberties Union, https://www.aclu.org/blog/nsa-surveillance-unravels-international-law)

The NSA's surveillance programs fly in the face of that commitment. And, more critically, they violate international law. A recent ACLU and Amnesty International submission to the Privacy and Civil Liberties Oversight Board (PCLOB) explains that Section 702 of FISA—enacted by Congress in 2008 to codify the Bush administration's warrantless wiretapping program—authorizes surveillance that is not only unconstitutional but that violates the long-established human right to privacy. The International Covenant on Civil and Political Rights (ICCPR), which the U.S. ratified in 1992, has four primary requirements relevant to national surveillance programs. Surveillance must be: limited by statute and clearly defined in nature and scope; narrowly tailored to address legitimate governmental objectives, such as threats to national security; subject to independent oversight systems to prevent abuse; and applied equally irrespective of nationality. Section 702 of FISA fails each of these requirements. Section 702, as our submission explains, "provides US officials an extremely broad grant of authority and effectively unfettered discretion to secretly collect, store, and use protected communications." Meanwhile, Section 702 programs – like PRISM – provide virtually no "protection of the privacy interests of non-US persons outside US territory." That means there are few clear boundaries, little oversight, and no meaningful protections against surveillance for noncitizens. That's not just the position of civil liberties and human rights groups. In its recent Concluding Observations on U.S. compliance with the ICCPR, the U.N. Human Rights Committee agreed:

Prism

PRISM violates international law

Joergenson 14(Internet Policy Review, 1-18-2014, "Can human rights law bend mass surveillance?," http://policyreview.info/articles/analysis/can-human-rights-law-bend-mass-surveillance)

Based on the application of the above test, Sheinin argued that the surveillance architecture of the NSA violates the legal obligations of the US under the ICCPR. Firstly, the surveillance has been based on vague and broad provisions of the Foreign Intelligence Surveillance Act (FISA), thereby lacking a legal basis. The requirement of a legal basis for restrictions cannot be extended to a situation where neither the publicly available law - in this case FISA - nor the secret case law by a secret court provide to individuals precise information about the situations where their privacy and correspondence might be subject to surveillance (Ibid: 4). In line with the principles from the ECtHR mentioned above, accessibility and foreseeability of the legal basis are fundamental elements of the requirement of a proper legal basis so that individuals are able to adjust their conduct to the requirements of the law. Second, the sophistication of the PRISM programme suggests that the degree of intrusion through the mass collection of metadata has affected the inviolable core of privacy. Equally important, the surveillance was not limited to metadata, but instead metadata analysis was used to identify persons whose content data would also then be accessed (Ibid). Third, it has not been justified that the degree of intrusion employed under the PRISM programme is necessary for preventing terrorism or other serious crime in a democratic society. The failures to provide any privacy protection to non-citizens as well as the large numbers of innocent people being targeted, support the conclusion that the programme fails under the proportionality requirement. Moreover, the absence of a legitimate aim is highlighted as FISA authorises surveillance not only for the prevention of terrorism, but also for the purpose of serving the 'conduct of the foreign affairs' of the US. "This is a legitimate national interest to be pursued by lawful means that do not interfere with human rights but not a pressing social need that would justify interference with the privacy of ordinary people." (Ibid:4-5) Fourth, there has been a lack of both judicial and parliamentary mechanisms of oversight that could prevent abuses. Moreover, since the operation was based on broad and vague laws, it was open for discriminatory application resulting in interference with other human rights such as the right to non-discrimination, freedom of expression, and freedom of association without proper justification. As a final issue, the question of extraterritoriality was addressed, since the territorial scope of the state's obligation under ICCPR is crucial in the current context. ICCPR Article 2, paragraph 1, establishes the general obligation of a state party "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant." According to the practice of the Human Rights Committee, this formulation entails an extraterritorial effect, implying that the state has a duty to protect not only individuals within its territory but also individuals that are subject to its control irrespective of the territory14. The committee has codified this practice in the General Comment on Article 2, in 2004. "10. States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party"15. In Scheinin's intervention, these examples are used to argue a U.S violation of Article 17 for both US citizens and foreigners, since the US government de facto has had control over - and thus means to violate – the privacy rights of individuals outside the US territory. As stressed in Burgos[see footnote 13], the key issue is not the place

where the violation occurs, but rather the relationship between the individual and the state in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred. The question of extraterritorial effect, however, is legally complex and Scheinin's interpretation is largely contested, not least by the US government16.

Drones

FBI's use of drones calls into question civil liberties

Gallagher 13(Ryan Gallagher, 7-26-2013, "FBI Fesses Up: We've Used Domestic Drones 10 Times," Slate Magazine, http://www.slate.com/blogs/future_tense/2013/07/26/fbi_admits_in_letter_to_rand_paul_that_it_s_used_domestic_drones_10_times.html)

In a recent letter to Paul, published on the senator's website Thursday, the FBI acknowledges that it has used drones domestically in 10 cases in response to a "specific, operational need." The bureau says that, since late 2006, it has used unmanned planes for surveillance to support missions related to kidnappings, search and rescue operations, drug interdictions, and fugitive investigations. On eight occasions the drones were used as part of criminal cases, and two in national security-related operations. In none of these cases, the bureau says, did it apply for a warrant to conduct the drone surveillance. The letter states that the FBI will seek a warrant when using a drone only if it is attempting "to acquire information in which individuals have reasonable expectations of privacy under the Fourth Amendment." But it does not clarify exactly what kind of information it believes individuals have a reasonable expectation of privacy over. Paul has requested that the FBI provide more details, saying he is concerned that the bureau may be adopting an "overbroad" interpretation of the rules in order to conduct warrantless surveillance. The FBI also told Paul in its letter, dated July 19, that none of its drones are armed with either lethal or nonlethal weapons, adding that it does not use the aircraft to conduct "bulk surveillance." And the bureau confirmed reports earlier this year that the it used a drone in Alabama to support the rescue of a 5-year-old child being held hostage in an underground bunker. However, the bureau declined to publicly provide details on the other nine cases in which drones were used, saying that this information is "law enforcement sensitive." The secret operational details were disclosed to Paul in a separate, classified addendum. Paul has been a vocal critic of domestic drone use, raising concerns about how the controversial aircraft could be used to target and kill American citizens on their home soil. In March, the Kentucky lawmaker staged a 12-hour filibuster in the Senate, delaying the confirmation of John Brennan to lead the CIA, after he received a letter from Attorney General Eric Holder that refused to rule out domestic drone strikes in "extraordinary circumstances." Last month, Paul said that he would launch another filibuster—this time to delay the nomination of James Comey to lead the FBI—unless the bureau explained how it was using drones. The threat came after FBI Director Robert Mueller told the Senate Judiciary Committee that the FBI had been using the aircraft in a "very minimal way" for surveillance purposes. Drones have been used domestically in the United States since 2004 by the Department of Homeland Security, predominantly in border zones in Arizona and Texas. However, in some isolated cases the aircraft have been used for wider domestic law enforcement purposes. In one bizarre incident in 2011, for instance, a Predator drone was called in over a farming dispute in North Dakota. The expansion of drones into domestic airspace continues to raise unresolved privacy and civil liberties questions, particularly as military-style drones like the Predator are capable of flying beyond sight at high altitude, carrying powerful cameras that can zoom in and covertly monitor the ground below. Recently disclosed documents have compounded these concerns, revealing that the Customs and Border Patrol agency has considered equipping its fleet of domestic Predators with "non-lethal" weapons and eavesdropping equipment to pick up phone calls on the ground below. (The FBI did not disclose in its letter to Paul whether it uses large military-style drones like the Predator, or smaller, commercially available drones like the Octocopter.).

215/702

Section 215, Section 702, and PRISM violate international law

Weissmann 13(Andrew Weissmann, 12-18-2013, ""“We don’t export our law to other countries – that would be hubris”," Verfassungsblog, http://www.verfassungsblog.de/en/we-dont-export-our-law-to-other-countries-that-would-be-hubris-2/)

Germany has just co-sponsored a UN General Assembly Resolution affirming the right to privacy on the internet. German scholars have argued that the surveillance program violates international law, namely the human right to privacy in Art. 17 of the Intl Covenant on Civil and Political Rights, sovereignty, the NATO treaty und the Vienna Convention on Diplomatic Relations. Did international law matter in any way in the legal discussions at the FBI and within the intelligence community? Is PRISM legal under international law? Section 702 is a congressional statute that the FBI has to deal with. If international law is raised in the proceedings against its constitutionality, then the Department of Justice will deal with it. In the two public FISC decisions regarding section 215, the court did not address international law. I’m confident that given the creativity of groups like the ACLU, they will raise international law questions in litigation to come against the constitutionality of sections 215 and 702. And certainly the discussion is ongoing whether constitutional privacy rights should be extended to foreigners abroad by statute.

Border/Drone

Border and drone surveillance leads to snooping calls

Gallagher 13(Ryan Gallagher, 3-1-2013, "DHS Considers Eavesdropping Tech for Spy Drones on Border," Slate Magazine, http://www.slate.com/blogs/future_tense/2013/03/01/eavesdropping_drones_may_be_next_for_border_surveillance_efforts_in_texas.html)

EPIC, which obtained the documents after filing a Freedom of Information Act request, says it is now concerned about how electronic surveillance of communications could be conducted by DHS Customs and Border Patrol Agency drones to indiscriminately snoop on calls. "This raises questions about compliance with federal privacy laws and the scope of surveillance," Ginger McCall, director of EPIC's open government project, said in an email. Michael Friel, a CBP spokesman, said that the agency currently was "not deploying signals interception capabilities on its [drone] fleet." However, because the aircraft have a long anticipated lifespan, an eavesdropping capability is being considered by the agency for future deployment. According to Friel, any use of signals surveillance gear on border drones would be implemented in line with "civil rights/civil liberties and privacy interests and in a manner consistent with the law and long standing law enforcement practices." Back in 2008, Predator drones used for combat overseas were kitted out with sensors for "signals intelligence." But the prospect of drones used domestically for eavesdropping is a far more contentious issue, even if only conducted at the border. The government has argued that the border in fact extends 100 miles inland and is exempt from the search and seizure protections of the Fourth Amendment, meaning it would be legally easier for border drones to scoop up communications from anyone in the area without a warrant.

Drone Surv. Not legal

US Domestic Drone Surveillance violates international law and the UDHR
Adams et al '13

(Elliott Adams, Creating a Culture of Peace, Chairperson Meta Peace Team, Training Committee member, Veterans for Peace – Past President Judy Bello – Upstate (NY) Coalition to Ground the Drones and End the Wars Medea Benjamin – Co-founder CODEPINK Toby Blome – CODEPINK – San Francisco Steve Fenichel, MD, Ocean City, NJ Joy First – National Campaign for Nonviolent Resistance, Mt. Horeb, WI Margaret Flowers – Popular Resistance.org. *No specific date listed – cites quotes from articles in February of 2013. Ban Honeywell, "Call to Boycott and Divest Honeywell," http://www.badhoneywell.org/blog_index.html SM)

Honeywell International Inc., through its manufacturing of the engine and certain navigational, guidance and targeting equipment for the MQ-9 Reaper drone, is deeply complicit in, and profits from, United States drone surveillance and drone attacks that have resulted in the deaths of a total of more than 4,000 children, women and men in Afghanistan, Pakistan, Yemen, Somali and the Philippines. These killings are war crimes because they violate provisions of international law that require commitment to due process, the protection of life and rights to privacy, freedom of assembly and freedom of association, among other obligations. They also violate the U.S. Constitution and the U.S. War Crimes Act in a variety of ways, including violating prohibitions again assassination. They also violate the United Nations Universal Declaration of Human Rights (UDHR), to which the United States is a signatory. Drone killing often looks like this, as reported in a New York Times article published on February 6, 2013: "After the drone strike (in Yemen), villagers were left to identify two dead relatives from identity cards, scraps of clothing and the license plate of Mr. Jamal's Toyota; the seven bodies were shredded beyond recognition, as cellphone photos taken at the scene attest. 'We found eyes, but there were no faces left,' said Abdullah Faqih, a student who knew both of the dead cousins." Continuous drone surveillance by the United States, on which drone attacks are based, also violates international law and the UDHR. For example, the highly regarded study Living Under Drones reports: "Drones hover twenty-four hours a day over communities in northwest Pakistan, striking homes, vehicles, and public spaces without warning. Their presence terrorizes men, women and children, giving rise to anxiety and psychological trauma…" All the above information is notorious and well- known to the Honeywell management. In addition, Honeywell manufactures, and profits from the T-Hawk surveillance drone intended for use by the United States military and law enforcement agencies, a weapon that threatens life, privacy, freedom of assembly and free speech.

Drone Surveillance Violates I law
Rosen '13

(Frederik – research fellow at the Danish Institute for international Studies. Published widely on international security and warfare. OUPB 11/4/2013 "Drone technology and international law" http://blog.oup.com/2013/11/drone-technology-international-humanitarian-human-rights-law/ SM)

The legal controversies about the use of drones in armed conflicts primarily spring from the disputed lawfulness of targeted and signature killings, including constitutional and sovereignty issues. Yet the debates have failed to address the legal implications arising from the increasing surveillance capabilities of drone technology. Let's take proximity and transparency as our main point of departure to discuss drones and law. Drone technology triggers international humanitarian law obligations regarding

precaution in attack. Belligerents have affirmed the obligation to take due care in attack for a long time, and it is enshrined in Article 57 of Add. Protocol 1 from 1977. The principle of precaution is considered customary international law. It forms a most critical component in international humanitarian law and in the military manuals of most states. If military commanders have drones, then under international humanitarian law they are required to use them to the greatest possible extent for taking due care in attack. If a state possesses drone technology, and if the deployment of this technology may potentially reduce unnecessary harm from armed attacks, the state is obliged to employ the technology. This is not at all different from the obligation to pick up the binoculars before firing the shells. The obligation to use drones for precaution is logically not limited to drone attacks. It applies across all weapon systems. Even in the near future, ground attacks may no longer be lawful without engaging available drone technology for the purpose of precaution. But it does not end here. The availability of drone technology for precaution also bears implications as to how the principle of precaution should be applied. The humanitarian legal obligation to take "feasible precautions" depends on what "feasible" is balanced against. The three conventional parameters here are: (1) precautionary measures vs. strategy considerations, i.e. the time to gather and process information, or whether precautionary steps may reveal tactics; (2) precautionary measures vs. personnel considerations, i.e. the risk to the soldiers and the operators of weapon systems; (3) the precautionary measures vs. materiel considerations, i.e. the risk to the weapon systems. Since drone technology can be stealthy, quickly deployed, or deployed well ahead of an attack (as it mostly is when used for targeted and signature killings), most situations of weapon engagement by drones leave us with only the material considerations. Yet the price tag difference between a US$3 billion B2 bomber, the US$17 million Reaper, and the US$100,000 ScanEagle, is considerable and should make a difference for such calculations. In another branch of international law, human rights law, the growing surveillance capability of drone technology also has implications. The European Court of Human Rights has several times found the convention applicable in situations where European states have exercised control over territories or persons in places remote from Europe. Combined with sophisticated weapon systems, drone technology suggests a capability for exercising a degree of control over territories and persons, which easily mirrors some of the cases where the Court has applied its convention. To be sure, drone technology sometimes allows for more effective control than boots on the ground. Drone technology will develop at great speed. We will soon see surveillance capabilities and weapon technologies that we cannot yet imagine the full scope of. It is, however, certain that drone technology will become an increasingly powerful tool for controlling territories and persons, and will bring still greater transparency to armed conflicts. Drones will be increasingly robotized. Autonomous weapon systems raise many questions, yet notwithstanding the weapon aspect, the mere surveillance advantage of robotized drones flows directly into the main argument about how "seeing and knowing triggers obligations."

Drone Surv Legal

Domestic Surveillance with drones is the ONLY legal use
O'Connell '10

(Mary Ellen O'Connell, an ASIL member, is Robert and Marion Short Chair in Law and Research Professor of International Dispute ResolutionâKroc Institute, University of Notre Dame, Vice President of the American Society of International Law, and Chair of the Use of Force Committee of the International Law Association.. American Society of International Law. 11/12/2010. "The International Law of Drones," http://www.asil.org/insights/volume/14/issue/37/international-law-drones SM)

In determining what international law rules govern drone use, the most salient feature is not the fact that drones are unmanned. The fact drones carry no human operator may be the most important new technological breakthrough, but the key feature for international law purposes is the type of weaponry drones carry. Drones are currently configured to launch missiles and drop bombs. The missiles and bombs carried by drones are not the type of weaponry permitted in law enforcement efforts. Lawful resort to lethal force in law enforcement is too restricted by international human rights law to permit the use of such heavy firepower. The limitation on the arbitrary deprivation of life, in particular, regulates a stateâ☐™s resort to lethal force.[9] During law enforcement operations, resort to lethal force is permissible when needed immediately to save human life.[10] Civilian police forces are acquiring drones, but to date they are using them for surveillance purposes. **This is the only lawful use** until drones are equipped with rifles, side arms, or other law enforcement-appropriate weaponry.

Surveillance Drones are legal in international law – UN use, and non-targeting protects from court ruling
Alberstadt '14

(Rachel, Masters in Public International Law, Writer for the Open Journal of Political Science. OJPS, 8/2/2014, "Drones under International Law," www.scirp.org/journal/PaperDownload.aspx?paperID=50570 SM)

The lower cost of production, the resource efficiency, and the overall capabilities of drones provide several key reasons why many States now seek to increase their drone arsenals. Indeed, for these same reasons, drones appeal to non-State actors as well. For instance, the United Nations (UN) has employed drones to facilitate humanitarian missions, such as aerial surveillance in the Democratic Republic of the Congo (UN Launches, 2014) (UN Starts, 2013). These operations exist in parallel to conflict operations with the practical usage of using drones to drop humanitarian supplies in troubled (e.g. natural disasters, armed conflict) areas as briefly discussed earlier. Increasing popularity for this method predicates upon the drone's allowance for greater surgical precision for the drops in difficult or dangerous flying areas. It also lowers mission costs as the troops do not need to be deployed as the aircraft can be remotely piloted. Alternatively, many speculations about drones, which this author argues have resulted to an extent in misinformation, point to the US or even Israel as the two main users of drones. The US and Israel are perhaps the two States most speculated as the sole users of drones (Israel's Defence, 2014), however, while they are possibly the two primary users, there are more than 40 other countries competitively developing and employing drone technology (Alston, 2010). As a result, discussions on drone development largely pertain to assessment of drone legality as linked with the main uses of drones. Drones are thought to be inherently unlawful as they are directly associated with targeted killing policies advocated by States such as the US, Russia, and Israel generally as responses against terrorist attacks (Matthews & McNab, 2011). Thus, the inherent problem associated with the legality of drones—as is with all weapons—is when they can be lawfully employed and against whom. If States employ drones as a counter-terrorism policy,

this proves problematic in light of the nebulous legal minefield associated with the discourse of terrorism itself. While this paper will not address the use of drones in these contexts (contexts which are outside of international warfare), it does point out that these remain imperative issues which, nonetheless, continue to be governed by domestic and human rights laws. 3. Jus in Bello and IHL **Drones, by themselves, are not illegal**. They do not qualify as banned military instruments under regulations of armed conflict nor under Article 8 of the Rome Statute as they do not exhibit banned qualities such as causing indiscriminate harm or unnecessary suffering (Schmitt, 2011). However, lawful action of drones rests upon customary principles such as military necessity and proportionality—with due regard for protection of civilians and civilian objects (Vogel, 2011; Military Commander, 2012; Air Force Operations, 2009). As mentioned earlier, in linkage to their common usage, the lawful firing of drone missiles predicates upon the status of the target (Schmitt, 2011). In addition to the general prohibition on the use of force, there exist established rules which govern warfare in the event of conflict. For example, under customary laws, indiscriminate weapons are prohibited, an issue that affects the implementation of drones rather than the weapon itself (Military Commander, 2012). Applicable rules which govern conflict activities are international humanitarian laws codified in the 1946 Geneva Conventions, the 1907 Hague Conventions, the 1977 Additional Protocols, and interlinked to the three aforementioned, customary international law (Cryer, Friman, Robinsin, & Wilmshurst, 2007). Legal regulations allowing use of drones appear fairly straightforward1 —if in compliance with international laws regulating force, deployment of drones is allowed. Otherwise, the legal uncertainty follows from case law where few courts have expressly or consistently issued judgments on drones, for instance in relation to targeted killing. If employed as a weapon (as opposed to surveillance or intelligence usages) the legality of the use of drones largely predicates on targeting restrictions. Overall, the dichotomy between combatant and non-combatant or civilian status, and collateral damage in relation to proportionality exemplify several IHL restrictions which inform the lawfulness of targeting (Cryer, Friman, Robinsin, & Wilmshurst, 2007). In addition, restrictions on launching missiles extend from civilian protection of humans to protection of civilian objects as well, such as churches or cultural buildings (Kalshoven & Zegveld, 2011).

ICJ Prioritizes ICCPR

The ICJ enforces ICCPR first without extraterritorial exception – Israel proves Bekker ‘4

(Pieter H.F. Bekker, is a partner in the International Dispute Resolution (IDR), Chair on the international division of the American Arbitration Association, and professor of international law at Fordham University. “The World Court Rules that Israel's West Bank Barrier Violates International Law,” American Society of International Law, 7/15/2004, http://www.asil.org/insights/volume/8/issue/17/world-court-rules-israels-west-bank-barrier-violates-international-law SM)

V. Scope of applicable treaties (Paras. 107-113) Regarding the scope of application of the applicable treaties, the ICJ concluded that the ICCPR and the Convention on the Rights of the Child are applicable both to territories over which a state has sovereignty and to those over which that state exercises jurisdiction outside sovereign territory. [11] While the ICESCR lacks a provision specifying its scope of application, the ICJ found that it is not to be excluded that this treaty applies also to acts carried out by a state in the exercise of its jurisdiction outside its own territory. [12] Observing that "the territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying Power," the ICJ concluded that Israel is bound by the provisions of these treaties and "is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities." (Para. 112) VI. Question of breach (Paras. 114-134) Turning to the question of whether the construction of the wall has violated the rules and principles identified by it, the ICJ noted that Israel has argued that the wall's sole purpose is to enable it effectively to combat terrorist attacks launched from the West Bank and that the wall is a temporary measure. The Court recalled that both the General Assembly and the Security Council in their resolutions have referred, with regard to Palestine, to the customary rule of the inadmissibility of the acquisition of territory by war. In the Court's view, it is apparent that the wall's sinuous route has been traced in such a way as to include within the "Closed Area" between the Green Line and the wall the great majority of the Israeli settlements (and about 80% of the Israeli settlers) in the Occupied Palestinian Territory (including East Jerusalem). According to the ICJ, the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law, in particular Article 49(6) of the Fourth Geneva Convention [13] and binding Security Council resolutions. The Court considered that the construction of the wall and its associated regime of measures create a "fait accompli" on the ground that could well become permanent, in which case it would be tantamount to de facto annexation. In the Court's view, the wall's construction, along with measures taken previously, "severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right." (Para. 122.) The ICJ found that the construction of the wall has led to the destruction or requisition of Palestinian properties under conditions that contravene the requirements of Articles 46 and 52 of the 1907 Hague Regulations and Article 53 of the Fourth Geneva Convention. [14] In its view, the wall's construction, the establishment of the Closed Area, and the creation of enclaves have imposed substantial restrictions on the freedom of movement of the inhabitants of the Occupied Palestinian Territory (with the exception of Israeli citizens) and have had serious repercussions for Palestinian agricultural production, access to health services, educational establishments and primary sources of water, and have changed the demographic composition of the territory concerned in violation of applicable provisions of international

humanitarian law, [15] human rights treaties, [16] and Security Council resolutions. [17] VII. Applicability of exceptions (Paras. 135-142) With regard to the question whether the applicable international humanitarian law contains provisions enabling account to be taken of "military exigencies," the ICJ pointed out that the exception to Article 49(1) of the Fourth Geneva Convention prohibiting forcible transfers of population and deportations (except when "the security of the population or imperative military reasons so demand") does not apply to Article 49(6), which prohibits the occupying Power from deporting or transferring parts of its own civilian population into the territories it occupies. Although Article 53 of the Fourth Geneva Convention concerning the destruction of personal property includes an exception "where such destruction is rendered absolutely necessary by military operations," the ICJ was not convinced that the destructions carried out by Israel contrary to the prohibition in Article 53 were rendered absolutely necessary by military operations. As regards the applicable human rights conventions, **the ICJ noted that Israel is bound to respect all the provisions of the ICCPR** with the exception only of Article 9 relating to the right to freedom and security of the person. [18] It said that although Article 12 permits some restrictions on freedom of movement, the restrictions not only must be directed to the ends authorized (i.e., the protection of national security, public order, public health or morals), but also must be necessary for the attainment of those ends. Moreover, they must conform to the principle of proportionality and must be the least intrusive instrument available. The ICJ concluded that these conditions were not met in this case. Moreover, the restrictions on the economic, social and cultural rights of the affected Palestinians were not implemented "solely for the purpose of promoting the general welfare in a democratic society," as required by Article 4 of the ICESCR.

NSA Surv. Illegal - ICCPR

No International legality for NSA surveillance – ICCPR proves

Sinha '14

(Alex G. Fellow, Human Rights Watch and the American Civil Liberties Union. ". All research and writing for this paper took place before my affiliation with HRW or the ACLU began, and the views expressed here do not necessarily reflect the positions of either organization." "NSA Surveillance Since 9/11 and the Human Right to Privacy," http://www.aaron-zimmerman.com/wp-content/uploads/2014/01/Privacy-Supplement-1-Sinha.pdf SM)

In the end, however, entertaining this argument is more a matter of completeness than a matter of serious legal analysis. All along, we have made charitable assumptions toward the position of the United States, specifically to ensure a conservative and compelling series of conclusions. But there are only so many times that we can take the position favorable the United States and keep the results plausible, and by now we seem to have exhausted that supply. The more promising indicator for the United States is the deference of the ECtHR in cases where state parties assert national security as the justification for their interference with the right to privacy. Recall that the ECtHR places substantial weight on the existence of "formal legality and procedural guarantees,"347 as well as access to remedies.348 If those conditions are met, then the ECtHR is likely to defer in the face of interference with the right to privacy (under Article 8 of the European Convention). Even here, however, **the United States would struggle**. For much of its life, the NSA program lacked formal legality, and even now it has weak procedural guarantees. Further, in light of Clapper, access to remedies is severely restricted. Perhaps it would be possible for the United States to modify the NSA program in a way that allowed it to retain its breadth while also complying with the sort of criteria valued by the ECtHR, but until and unless that were to happen, **a favorable verdict by analogy for the legality of the NSA program under the ICCPR is unlikely**. In sum, it is obviously difficult to reach conclusive opinions about the legality of the NSA program (or its various constituent parts) under the ICCPR in part because some of our analysis is built on credible but disputed or unsubstantiated reporting on the program itself. At the very least, we need additional, concrete information about how the government executes the program. Further, the arguments on either side are relatively complicated, and can develop in a range of different ways. But at a minimum, even on conservative assumptions about the nature of the program and the scope of the ICCPR, we face the legitimate and frightening prospect that the United States is systematically and massively violating the human right to privacy. What happens now? Cherry-picked leaks from individuals like Edward Snowden help to shed light on parts of the program, but the government is unlikely to turn over any more comprehensive information voluntarily. The limited Congressional oversight that occurred shortly after the program became known fell far short of the public accountability created by investigations into spying abuses in the mid-1970's. Despite a string of recent revelations, the political climate now is even less likely to lead to oversight than it was in 2005 and 2006, since administrations of both parties have formally endorsed the FAA, thereby illustrating their commitment to the NSA program. But suppose we look at the issue from another angle. Why is it that the arguments on both sides are so complicated and uncertain? In part, the reason is that international human rights bodies have not paid enough attention to the risks posed to privacy by government surveillance programs. We have inferred the various points of illicit contact between the NSA program and the ICCPR by carefully reading both news reports about the program and commentaries on the treaty. But the Human Rights Committee's General Comment on the right to privacy is 25-years old and no more than two-pages long, and it does not specifically address surveillance practices that are certain to be in wide use around the world. This paper essentially presents a case study about the human right to privacy in the United States, as implicated by a single—albeit major—national security initiative. The NSA has multiple surveillance programs, and it is not the only agency within the government that conducts surveillance here. Most importantly, other countries conduct their own surveillance, making this a global issue. Governments can discern the basic form of their human rights obligations, and cannot be excused for ignoring them simply because it is possible to obscure their activities behind the cloak of national security policy. Nevertheless, it is much easier for them to duck their obligations when they can claim ambiguity in the law, and when human rights bodies abstain from explicit criticism of their problematic programs. If human rights bodies were to take the matter seriously, papers like this one would not be necessary. Notwithstanding the impulse of governments to protect information about surveillance activities, emphasis by human rights bodies on the significance of the right to privacy, and the elaboration of clear standards for compliance with it in an age of increasing government surveillance, would constitute crucial steps in making sure that states do not trample on this core human right.

US extraterritoriality exception violates international law and ICJ opinion – creates ICCPR confusion

Sinha '14

(Alex G. Fellow, Human Rights Watch and the American Civil Liberties Union. ". All research and writing for this paper took place before my affiliation with HRW or the ACLU began, and the views expressed here do not necessarily reflect the positions of either organization." "NSA Surveillance Since 9/11 and the Human Right to Privacy," http://www.aaron-zimmerman.com/wp-content/uploads/2014/01/Privacy-Supplement-1-Sinha.pdf SM)

There has been some debate about how to interpret "within its territory and subject to its jurisdiction." The Human Rights Committee ("HRC")—the committee of experts tasked with monitoring implementation of the ICCPR202—interprets the phrase to mean that "a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."203 Moreover, the HRC holds the view that the ICCPR extends to non-citizens—indeed, "all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons—who for whatever reason find themselves either within the territory of a state party, or within the power or effective control of that state party outside its own territory.204 The **International Court of Justice has taken a similar view,** as have prominent commentators like Manfred Nowak.205 The United States, rather notoriously, takes a different view: "The United States in its prior appearances before the Committee has articulated the position that article 2(1) would apply only to individuals who were both within the territory of a State Party and within that State Party's jurisdiction. The United States is mindful that in General Comment 31 (2004) the Committee presented [a different view]. . . . The United States is also aware of the jurisprudence of the International Court of Justice ('ICJ'), which has found the ICPR 'applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory," as well as positions taken by other States Parties.'206 Though the United States appears to be the outlier here, that fact alone would not necessarily render its view invalid. If it is fair to say that the United States has consistently maintained this position on the scope of the ICCPR, then perhaps as a persistent objector to the more common stance, the United States' view could be taken as applicable—at least for its own obligations under the ICCPR, if not for other parties. Moreover, most of the reporting on the NSA program has focused on its effects for those who are within the United States, so for present purposes, it may not matter a great deal which view we adopt. Nevertheless, the right to privacy (whatever that ultimately entails) illustrates in some of the starkest terms the counterintuitive implications of the United States' position. Essentially, the stance of the United States reduces to the view that the ICCPR permits states to conduct illegal or arbitrary surveillance on anyone outside of their own territory or outside of their jurisdiction. Presumably that is indeed the position of the United States, which after all originally established the NSA specifically to conduct foreign surveillance, and has since developed an extremely powerful surveillance apparatus that continues to collect substantial information abroad. But surveillance is particularly troublesome in this respect because much of it can be done from a distance—via satellite, for example, or through the interception of communications that travel through other countries. (By contrast, the United States reading produces much less counterintuitive results in the case of the right to peaceful assembly, which other governments might have a much harder time violating from afar.) If we were to generalize the United States position, then the ICCPR might secure the privacy of Americans only against arbitrary and illegal intrusion by the

United States, but leave them vulnerable to intrusion by every other government in the world. Similarly, Canadians would be secure as against their own government, but vulnerable to intrusion by all other governments. The same would be true again for people within the territory and jurisdiction of each other state. The right to privacy under the ICCPR would amount to very little on such a view. At the same time, it is not obvious that a broader reading of the scope of the treaty would be prohibitive for effective intelligence purposes, barring only illegal and arbitrary interference with privacy. 207 Further, whatever the geographic scope of the treaty, each state must do more than simply abstain from intruding on the privacy rights of those within its territory and jurisdiction. The general rule is that **states must respect, protect and fulfill the rights of those who fall within the scope of a binding treaty**.208 But without a duty on states not to engage in broad surveillance of those outside their territory or jurisdiction, the responsibility of each state to protect its own subjects from the prying of dozens of other states would be impossible to meet. To the extent that states literally could not protect their own from violations by other countries—violations that on the United States' view would not actually contravene the treaty—the number of privacy intrusions that the ICCPR would countenance on such a reading is extraordinary, and might be so large as to defeat the object and purpose of the treaty as concerns the right to privacy.209 These worries are worth raising here because privacy introduces **distinctive concerns about the United States' preferred reading of the treaty**. If even a subset of the rights guaranteed in the ICCPR cannot be protected in any meaningful way as a result of a particular reading of the treaty, then there are strong reasons for doubting the adequacy of that reading. Nevertheless, if only to yield less controversial results from our inquiry, we can stipulate to conducting our analysis under the United States' own position on the reach of the ICCPR.

NSA Surveillance violates I law

NSA Surveillance Violates Ilaw –

ICCPR inconsistencies

Georgieva 2/27

(Ilina, Research Associate at Public International Law & Policy Group, Peer Reviewed "The Right to Privacy under Fire – Foreign Surveillance under the NSA and the GCHQ and Its Compatibility with Art. 17 ICCPR and Art. 8 ECHR," Urtrecht Journal of International and European Law, 2/27/2015, http://www.utrechtjournal.org/articles/10.5334/ujiel.cr/ SM)

-ICCPR=The International Covenant on Civil and Political Rights – VCLT=The Vienna Convention on the Law of Treaties

http://www.utrechtjournal.org/articles/10.5334/ujiel.cr/

1. The Territorial Reference in Art. 2 (1) ICCPR The ICCPR defines its territorial scope in Art. 2 (1) and obliges every State Party to ensure the rights recognized in the Covenant to all individuals within its territory and subject to its jurisdiction. This somewhat 'awkwardly formulated'34 provision has been widely understood to mean that Covenant rights are to be guaranteed to all individuals within a state's territory and to all individuals subject to its jurisdiction.35 The US is one of the few states that read this provision in a different manner. a. The US Position In the opinion of the US, persons who are not both within the respective territory and subject to the state's jurisdiction do not benefit from the treaty's protection.36 In an attempt to substantiate its position and to present it as a long-established understanding and practice of the Covenant's applicability, the US argues using the travaux préparatoires and refers to its earlier statements before the HRC.37 The US further relies on the ordinary meaning of the two conditions in Art. 2 (1) ICCPR connected by the conjunctive 'and'. **This position, however, has been contested from the very moment of its articulation**38 **and raises substantial problems**. These shall be explored in the following sub-sections. b. Rules of Treaty Interpretation in the VCLT The Vienna Convention rules on treaty interpretation are considered declarations of pre-existing customary international law.39 Arts. 31 to 33 VCLT covers the interpretation doctrines in international law. The first approach centers on the actual text of the provision in question, emphasizing the analysis of the words used.40 The second approach considers the intention of the parties adopting the agreement, while the third approach looks at the object and purpose of the treaty as the most important tool in resolving ambiguities.41 Thus, Art. 31 (1) VCLT requires in the first place a reading of the Covenant in good faith and consistent with the ordinary meaning of the terms used.42 Following this rule of interpretation, the US position seems to be the most natural one, considering the literal meaning of the 'and' as a conjunction between 'within its territory' and 'subject to its jurisdiction'. However, what appears superficially to be the right answer leads to unsustainable results when considering some of the further norms in the ICCPR. The provision regarding the right to return to one's state43 and the right not to be tried in absentia44 presume exactly that individuals can be outside the territory of their state when exercising the rights in question. As Margulies45 rightfully points out, these provisions would become a nullity if they would not protect persons at least temporarily outside a state's territory. Additionally, it would exclude from its reach individuals who are outside the state's jurisdiction but within its territory, such as foreign diplomats or members of foreign armed forces stationed on the territory pursuant to international agreements between the receiving and the sending

state.46 Thus, it makes more sense that Art. 2 (1) has to be read interpreted within the context of all of the substantive rights in Art. 6–27 ICCPR.47 Otherwise, one would reach an interpretation that is inconsistent with the object and purpose of the treaty in the sense of Art. 31 (1) VCLT or to a result which, as Art. 32 (b) VCLT puts it, is manifestly absurd or unreasonable. It seems more logical to deem that Art. 2 (1) permits and requires a different construction.48 This conclusion allows turning to the preparatory work and drafting history of the Covenant as a further means of interpretation, Art. 32 VCLT. While the provision might have been drafted in a different manner that would have avoided the ambiguity, interestingly, the travaux préparatoires indicate that attempts to delete 'within its territory' and to replace 'or' for 'and' failed for different reasons.49 One finds in the official records of the drafting process statements of the chief US delegate50 that clearly show that including a reference to 'territory' in Art. 2 (1) ICCPR aimed at avoiding obligations to 'ensure' the rights of individuals in the territories occupied by the Allies after the Second World War. The obligation to respect, on the other hand, was not considered problematic. The US eschewed the responsibility to guarantee rights within the states with only recently recovered democratic institutions.51 Potential inconsistencies with the international law of occupation had to be considered as well.52 The facts illustrated above show a very different position by the US Government and a diverse meaning of the terms. Thus, the reading of the US cannot be considered a long-established practice. In addition it should be also noted that **the International Court of Justice has endorsed the extraterritorial applicability of human rights obligations** in its 'Wall' Advisory Opinion.53 c. Why **the Narrow View is not Persuasive in the Surveillance Context** Although the stance of the US was reviewed and conceived as inconsistent with effective international law in general, in order to strengthen this finding it is important to see how the US position would perform in the surveillance context. As the HRC has stressed in its General Comment ('GC') on the nature of legal obligations imposed by the Covenant,54 every State party has a legal interest in the performance by every other State party of its obligations. Bearing this in mind, the US reading of the territorial scope of the ICCPR brings a couple of interesting consequences along. The first one is that **it allows states to perform illegal or arbitrary surveillance on anyone outside of their own territory or outside of their jurisdiction**.55 This automatically means that the Covenant secures the privacy of i.e. Americans only against arbitrary and illegal interferences by their own state, but would leave them unprotected against intrusions by every other state agency in the world.56 However, this result most certainly conflicts with the very nature of human rights, to which every human being is entitled by the simple fact of being human and a bearer of human dignity.57 Human Rights cannot be assimilated to social compacts, nor depend for their applicability on 'morally arbitrary criteria' such as the mere accident of birth.58 In the words of Ronald Dworkin, '[t]he domain of human rights has no place for passports'.59 The second consequence to consider is that with this reading, the task of each state to protect its own subjects from the spying activities conducted by all other states would be **impossible to accomplish**. This is true to the extent that privacy intrusions would become something ordinary, potentially defeating the object and purpose of the treaty with regards to the right to privacy. **Such an understanding of** Art. 2 (1) **ICCPR would** not only offer very little protection with regards to privacy, but **most the protection offered for most of the other ICCPR rights would be undermined**. And here is where the line must be drawn – where even a small part of the Covenant's guarantees cannot be fulfilled in any reasonable way as a result of a particular understanding of the treaty, then this understanding is most certainly inadequate.60 The illustrated points make it clear that the advocated understanding of the Covenant's territorial scope by **the US is unsustainable under international law**. The reference to a state's territory in Art. 2 (1) ICCPR is not to be read as excluding extraterritorial application per se.

I law courts reject US extraterritorial exception – violates sovereignty and collapses human rights – HRC and ECtHR proves

- HRC=Human Rights Campaign. ECtHR= European Human Rights Court

2. State Jurisdiction under Art. 1 ECHR and Art. 2 (1) ICCPR The next challenge is to establish what exactly being under a state's jurisdiction means and entails. In order to elaborate the concept, which would be applicable to foreign surveillance activities, the following section outlines the major findings of the HRC and the ECtHR on extraterritoriality. Both bodies have had the opportunity to decide on whether the human rights treaties in question apply outside of a State's party territory. a. First Extraterritorial Steps For the simple reason that 'jurisdiction' has emerged as the basis of sovereignty and state's sovereign powers, the original notion of jurisdiction is necessarily linked with the idea of territorial powers.61 That is why jurisdiction is closely related to the national territory.62 However in the interventionist age63 we live, with the growth of operations conducted abroad and the ever-increasing number of individuals brought under some form of foreign de facto control, the question of human rights treaties' applicability although vague in terms of the exact guarantees' scope **is quite significant**. Taking this in account, the ECtHR has only accepted in exceptional cases that acts carried out by the Member States outside their territories can be an exercise of jurisdiction in the sense of Art. 1 ECHR.64 The territorial scope of the ECHR has been a point of contention for quite some time. Although Art. 1 ECHR has received some fair attention in the Court's case law; the ECtHR's position is far from uniform. It had a promising start with the Loizidou case,65 where the Court accepted that the treaty has a certain degree of extraterritorial effect, coupling the Convention's application with the requirement of effective control employed by a State Party in a certain area. What mattered was the question of effective control, regardless of whether it was based on an unlawful act, i.e. violation of the territorial state's sovereignty.66 In the later judgement of Cyprus v Turkey, the justices of the Grand Chamber reaffirmed their position, adding to the previous argumentation the need to reject the otherwise resulting **'regrettable vacuum in the system of human-rights protection'.**67 In a similar cautious manner, the early HRC only ruled in favour of extraterritorial application in 'exceptional circumstances', such as when states acted against their own citizens living abroad.68 However, it must be also acknowledged that in comparison to the ECtHR, the Committee's degree of practice in the matter of extraterritoriality is more limited by the simple fact that it receives fewer complaints than its European counterpart. As will be illustrated below, the consequence is that the Committee often turns to the judgements delivered by the ECtHR for interpretation help. In the so called Passport cases,69 the HRC found that States parties are responsible for infringements of the Covenant committed by their foreign diplomatic representatives. Further, considering the cases of individuals kidnapped by Uruguayan agents in neighbouring countries, the Committee held that States parties are liable for the actions of their agents on foreign territory.70 The HRC thus accepted the extraterritorial application of the ICCPR in cases where state agents exercised authority and control over individuals, rather than over areas. This same approach used by the ECtHR in one of its early Cyprus cases,71 where it had found that States parties are 'bound to secure the rights and freedoms to all persons under their actual authority'. In other words, what mattered was the relationship between the individual and the state and not where the alleged violation occurred.72 b. Jurisdictional Approaches after Bankovic What looked like an auspicious (although not entirely uniform) beginning that kept pace with recent developments in the international community, took a step back with the Bankovic admissibility decision.73 In this case, the ECtHR found that the victims of an air strike on a TV station in Belgrade had never been 'within the jurisdiction' of the NATO Member States. The Court observed that only effective control – an exercise of all or some public power – over a territory and its inhabitants due to a military occupation or an explicit agreement could bring the situation within the jurisdiction of the 'occupying' state. The mere repercussions of States parties' actions, i.e. dropping bombs over Belgrade, would not trigger control over the territory or individuals in question.74 This approach, clearly leaning towards the pronouncement of the Convention's extraterritorial application as an exception, has casted quite some doubt on the Court's reasoning, which has been a point of critique and discussion ever since. The decision in the Issa case75 led to further confusion with its observation that 'Art. 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory'. The Court stipulated that even short-term military operations in a territory brought the individuals there under the jurisdiction of the acting state. In the Ilascu case,76 the Court affirmed the triggering effect of military control in an area, but this time it reduced the requirement to 'overall control'. This so-called 'more generous approach'77 was later followed in the Al-Skeini78 judgement as well, where the Court explained that the test of jurisdiction could be met either through control over an individual or over a certain area. In addition, a state can exercise effective control either directly, through its own armed forces, or by means of a 'subordinate local administration'.79 Thus, it would seem that the ECtHR was moving away from the view that jurisdiction is an all-or-nothing matter,80 trying to correct to some extent the Bankovic findings by reducing the degree of control required over a territory. A further development in the Court's approach was brought by the case of Öcalan v Turkey,81 a case involving the handing-over of a suspect of terrorist-related crimes to Turkish officials in Kenya. The ECtHR noted that the suspect was 'effectively under Turkish authority and therefore within the jurisdiction of Turkey' after the handing-over was completed.82 Simplifying this statement means that the State party in question does not need to exercise all public powers, for even some exercise of public powers is sufficient to trigger jurisdiction, although not in an exclusive manner with regard to all other states and their rights. In the meantime, the HRC, which from its very inception has sought a way to provide a reading of Art. 2 (1) ICCPR that renders appropriate legal protection and had therefore followed the disjunctive interpretation, extended the application of the Covenant to actions of state authorities in occupied territories as well.83 For example, as the Committee has stated in its recent comments on Israel, the latter bears responsibility for implementation of the ICCPR within Israel, as well as the Occupied Palestinian Territories in the West Bank and Gaza84 where Israel exercised effective jurisdiction and effective control. The HRC's line of arguments appears to follow Bankovic, that is, it is based on an 'effective control' approach.85 The Committee has applied this approach in a number of different contexts where the state acts or takes measures on the territory of another state and these have an effect on persons within that other state's territory.86 In GC 31 the Committee reaffirmed its position, asserting that a State Party

must provide for the Covenant's rights to anyone within its power or effective control, even if not situated within its respective national borders and without concern for the circumstances in which such power or effective control was obtained.87 In other words, in the view of the Committee, states are always bound to both respect and ensure that individuals receive maximum protection of their human rights.88 Through this position the HRC has officially developed a case law that some scholars have criticized for being purposive89 and rather goal-oriented. While this presumption may or may not be true and could be the topic of an entirely different investigation, it demonstrates one of the core problems of extraterritoriality – namely that human rights protections are necessarily extraterritorial. This issue will be addressed in a moment under 2. d). c. The Test of 'Subject to its Effective Control' in the Surveillance Context As it was illustrated above, the effective control over territory or over individuals test represents the best synthesis of the ECtHR's current extraterritorial jurisprudence, supported by the HRC as well. However, this approach was put into place long before one could even consider the issue of foreign surveillance and its impact on the discussion. The 'effective control' notion is adequate to analyse the actions in real time taken abroad by state agents,90 but in the cyber domain, the physical control over persons or territory is not very useful.91 The NSA has the capacity to remotely control and filter much of the communications of a foreign national abroad and, as indicated in the press, the agency can break different forms of encryptions thanks to so-called 'back-doors' it has engineered in many software systems.92 In addition, the implantation of tiny radio transmitters in most of the computers produced in the US grants the NSA the capacity to gain control over computers not connected to the Internet.93 Considering also that much of the Internet traffic is routed through the US, makes the picture complete – physical control does not play a role at all. That is why in order to answer the question how surveilling a foreign national's communications renders that person subject to the surveilling state's jurisdiction,94 the concept needs to be adapted to the cyber context. A narrow standard does not do justice to the rapidly evolving technology, but an official solution has not been established yet, although one of the first cases concerning external communications' interception is already being dealt with in Strasbourg.95 In this regard, Margulies suggests the virtual control test as an approach that at least for now can meet this challenge.96 Applying this standard has two advantages: first, it works closely with the notion of control developed and required in the jurisprudence discussed above; second, it considers and bridges the changing technological circumstances that any practitioner would face when dealing with questions of jurisdiction triggering human rights obligations in surveillance cases. The intelligence agencies under scrutiny are perfectly capable of controlling lives and private information with the press of a button. **Without a proper assimilation of the effective control test in cyberspace these intrusions would remain unaddressed and would run counter to substantial human rights principles**. Privacy rights should be protected even when interferences have been initiated in a place different than the affected individuals' abode. The virtual control test is thus preferable when assessing the extraterritorial application of privacy interests in cases of foreign surveillance. d. Type of State Obligations in the Extraterritorial Application What has become clear from the above sub-sections is that both the ECtHR and the HRC, certainly not uninfluenced from each other's findings and interpretations, apply the treaties in question outside of the national borders of the States parties. The current stance of both bodies is to answer in affirmative the question of jurisdiction where some kind of public power has a controlling effect over an area or an individual abroad. What needs a point of clarification, however, is what exactly states are obliged to do when their jurisdiction is triggered. In this regard it is important to turn again to the original treaty provisions. While the ICCPR text requires states to 'respect and ensure'97 the rights in the Covenant and, as it was illustrated above, the Committee has gladly taken up this wording in its demands for effective rights protection, Art. 1 ECHR speaks of 'securing' the respective rights and freedoms. However, despite the differences in the wording of these treaty provisions, it has become customary to apply the tripartite typology of respect – protect – fulfil when assessing state's obligations under a human right treaty.98 One can also categorize the duty to respect as closely corresponding to negative obligations,99s and the other two dimensions (protect and fulfil) to positive obligations.100 Since 'to secure' in Art. 1 ECHR and 'to respect and to ensure' in Art. 2 (1) ICCPR encompass both negative and positive obligations, it can be acted on the assumption that both treaties

mean the same. Now, the problem with the extraterritorial application is constituted by the fact that interventions abroad take place in forms other than extensive and long-term military operations and occupations. In many cases, there are actions that can and are accomplished in a matter of days or even hours. Under these circumstances, the foreign state acting abroad cannot be expected to also positively ensure or protect human rights, for it does not have the respective powers to adopt any legislative, judicial or administrative or other appropriate measures in order to fulfil its positive legal obligations. It can only make sure to respect and not to interfere with the rights of the individuals. A further difficulty arises out of the fact that the bodies entrusted with the application and interpretation of the provisions have either left the question of the exact nature of the obligation unaddressed or have opted for an 'all- or nothing' approach. In other words, the approach is everything but conclusive.

Solvency- Tech Backdoors

The tech backdoors of NSA Mass Surveillance violates I law
WB '14

(Washington's Blog – quotes UN high commissioner and UN reports from the United Nations General Assembly, 7/19/2014. "UN High Commissioner: Mass Surveillance Violates International Law … and Snowden Should NOT Be Prosecuted," http://www.washingtonsblog.com/2014/07/un-mass-surveillance-violates-international-law.html SM)

UN High Commissioner: Mass Surveillance Violates International Law … and Snowden Should NOT Be Prosecuted Posted on July 19, 2014 by WashingtonsBlog Mass Surveillance Violates U.S. Law Despite the fancy footwork of government lawyers, mass surveillance undoubtedly violates the U.S. Constitution. See this, this and this. After all: Mass spying by the NSA violates our freedom of association It violates our Fourth Amendment right against unreasonable search and seizure And our Sixth Amendment right to face our accusers (and see this). By way of background, the information gained through spying is shared with federal, state and local agencies, and they are using that information to prosecute petty crimes such as drugs and taxes. The agencies are instructed to intentionally "launder" the information gained through spying, i.e. to pretend that they got the information in a more legitimate way … and to hide that from defense attorneys and judges And the right not to have digital troops quartered in our homes Experts say that the type of spying being carried out by the NSA and other agencies is exactly the kind of thing which King George imposed on the American colonists … which led to the Revolutionary War Moreover: NSA started spying on journalists in 2002 … in order to make sure they didn't report on mass surveillance There is no real oversight by Congress, the courts, or the executive branch of government. And see this and this. Indeed, most Congress members had no idea what the NSA is doing. Even staunch defenders of the NSA – and congress members on the intelligence oversight committees – now say they've been kept in the dark A Federal judge who was on the secret spying court for 3 years says that it's a kangaroo court Even the current judges on the secret spying court now admit that they're out of the loop and powerless to exercise real oversight. When these judges raised concerns about NSA spying, the Justice Department completely ignored them A former U.S. president says that the spying program shows that we no longer have a functioning democracy Indeed, the NSA itself admitted that similar surveillance which it conducted in the 1970s was probably illegal: During the Vietnam war, the NSA spied on two prominent politicians – Senators Frank Church and Howard Baker – as well as critics of government policy Muhammad Ali, Martin Luther King, and a Washington Post humorist. A recently declassified history written by the NSA itself called the effort "disreputable if not outright illegal." (And that's just surveillance. The NSA might also be involved in dirtier tricks.) Mass Surveillance Violates International Law **The U.N high commissioner for human rights released a report this week saying that mass surveillance may violate international law**. EFF summarizes: The report is issued in response to a resolution passed with unanimous approval by the United Nations General Assembly in November 2013. That resolution was introduced by Brazil and Germany and sponsored by 57 member states. *** Forget The "Haystack" The report issues a powerful condemnation of the "collect-it-all" justification that an infinitely large "haystack" of personal data must be accumulated in order to find the needles. The report points out that few "needles" that have been uncovered, and that in any event: Mass or "bulk" surveillance programmes may thus be deemed to be arbitrary, even if they serve a legitimate aim and have been adopted on the basis of an accessible legal regime. In other words, it will not be enough that

the measures are targeted to find certain needles in a haystack; the proper measure is the impact of the measures on the haystack, relative to the harm threatened; namely, whether the measure is necessary and proportionate. The second part of that passage, emphasis added, is critical: it gives guidance that the proper measure of a mass surveillance program is not its effectiveness in a vacuum, but whether the surveillance is both necessary and proportionate. Metadata Matters EFF has long called for moving beyond the fallacy that information about communications is somehow inherently less privacy-sensitive than the communications themselves. *** The report agrees, debunking the argument that "interception or collection of data about a communication, as opposed to the content of the communication, does not on its own constitute an interference with privacy." It argues, "From the perspective of the right to privacy, **this distinction is not persuasive**" The aggregation of information commonly referred to as 'metadata' may give an insight into an individual's behaviour, social relationships, private preferences and identity that go beyond even that conveyed by accessing the content of a private communication." Monitoring Equals Surveillance Much of the expansive state surveillance revealed in the past year depends on confusion over whether actual "surveillance" has occurred and thus whether human rights obligations apply. Some suggest that if information is merely collected and kept but not looked at by humans, no privacy invasion has occurred. Others argue that computers analyzing all communications in real-time for key words and other selectors is not "surveillance" for purposes of triggering legal protections again, unless the analysis is by human eye. [But the U.N.] report makes clear that: "any capture of communications data is potentially an interference with privacy and, further, that the collection and retention of communications data amounts to an interference with privacy whether or not those data are subsequently consulted or used. Even the mere possibility of communications information being captured creates an interference with privacy, with a potential chilling effect on rights, including those to free expression and association." (Again, emphasis added.) Mandatory Data Retention Is Unnecessary and Disproportionate EFF has long held that government mandated data retention impacts millions of ordinary users, compromising the online anonymity that is crucial for whistle-blowers, investigative journalists, and others engaging in political speech. The report calls data retention mandates unlawful, saying: Mandatory third party data retention, a recurring feature of surveillance regimes in many States, where Governments require telephone companies and Internet service providers to store metadata about their customers' communications and location for subsequent law enforcement and intelligence agency access appears neither necessary nor proportionate." Shut the Backdoor: Re-use of Data As EFF has noted here,here and in the legal background to the 13 Principles , many national frameworks lack "use limitations," allowing data collected for one legitimate aim, to be subsequently used for others. The report also emphasized that point. The report explained that the absence of effective use limitations has been exacerbated since September 11, 2001, with the line between criminal justice and protection of national security blurring significantly. The resultant sharing of data between law enforcement agencies, intelligence bodies and other State organs risks violating Article 17 of the Covenant on Civil and Political Rights, because surveillance measures that may be necessary and proportionate for one legitimate aim may not be so for the purposes of another. No Secret Law EFF has long held that the basis and interpretation of surveillance powers must be on the public record, and that rigorous reporting and individual notification (with proper safeguards) must be required. *** The report agreed: Secret rules and secret interpretations even secret judicial interpretations of law do not have the necessary qualities of "law". Neither do laws or rules that give the executive authorities, such as security and intelligence services, excessive discretion; the scope and manner of exercise of authoritative discretion granted must

be indicated (in the law itself, or in binding, published guidelines) with reasonable clarity. A law that is accessible, but that does not have foreseeable effects, will not be adequate. The secret nature of specific surveillance powers brings with it a greater risk of arbitrary exercise of discretion which, in turn, demands greater precision in the rule governing the exercise of discretion, and additional oversight. Human Rights Law Does Not Discriminate For "Foreigners" This new report underscore the value that the UN places on "measures to ensure that any interference with the right to privacy complies with the principles of legality, proportionality and necessity regardless of the nationality or location of individuals whose communications are under direct surveillance." Again this position is supported by our previous submissions, available here and here and here. In the words of the report: If a country seeks to assert jurisdiction over the data of private companies as a result of the incorporation of those companies in that country, then human rights protections must be extended to those whose privacy is being interfered with, whether in the country of incorporation or beyond. This holds whether or not such an exercise of jurisdiction is lawful in the first place, or in fact violates another State's sovereignty. We have seen precisely these questions raised, and not always answered satisfactorily, in cases like the demands to Twitter for information on Wikileaks supporters or Chevron's demands for email data to Twitter, Google and Yahoo. Right to an Effective Remedy and Notification Quite impressively, the report lays out four characteristics that effective remedies for surveillance-related privacy violations must display. Those remedies must be "known and accessible to anyone with an arguable claim." This means that notice is critically important, and that people must be to challenge the legality of the surveillance program without having to prove that their particular communication was monitored or collected. EFF has always said that the notification principle is essential in fighting illegal or overreaching surveillance. Individuals should be notified of authorization of communications surveillance with enough time and information to enable them to appeal the decision, except when doing so would endanger the investigation at issue. The report continues, stressing the importance of a "prompt, thorough and impartial investigation"; a need for remedies to actually be "capable of ending ongoing violations"; and noting that "where human rights violations rise to the level of gross violations…as criminal prosecution will be required". **No Tech Backdoors** EFF has said no law should impose security holes in our technology in order to facilitate surveillance. Diminishing the security of hundreds of millions of innocent people who rely on secure technologies in order to ensure surveillance capabilities against the very few bad guys is both overbroad and short-sighted.

Immigration

ICJ Ruled US border surveillance company Elbit is illegal
Kilpatrik '14

(Kate, Staff writer for AlJazeera America, 9/6/2014, "Immigration seen as bonanza for slumping global defense industry" http://america.aljazeera.com/articles/2014/9/6/elbit-systems-bordermilitarizationusmexico.html SM)

A desolate patch of terrain in southern Arizona — crossed mostly by coyotes, jackrabbits and Border Patrol agents — is one of the planned sites for a 120-foot-tall lattice-steel tower. Located two miles from the U.S.-Mexico border, the tower will be outfitted with sensors to allow Customs and Border Patrol to detect and record the movement of migrants and smugglers up to 7.5 miles away. The simple structure will contain advanced technology that has been already used halfway across the globe in Israel, where its makers, Israeli defense company Elbit Systems Ltd., have deployed their border security products for more than a decade. The towers being erected in Arizona shed light on the fierce and ongoing debate over U.S. border strategy where they symbolize efforts to adopt a more militaristic policy. At the same time the presence of a foreign company at the heart of such a project also highlights a booming niche in the global defense industry: one where hefty profits can be made by fortifying international frontiers. While environmental assessments have been done to prepare the sites, project hasn't yet broken ground due to a protest filed by a competing bidder, a Customs and Border Protection spokesperson confirmed. But that's not the only controversy. In the wake of Israel's increased military campaign in Gaza this summer, Elbit Systems has drawn fire from protesters in England and Australia who criticize the company for profiting from the Israeli occupation and separation wall, which **the International Court of Justice has declared illegal under international law.** "No company is more deeply embedded in Israel's brutal architecture, occupation and segregation than Elbit," journalist Naomi Klein wrote in her 2008 book, The Shock Doctrine: The Rise of Disaster Capitalism. Elbit's No. 1 client outside Israel is the United States and the towers in the Arizona desert are part of a 9-year, $145 million contract the Department of Homeland Security awarded the firm's American subsidiary, Elbit Systems of America, in February. Elbit beat bids from U.S. competitors including Lockheed Martin, General Dynamics and Raytheon.

AT: ICJ bad

Non-unique'd by 40 years

Liptak 5 – analyst @ NYT

("U.S. cuts World Court's jurisdiction," http://www.nytimes.com/2005/03/10/world/americas/10iht-judge.html?_r=0)

Prompted by a World Court decision last year ordering new hearings for 51 Mexicans on death row in the United States, the State Department has said that the United States has withdrawn from a protocol that gave the court jurisdiction to hear such disputes. The withdrawal announced Wednesday followed a Feb. 28 memorandum from President George W. Bush to Alberto Gonzales, the U.S. attorney general, directing state courts to abide by the World Court decision regarding the Mexican inmates. The International Court of Justice, in The Hague had ruled that U.S. courts should grant "review and reconsideration" to claims that the inmates' cases had been hurt by the failure of local authorities to allow them to contact consular officials. The memorandum, issued in connection with a case the U.S. Supreme Court is scheduled to hear this month, puzzled state prosecutors, who said it seemed inconsistent with the administration's general hostility to international institutions and the White House's support for the death penalty. The withdrawal announced Wednesday helps explains the administration's position. Darla Jordan, a State Department spokeswoman, said the administration was troubled by foreign interference in the domestic capital justice system, but intended to fulfill its obligations under an international agreement the United States had signed. But, Jordan said, "we are protecting against future International Court of Justice judgments that might similarly interfere in ways we did not anticipate when we joined the optional protocol." Peter Spiro, a law professor at the University of Georgia, said the withdrawal was unbecoming: "It's a sore-loser kind of move," he said. "If we can't win, we're not going to play." Jordan stressed that the United States was not withdrawing from the Vienna Convention on Consular Relations itself, which gives people arrested abroad the right to contact their home countries' consulates. But the United States is withdrawing, she said, from an optional protocol that gives the World Court, the principal judicial organ of the United Nations, jurisdiction to hear disputes under the convention. "While roughly 160 countries belong to the consular convention," she said, "less than 30 percent of those countries belong to the optional protocol. By withdrawing from the protocol, the United States has joined the 70 percent of the countries that do not belong. For example, Brazil, Canada, Jordan, Russia and Spain do not belong." Countries that have signed the protocol include Australia, Germany, Japan and the United Kingdom. Jordan said Condoleezza Rice, the U.S. secretary of state, informed Kofi Annan, the secretary general of the United Nations, of the move on Monday. Harold Hongju Koh, dean of the Yale Law School and a former State Department official in the Clinton administration, said the Bush administration's strategy was counterproductive. "International adjudication is an important tool in a post-cold-war, post-9/11 world," Koh said. For **40 years**, from 1946 to 1986, the United States accepted the general jurisdiction of the World Court in all kinds of cases against other nations that had also agreed to the court's jurisdiction. After an unfavorable ruling from the court in 1986 over the mining of Nicaragua's harbors, the United States withdrew from the court's general jurisdiction.

AT: ICJ fails

ICJ fails because of limited jurisdiction – the plan resolves that

Lu 4 – LL.M, law librarian, Transnational Law and Business University (TLBU), Seoul

(Bingbin, "3. Reform of the International Court of Justice – A Jurisdictional Perspective," http://www.oycf.org/Perspectives2/25_063004/3.pdf)

The ICJ has been criticized for its limited effectiveness and the many failures it has experienced. ¶ These circumstances have many reasons, such as the time consuming nature of ICJ proceedings, ¶ but the **most important reason** is the extent of the ICJ's jurisdiction. If we want to see a more ¶ efficient ICJ, some reform steps must be taken to solve the jurisdictional problem. But what can ¶ the Court do under the Statute as it is now in order to limit its shortcomings? Reforming a World ¶ Court is not an easy matter. The goal should be achieved step by step. In my opinion the ICJ can ¶ construe its jurisdiction broadly when there are differences as to what the scope of its jurisdiction ¶ is. Of course the relevant provisions or Optional Clause declaration must be interpreted in a ¶ natural and reasonable way, as in the Fisheries Jurisdiction Case.33 To extend the construction of ¶ the ICJ's jurisdiction does not mean there should be a license to misuse it. I am sure the World ¶ Court can do a much better job of exercising its competence under the current ICJ Statute and in ¶ an environment of proliferating international courts and tribunals, if it chooses to interpret its ¶ jurisdiction broadly. So we can hope that the Peace Palace will heat up and the World Court will ¶ be in business again.

2NC A2: Doesn't Solve Signal/Perception

Delegation better captures their signal arguments

Alter, Political Science-Northwestern, **3**

(Journal of Asian and Pacific Studies, Vol. 25, P. 51-74)

6) Delegating authority to international courts may be attractive because it lessons the role of power in dispute resolution. The strongest powers can use unilateralism to enforce agreements while cheating when they want. Strong powers thus are less likely to want to create a system of third-party enforcement. But weaker powers may demand third-party enforcement so that everyone will be held accountable to the same rules, including strong powers. And strong powers **may need to create a legal system to get others to sign on to the agreement** (McCall Smith 2000, 148).

7) Delegation may be a good way to signal a commitment to an agreement without really binding a state or committing real resources to enforce the agreement. Argument 1 assumed that delegation did in fact increase the credibility of an agreement. But in most cases states have created international courts while refusing to give international legal bodies tools to enforce legal rulings. If courts do not in fact make commitments more credible, then it may be that **states delegate to courts to capture the benefits of the signal**. For example, when governments want to reinforce key values, creating a legal system may **enhance the perception,** if not the reality, that these values confer genuine rights for individuals. Gary Bass who seeks to explain why war crimes tribunals have been created on an ad hoc basis across time offers a non-cynical argument in this vein. Bass argues that empirically speaking, liberal countries are more likely to create war crimes tribunals. He explains this finding by arguing that liberal countries create ad hoc tribunals to uphold their values (and perhaps because since they almost never commit gross atrocities, they will not called to account in front of the court.) (Bass 2000) A cynical argument in this vein comes from Giulio Gallarotti who claims that international institutions may provide a cheap way to demonstrate that a government is doing something to address an international issue, while in practice it is not expending any significant resources to realize an international objective (Gallarotti 1991).

2NC Spills Over/A2: Not Effect All States

ICJ ruling would have spillover effects on other countries

Burroughs, Executive Director-Lawyers' Committee on Nuclear Policy, **7**

http://lcnp.org/wcourt/memoreturnICJhead.pdf

4) The Court would likely confirm that the disarmament obligation applies to all states, including those outside the NPT, Israel, India, and Pakistan. While the latter two states accept the obligation in their votes on UNGA resolutions,4 it still would be useful to have an ICJ statement on this point. It could help point towards integration of those states into a disarmament/non-proliferation regime. It would also help dispel any perception that the proposed U.S.-India deal is certifying India as a member of a permanent nuclear weapons club. Since Israel does not officially acknowledge possessing nuclear weapons, it is in a different position than India and Pakistan. NPT Article VI applies to all NPT parties, not only those with nuclear arsenals. Thus an ICJ conclusion that the disarmament obligation founded upon Article VI applies universally would confirm that Israel is bound by the obligation regardless of how Israel is classified. It would support Israel's joining the NPT as a NNWS or its participation in the creation of additional instruments to create a nuclear-weapon-free world.

2NC A2: Hegemony DA- Undermines All War Powers

Counterplan does not submit all future war powers decisions to compulsory jurisdiction- only a small subset that the aff has already said we shouldn't do- means there is no risk of an impact or solvency deficit

Counterplan exchanges unilateral war powers for multilateral- makes future war fighting sustainable

Harvard Journal on Legislation, "Protecting National Sovereignty in an Era of International Meddling: An Increasingly Difficult Task" Representative Bob Barr, **2002**. 39 Harv. J. on Legis. 299. Lexis.

> The U.N. Charter proscribes "non-pacific" conduct unless necessary to counter threats to peace, breaches of peace, acts of aggression, or to act in self-defense. [28] By potentially giving the ICJ the compulsory jurisdiction to adjudicate "all legal disputes concerning treaties," the United States has effectively tied its hands to resolve such disputes in a manner deemed to be in accord with the ICJ-- and within the general proscriptions of the Charter to forego the use of force in such disputes. The Senate never should have agreed to such a provision, as it presents a potential conflict with the United States Constitution, 29 which grants Congress alone the power to declare war 30 and gives the President the sole power as Commander-in-Chief to wage war on behalf of our sovereign nation. 31 The Constitution does not grant the federal governm, ent the power to cede such authority. So long as the United States had the power, the understanding, and the will to restrict the U.N. provisions to the supremacy of our Constitution, such a problem may have been tolerable. Now, however, the understanding and will are largely absent from national debates, and a serious problem presents itself.
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> The most dramatic and recurrent example of the United Nations exerting powers reserved by the United States Constitution is the de facto transfer of war powers from our government to the mechanism of the [*305] U.N. [32] Constitutional grant to Congress to declare war and to the President to wage that war [33] is thwarted when international organizations attempt to interject their views on when and where such combat is legitimate. For example, the U.N. Charter mandates that, "all Members . . . undertake to make available to the Security Council, *on its call* . . . armed forces, assistance, and facilities . . . ." [34] This provision of the charter usurps congressional power to declare war by allowing the Security Council to have direct influence and/or control over America's fighting forces and resources. [35] By allowing the U.N. to interpret when United States troops are to be made available on its own beckoning, the *unilateral* and *sovereign* power of the United States becomes diluted and weakened. It is into these muddy waters that the United States has been repeatedly pulled or led in the last years of the twentieth century, and into the beginning years of the twenty-first, with little or no long-term forethought to the consequences or bases for such action by the United States.

US leadership is unsustainable without a highly visible commitment to multilateralism- answers all your DA's

Lake, 10– Professor of Social Sciences, distinguished professor of political science at UC San Diego (David A., "Making America Safe for the World: Multilateralism and the Rehabilitation of US authority", http://dss.ucsd.edu/~dlake/documents/LakeMakingAmericaSafe.pdf

The safeguarding of US authority requires multilateralism that is broader and certainly deeper than in the 1990s—more like NATO than the ad hoc coalitions of the new world order. Indeed, absent the constraints exerted by competition with the Soviet Union, the institutional fetters through which the United States must bind its own hands will have to be even stronger than those in NATO. 47 The great paradox of contemporary international politics is that the unprecedented international power of the United States requires even more binding constraints on its policy is fit to preserve the authority that it has built over the last half-century and extend it to new areas of the globe.

The advanced military capabilities of the United States will make it a key actor in any such multilateral institution and will allow it to set the collective agenda. Since it is highly unlikely that anything will happen in the absence of US involvement, as in Bosnia where the Europeans dithered until the United States stepped to the fore, 48 Americans need not be overly concerned about "runaway" organizations or global mission creep. At the same time, if any organization is to be an effective restraint on the United States, other countries will have to make serious and integral contributions to the collective effort. Both sides to this new multilateral bargain will need to recognize and appreciate the benefits of a stable international order to their own security and prosperity and contribute to its success - 480 Making America Safe for the World. The United States will need to continue to play a disproportionate role in providing international order, even as it accepts new restraints on its freedom of action. Other countries, however, must also contribute to the provision of this political order so that they can provide a meaningful check on US authority.

Americans are likely to resist the idea of tying their hands more tightly in a new multilateral compact. After six decades, US leadership and its fruits— security, free trade, economic prosperity—have developed a taken-for-granted quality. It is hard for average Americans to tally the myriad benefits they receive from the country's position of authority, but it is relatively easy for them to see multilateral institutions constraining the country's freedom of action. Precisely because unipolarity makes coercion and unilateralism possible, and for some attractive, any constraints on US foreign policy may appear too high a price to bear. 49

But if the United States is to remain the leader of the free world and possibly beyond, it must make its authority safe for others. To sustain US authority over the long term, it must be embedded in new, more constraining multilateral institutions. Americans trust their government only because of its internal checks and balances. Although there may be disagreements on exactly where the appropriate scope of government authority ends, nearly all Americans agree that limited government is the best form of government. This same principle extends abroad. If the United States is to exercise authority over other states, and enjoy its fruits, that authority must be **checked and balanced** as well. The height of hubris is not that the United States might govern the world, at least in part. This is a fact of international politics. Rather, hubris arises in the belief that the virtue of its people and leaders will restrain the United States sufficiently such that other peoples will voluntarily cede a measure of their sovereignty to it. 50 Politicians and peoples may occasionally be saintly, but it would be folly to rely on this quality at home or abroad. Recognizing the universal need to restrain authority, the United States should, in its own self-interest, lead the way to a new world order.

Only **the counterplan solves hegemony- binding the US's authority is critical**

David A. **Lake**, UC San Diego June 10, **2009**, Making America Safe for the World: Multilateralism and the Rehabilitation of U.S. Authority, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1417667

Over the last century, the United States has built and sustained informal empires over states on the Caribbean littoral, spheres of exclusive political and economic influence over countries in South America, and after 1945 protectorates over key "allies" in Western Europe and Northeast Asia. In pursuit of a New World Order, the United States has in recent decades attempted to expand its authority over other states into Eastern Europe, with a measure of success, and the Middle East, which has been far more problematic. The authority wielded by the United States over its subordinates, despite occasional abuses, has been enormously beneficial. This order provides **security** both internally and externally and permits unprecedented **prosperity**. Americans, in turn, gain from writing the rules of that order and, especially, from turning possible rivals into reliable subordinates that largely comply with its rules. The key foreign policy task is not to diminish U.S. authority but to safeguard that authority and its preserve its benefits into the future. To secure the international order that has been so beneficial in the last century – and to succeed in **extending that order** to countries that do not yet enjoy its fruits – requires a new, more restraining, multilateral solution that binds the hands of the United States far more tightly than in the past. To rule legitimately requires tying the suzerain's hands.

2NC A2: It's Just Once

Submitting any major decision to the ICJ for compulsory jurisdiction is a major signal of support- the US has previously completely denied the ICJ's jurisdiction- totally reshapes the debate about international law's domestic relevance and they rule against the US's use of force, which makes it an extra big deal

And---refusal to be bound by the court's rulings on nukes will render it ineffective at enforcing international law

Kahn, Law—Yale, **99**

(31 N.Y.U. J. Int'l L. & Pol. 349, Winter/Spring)

The Court's interest in furthering legal interpretations that support these values is linked to its conception of itself as an international institution independent of the states that are responsible for its own origin and the selection of new judges. n68 Nevertheless, the Court as a political institution in a world of sovereign states cannot get too far ahead of a state's understanding of its own consent. Were it to do so, it would render itself politically irrelevant. The history of adjudication before the Court is filled with instances in which states simply refused to appear. n69 If states decline to listen, the Court faces [*373] the danger of **making its own voice the equivalent of another scholarly voice.** Indeed, scholars may become its primary audience. **The threat of irrelevance is particularly prominent in the nuclear weapons case**, in which none of the nuclear weapons states supported the General Assembly's decision to request an advisory opinion.

Doesn't answer our other net benefits---a single act of delegation is necessary to make the commitment credible and to prevent political backlash.

2NC A2: CP=Cheating

The counterplan is good:

a.) Tests unilateral versus multilateral solutions to conflict resolution- that's one of the core debates in political science since the formation of the League of Nations

b.)

2NC A2: Perm DB

Compulsory jurisdiction means that only the ICJ has the authority to rule on ____- simultaneously submitting the plan area to the Supreme Court would not grant the ICJ compulsory jurisdiction, it would retain US compulsory jurisdiction- doesn't solve either net benefit

Coleman, Asia-Pacific Centre for Military Law--University of Melbourne, **3**

(http://mjil.law.unimelb.edu.au/issues/archive/2003(1)/02Coleman.pdf)

Voluntary jurisdiction in contentious matters has been described as the ICJ's greatest weakness. In my view this is not an exaggeration, since in real terms the **Court's ability to function,** indeed its very existence, is **totally dependent upon the consent of states.** If not a single state granted consent, then, with the exception of delivering advisory opinions, the Court would not have a function.

Furthermore, not all states have given their consent, and there is nothing to prevent a state from withdrawing its consent after making the declaration. When these difficulties are combined with the use of reservations by states when accepting jurisdiction, the potential for non-appearance or non-participation by parties when the Court seeks to invoke its jurisdiction in accordance with art 36(2) is significant. Indeed, as noted by Janis, there were many incidents of non-appearance in cases involving the application of art 36(2) during the 1970s and 1980s (eg Iceland in the Fisheries Jurisdiction Cases, France in the Nuclear Tests Cases, Turkey in Aegean Sea Continental Shelf (Greece v Turkey) (Jurisdiction) and Iran in United States Diplomatic and Consular Staff in Tehran (US v Iran) (Order)). In highly political matters, non-appearance may be a tempting proposition for states that feel that they can achieve more advantageous outcomes through a purely political solution. The non-appearance of parties in contentious cases (as opposed to those cases where jurisdiction is granted by a compromis or special agreement) poses a difficult problem. Regardless of which action the Court takes—to proceed or not proceed — one party will be disadvantaged. This may raise concerns that justice has not been done in two ways. First, when a party fails to appear, it may allow that party 'to profit from their absence'. If the matter were not to proceed to judgment, then the claim of the party which did appear would be defeated not because of a deficiency in the merits of its claim, but because of the recalcitrance of the other party whose own claims may actually be insupportable. States could easily abuse this as a particularly useful tactic when the legal merits of their claims are dubious or weak at best, or when their national interest would not be served by having the matter adjudicated by the ICJ. Second, if the matter were to proceed to judgment, then the non-appearing party would be unable to counter any of the arguments presented or examine any of the witnesses, and would also be unable to present its claim. It could be argued that the disadvantages caused by non-appearance where the case proceeds to judgment are a concern only for the non-appearing party and are entirely self-inflicted. What non-appearance does, however, is raise a perception in the broader international community of the irrelevance of the ICJ in resolving international disputes. If it is perceived that a party is the victor simply by virtue of its appearance in the absence of the other party, rather than due to the strength of its claim, then this raises serious concerns about the validity of the Court's findings, **undermining the Court's credibility in the eyes of the international community. Credibility is important to all courts, given the problems of enforceability that it faces**.

Mootness--the icj wouldn't rule on the permutation---the unilateral enactment of the plan prior to the ruling means the court would rule that the issue is moot—prior nuclear testing cases prove

Amerasinghe, PhD and LLD-University of Cambridge and Fmr. UN Administrative Judge, **3**

(Jurisdiction of International Tribunals, P. 228-229)

Mootness or absence of object in adjudication **is another fundamental reason for a tribunals' not assuming jurisdiction in a particular case.** In both the Nuclear Tests Cases and the Northern Cameroons Case the ICJ held that it could not proceed with the merits of the case because the issues raised **were moot** and there was no purpose served by doing so. In the former two cases the claimants in effect requested the Court to find that the carrying out of the nuclear tests in the South Pacific Region giving rise to radioactive fall out was a violation of international law. After the filing of the applications the respondent by unilateral declaration undertook not to carry out atmospheric nuclear tests in the South Pacific Ocean. Even though in both cases only a declaratory judgment was sought, because the Court found that the **dispute had ceased to exist by the time it was ready to give its decision as a result of**

the unilateral declaration made by the respondent, so that the object of the claim had been achieved by other means, it decided that **no further judicial action was required.**

2NC A2: Perm---submit plan to icj and do the plan no matter what

1. it's intrinsic—it adds the element of doing the plan after submitting the case to the icj—this element of time is not in the counterplan. That's illegitimate because they can add elements to ensure that no counterplan competes.

2. it must be binding---only a genuine commitment to rulings can restore credibility to the icj

Tranel, JD-American University Law, **5**

(20 Am. U. Int'l L. Rev. 403)

While the United States has submitted to the jurisdiction of the ICJ for disputes arising under the Vienna Convention, n223 the United States has not incorporated the ICJ's authority in domestic procedures and law. n224 The tension between international law and [*452] domestic law with regard to the Vienna Convention right to consular notification demands recognition and the Avena decision obviates resolution of this tension. n225 The United States is under a legal obligation both to comply with its duties under the Vienna Convention and to comply with any ICJ decision interpreting the Vienna Convention. n226 As noted above, the United States has consented to the jurisdiction of the ICJ for disputes arising out of the Vienna Convention. n227 By way of submitting to the ICJ's jurisdiction, the United States has an obligation to comply with decisions like LaGrand and Avena that interpreted the Vienna Convention. n228 While the United States continues to violate international law, there is very little the international community may do in order to ensure U.S. compliance with its international obligations. n229 The method by which the United States implements the ICJ rulings is entirely up to the United States. n230 While no international stronghold will invade the United States and begin enforcing Vienna [*453] Convention rights, the methods by which the United States could choose to enforce Article 36 rights under the Vienna Convention are multitudinous. n231

B. Suggestions of Methods Through Which the United States Can Effectively and Efficiently Implement Avena as Binding Authority

1. Judicial Implementation U.S. Supreme Court reliance on Avena as controlling authority is the most effective way to incorporate the ICJ's ruling from Avena to U.S. domestic law. n232 Most commentators agree that the judicial system is the best solution for ensuring implementation of Vienna Convention obligations. n233 This solution remains stifled because lower courts deny defendants relief in suits regarding the Vienna Convention, thereby precluding those defendants from ever reaching the U.S. Supreme Court. n234 Thus, the more substantive issue is the [*454] question of whether lower courts can directly rely on ICJ decisions as binding authority absent a ruling by the U.S. Supreme Court. n235

a. U.S. Courts Should Rely on Avena to Find that There is a Remedy to the Right Established in LaGrand

Because the United States has consented to the jurisdiction of the ICJ for "disputes arising out of the interpretation or application of the Convention," n236 it has consensually bound itself to the rulings of the ICJ for disputes over the Convention. n237 Thus, since the ICJ issued a ruling on the merits of the LaGrand and Avena cases, these decisions should be controlling in U.S. courts. n238 Despite these obligations, U.S. courts have declined the opportunity to follow the LaGrand decision and instead have relied primarily on the U.S. Supreme Court decision from Breard. n239

[*455] Notably, the U.S. Supreme Court stated in Breard that the Vienna Convention "arguably confers on an individual the right to consular assistance following arrest." n240 However, the ICJ unequivocally held in LaGrand that Article 36(1) of the Vienna Convention "creates individual rights, which ... may be invoked in this Court by the national State of the detained person." n241 If U.S. courts were treating the ICJ decision from LaGrand as binding precedent, then under the doctrine of stare decisis they could not deny that the Vienna Convention creates individual rights. n242 By relying on Supreme Court precedent rather than ICJ precedent, however, U.S. courts have held that the Vienna Convention does not create individually enforceable rights. n243

[*456] Nonetheless, the courts should rule that the Convention creates individual rights. n244 There is a chasm between what U.S. courts consider to be the rule of individual rights under treaties (treaties generally do not create individually enforceable rights) n245 and what international courts believe to be the rule of individual rights under treaties (that treaties do create individual rights). n246 One could go so far as to infer that U.S. courts may never conclude that an ICJ decision interpreting the Vienna Convention is binding authority n247 given that they have declined to decide the issue of whether the Vienna Convention creates individual rights, even after LaGrand. n248The Avena decision, however, facilitates U.S. judicial implementation of Vienna Convention rights because it provides for a remedy that U.S. courts have already stated is appropriate in the case of a violation of Article 36. n249 U.S. federal courts have used a "prejudice" standard to conclude, without deciding the individual rights issue, that a defendant must show prejudice resulting from the denial of his Vienna Convention rights in order to receive a remedy. n250 By implementing the Avena remedy, courts will effectively acknowledge an individual right to consular access under [*457] the Vienna Convention. n251 Creating an individual right to consular access is not inconsistent with the Constitution. n252 Providing for an individual right in U.S. courts would establish a right on par with a federal or statutory right. n253 If U.S. courts apply the remedy established in Avena, they would comply both with the Avena decision and with the LaGrand decision. n254

b. U.S. Courts Should Implement the Avena Decision by Granting Meaningful Review and Reconsideration Through Vacating the Death Penalties

In the case where a court determines that there has been an Article 36 violation that resulted in actual prejudice, the ICJ stated in Avena that "review and reconsideration should be both of the sentence and conviction." n255 Review and reconsideration in the form of vacating [*458] the death sentences is the remedy that concretely reconciles the obligation of review and reconsideration from LaGrand with the more refined remedy presented in Avena. n256 The invocation of the death penalty is both a violation of one's individual rights under the Vienna Convention and is a violation of international due process rights. n257 If U.S. courts vacated the death sentences, that decision would comply more directly with international law in this area given that international law generally disfavors the use of the death penalty. n258

Calling for vacatur of the death sentences would further allow U.S. domestic courts to reassess the appropriateness of the death penalty without needing to negotiate new trials, evidence, or the guilt of the defendants. n259 Furthermore, vacating the death sentences would [*459] require only a re-sentencing hearing, which reduces the burden on U.S. courts and does not require them to conduct new trials for each defendant. n260 In some cases, U.S. courts may find that the right to speak to a consulate would have made a significant difference in the case and therefore would merit further reconsideration or even a retrial. n261 Judges would have the discretion to impose life sentences, however, if a particularly egregious case required it. n262

Such a result would not be disproportionate to the "limited character of the rights in issue," n263 but would address the fact that the Mexican nationals are still alive and therefore merit some form of practical relief. n264 An appropriate and meaningful interpretation of review and reconsideration, with an eye to determine whether actual prejudice occurred, would compel U.S. courts to grant vacatur of the sentences to the death penalty. n26 [*460] c. Violations Are Likely to Cease as U.S. Jurisprudence Relies More Heavily on International Law

The United States has already interpreted international law as binding on domestic courts. n266 For example, as early as 1900 the U.S. Supreme Court acknowledged that "international law is part of our law." n267 The president also has the authority to make a binding agreement with a foreign state even when the agreement requires a change in state law. n268 The United States cannot avoid its international obligations by asserting its domestic law because international law can require domestic law to change. n269

As U.S. courts look more frequently upon decisions from international jurisdictions when making their decisions, n270 it becomes more likely that the judicial system will respond to the need to enforce ICJ decisions in the courts. n271 Logically, the courts' adoption of international norms is the most critical factor towards U.S. [*461] adoption of ICJ rulings and fulfillment of Vienna Convention obligations. n272

Evidence supports the suggestion that federal courts implement international law in their decisions. n273 The U.S. Supreme Court has also shown a willingness to look at international law in some of its more recent opinions. n274 Justices Stevens and Breyer have further expressed an interest in complying with an ICJ decision in the Avena case. n275 Some lower courts held that the Vienna Convention is enforceable, even without controlling Supreme Court case law to guide the lower courts' holdings. n276 Thus, hope exists that U.S. courts will independently incorporate the ICJ decisions into their rulings. n277

2. Non-Judicial Implementation of Avena to Ensure the United States' Cessation of Article 36 Violations

a. ABA Guidelines are a Workable Enforcement Mechanism for the Vienna Convention Rights

One particularly compelling idea to ensure cessation of Article 36 violations has arisen through the ABA's adaptation of revised Guidelines for the Appointment and Performance of Defense [*462] Counsel in Death Penalty Cases. n278 Importantly, these Guidelines are important because they refer specifically to the obligation to apply international law on the domestic court level in the United States. n279 The Guidelines require counsel "at every stage of the case [to] make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals;" defense counsel would also have an affirmative duty to inform his or her client immediately of the right to speak to the appropriate consulate and to gain the client's consent to speak to the consulate. n280

Placing the burden on defense counsel to inform the client of his right to speak to the relevant consulate would relieve many of the problems that domestic courts have with enforcement of international norms. n281 It would also relieve problems of timing because once the defendant receives counsel, under the ABA Guidelines, he also would have information about his right to consular notification. n282

Furthermore, this approach would convert a violation of Article 36 into an issue of adequate counsel, and courts have been positively inclined to consider Article 36 violations in this context. n283 The placement of the duty to inform a defendant of his consular access [*463] rights on counsel would also allow the defendant to bring a claim of inadequate counsel at later stages of judicial proceedings and he would not be barred from bringing a claim because of the procedural default rule. n284

CONCLUSION

This case note has observed that ICJ decisions are binding authority in the United States when they interpret conflicts arising out of the Vienna Convention on Consular Relations. n285 The United States has recognized the importance of the Vienna Convention n286 and it cannot circumvent its obligation to implement this treaty. n287 With the ruling of the Avena case, the United States gains ever more responsibility to fulfill its obligations under the Vienna Convention. n288

The United States must carefully consider its role in the international legal system and how it will effectively and successfully implement international law on the domestic plane. n289 **If the United States wishes to participate in and benefit from international law, then it must be willing to recognize this body of law as cogent, binding authority**. n290 An excellent beginning would be . [*464] to acknowledge the gravity of the Avena decision and implement the ruling in domestic courts. n291

And the permutation can’t avoid this---their intention to do the plan no matter what would be leaked

Newsom, Professor of diplomacy at UVA, **92**

[*The Allies and Arms Control*]

*the signal leak. Information is sometimes given out unofficially in order to warn another country of a possible reaction to policies or deployments. Secretary of State Kissinger, according to several sources, anonymously briefed reporters on reports that Cuba was building a base for Russian submarines at Cienfuegos and subsequently blamed the Pentagon for the leak. His purpose, according to Seymour Hersh in *The Price of Power*, was to send signals to both the Cubans and the Russians that the United States would not tolerate this intrusion of Soviet military power in the Caribbean.

This is true in the context of obama

Hoover 9

(J. Nicholas Hoover 9, InformationWeek, June 3, 2009)

A highly sensitive document that details some of the nation's nuclear secrets mistakenly showed up on a government Web site. On May 5, President Obama sent a draft list of nuclear sites that the United States intended to declare to the International Atomic Energy Agency to Congress, noting in his transmittal letter that the document was "Sensitive" and that the document was exempt from disclosure. A little more than two weeks later, that very document appeared online. The 267-page document, a draft of "The List of Sites, Locations, Facilities, and Activities Declared to the International Atomic Energy Agency," contains addresses and descriptions of civilian nuclear sites around the country, such as a Westinghouse site in Pittsburgh used for the enrichment of nuclear material and details on some programs at places like Oak Ridge National Laboratory. It also contains maps of some of the more sprawling nuclear locations, and the square footage of many. Though it is unclassified and doesn't detail weapons programs, the document contains information the IAEA labels "Highly Confidential Safeguards Sensitive," words that show up on every page -- except maps -- of the disclosure document itself. In a speech about cybersecurity last week, President Obama noted that the United States was "renewing American leadership to confront unconventional challenges" that include "nuclear proliferation." The disclosure, first noted by the Federation of American Scientists' Secrecy News newsletter, appears to have been

put into motion on May 6, but it's unclear just how. A House of Representatives transmittal letter said that the president's letter and the attached documents were "referred to the Committee on Foreign Affairs and ordered to be printed." The communications director for the House Committee on Foreign Affairs wasn't immediately available for comment but told The New York Times that the committee hadn't published or controlled the publication of the document. A GPO spokesman noted that the GPO publishes about 160 House documents each session, adding that this document had been received "in the normal process and produced under routine operating procedures." The document has since been permanently removed from the Government Printing Office Web site, where it had been published, upon consultation with the White House and Congress. "Somebody screwed up," Federation of American Scientists' Steven Aftergood, an advocate of open government who described the document's disclosure as a "net plus" from a public policy standpoint, said in an e-mail. "When the president declares a document to be sensitive on May 5, it is not supposed to show up on a government Web site on May 22. But that's what happened." This isn't anywhere near the first time the government has incautiously published sensitive documents and represents a classic example of why insider threats are just as dangerous as those from outsiders. Several Web sites, including Cryptome, FAS Secrecy News, and Wikileaks, are dedicated to finding and publishing such documents.

3. the permutation severs topical action---it violates 'substantial' which requires immediate action

Words and Phrases 64

(40W&P 759)

The words" outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean **not concealed**; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain: absolute**: real at present time**, as a matter of fact, not merely nominal; opposed to fonn; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

Severing topical action is bad because it negates the resolution and allows the aff to selectively defend topical requirements to avoid counterplans grounded in the resolution that are core negative ground.

4. Tacit consent---The credibility of international law depends on explicit consent of states.

Kahn, Law—Yale, **99**

(31 N.Y.U. J. Int'l L. & Pol. 349, Winter/Spring)

There is an immediate problem with this argument: The nuclear-weapons states do not themselves believe that they have consented to such a prohibition. Their practice for decades has indicated that they perceive no such legal contradiction in their behavior. Thus, the analogy to the volunteer army does not carry us very far. The soldier who does not consent presently and does not believe that he ever expressed his consent looks more like a conscript than a volunteer. At most [*408] we could offer a theory of tacit consent, by which we could seek to prove that by consenting to some other proposition, he also consented to military service without fully realizing it. Tacit consent arguments are always weak, and this is the weakest version of such arguments. n164 As the demands on the consenter become

greater, **more - not less - should be demanded of the clarity and explicitness of consent**. This is true at least as long as consent is the normative ground of the obligation.

and---This issue is critical---the source of consent is more important to legitimacy than the actual implementation

Kahn, Law—Yale, **99**

(31 N.Y.U. J. Int'l L. & Pol. 349, Winter/Spring)

One approach understands international law as the product of consensual actions by states. On this view, the legitimate authority of international law arise out of the consent of the states that bear the legal obligation. Accordingly, to understand the content of the law, we need to trace the character and implications of state consent. I will generally call this the perspective of "legitimacy," because its primary concern is with the **source of the claim of legal obligation**, **rather than with the justice of those obligations**. Interpretation of law, on this view, must link the content of law to its origin in state consent. Legal claims that extend beyond that consent are illegitimate. This is not to suggest that consent must be interpreted narrowly; it is only to identify the conceptual parameters of the interpretive debate within this approach to legal obligation. n53

2NC A2: Perm Do CP

This isn't a consult counterplan

The counterplan is textually competitive---it doesn't include the unilateral reduction that the plan mandates---it simply submits our status quo policy to the icj

2NC A2: Perm "Consult on Other Issue"

Perm is functionally intrinsic- adds a context outside of the resolution- the counterplan doesn't consult on other issues- it substitute's the plan's [Congressional/Judicial] restriction for an international restriction- directly tests the relevance of the topic- allowing intrinsicness allows them to add any scenario to the counterplan that solves the net benefit

Linear net benefit to submitting more issues for ICJ arbitration- means there is still a reason to prefer to counterplan over the perm, since the aff allows the US to maintain

Doesn't solve either net benefit- only binding the US on a major issue of sovereignty solves- that means use of force- proves the plan is a core issue- that's (Lake or Murphy)

2NC A2: Rollback

Delegation best way to avoid rollback by future administrations

Alter, Political Science-Northwestern, **3**

(Journal of Asian and Pacific Studies, Vol. 25, P. 51-74)

1) States delegate to increase the credibility of a commitment**.** The number one given reason to delegate is to **make a commitment more credible**. For example, Giandomenico Majone argues that governments agree to transfer to independent central banks the power to set interest rates, and to courts the power interpret international rules, because businesses believe that central banks and courts are less likely to be swayed by electoral imperatives, and thus governments will be forced to follow through on their promises (Majone 2001). Andrew Moravcsik makes a similar claim arguing that Central European countries signed on to the European Convention of Human Rights and agreed to delegate interpretation to the European Court of Human Rights, to demonstrate to their citizens the government's commitment to democracy (Moravcsik 2000). Lloyd Gruber sees another attraction to delegating to commit; ruling parties may sign on to an international agreement and intentionally lock in their commitment so that subsequent leaders cannot back away (Gruber 2000, 81-88). It is not clear in Majone or Moravcsik's arguments if states mainly want to imply that a commitment is more credible, or if delegation in fact impedes governments' ability to walk away from commitments. I will separate the idea of a signal from reality in argument seven—take the first argument as meaning that states delegate enforcement authority to international courts because **when there is an international court to enforce an agreement it is harder for states to walk away from their commitments.**

2NC At: Hurts Negotiations

International court ruling best preserves negotiating credibility

Downs, Professor of Politics-NYU, **9**

http://ejil.oxfordjournals.org/cgi/content/full/20/1/59

Faced with the prospect that their judicial space would continue to shrink as the result of an ever greater proportion of domestic regulatory policy being determined by international institutions and increased competition from international tribunals, it would have been surprising if the national courts had not felt a sense of jeopardy regarding their ability to fulfill their traditional constitutional role. However, they also possessed a variety of resources that they could potentially use to address these potential threats. Better insulated than their political branches from both domestic and foreign special-interest pressure, the courts could pressurize their governments to seek legislative approval of their actions, or block certain policies as incompatible with constitutional and international legal texts. By creating clearer boundaries which placed limits on executive unilateralism in the area of foreign policy, they could better safeguard domestic democratic processes and reinforce their own autonomy. Moreover, they had reason to believe that these stricter demands on their executive would not necessarily jeopardize the latter's bargaining position vis-à-vis its negotiating partners but might actually **provide credibility to the government's reluctance to succumb to external pressures demanding compliance with certain policies.** Pressure exerted on a certain government by its disapproving court can, in fact, result in greater **bargaining leeway for that government**, as it uses that pressure as an explanation of its inability to bow to the pressure of the foreign negotiators.14

2NC A2 Accountability

Icj justices are accountable

Slaughter, Dean-Woodrow Wilson School at Princeton, **5**

(http://www.princeton.edu/~slaughtr/Articles/IntlTribunals.pdf)

Conversely, the costs of independent tribunals are far less than they may at first appear. Just as in the domestic setting, judicial independence does not mean that judges face no constraints on their behavior. Judges in the United States, for example, are appointed for life at a fixed salary. But they are influenced by the views of their brethren and of the bar, by the desire to preserve their political legitimacy as nonmajoritarian institutions, by strong institutionalized professional norms, and by their hope of personal career advancement or achievement of a particular judicial legacy. As we demonstrate below, "independent" international judges face an even greater host of structural, political, and discursive constraints, many of which can be manipulated by states themselves. The result is an international legal system in which independent tribunals are unlikely to overstep their bounds and are far more likely to advance states' long-term interests.

2NC A2: Posner and Yoo

Posner and yoo's arguments are flawed---methodological errors and bias

Slaughter, Dean-Woodrow Wilson School at Princeton, **5**

(http://www.princeton.edu/~slaughtr/Articles/IntlTribunals.pdf)

To their credit, Posner and Yoo test their claims against a wealth of empirical data regarding the organizational structures and actual operations of international courts and tribunals. But the data the authors use as evidence to support their theory are flawed. To begin with, they fail to accurately describe the empirical landscape, omitting dozens of independent tribunals and quasi-judicial review bodies from their analysis and diminishing the universe of potential observations relevant to testing their theory. Second, and more significantly, they commit selection bias by analyzing a subset of tribunals in a nonrandom manner. Finally, they engage in omitted variable bias by failing to control for judicial design features and political and discursive constraints that affect the correlation between their explanatory variable (tribunal (in)dependence) and their dependent variable (tribunal effectiveness).33 These methodological errors undermine their analysis and, ultimately, their conclusions.

2NC A2 ICJ DA's

All of their disads are not unique---huge number of international court cases now

Slaughter, Dean-Woodrow Wilson School at Princeton, **5**

(http://www.princeton.edu/~slaughtr/Articles/IntlTribunals.pdf)

Within the past decade, the world has witnessed an **explosion of international adjudication**. This explosion can be documented in at least three distinct ways. First, states are creating new international courts and tribunals which exhibit many formal attributes of independence. Second, states are recognizing the jurisdiction of both new and existing independent tribunals in increasing numbers. Third, several highly independent tribunals are actively used, a fact demonstrated by their swelling dockets and the large number of decisions they issue. These three trends reveal a strikingly different empirical landscape than the one portrayed in *Judicial Independence in International Tribunals*. These trends undermine the authors' hypothesis. If independent tribunals were ineffective in the ways that Posner and Yoo assert, we would expect to observe a decline in their number, in their caseloads, and in states' willingness to submit themselves to the tribunals' jurisdiction. Yet, as we demonstrate below, the revealed preferences of states in all three areas is strikingly to the contrary. This evidence presents an insoluble problem for the theory of dependence that Posner and Yoo offer. Either states are acting highly irrationally—an explanation inconsistent with the rational choice framework the authors employ—or independent tribunals are serving states' interests in ways that their model fails to capture.

International tribunals experiencing high caseloads now

Slaughter, Dean-Woodrow Wilson School at Princeton, **5**

(http://www.princeton.edu/~slaughtr/Articles/IntlTribunals.pdf)

3. Rising Caseloads of International Courts and Tribunals Independent international tribunals have also witnessed a corresponding increase in their caseloads. The rise in judicial activity has been most striking for the ECHR and ECJ, but is true as well for tribunals as diverse as the IACHR and the ICJ. Aggregating the output of all independent tribunals reveals a similar trend. According to a recent study by Karen Alter based on cases decided through 2002, "more than 80% of the total international judicial activity (14,946 out of 18,277 cases heard by international tribunals) occurred in the last 13 years alone." These figures are particularly striking given that the dockets of international tribunals often take years or even decades to reach anything close to full capacity.

2NC A2: Recognizing jursidiction of intl courts bad

not unique---states are increasingly recognizing the jurisdiction of international legal bodies

Slaughter, Dean-Woodrow Wilson School at Princeton, **5**

(http://www.princeton.edu/~slaughtr/Articles/IntlTribunals.pdf)

Posner and Yoo also fail to notice the marked increase in state recognition of the jurisdiction of both new and existing independent courts and tribunals. Such recognition takes two principal forms. First, states are increasingly ratifying treaties that require dispute resolution in international courts. Rising ratification rates are especially pronounced in the case of the WTO Agreement, the ICC statute, and regional tribunals. Second, states are recognizing the jurisdiction of independent courts and tribunals even where the decision to do so is optional. This latter trend is especially pronounced for human rights tribunals, and to a lesser degree, for tribunals whose competence covers trade and economic law — areas in which international jurists possess broad authority to review laws and practices lying at the core of national sovereignty. Admittedly, not all tribunals can boast of such expansions. The compulsory jurisdiction of the ICJ and ITLOS, for example, has not been widely accepted. As elaborated in Part I above, domestic politics—and in particular the political pressures generated by tribunals to which private parties have direct or indirect access—may explain some of these discrepancies. Regardless, a clear trend is evident toward greater state recognition of independent tribunals, an empirical observation that undermines a central premise of *Judicial Independence in International Tribunals*.

***ICJ Cred NB

***1NC Shell

Solves – ICJ will rule against illegal surveillance– ruling against the US boosts credibility

Murphy 8 - Professor of Law, George Washington University

(Sean, "The United States and the International Court of Justice: Coping with Antinomies," in THE UNITED STATES AND INTERNATIONAL COURTS AND TRIBUNALS)

The formal means for mediating antimonies have been largely unchanged since the inception of the Court: the Court has jurisdiction over many disputes, but that jurisdiction is circumscribed (as recognized in Yugoslavia's Legality of Use of Force cases); the judges reflect the global community, but also the major powers; etc. Yet, the Court may have entered a phase where it is more likely to resist the constraints on its power contained within those formal means and less likely to attempt to reconcile antinomies. Although only states may appear before the Court, the Court now finds that a non-state entity (Palestine) may do so if a dispute is submitted in the guise of an advisory opinion. While its jurisdiction is circumscribed, the Court is comfortable engaging in an **extended review** of the legality of the use of military force by the United States based on a treaty that the Court has found was not violated. While the Vienna Convention on Consular Relations, and other relevant treaties, contain no provisions regarding the effect of violations of the Convention upon national court proceedings, the Court sees **no difficulty** in determining that U.S. courts must engage in further judicial review of criminal convictions and sentences, trumping local procedural rules. One gets the impression that the Court —fifty years after its creation— is tired of some of the formal constraints that applied earlier in its life and —looking around at the robustness of dispute resolution in other international fora— is **ready to expand** the reach of its power. Moreover, it may be that some of the informal means for mediating antimonies have been lost in the past twenty years. While the Court's concern with its reputation and legitimacy in the first thirty years of its existence served as important political constraint in the Court's relationship with all states, including the United States, over the past twenty years that same concern has lead to several clashes with the United States foremost, but also the UK and France. **Having stood** up to the United States in the Nicaragua case, the Court **became a hero to the states of the developing world**, and ushered in a period of increased activity on its docket. Of the cases filed before the International Court since its inception, approximately forty percent were filed in the last fifteen years.167 Thus, while from 1947 to 1989, the Court received on its docket approximately two cases per year, after 1990 the Court received more than three cases per year. The U.S. withdrawal from the Court's compulsory jurisdiction has far from crippled the Court; arguably, it has enhanced the Court's stature as a place of authority in interstate relations unbeholden to the major powers. For the Court, the lesson may be not to tread lightly with respect to the United States but, rather, to tread heavily unless doing so would be viewed generally as bias. In its foreign policies, contemporary America appears to be going a different route than much of the world, even its former close allies in Europe. The consequence is that **the judges of the ICJ now reflect predominantly the views of states with whom the United States often disagrees**. Perhaps this reflects success in the prescription for the Court made by Richard Falk in his 1986 book, Reviving the World Court.168 Falk argued for the Court to turn away from what he viewed as Anglo-American and West European ways of thinking, and move more toward reflecting the

viewpoints associated with non-Western legal traditions (including, at that time, Marxist outlooks on law). Arguably, this is now what has happened, which has strengthened the Court's position among most states of the world, but seriously alienated the United States. The antinomies identified in Part II are unlikely to be resolved through the further development of formal or informal techniques for mediation. While the United States is not happy with the decisions being rendered by the Court, there is no support in the global community for altering the formal mechanisms by which the Court operates. If the United States saw concrete benefits in being more closely associated with the Court, it might look for ways to improve relationships, but for the world's premier superpower the benefits appear slim while the costs appear quite high. Consequently, the United States may take steps to further remove itself from the reach of the ICJ's jurisdiction, through terminating some or all of the outstanding treaties that provide for the Court's jurisdiction. In the near term, U.S. policymakers will seek to avoid any involvement in matters before the ICJ, while the Court may well welcome opportunities to speak to the legality of U.S. actions.

ICJ credibility solves Asian territorial disputes and leads to Asian regionalism

Strachan 9 – Research Intern, IPCS, New Delhi

(Anna Louise, "Resolving Southeast Asian Territorial Disputes: A Role for the ICJ," http://www.ipcs.org/pdf_file/issue/IB133-SEARP-AnnaICJ_(Read-Only).pdf)

Southeast Asia is currently embroiled in a number ¶ of territorial disputes, the resolution of which ¶ would greatly increase progress towards regional ¶ integration. This essay argues that the ICJ has the ¶ potential to play a **much greater role** in resolving ¶ these disputes and that action should be taken to ¶ **increase the court's credibility** among Southeast ¶ Asian nations. It is important to note that China is ¶ involved in a number of territorial disputes with ¶ countries in Southeast Asia. The Spratly Islands is ¶ the most notable of these, although there are also ¶ issues relating to the land borders between China ¶ and Vietnam and China and Laos. ¶ ROLE OF THE ICJ: A CRITIQUE ¶ In 2002, sovereignty over both Pulau Ligitan and ¶ Pulau Sipadan was awarded to Malaysia by the ¶ ICJ. The dispute over the territories was brought ¶ before the ICJ in 1998 by the governments of both ¶ parties to the dispute. However, the ICJ did not ¶ determine the maritime boundaries between ¶ Malaysia and Indonesia in the area around the two ¶ islands. As a result one could argue that the dispute ¶ has not been settled completely. It is important to ¶ note that the sole reason for this was that the ICJ ¶ was not requested to resolve that particular issue by ¶ the parties involved in the dispute. ¶ In May 2008, sovereignty over Pedra Branca was ¶ awarded to Singapore, Middle Rock was awarded ¶ to Malaysia and South Ledge was split between ¶ both countries according to their territorial waters. ¶ Both Malaysia and Singapore accepted the ICJ's ¶ ruling, with the Singaporean Deputy Prime Minister ¶ S. Jayakumar stating that Singapore was pleased ¶ with the judgment and the Malaysian Foreign ¶ Minister Rais Yatim describing the outcome as a ¶ "win-win" judgment. This was to be expected as the ¶ two countries had jointly submitted the request for ¶ the ICJ to resolve the dispute in 2003. It is however ¶ important to note that despite this ruling, ¶ outstanding issues remain. Singapore and Malaysia ¶ have yet to decide how the territorial waters ¶ around Pedra Branca and Middle Rocks will be ¶ delimited. A joint technical committee will be ¶ responsible for this. ¶ In both the cases mentioned above, the ICJ has¶ only resolved half the issue. This is certainly a step ¶ in the right direction, but years of negotiation ¶ remain to fully resolve the disputes, even after the ¶ outcome of the lengthy ICJ hearings. It is however ¶ important to note that the ICJ fulfilled its remit in ¶ both the aforementioned cases as it was not ¶ asked to determine maritime boundaries in either ¶ case. The time-consuming process of starting fresh ¶ negotiations after the ICJ has presented its ruling ¶ does however suggest that alternative means of ¶ conflict resolution, preferably in the form of ¶ bilateral negotiations, may be more effective in ¶ resolving territorial disputes than referring cases to ¶ the ICJ. ¶ In 2003, Singapore and Malaysia also referred a ¶ territorial dispute to the International Tribunal for ¶ the Law of the Sea (ITLOS) in Hamburg for ¶ arbitration. The dispute related to Singapore's land ¶ reclamation projects which Malaysia alleged ¶ encroached on Malaysian territorial waters. Once ¶ again the Tribunal, as arbitrator, only played a ¶ partial role in the resolution of the conflict. Several ¶ rounds of negotiations took place before the ¶ dispute was finally resolved by the signing of the ¶ Settlement Agreement on 26 April 2005. ¶ The majority of territorial disputes in Southeast Asia ¶ have not been resolved this way, confirming that ¶ for the majority of nations in the region, the ICJ ¶ and other international courts like the ITLOS remain ¶ something of a last resort. Bilateral dispute ¶ resolution is more common. Brunei and Malaysia, ¶ for example, reached agreements to resolve a ¶ number of territorial disputes regarding both land ¶ and sea boundaries in August 2008. ¶ II ¶ UNRESOLVED DISPUTES ¶ The Preah Vihear Temple dispute between ¶ Thailand and Cambodia has shown signs of ¶ **escalation** despite a period of calm since the ¶ latter half of 2008. On 19 September 2009, a mob¶ raised by the People's Alliance for Democracy ¶ (PAD) clashed with riot police and local villagers ¶ who were blocking their way to the temple, on the ¶ Cambodian side of the Thai-Cambodian border. ¶ The conflict was initially thought to have been ¶ resolved in 1962, when the temple was awarded ¶ to Cambodia by the ICJ. However the problem ¶ with the 1962 ruling was that much of the territory ¶ surrounding the temple remained a part of ¶ Thailand. The way in which the territory was ¶ divided has arguably facilitated the recent rise in ¶ hostilities between the two parties to the dispute. ¶ The territorial dispute over Sabah also remains ¶ unresolved. The Philippines claims Sabah on the ¶ basis that all land on the Northeastern part of ¶ Borneo was once subject to the Sultanate of Sulu, ¶ which is part of the Philippines. The Philippines first ¶ staked their claim to the territory in 1962, when the ¶ Malaysian Federation was being formed. Bilateral ¶ relations between Malaysia and the Philippines ¶ were restored in 1969, but the Philippines has yet ¶ to officially renounce its claim to Sabah. Bilateral ¶ relations between the two countries have ¶ improved dramatically in recent years and it is ¶ hoped that the Philippines' dormant claim to the ¶ territory will eventually be renounced completely. ¶ According to the 2008 issue of the Heidelberg ¶ Conflict Barometer, there are outstanding ¶ territorial disputes between Cambodia and ¶ Vietnam, Singapore and Malaysia, and Thailand ¶ and Myanmar. Other sources list many more ¶ regional territorial disputes. According to Amer, ¶ Vietnam alone was embroiled in five different ¶ territorial disputes with other Southeast Asian ¶ nations in 2005. These include disputes with ¶ Cambodia,

Thailand, Malaysia, the Philippines and ¶ Brunei. Differences in dispute classification are one ¶ of the factors responsible for this data diversity. ¶ Regardless of the exact figures there can be no ¶ doubt that a **significant number** of territorial ¶ disputes in Southeast Asia remain unresolved. ¶ One of the reasons behind the plethora of ¶ territorial disputes in Southeast Asia relates to the ¶ fact that land borders have yet to be ¶ demarcated in many parts of the region. ¶ Cambodia and Laos have taken steps in this ¶ regard and Thailand has suggested that it is ¶ interested in taking steps to demarcate its border ¶ with Cambodia in order to prevent an escalation ¶ in hostilities between the two countries. Indonesia ¶ and Timor-Leste also took steps to demarcate their ¶ joint border in 2004. All these initiatives are a step ¶ towards eliminating territorial disputes within the ¶ region.

Senkaku conflict escalates – extinction

Khan 10 – Financial Express

(Maswood, September 22, "An islet straining China and Japan" http://www.thefinancialexpress-bd.com/more.php?news_id=112447&date=2010-09-22)

ONE thing leads to another. Tensions between neighbours flare up at the **slightest provocation** mostly on a trivial issue sparking first a regional conflict leading ultimately **to a World War**. Such is the history of the First World War and the Second World War. The explosives that had blasted during the First World War had been long in the stockpiling. But the spark that detonated the first explosive of the First World War was the assassination of Archduke Franz Ferdinand, heir to the Austro-Hungarian throne, in Sarajevo on 28 June 1914. A six-year long Second World War was brewing up when Adolf Hitler was planning to grab more land, especially in the east, to expand Germany according to the Nazi policy of lebensraum. But the spark of the Second World War was ignited on the night of August 31, 1939, when Nazis took an unknown prisoner from one of their concentration camps, dressed him in a Polish uniform, took him to the town of Gleiwitz (on the border of Poland and Germany), and then shot him. The staged scene with the dead prisoner dressed in a Polish uniform was made to appear as a Polish attack against a German radio station. Hitler used the staged attack as the excuse to invade Poland that started the full-scale World War II. With bitter and horrific experiences of the two World Wars all nations and superpowers are extraordinarily circumspect in dealing with tussles among rivals to make sure that a small conflict does not flare into a global conflagration leading to a World War because a Third World War this time must result in "Mutual Assured Destruction", a doctrine known by its most suitable acronym MAD. "Mutual Assured Destruction" is a policy in which a full-scale use of nuclear weapons by two opposing sides would effectively result in the destruction of both the attacker and the defender. The necessity of a conventional World War however seems to have been obviated by a new strategy that contains a regional war from being flared into a World War but serves the purpose of a World War---the purpose of selling arms and ammunitions, flexing muscles of power and establishing economic and military supremacy. Such wars, sometimes in the name of peacekeeping, sometimes for ensuring energy security and at times on the pretext of ousting a terrorist, are continually being waged here and there at different strategic locations in the world---the latest one being in Iraq for fear of Saddam Hussein possessing 'weapons of mass destructions' (WMD) and the ongoing one in Afghanistan for vanishing Osama bin Laden, the Al-Qaeda leader, though both the fear of Saddam possessing WMD or the trace of Osama bin Laden in Afghanistan have been proven dismally false. America is still "Number One" superpower in the world---both militarily and economically. China is also one of the superpowers in terms of military and economic strength though the country still claims itself as a developing country considering a low per capita income on the law of average for its 1.3 billion people. After their defeat in the Second World War Japan is no more a military power but till the other day it was the second economic superpower before the country was humbled by China which is now the second strongest economy in the world and is poised to become "Number One" in a matter of years. Anti-Japanese sentiment in China is historically very old and still raw. A defeat of Japan at the hands of China in the economic front must have bolstered the Chinese who had suffered many military defeats at the hands of Japan and the defeat must have humiliated Japan which used to boast about many of their miracles that reshaped the behavior and strategy of modern global business. Now a new dispute has cropped up which may re-ignite anti-Japanese sentiment in China and which may turn out to be an ominous spark to ignite explosives that have been stockpiled in the minds of the Chinese since their military defeat at the hands of the Japanese about eighty years back. A row between China and Japan erupted since September 7th, when the Japanese authorities arrested the crew of a Chinese fishing boat which Japan claimed had rammed into one or two Japanese patrol boats that were attempting to shoo the fishing vessel away. The row has become emotive in China as Japanese authorities detained the fishing boat's captain though the rest of the crew was released. The row would not have been so serious had the ramming not taken place near an islet Japan named Senkaku and China Diaoyu---an uninhabitable islet that both countries claim as their own and regard as important not only as a marker for their wider territorial claims but also for its mining potentials as the small mass of land is perched on the oil-rich East China Sea. It is not yet clear why and how the ramming took place and why Japan has still been detaining the captain of the fishing vessel in spite of China's repeated calls for his release. Was the ramming a deliberate attempt by a Chinese citizen to flaunt his country's newly achieved status of second economic superpower? Was the detention of the captain of the fishing vessel a semblance of revenge Japan took to assuage pains of their recent defeat at the hands of China in the economic race? Was the captain of the fishing vessel drunk? Or, was the whole incident something called "staged"? China has suspended all bilateral talks with Japan. Japan however has called for calm in the wake of China's apparent decision to suspend top-level ties. The incident has also sparked resentment among the Chinese public, which still has strong feelings about atrocities committed by Japanese forces when they occupied swathes of China before and during the Second World War. Demonstrations in Beijing, diatribes on the internet and fulminations in some Chinese newspapers over the incident with anti-Japan chants, talks and banners mysteriously coincided with a politically sensitive anniversary of an incident occurred about eighty years back on September 18. It was on 18 September in 1931 when an incident called "Mukden Incident" took place that led to the Japanese occupation of China's northeast and eventually the invasion and conquest of much of China. The "Mukden Incident" was an early event in the Second Sino-Japanese War. Somewhat similar to 9/11 attack in 2001 in New York, on 9/18 in 1931, near Mukden (now Shenyang) in southern Manchuria, a section of railroad owned by Japan's South Manchuria Railway was dynamited as an act of sabotage. While the responsibility for this act of sabotage remains a subject of controversy, the prevailing view is that Japanese militarists staged the explosion in order to provide a pretext for war. One thing leads to another. If the new row between China and Japan is allowed to simmer for long a war in the pacific, if not a

war engulfing the whole world, may be in the offing---this time China showing its muscle to Japan the way America showed its muscle to Iraq.

2NC A2: Perm DB- ICJ Cred

Binding opinions needed to restore support for the icj

Vachon, JD-Denver, **98**

(26 Denv. J. Int'l L. & Pol'y 691, Summer)

Countries have been moving towards disarmament and denuclearization as part of the nation-states' search for a national identity consistent with development and peace. n282 Since, the ICJ considered itself able to address several aspects of the nuclear weapons legality debate; does it make sense that it could not render the ultimate decision of total legality of nuclear weapons when the survival of a nation-state is at stake? The ICJ identified the role of the ICCPR and United Nations Charter in times of peace and war (leaving out the ICESCR); n283 yet failed to consider the binding Covenants in its final analysis, considering only the law of armed conflict. Surely, if the Court considered these documents, it would have found itself capable to render an ultimate decision. By not making a determination as to the legality of the threat or use of nuclear weapons when the survival of a state is at stake, the Court impliedly admits to its doubt of the effectiveness of its determinations and ultimately of international law in general. For if the Court was certain that by declaring nuclear weapons completely illegal, that all states would comply; there would be no reluctance to indicate that there is no use of nuclear weapons. n284

Cyclically, if the ICJ does not make conclusive opinions it **diminishes the stability of globalization and in turn a decrease in globalization decreases the support for the ICJ**. Military technology is constantly changing. n285 The principle of sovereignty constantly changes. n286 Global threats grow and the world recognizes the increasing need to act as a community. The ICJ should accept this change, and in fact advocate change to improve the global community and environment. "In a world whose only constant is change and a perpetual realignment of forces based on response to change, failure to accept the view that nation-states are not like pieces on a chessboard "with specified roles, set objectives and fixed configurations' seems imprudent." n287 Although acknowledging the international standard to take measures toward the ultimate extinction of the nuclear weapon, the ICJ failed to take the strongest step of all, declaring the weapons illegal.

Submitting cases to the icj key to it’s credibility

Matheson, Law—GWU, **8**

(6 Geo. J.L. & Pub. Pol'y 129, Winter)

Now, the U.S. system, of course, relies primarily on the Executive Branch to take the necessary action to enforce U.S. treaty obligations; the President is responsible for foreign relations, including the resolution of disputes over treaties. n70 The President has many sources of constitutional authority to carry [*141] out that responsibility, including his rights and responsibilities under the so-called "Take Care" clause of the Constitution. n71 And I think the same logically is true with respect to the enforcement of binding decisions of international tribunals. In many cases, implementation by U.S. courts, including state courts, is necessary to comply with our obligations and thereby preserve the treaty regime. n72

As a practical matter, I think the United States will usually have significant interests in complying with binding tribunal decisions. Such compliance may be necessary to avoid damage to a treaty regime that

the United States thought was in its interests, to protect the interests of private U.S. nationals, or to avoid damage to bilateral relations with the other country in question. All these are interests that the President invoked as reasons for compliance by state courts with the Avena decision of the ICJ. n73

u.s. defiance of the icj will devastate it's ability to be an effective enforcer of international law

Scott, Political Science-Portland State University, **87** (81 A.J.I.L. 57, January)

Whatever one thinks of the impact of these cases on the Court itself, defiance and withdrawal by these two major powers surely augurs ill for the international legal system. The U.S. defiance in the Nicaragua case seems particularly harmful because the Court was placed in the position of carrying through with its Judgment even after the American withdrawal and after statements were issued in January 1985 by the current U.S. administration that it would "defy the Court and ignore further proceedings in the case." n53 Furthermore, immediately following the announcement of the Judgment on June 27, 1986, a State Department spokesman announced that the United States was rejecting the Court's verdict because the Court was "not equipped to judge complex military issues." n54 Thus, the United States stood in clear defiance of the Court and, apparently, above international law. Such behavior appears not only injurious to the efficacy of the Court's compulsory jurisdiction under Article 36(2), but detrimental to the development of international lawfulness as well. Such lawfulness cannot develop as long as states are inclined to place themselves above the law. It may be asserted with some accuracy that United States prestige may suffer somewhat from this unlawful behavior; but given contemporary political and economic realities, the effect on the world's ranking nuclear superpower will scarcely be noticed. The Court, on the other hand, is far more vulnerable to the effects of defiance of its compulsory jurisdiction and of its judgments. The development of lawful behavior and of compulsory jurisdiction itself is significantly impeded by such behavior. The Nicaragua case further demonstrates that the optional clause can only work when states are willing to abide by their earlier commitment, i.e., when they give contemporaneous consent to the Court's jurisdiction. It also suggests that the efficacy of the Court remains threatened as long as the optional clause exists. In the two cases involving the optional clause where the decision on both the preliminary objections and the merits went against the respondent state (Category IV), the record of compliance is only 50 percent. Compromissory Clauses Some middle ground in the acceptance of the Court's compulsory jurisdiction is to be found in compromissory clauses in treaties. Although such clauses suffer from some of the same problems as optional clause acceptances, they do have two advantages over these acceptances. First, they are confined to disputes concerning a particular treaty, and thus the subject matter of any dispute that may arise is limited. Second, because most of these clauses are contained in bilateral treaties, n55 the other party to the possible dispute is usually known. Those clauses found in multilateral and global treaties widen the field of possible litigants considerably, but the subject matter remains limited. [*67] Nonetheless, the two other incidents of major defiance in the post-1961 period involved jurisdiction granted in compromissory clauses in earlier treaties. n56 The defiance of the Court by Iceland in the Fisheries Jurisdiction n57 case rested on its noncompliance with an exchange of notes with the Federal Republic of Germany and the United Kingdom on July 19 n58 and March 11, 1961, n59 respectively. In United States Diplomatic and Consular Staff in Tehran, n60 the Court's jurisdiction was based on compromissory clauses in certain treaties between the United States and Iran. n61 Though we are primarily concerned here with compulsory jurisdiction as conferred by the optional clause, the major conclusions of our argument are supported as well by these two cases. Since they, too, evoked defiance of the Court, it seems that the only safe way to get states before the Court is by their agreement at the time of the actual dispute. Other methods all carry a reasonable probability of failure. It is interesting to note that in recent years, two of the successfully resolved cases involved the allegedly lawless state of Libya. Both disputes were brought before the Court by special agreement between Libya and another state. n62 We think these cases demonstrate that the legal system can serve a useful function and that the Court has a role in the system as a dispute settlement mechanism if it is approached in the consensual mode. Can anyone doubt that Libya would have refused to participate had these cases been an attempt to force the Court's jurisdiction upon it? It is axiomatic that problems of jurisdiction or compliance rarely arise when states make a special agreement to submit their dispute to the Court. n63 [*68] Only in this way can states maintain the necessary control over dispute settlement that is part of their raison d'etre Chambers The recent Gulf of Maine case, n64 the first adjudicated in Chambers, raises the possibility that the Court's compulsory jurisdiction under Article 36(2) might be given new vigor if applied only to cases using Chambers. Presumably, this could be done either through reservations to individual state acceptances of the optional clause or, less likely, through appropriate changes in the wording of the Statute. Changes in the Statute in 1972, designed to facilitate recourse to Chambers, might relieve the anxiety of some states about submitting to the compulsory jurisdiction of the present Court. n65 The Court has always suffered because states feared that they would not be dealt with fairly. In the early years of the ICJ, many Third World states felt that a court dominated by developed states would not do them justice. Ironically, today's more eclectic Court seems not to engender confidence in either First or Third World states. The new provisions, which allow Chambers to be selected after consultation with the parties, might alleviate this problem sufficiently for states again to have little difficulty in accepting the Court's compulsory jurisdiction under Article 36(2). As we have noted above, there may have been no significant problems involving Article 36(2) in the 1945-1961 period largely because the Court was dominated by "Western" judges and it adjudicated disputes primarily between Western states. Certainly, in the Gulf of Maine case, the United States and Canada should have been comfortable with judges from France, West Germany and Italy, in addition to the two judges of their own nationality, constituting the Chamber. It is also true that this case was handled smoothly and to the reasonable satisfaction of both parties. n66 Moreover, since it was adjudicated shortly before the U.S. refusal to submit to the Court's jurisdiction in Nicaragua v. United States, this case also adds credibility to the claim that the institution of Chambers may help overcome states' reluctance to accept third-party adjudication. Some aspects of Gulf of Maine are worth considering if we are to assess the possible value of compulsory jurisdiction when applied solely to Chambers. First, while the changes in the Statute facilitating recourse to Chambers occurred in 1972, it was nearly a decade before any case was brought before the Court in this way. Second, the two states that did finally make use of Chambers enjoyed a rather special bilateral relationship marked by a long history of peaceful dispute resolution. The United States and Canada are among the most likely pairs of states to seek peaceful methods (both political [*69] and legal) to resolve problems between them. Third, this particular dispute, though important economically, was a "low politics" issue, i.e., it did not directly involve national security, and thus recourse to third-party settlement was more acceptable. Moreover, while the dispute had a loong history of unsuccessful negotiation, both parties clearly desired a settlement. Finally, this case was submitted jointly to the Court through Special Agreement, n67 so it is evident that the parties had decided early on to conceptualize the dispute in legal terms. To what extent, then, does this case hold promise for strengthening Article 36(2) by using it only with recourse to Chambers? Since the institution of Chambers probably will alleviate some of the uncertainty about going to court, states that agree to compulsory jurisdiction solely with respect to Chambers will be less likely to defy the Court if called upon to appear before it. If the point is to insulate the Court from future defiance related to its compulsory jurisdiction, then recourse to Chambers might help. On the other hand, the initial problem and its attendant logic remain. If, at the time of the actual dispute, a state really does not wish to have the dispute settled by the Court, it will still refuse the Court's jurisdiction. n68 For example, it seems highly unlikely that recourse to Chambers would have changed France's behavior in the Nuclear Tests Cases. Conversely, if a state is willing to go to court, it will probably do so with or without Article 36(2); and recourse to Chambers is always a choice, as it was in Gulf of Maine. Thus, we are faced with the following question: does the increased probability of adherence to Article 36(2) jurisdiction outweigh the continued possibility of defiance when states find it in their interests not to adhere to the Court's jurisdiction? III. INTERNATIONAL LAW AND THE IDEA OF LAWFULNESS If we think of the Court's history in terms of the evolution of international law, our review of the Court's activities will cause concern for two reasons. First, the Court seems to be in a period of decline in terms of its adjudicatory activity. This fact alone is hardly troubling; it only becomes so when studied against the background of international politics. The Court's decline in activity does not coincide with a similar decline in the frequency of international conflict. Thus, the Court's decline in activity is not due to the increased lawfulness or civility of the nations of the world. Disputes, even violent disputes, remain a constant theme of international life; consequently, the declining use of the Court to pursue peaceful and principled methods of dispute resolution indicates that states are turning away from third-party adjudication rather than towards this mode of dispute resolution. There is nothing new or shocking, however, about cataloging the decline [*70] in the Court's activities. n69 Interestingly, one proposed remedy for this decline suggests doing away with the optionality of the Court's compulsory jurisdiction. Many international lawyers insist that the Court's place and prestige in the international system can best be strengthened by making the Court's jurisdiction truly compulsory. n70 This, it is argued, would have the salutary effect of ending the decline in judicial activity and making the ICJ more nearly resemble domestic courts; and it would symbolize an international effort to "get serious" about international law. Yet the second cause for concern to emerge from our case review calls the logic of this position into question. Defiance of the Court is the **most serious impediment to the evolution of the Court's efficacy**. It suggests that at least some states are unwilling to see international disputes in predominantly legal terms, preferring instead to conceptualize these disputes in more traditional political terms. A change in this perspective cannot be brought about simply by making the Court's jurisdiction truly compulsory, which means that any such attempt would likely lead to further defiance of the Court. The continued and expanded defiance of the Court would have a **crippling effect on the evolution of international law.** Powerful states would have a pronounced advantage over weaker states under compulsory jurisdiction because of their ability to defy Court decisions and any methods devised to enforce those decisions. Truly compulsory jurisdiction would allow the stronger states an even greater opportunity to posture in favor of lawfulness in international dealings and still defy the Court when they perceive it to be politically desirable. Though it is also possible for small states to defy the Court while posturing in favor of international law (as Iceland and Iran seem to have done), it is more difficult for small states to make a general practice of defiance. One need hardly belabor the cost of such a scenario to

the efficacy of the Court and the legitimacy of international law. **A double standard of justice would generate cynicism**, or at best skepticism, about international law in the weaker states and it would make international law into little more than an extension of power politics. But there is a second and perhaps even more telling reason for rejecting strict compulsory jurisdiction. A system of [*71] international law should embody, and take seriously, some (if not all) of the principles and ideals that lend credibility and integrity to domestic legal systems. The principle of equal justice is perhaps the first virtue of any legal system. n72 Any putative system of law that permits a double standard of justice thus fails in an important sense to qualify as a legal system. Tinkering with the Court's jurisdiction should be undertaken only if proposed alterations can feasibly be calculated to enhance (rather than defeat) equal justice. In light of the Court's history, it seems a virtual certainty that strict compulsory jurisdiction would have the opposite of this desired effect. Though it may sound strange to legal scholars accustomed to thinking that courts of law should have compulsory jurisdiction, we believe that a better method for promoting the efficacy of the Court (and consequently the gradual development of international law) is to remove the Court's powers of compulsory jurisdiction under Article 36(2). Even a brief review of the history of the western legal tradition is sufficient to make clear that legal systems cannot be implemented overnight. The legal systems employed in the West have evolved over centuries. n73 Their formal machinery is perhaps the least significant element of their success as systems of law. Legal positivists are quick to point out that the authority of these systems depends upon their general acceptance by those subject to them. n74 There is no reason to think things should be different when we turn to international law. General acceptance of international law, and the concurrent realization that international law and the ICJ, in particular, are important contributors to the process of international dispute resolution, are **fundamental to the evolution of an international legal system.**

Us resistance to the icj undermines it's authority

Alexandrov, Frmr. Deputy Foreign Minister for Republic of Bulgaria, **95**

(33 Colum. J. Transnat'l L. 41)

This strategy [non-appearance and eventual non-compliance] may also backfire. The "no-appearance technique" of litigation may suffer a setback, once its absurdity and overall uselessness are correctly perceived. Likewise, overt defiance of the Court by a great power over a case won by a small one may prove to be an unattractive example - a disincentive - for other states. It is hard to complain with Goliath after he has been trounced by David. n127

2NC ICJ NB O/V

Try or die flips neg – Credible ICJ solves all hot spots

Cassel 3 – Professor of Law @ NU

(Doug, "Is There a New World Court?," ND Law School Faculty Publications)

> One factor appears to be growing state confidence in the ICJ. This is evidenced by the continued flow of border demarcation cases, in which the ICJ role in peaceful resolution is an **important alternative** to potential (or in some cases actual) **armed conflict**. It is further evidenced by the geographical spread of such cases, which have been filed in recent years by states in **Latin America**, **Africa**, **Southeast Asia**, and the **Middle East**.¶ Another factor is that filing cases involving ongoing armed conflict is an attractive alternative for weak states which cannot defeat stronger adversaries by military means. Serbia sued NATO member states against whose bombing it had no effective military defense, while Congo sued neighboring states whose forces it could not oust from its vast territory. **An ICJ lawsuit may be war by another means**.

2NC CP Key to ICJ Cred

The u.s. is critical to the credibility of the icj---delegating policies to the court necessary to strengthen international law and instill multilateralism

Henson, Sr. Lecturer-International Relations-Vanderbilt, 8/31/**6**

(Power in the Judicial Balance: United States Hegemony, Judicial Independence, and the International Court of Justice, Paper presented at the annual meeting of the American Political Science Association)

The International Court of Justice (ICJ) remains an enigma to many scholars in international law and political science. Founded as the judicial organ of the United Nations in 1947, the Court began with great promise to become the legal arbitrator of peaceful settlements between nations and legal advisor to the powerful Security Council. The hope that great power wars could be avoided through the just application of principles in law and the emerging institutions of cooperation among states included high expectations on the new World Court. Nearly forty years later, **the Court operates on the fringes of international politics neglected and criticized at times by the States that created it**. The Court has accepted 111 contentious cases and issued 25 advisory opinions involving 80 nations, yet few scholars include the ICJ in studies of important international institutions or mine its extensive records for insight into the contentious issues it has adjudicated over its nearly half century of work. Critics of the Court argue that cases lack salience in international politics because nations are willing to delegate only insignificant issues to the legal process reserving the important issues for traditional settlements such as force or diplomatic negotiations. This view is challenged by the list of issues brought before the Court including territorial disputes, testing nuclear weapons, attacks on warships, immigration, and covert interventions in conflicts. Critics counter that nations reject decisions of the Court when issues are important and Court rulings are unfavorable. Records show that nations adhere to Court decisions most of the time, nearly eighty to ninety percent depending on how you measure compliance, considerably more than generally acknowledged (Schulte 1 Unless otherwise cited, references to International Court of Justice (ICJ) cases and information concerning the proceedings of the ICJ are taken from electronic archives on the official website of the Court at www.icj-cij.org. Pleadings, judgments, and case backgrounds are publicly available for every contentious case and advisory opinion.

One notable exception is the United States rejection of the Court's jurisdiction in the 1984 case brought by Nicaragua. This case marks a significant change in the Court's role and will be discussed in more detail. Nevertheless states have shown a remarkable willingness to respect the Court and work vigorously to win the Court's affirmation on issues important to national interests. The Court also provides scholars with two interesting and unique avenues of research in international relations. First, the Court examines cases involving international conflicts through the strict application of principles in international law. It is a major source of interpretation and application of international law in relations among states. It is unique and extensive in this respect. The Court is secondly a place where broad issues concerning international relations get rehearsed in a controlled environment. The structure of law and format of the Court sets up a micro-experiment in which researchers can observe nations engaging in power politics, waging the Cold War, exercising hegemonic powers, demanding equity, reorganizing post-colonial borders, struggling with the question of nuclear weapons, and a host of other overarching issues on the international political stage. While Court decision have not significantly transformed these situations and problems, Court proceedings enlighten our understanding of the positions held by nations and the issues at stake for them. Two illustrative cases provide insight into the role of the World Court and its evolution alongside major changes in world politics over the last five decades since World War II. The 1947 Corfu Channel and 1984 Nicaragua cases also introduce the theoretical and empirical components of this study.

The first case brought before the newly formed International Court was initiated by the United Kindgom against Albania in 1947. Two British warships patrolling in the North Corfur Channel on October 22, 1946 were heavily damaged by mines. The incident resulted in the deaths of forty-four sailors and extensive damage to the ships. Great Britain alleged that Albania was responsible for this intentional act of aggression and violence. As one of the victorious allies in World War II and a major naval power, Great Britain had every capability to respond with military retribution. Interestingly, the British decided instead to get a lawyer and sue Albania for damages in a basic tort case. The case was not an ordinary tort before a civil court but involved two nations on opposite sides of an emerging divide between Western and Eastern Europe with the potential to inflict extreme violence. It was in a sense the test of Great Power restraint and credence to international civility in the wake of a devastating world war. Reference of the case to the International Court of Justice signaled the support of international institutions designed to provide stability and growth to a new system of world politics envisioned by the victorious allied powers. Over the first 12 years of the Court, the United Kingdom, United States, and France brought 20 cases, 53 percent of all cases before the ICJ.

The Court decided in favor of United Kingdom and ordered Albania to pay a fine of 843,947 British pounds. Albania accepted the Court's jurisdiction and decision but argued against the Court's authority to fix compensation. No compensation was ever paid. Contrast the Corfu case with another incident involving sea mines in the complaint brought by Nicaragua against the United States in 1984. Nicaragua argued to the Court that the United States violated international laws against invention in internal political affairs of another nation by aiding the Contra rebels in their struggle against the Sandinista government. Included in the allegations were reports of mining Nicaraguan harbors and providing military advice and aid to rebel forces. The United States refused to answer the complaint and withdrew from compulsory participation in ICJ cases. The Court proceeded with case and ruled in favor of Nicaragua. The Court also indicated that reparations of 370 million dollars were appropriate on an interim basis to be decided in finality by a later decision. Nicaragua discontinued the case in 1991 and no reparations were ever paid. There are striking parallels and contrasts in these cases. Together the Corfu Channel and Nicaragua cases illustrate the changing nature of international politics in relation to international law and courts. Both cases involved issues of Cold War politics and the use of force. The cases also have two very different characteristics. The Corfu case was initiated by a world power against a relatively small nation while the Nicaragua case was brought by the smaller nation against the world power. Court rulings also followed this reversal. The circumstances and merits of the cases are unique. However, they do highlight questions concerning the choices by participants to utilize the Court. These cases also introduce the idea that distinct patterns exist in usage and decisions of the Court. In order to pursue these questions, theoretical perspectives are useful concerning world circumstances and national interests influencing the decisions of participant nations. The United States emerged from World War II as the economic power in the world. While all the allied nations enjoyed benefits of victory, it was the United States that had suffered the least destruction and national distress. Industrial expansion of the economic base established during the war years propelled the United States to a dominant economic position. The post-war period initiated the rise of a new global hegemon. While the Soviet Union eventually rose to challenge United States supremacy and interests in world affairs, the United States became the clear leader in rebuilding the international political and economic systems. The establishment of the United Nations, implementation of the Bretton Woods agreements, and formations of the International Monetary Fund and World Bank are examples of the institutions created to facilitate a new world order. This order included the dominant role of capitalism and leadership of democratic regimes. The rapid development of international law and a series of conferences resulting in new legal regimes established international norms along the principles of rule of law and national sovereignty. The new system was predictably favorable to the interests of the United States and its partners. From these circumstances derived a theory of economic stability and leadership commonly referred as hegemonic stability. Conceptual development of the idea that economic stability provided by the leadership and dominance of the United States increased economic growth, trade, and wealth worldwide is in many respects attributable to the work of Charles Kindleberger. Kindleberger's work in political economics is extensive and it oversimplifies his views to identify hegemonic stability as his most prominent contribution; however, Kindleberger is a formative advocate for the idea that stable economic conditions depend on the leadership of a dominant hegemonic power. "Without a stablizer," Kindleberger says, "the system in my judgment is unstable" (Kindleberger 1981, 253). Leadership from a powerful nation establishes rules that stabilize the economic system, force cooperation among nations, maintain order, and form international regimes. The concept that United States leadership and dominant influence largely determined future trajectory was not limited to economics. The idea of hegemonic international law follows a similar logic attributing elements of the potency and development of international law to the role of the hegemon in defining, interpreting, and implementing principles of law in international relations. Detlev Vagt addresses the legal implications of hegemonic influence on international law. In his analysis, Vagt reviews issues such as choice of treaty interpretation, intervention, and prominence of custom. Vagt also makes the point that a "body of law to work with" has historically

benefited hegemonic interests and provided a convenient reference point and set of expectations for nations to follow in order to participate in the benefits of international transactions such as trade (Vagt 2001, 845). The theoretical implications of hegemonic stability and hegemonic international law are applicable to the International Court of Justice in several ways. The Court as an organ of the United Nations and institution for establishing the rule of law among nations was a key component of the strategies employed by powerful nations to restructure the international system. According to hegemonic theory, the interests of the United States and its allies were served by solidifying influence over the creation of stable rules governing international interactions. Stability facilitates growth in capital and production of goods from which the United States as hegemon was the greatest beneficiary. Rules developed from a customary system of law based heavily on the most active, vested, and involved nations. Western powers served this stabilizing function while preserving their interests in the status quo. This is clearly illustrated in economic terms through the dominance of the dollar in world currency markets and Western corporations and governments in trade markets such as oil. This dominance extended into international agreements and legal regimes with stability and status quo characterizing international law through custom and treaty. In this environment it was easy to view the International Court of Justice as an instrument of international hegemonic law. The Court's dependence on customary international law and mandate under the United Nations charter favored the maintenance of status quo, peace, and stability. The bedrock concept of national sovereignty in law and politics provided additional support for the pursuit of national interests by powerful nations. Interestingly, the principle of sovereignty and related concept of non-intervention rebutted the interests of the United States in the Nicaragua case. International leadership and dominance through United States hegemony provides a compelling explanation for the actions toward the International Court of Justice by powerful countries. As mentioned earlier, the United Kingdom, France, and United States brought a large proportion of the cases adjudicated by the Court in its early years. Issues at stake in many of these cases indicated a desire to maintain stability and status quo in international politics and economics. The Corfu Channel case emphasized free passage of ships through vital waterways. This was important to global policing by the British Navy as well as safe trade and transportation. Additional cases brought by major powers focused on fisheries, air space, rights of nationals abroad, corporate interests, and other issues involving freedom of transnational movement and operations. Powerful nations seeking to maintain the advantages of the status quo viewed the ICJ based in customary norms as a useful instrument. The post-war aversion to armed conflict and the economic advantage of stabilization and peace made the Court a desirable recourse. This pattern is evident in the records of contentious cases initiated in the ICJ. Over thirty years ago, William Coplin and Martin Rochester published an article that examined empirically the ICJ and its predecessor Permanent Court of International Justice along with the League of Nations and United Nations (Coplin and Rochester 1972). They attempted to move away from normative and prescriptive analyses of the Court and focus on compiling data that could be used by researcher for statistical evaluation. Their study

examined issues such as who participates in the court and how frequently, as well as attributes of participants and their relationships to one another. The Coplin and Rochester study showed that the majority (64%) of initiating states were at least 25% larger based on GDP than the respondent state. The ICJ data examined by Coplin and Rochester ranged from 1947 to 1968. These findings suggest the question of whether the initiation of cases by stronger states is the pattern that continued after 1968. The short answer is that it does not. Data from later periods show a swing in the power differentials between participants toward weaker state initiations. This change can be partially explained within the literature concerning hegemonic theory by the decline of United States influence and control over the international system. Robert Keohane discusses extensively the decline of hegemonic influence in terms of regime coherence and cooperation. Keohane argues that hegemonic stability explains many aspects of post-World War II economic and political cooperation under the leadership of the United States and its close allies, but hegemonic leadership cannot explain every aspect of cooperation. Cooperation exists in a variety of forms and for diverse interests; however, there are clear indications of changes in international cooperation coinciding with a decline in hegemonic control of regimes in money, trade, and oil. Keohane asserts that the oil regime controlled largely by the United States and Great Britain had broken down by the late 1960's, discord over international monetary policy was strongly evident by 1971, and government trade controls in opposition to GATT principles rose sharply by the 1970's (Keohane 1984). The general propositions of Keohane's view of declining hegemony focus on the period 1967-1980. While Keohane emphasizes the persistence of international cooperation, he is quite clear and persuasive in describing a decline in the United States and its powerful allies influence and control over the international economic system. Economic factors are not the only indications of the United States waning hegemonic influence over world affairs. The war in Vietnam, Nixon scandals, Iran hostage crisis, and other political events also eroded United States influence around the world. Holsti and Rosenau point to a loss of consensus in United States foreign policy that contributed to deterioration in leadership (Holsti and Rosenau 1984). These events place the decline of United States hegemonic leadership within the same time period as Keohane's economic arguments. The gradual decrease in influence and control over world economic markets, institutions, and systems coincides with a decreased use of the Court by the United States and allies such as the United Kingdom and France. Fragmentation of interests and development of diversity and competition within political and economic regimes weakened the ability of the United States to hold together a hegemonic coalition. While the threat of the Soviet Union maintained unity within the North Atlantic Treaty Organization, other regimes such as the Bretton Woods monetary system, GATT, and oil regime began to crumble. Keohane's analysis places the demise of the hegemonic regime in the mid-1970's. In this period, the Vietnam War and Nixon scandals also diminished United States influence in world affairs. The year 1975 is used as the date to demarcate this change for the purposes of empirical analysis. The hegemonic models provide an explanation of the initial utilization of the Court by powerful nations and the later decline in cases coinciding with a decline in hegemonic solidarity in economic and political world affairs. The models do not provide a rationale for the trends evident in subsequent periods. The neglect of the Court by world powers suggests that few cases would be submitted to the Court. However, the utilization of the Court actually accelerates from 1.6 cases per year in the period 1947-1975 to 2.3 cases per year 1976-2005. In order to explain this increase, it is useful to look again at the Corfu Channel and Nicaragua cases. While Corfu Channel illustrates the motivation of powerful nations to maintain the status quo, Nicaragua represents a different type of motivation. The complaint brought by this small nation against the United States challenges the hegemonic position of the United States by attempting to restrict its power to promote United States interests in the Western Hemisphere. In the context of Cold War politics, the United States desired the success of anti-Communist regimes. Nicaragua and the Court interpreted United States actions as a violation of the principles of sovereignty and non-intervention. The Nicaragua case reversed the efficacy of the principle of sovereignty for small nations and the power relationship between participants in the Court. This case was not the first occasion that a less powerful nation initiated a complaint before the Court, but it was a high profile moment when the Court was forced into a standoff with the world superpower. The United States refusal to submit to the Court's jurisdiction, defiance of the Court decision, and withdrawal from compulsory participation pitted the interests of a powerful state against the credibility of the Court. It represents a turning point in the Court's dealings with non-compliance (Schulte 2004, 403-404). Establishing credibility as a Court is dependent on many factors including competence and impartiality, but at the core of the issue of credibility is independence. Laurence Helfer offers a concise and useful definition of independence referring to "insulation" but not necessarily "isolation" from political pressures (Helfer 2006, 2). A demonstration of independence in the face of severe political pressure from the United States is clear in the Nicaragua case. Helfer states, "As a matter of practical judicial decision-making, independence denotes the willingness of judges to decide cases based on generally applicable legal principles rather than political expediency, even where this requires ruling against powerful states" (Helfer 2006, 3). 2 The ruling against the United States in the 1984 case petitioned by Nicaragua gives a strong indication that the ICJ judges were willing to assert their independence from political influence from powerful states. Stephen Krasner relates a similar description of institutional regimes asserting independence stating, "Regimes may assume a life of their own, a life independent of the basic causal factors that led to their creation in the first place" (Krasner 1983). This change in the function of an institution is aligned with the classic dilemma of principal/agent. Delegation by a principal of certain duties and functions carries the risk that the agent will execute those duties contrary to the intent and interests of the principal (Shapiro 2005). The delegation of judicial responsibilities to the ICJ by the powerful nations that instigated the creation of the United Nations carried that risk. The United States administration believed in the Nicaragua case that the ICJ was operating outside of its mandate for political motives, and in a manner contrary to United States interests. In light of the Court's strong stance, it is likely that increased perception of independence invited more participation by nations challenging the status quo. The Court's willingness to rule in favor of a small nation and against intense political pressure from the world's most powerful nation established a favorable precedent for other nations seeking to challenge more powerful nations through the judicial process. Records of contentious cases after 1984 show an increase in several characteristics including total number of cases submitted to the Court, number of new participant nations, and number of cases initiated by the less powerful nation. For the empirical analyses of power differentials this study uses the National Material Capabilities measurement. The statistical model chosen to measure changes in participants' characteristics is a contingency table (two by two) with four quadrants. The first quadrant at the upper left represents cases before 1976 initiated by the more powerful nation of the two case participants. The lower left represents cases initiated by the less powerful state. The pattern is repeated on the right for cases after 1976. The test statistic applied to the ratios is a chi square distribution. This is a standard measurement for determining the probability function for a contingency table. The chi square measurement of 16.6 indicates that there is less than or equal to .001 chance that the null hypothesis is true and the distribution pattern is a random outcome. This is a very significant result and strongly supports the hypothesis that case initiators before 1976 were predominantly more powerful than the target nation but after 1976 initiators were predominantly less powerful than the target nation. Closer analysis of the data shows that while 1975 is a good central point in the transition, overall Court activity remained low until the Nicaragua case in 1984 with only 6 cases initiated from 1975-1984. This buttresses theoretical explanations of the gap between hegemonic decline and assertion of judicial independence in initiation of new Court cases. Court decisions provide a second approach to analysis of the Court's interaction with states. Examining the power differential based on favorable decisions rendered by the Court reinforces the concept of a Court in transition from maintenance of the status quo to equity in international relationships. Using the same statistical test, it is evident that a distinct shift occurs in the same time period from favoring stronger states to favoring weaker states in the Court's decisions. The following table shows that the level of significance is even slightly stronger in this case. Although the earlier period has more cases of powerful states initiating cases and receiving favorable decisions, the correlation between initiating a case and receiving a favorable decision is not significant. The Court's apparent bias toward the more powerful state in the earlier period is not a factor of favoring the initiator. The same is true of weaker states in the later period.

Judicial independence for the ICJ does not necessarily benefit only less powerful nations who challenge the status quo. In his concept of "constrained independence" Helfer identifies advantages that powerful states gain through support of a credible judicial institution. Focusing on international tribunals, Helfer argues that subtle control mechanisms drawn from a variety of political options can, "allow states to **capture the credibility-enhancing benefits** of delegation to formally independent international tribunals while minimizing, although not eliminating, the potential for judicial excesses" (Helfer 2006, 3). Even with limited controls, states that submit authority to independent judicial bodies such as the ICJ are foregoing some sovereign control and potentially sacrificing self-interests. Helfer offers as a rationale for states to forego some control and support independent tribunals based on an argument for **increased credibility to international law commitments.** Increased credibility to commitments has clear advantages in multilateral negotiations where cooperation depends on mutual trust. In a world of declining hegemonic control, the United States is more dependent on multilateral cooperation in order

to enhance its interests and obtain foreign policy goals. **Renewed support for the ICJ through compulsory participation without reservations would improve the United States credibility towards international law commitments and build trust in multilateral cooperation.** There are indications of United States willingness to move in this direction in the case of Avena and other Mexican Nationals Mexico v. United States of America 2003. The United States chose not to reject the case and actually filed pleadings to the Court. The ICJ eventually ruled in favor of Mexico. Although the United States strongly opposed this decision, it did not retaliate with political threats in the manner evident during the Nicaragua case in 1984. This is not to say that current United States policy toward international law commitments has taken a strong turn to the positive. Concerns over the newly instituted International Criminal Court and questions about the judicial procedures in cases of international detainees have created new problems for United States credibility to commitments in international law. However, the International Court of Justice offers the United States an opportunity to support international institutional cooperation while avoiding controversial and sensitive legal issues involving criminality and national security. Willingness to follow a model closer to Helfer's "constrained independence" would also **improve credibility in respect to other important institutions** such as the World Trade Organization and its system for dispute settlement and compliance.

Delegation to the icj is necessary to make the u.s commitment credible

Slaughter, Dean-Woodrow Wilson School at Princeton, **5**

(http://www.princeton.edu/~slaughtr/Articles/IntlTribunals.pdf)

First we describe a long line of political science scholarship which explains why independent tribunals in fact serve the interests of governments. We then expand upon this settled theoretical framework and offer our own hypotheses. Our basic conjecture is that, as a first order of regime design, states choose independent tribunals over dependent ones when they face multilateral, as opposed to bilateral, cooperation problems. We identify three types of multilateral cooperation problems that independent tribunals are especially well suited to resolve, and then we explain why bilateral disputes permit effective dispute resolution through arbitration or dependent tribunals. This theory, while subject to further refinement and empirical testing, provides a more accurate explanation of the existing legal landscape than does *Judicial Independence in International Tribunals*. The theory also resolves the apparent paradox of how independent tribunals can flourish in an international legal system in which enforcement authority resides predominantly in states themselves.

A. Delegation Enhances the Credibility of International Commitments Many political scientists have argued that delegating dispute settlement authority to independent judicial decision makers can further government interests. Although such delegations may at first seem counterintuitive, they are explained by the functions that courts and tribunals perform. For Posner and Yoo, international tribunals play only a limited role: they provide information that reduces decision-making costs for states involved in a dispute.106 In exercising this function, the tribunal members are agents and the disputing states are principals. The dilemma facing the principals is how to ensure that the agents remain faithful to the principals' instructions as set forth in a treaty, customary international law, or an arbitration agreement. In the parlance of principal-agent theory, this is "the problem of agency slack."107 Independent courts and tribunals do far more, however, than simply settle disputes between contesting parties. In the domestic realm, independent courts reduce policy ambiguities, stabilize policy outcomes, manage electoral uncertainty, and discipline other political actors.108 In the international context, independent tribunals serve related functions.109 In particular, they **act as trustees that enhance the credibility of the promises that governments make to one another.**110 By interpreting those promises and identifying behavior that violates them, independent tribunals **increase the likelihood that states will comply with their obligations** in situations where compliance generates short-term political losses but long-term political gains.111 This claim should not be read to suggest that dependent tribunals are incapable of bolstering the credibility of state commitments. To the contrary, even dependent decision makers—such as ad hoc arbitral bodies— provide a measure of credibility enhancement as compared to purely political modes of negotiation and dispute settlement.

It might be argued, however, that our claim—that delegation to independent tribunals enhances the credibility of international commitments— is circular. Just as there is no coercive authority to enforce a state's initial promise to cooperate, there is also no such authority to compel adherence to the judgments of a tribunal which interprets that promise. Seen from this perspective, Posner and Yoo's theory implies that independent international tribunals can do nothing to enhance the credibility of commitments, since states can as easily disregard the tribunal's rulings as they can ignore the obligations of the treaty that establishes it. This argument misses the mark in several key respects. First, it ignores the informational functions that international tribunals perform and their effect on a state's reputation for honoring its promises to other nations. Not all compliance disputes are

clear cut. To the contrary, it is often difficult for a state to monitor the conduct of its treaty partners and to evaluate whether that conduct violates the treaty. These monitoring and evaluation costs reduce the risk that arguably nonconforming conduct will be detected or, if detected, will be accurately labeled as a breach. International tribunals reduce these monitoring and evaluation costs. They create a mandatory process by which plausible rule violations are investigated and, at the conclusion of the case, they publicly identify the state that has violated its commitments. In short, tribunals increase the probability that violations of international obligations will be detected and correctly labeled as noncompliance. The higher probability of detecting and accurately labeling violations creates two sets of costs for a state considering violating its international commitments. First, it increases the likelihood that other states will impose sanctions as a penalty for breach. These sanctions may be authorized by the tribunal itself (as in the case of monetary awards issued by the ECHR) or by a multilateral process connected to it (as in the case of the WTO's Dispute Settlement Body).117 Sanctions may also be imposed unilaterally through reductions in trade, aid, or other privileges previously granted by the adversely affected state.118 Second, and perhaps more importantly, the higher probability of correctly identifying violations and branding violators increases the reputation costs of noncompliance.119 "Being identified as having violated international law is costly for a state because it leads to a loss of reputation in the eyes of both its counterparty and other states," a loss that, in turn, makes it more difficult to enter into future agreements with other nations.121 By increasing the probability of both material sanctions and reputational harm, international tribunals raise the cost of violations, thereby increasing compliance and enhancing the value of the agreement for all parties.122 States can thus foresee that shirking compliance will be more difficult when a tribunal can be called upon to monitor their conduct and interpret their promises than when it cannot. As a result, when states delegate authority to an international tribunal, the commitments they entrust to **it will be viewed as more credible than commitments not subject to judicial scrutiny.**

2NC Cred Key

Even if the ICJ is never used, restoring its credibility means states settles disputes outside of the court

Mitchell 6

Sara McLaughlin Mitchell, Department of Political Science, The University of Iowa, "Cooperation in World Politics:

The Constraining and Constitutive Effects of International Organizations", 2006

Institutionalist scholars (e.g. Keohane, 1984) argue that institutions **promote cooperation** between member states by increasing information, **decreasing uncertainty**, enhancing legal liability, and raising the reputational stakes for reneging on agreements.2 They also stress the active role that international organizations play in the **conflict management process**, serving as mediators or adjudicators to help member countries resolve international conflicts (e.g. Abbott and Snidal, 1998; Russett and Oneal, 2001). International organizations may facilitate cooperation among member states **passively** (Mitchell and Hensel, 2006), something **long recognized** in the international law literature. For example, if two countries recognize the jurisdiction of the International Court of Justice (ICJ), then the ability for both sides to take disputes to the ICJ may enhance the chances that **they will reach agreements out of court** (Bilder, 1998). A similar process has been observed in the World Trade Organization and the European Court of Justice: the strong legal dispute mechanisms in these institutions **deter countries** from making frivolous claims (Allee, 2003; Burley and Mattli, 1993). International organizations may also promote cooperation among members indirectly, by promoting democratization among members (Pevehouse, 2002), which in turn strengthens interstate peace because democracies do not fight wars against other democracies (Russett and Oneal, 2001).

2NC ICJ Cred Good- Environment

Weakening the court prevents sustainable development

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), "Why judges are essential to the rule of law and environmental protection," Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

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 of all complex life

Barry 13—Political ecologist with expert proficiencies in old forest protection, climate change, and environmental sustainability policy [Dr. Glen Barry (Ph.D. in "Land Resources" and Masters of Science in "Conservation Biology and Sustainable Development" from the University of Wisconsin-Madison), "ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse," Forests.org, February 4, 2013, pg. 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.

2NC ICJ Cred Good- Resource Wars

Credible ICJ solves resource wars

Tiefenbrun 97 – PhD, Director of International Law Programs and Adjunct Professor at Hofstra University School of Law

(Susan, "The Role of the World Court in Settling International Disputes: A Recent Assessment," 20 Loy. L.A. Int'l & Comp. L.J. 1, Lexis)

Despite these issues, the World Court should play a greater role in the future because adjudication as a means of dispute resolution is dispositive and final. The Court is usually principled, impartial and orderly. It can provide time for parties that are in a protracted dispute to reach an agreement that is mutually beneficial. It settles disputes and provides advisory opinions, and as an impartial tribunal, it can "depoliticize" a dispute and reinforce the rule of law.¶ The World Court may be especially helpful in certain types of disputes in which governments are not particularly concerned about the outcome but are, nevertheless, unable to compromise the issue in negotiations. 187 The Court has proven to be an ideal forum for the reconciliation of serious, local problems like **boundary disputes**. 188 Furthermore, if a dispute involves difficult factual or technical issues, the Court can provide impartial assistance.¶ The World Court should also play a greater role in the future because of the increasing demand for the resolution of **environmental disputes**. It is in a unique position to settle such disputes because it has created a special chamber to deal with **each environmental dispute** brought to it. 189

ICJ Cred Good – Warming

ICJ credibility solves warming

Strauss 8 – Professor of Law at Widener University School of Law

(Andrew, "Give the International Court of Justice Compulsory Advisory Jurisdiction on Matters Concerning Climate Change and the Needs and Interests of Future Generations," CLI RECOMMENDATION NO. 16)

This underdevelopment has significant implications for future generations. Some of the more extreme but still ¶ credible scenarios suggest a global climate that could make civilization as it has developed over the past five thousand ¶ years unsustainable.7¶ Even less dramatic scenarios that have been predicted by climate scientists with much higher ¶ degrees of certainty will dramatically alter the natural environment with significant implications for future generations.8¶¶ While the effort to deal seriously with the climate problem will involve far more than application of law, international ¶ law is clearly necessary for both **constraining** and **coordinating** state action. Climate change—and the contours ¶ of intergenerational justice in relation to it—is only one of the more pressing examples of global problems whose ¶ **amelioration** could be furthered through involvement of the **I**nternational **C**ourt of **J**ustice. If **jurisdictional barriers** could ¶ be overcome, the Court could play a **significantly enhanced role** in both settling international law generally and resolving ¶ individual disputes, particularly those of large ecological import with implications across time as well as across space.

ICJ Cred Good– HR

A strong ICJ leads to enforcement and mainstreaming of human rights norms

Simma 12 – Professor of Law @ U Michigan

(Bruno, "Human Rights Before the International Court of Justice: Community Interest Coming to Life, In Coexistence, Cooperation, and Solidarity, edited by H. Hestermeyer et al. (Zeist, The Netherlands: Martinus Nijhoff, 2012), I: 577-603)

In my view, the most valuable contribution the ICJ can make to the international protection of human rights–a role for which it is par- ticularly well equipped and has almost no competition–consists of what could be called the juridical "mainstreaming" of human rights, in the sense of integrating this branch of the law into the fabric of both general international law and its various other branches.65 By way of exemplifying what the Court can do, and is already doing, to fulfill that task, it can render human rights arguments more readily acceptable to international law generalists by interpreting and applying substantive provisions of human rights treaties in a state-of-the-art way, compared, for instance, to the reading given to such provisions by certain general Comments issued by un human rights treaty bodies, all too often marked by a dearth of proper legal analysis compensated for by an overdose of wishful thinking. Further, the Court is **singularly capable** of devising solutions for practical, more technical, legal problems which arise at the interface between human rights and more traditional international law, thus **paving the way** for the acceptance of human rights arguments and, more generally, supporting and developing the framework of human rights protection.

2NC Ilaw Cred Solves Extinction

Credible commitment to international law necessary to stop extinction

Ferencz, JD Harvard Law and Chief Prosecutor for the US at Nuremburg – 11/08/**2**

(Coming International Order; http://www.benferencz.org/coming.htm)

The most fundamental of all human rights is the right of all human beings to live in peace and dignity without the constant fear and threat of imminent extinction. Yet, as we approach the twenty-first century, the world continues to face acts of aggression, genocide, apartheid, terrorism and other crimes against humanity. It is a bleak historical record but in the race between civilization and disaster, the eager and discerning eye may still find room for hope. The history of humankind has been a chronicle of bloodshed and violence among peoples with competing needs, ideologies and aspirations. The contemporary scene merely confirms the historical pattern. The recent invasion of Afghanistan by Soviet military forces was condemned by many states as an act of aggression – the gravest of all international crimes. A Security Council resolution calling for withdrawal of foreign troops was blocked by a Soviet veto. The admonition of a hundred nations was rejected by the USSR. In Iran, fifty American citizens have been held hostage despite months of effort by the international community. A non-enforceable order by the International Court at the Hague, calling for the immediate release of the captives, has been ignored. An investigative commission appointed by the United Nations was not even allowed to see the prisoners. n Bogota, the ambassadors from many States were held hostage by other militant groups. The Archbishop of San Salvador was the victim of political murder while saying Mass. Judges and other officials are gunned down regularly in Italy and Spain. Terrorists find easy asylum in friendly foreign States. In under-developed lands and areas of conflict millions of innocent people face starvation while limited planetary resources are squandered on armaments that cannot ensure the peace. Surely something is dangerously awry in the international legal order. In the face of the calamitous historical record one might be tempted to conclude that the ingrained practices of the past are inexorable and unalterable. But I am not ready to believe that **humankind** is destined to **self-destruction**. People can and must learn to settle their differences legally rather than lethally. The many people who inhabit the earth are in varying stages of economic, social and political development. The infinite variety of their problems and needs must inevitably give rise to international ferment and conflict. It is **vital for humankind** that such conflicts be settled peacefully. The creation of an effective peace keeping machinery is thus of consummate importance. Global ethics must supplant national ethics. If society could agree upon a code of establishing minimum standards of international behavior and upon a court whose judgments would be enforced, it would be as significant to maintaining international peace as legal codification, adjudication and enforcement are to protecting the tranquility of every independent national State. But there can be no peace without justice, no justice without law, and no meaningful law without a court to decide what is just and lawful under any given circumstance. There is no State in the world that does not have a system of domestic criminal law to help maintain the tranquility of its nationalsociety. Those who violate the established code of conduct are subject to sanctions in the name of the community whose peace has been disturbed. In contemporary international society no such system exists. Sovereign States are bound only by such restraints as they may willingly accept. They can and do arrogate to themselves the authority to act in any way they see fit to protect their own national interests. The General Assembly of the United Nations is a political and consultative body with no enforcement powers. The International Court of Justice can sit in judgment only on such disputes as States may voluntarily submit to it. There is no international court with jurisdiction to deal with international crimes or international criminals. In a world torn by upheaval and ferment there is clearly need for a new system to help maintain international law and order. New norms of international behavior are being born. There is a growing recognition that all human beings, regardless of race, color, creed, or location, should be entitled to certain fundamental and minimum standards of life. Thus, the destruction, waste or withholding of resources needed to sustain human existence may, one day, be prohibited as a criminal act. So too, endangering the environment, or violating disarmament agreements, or refusing to settle disputes by arbitration, adjudication or other peaceful means, should also be outlawed as crimes for which states and individuals may be held to account. Consideration of new norms has already begun, and in time, there will have to be plans for the establishment of new mechanisms for interpreting and enforcing the new international legal standards. Acts that cause death and suffering on an international scale must be prohibited as international crimes against world order. Progress has already been made toward the establishment of a more effective juridical system. However, much work remains to be done. New institutions capable of resolving obdurate problems should not be expected to spring to life full-grown. The effort to define international crimes is less than a century old – hardly a blink in the eye of time. The fact that great difficulties still lie ahead is no reason for inaction. Quite the contrary – the sooner the problems are faced the sooner they will be resolved. It is my thesis that it is possible to replace the law of force by the force of law. The Evolution of International Criminal Law **Since humans first took to the sea in ships certain acts have been condemned as international crimes against humankind. The pirate was subject to punishment whenever he was apprehended. Those engaged in the slave trade often faced a similar fate. The supremacy of the principle of law was imbedded in the very conception of the United States, and the young nation would soon inspire new concepts in the old world. When the thirteen colonies declared their independence in 1776, they agreed to be bound in a Federation with a single Supreme Court that would adjudicate disputes between the States** The Hague conferences of 1899 and 1907 looked to compulsory jurisdiction of arbitration tribunals to replace the armaments race among opposing Powers, but their efforts failed, and the principle remaining alternative was to continue to settle their differences by armed combat. The need for an international tribunal was recognized, but sovereign States, steeped in the tradition of war, were not ready to entrust their vital interests to the decision of any impartial third body. The price for their folly was paid by inordinate suffering and by the lives of ten million soldiers and ten million civilians killed in the first World War. The end of the "war to make the world safe for democracy" brought forth a renewed public outcry for an improved world order. Victors and victims demanded that those who had caused the war and violated humanitarian codes of warfare should be tried as criminals. A Permanent Court of Justice was planned to settle future disputes among States. The hopes for a better world were to rest on the twin pillars of a League of Nations and the rule of law. In fact, the planned trial of the Kaiser for having initiated wars of aggression was never carried out – despite the clear obligations of Articles 228, 229 and 230 of the Versailles Treaty. War crimes trials, held in 1921 in the Criminal Chamber of the Reich Court at Leipzig, charging German commanders with atrocities, turned out to be a farce. In the US Senate an isolationist minority prevented the United States from becoming a member of the League. The new International Court that was finally created lacked the compulsory jurisdiction to settle the disputes that might lead to war. The edifice for a new world order was built on pillars made of sand. US Secretary of State Elihu Root, and many other distinguished experts recommended, in 1920, that a High Court of International Justice be created "to try crimes against international public order and the universal law of nations." The proposal was brushed aside by diplomats trained to focus primarily on the immediate interests of their own country. The Kellogg-Briand Pact of 1928 was ratified by almost all nations. It purported to outlaw war as a means of settling disputes, but it left each State free to decide for itself when it could legally resort to self-defense of its own vital interests. Despite the world-wide economic depression of the late 1920's, there was little recognition that new international perceptions were required. The 1934 assassination of King Alexander of Yugoslavia by Croatian nationalists brought forth a world-wide demand that terrorism be punishable by an international court. When the self-styled "civilized States" assembled for that purpose, the desire for unanimity meant that the most conservative views would ultimately prevail. It was easier to adhere to the past than to embark on new experiments. By 1937 passions had cooled, and India was the only State to ratify the Convention for the Suppression of Terrorism. Hitler's defiance of treaty obligations, Italy's aggression against Ethiopia, Germany's invasion of its neighbors and the Soviet invasion of Finland brought little more than verbal denunciation by States too frightened to organize in any effective way to preserve the peace. The inability to act collectively in imposing economic or military sanctions led to the disintegration of the League that had been created to maintain the peace. Nations should have learned from the first world war that military alliances could not prevent combat and that without an enforcement mechanism, rules of warfare could not prevent atrocities. Refusal to suppress terrorism could only encourage terrorism and willingness to block aggression could only stimulate further aggression. Having failed to learn the lessons of the past, nations would soon begin to list world wars by Roman numerals. World War II brought fifty-seven "independent States" into armed conflict. The enormity of the losses and the misery endured between 1939 and 1945 by countless millions can never be calculated. At least fifteen million combatants were killed. "Total War" became a new concept in which all humanitarian considerations were subordinated to the drive for victory. Nations that sought power and glory ended in ruins. Six million Jews were either worked to death or sent helplessly to gas chambers for extermination and cremation, in factories erected for the sole purpose of consuming human beings. Nazi opponents of all nationalities and religions were tortured and imprisoned. Three million Soviet prisoners died in captivity. By the time the war was over, man had learned to immolate whole cities with atomic bombs that could destroy all living things and damage the genes of future generations. Once more victorious nations assembled to plan for a new international organization of States. Once more there were demands that those responsible for aggression and atrocities be placed before an international criminal court. Under American stimulus the four Allied powers agreed to create an International Military Tribunal for the trial of Axis war criminals. It was never intended that the Nuremberg court should serve merely as a mask of justice to hide the face of vengeance. Nor was it conceived as a legal instrument to enshrine the *status quo* in a changing world. The Nuremberg Charter, drawing upon historical precedents, was to mark a step forward in the codification and development of international law. Legal precepts that had slowly been evolving were to be reconfirmed, and a new era of humanity was to be encouraged. The Nuremberg judgments made it clear that the massive abuse by a State of its own citizens was the legitimate concern of all humankind. The concept of "crimes against humanity" became a living legal reality because sovereign States had become perpetrators of outrageous assaults against human beings, including their own nationals. Those who were persecuted because of their ethnic origin, religion or political persuasion were promised the protection of the community of States by punishment of the offenders, regardless of their rank or station. The Nuremberg trials were also to confirm that launching a war of aggression was punishable by the international community, that superior orders would be no excuse for murder and cruelty, and that even the Head of State would be answerable to all of humankind for major acts of inhumanity that offended the human conscience. The war crimes trial at Tokyo followed the Nuremberg precedent. The Nuremberg principles were affirmed by the General Assembly of the new United Nations in resolution 95 (1) of 11 Dec. 1946, and people were encouraged to believe that a universal rule of law was on the horizon. The UN Charter called for an International Court of Justice but, unfortunately, States were still unwilling to invest it with the necessary binding authority to resolve disputes that might lead nations to war. Further, no criminal jurisdiction against individuals was provided for. Jurists were beginning to recognize that certain acts of international immorality should be treated as international crimes, but it was only a beginning. American Ambassador Bernard Baruch proposed that any violation of an agreement to control atomic energy be punished as an international crime. The world is still paying for its failure to accept that sage advice. The General assembly, in Resolution 260 (III) of 9 Dec. 1948, confirmed that genocide was a crime under international law, but nations were unwilling to create any international court to deal with the offense. Traditions that had endured for thousands of years

could not be erased quickly, and it would take time to gain acceptance for new values and concepts, before new institutions for the maintenance of world peace could win widespread acceptance. New Lights on the Horizon At the end of 1948, a renewed determination to protect those who were oppressed inspired the UN Universal declaration of Human rights. The European convention on Human Rights, signed in 1950, contained the dramatic innovation of a European Court of Human Rights where individuals could hold even their own governments to account before an international tribunal. It demonstrated that sovereign States could voluntarily agree to surrender a portion of their sovereignty in order that certain fundamental rights might be protected in a court of law. It would serve as a model for the creation of a similar court in South America in 1979. An International Law Commission of independent experts was appointed by the General assembly to draw upon a statute listing acts that should be treated as offenses against the peace and security of humankind. In their 1950 report (General Assembly Off. Records; Fifth Sess. Supp. 12A/1316), they recognized that a code would have to go hand in hand with a court capable of enforcing it. But the outbreak of hostilities in Korea brought the super-powers into confrontation, and plans and hopes for the development of an international law of peace were pout into the deep-freeze for the duration of the cold war. A distinguished lawyer and diplomat, Ricardo Alfara of Panama, expressed the views of many legal experts when he said: "If the rule of law is to govern the community of States and protect it against violations of the international public order, it can only be satisfactorily established by the promulgation of an international penal code and by the permanent functioning of an international criminal jurisdiction." The vast majority of the International Law Commission agreed that an international judicial organ was both possible and desirable, but many powerful States, including the Soviet Union, the United Kingdom and the United States, were still not prepared to surrender any part of their sovereignty to any impartial agency. While the idea of an international peace code and an international criminal court remained on ice, the UN began to recognize new international crimes. The General Assembly condemned racial discrimination, apartheid, and violations of "economic and political rights of the indigenous population" in South Africa, as "crimes against humanity." Other violations of human rights were also beginning to be characterized as criminal acts. When aerial piracy threatened the safety of civil aviation it was denounced as an international crime. Although enforcement machinery was still lacking, acts of politically-motivated terrorism again evoked demands for a punitive international response. The Vietnam War and the atrocities it evoked brought calls for retribution and challenged whether any nation was competent to judge the legality of its own acts. It was only when that war was winding down that the warming breezes of détente began to thaw the ideas for an international court that had been frozen for nearly two decades. Formulation of a code of offenses against peace had been stymied by the absence of any agreed definition of what acts would constitute the crime of aggression. Until the code was ready no court was required, and thus there was a convenient excuse for international inaction. In 1973, a definition of aggression was finally adopted by consensus of the General assembly. Some States insisted that the definition could not restrain the use of force by those seeking self-determination. Although it contained such loopholes, the presence of such a definition eliminated the stated obstacle to further work on an international criminal code and an international criminal court. On the 25th anniversary of the UN, the Secretary-General, decrying acts of aerial hijacking, called for "an international tribunal defending the interests of all peoples and nations." Those who sought to justify the use of force pointed to the misery and frustration that gave rise to acts of violence. In their view, every conceivable means was legitimate to overthrow what they perceived to be a form of terrorism by the oppressive State. The absence of any clear agreement by the international community setting forth what acts would not be permissible, regardless of the nobility of the goal, and the failure to create any independent agency to determine whether there had been a violation of the agreed standard of conduct, could only lead to additional acts of violence. The victims would describe the deeds as criminal terrorism, and the perpetrators would hail their own actions as justified by the struggle for freedom, self-determination, national liberation or some other apparently laudable objective. One person's terrorism was another person's heroism, and without a code and a court, there was no way of determining which was which. Many statesmen were beginning to recognize that if there was to be a peaceful international community the conduct of all groups, be theycountries, militants or corporations, would have to conform to moral standards that were acceptable to the commonwealth of humankind. A

group of twenty "eminent persons" began to prepare a code of conduct for multi-national corporations, and its work formed a basis for a UN Commission on Transnational Corporations that, according to ECOSOC Res. 1913 (LVII) of 5 December, 1974, was to meet annually and report to the Economic and Social Council of the UN. These, activities, admittedly still fraught with controversy, evidenced the beginning of a new sense of corporate morality that was to be imposed via a code of conduct established by the international community. In 1973, in Resolution 3068 (XXVIII), ninety-one States declared apartheid to be an international crime "irrespective of the motive involved." Thus, for certain offenses the loopholes were to be closed, but not for all international crimes. A Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents, Resolution 3166 (XXVIII), was adopted by consensus at the end of 1973. The draft that had been prepared by the International Law Commission stipulated that offenders were to be extradited or tried by the arresting State "without exception whatsoever." Furthermore, the outcome of such trials was to be reported to the Secretary-General for public dissemination. Most states would have accepted the ILC draft, but at the last moment a new clause was added, exempting from its restrictions, "peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and apartheid in the exercise of their legitimate rights to self-determination and independence." In order to reach consensus, the exculpatory provisions wereadopted. Some groups were unwilling to see that if the means employed to attain a just goal failed to respect human life, all of humankind would live in jeopardy. Diplomats, having agreed to undercut the Convention to Protect Diplomats, should not have been surprised to find themselves among the victims. The Conventions that gave the appearance of controlling international lawlessness, such as the Friendly Relations Declaration, (Res. 2625 (XXV), 24 October, 1970), the Hijacking Conventions of Tokyo in 1963 and Montreal in 1971, the Convention to Protect Diplomats of 1973 and the 1974 definition of aggression, all contained opaque clauses that allowed nations to interpret the consensus agreements in ways that would best suit their own particular goals. The Convention Against the Taking of Hostages, (Res. 34/146), that was adopted by consensus in December 1979 contained a general condemnation of the crime but left the same old loopholes, exempting those who seek self-determination by every available means. A Convention to Prevent International Terrorism, (Res. 34/145), is still in the drafting stage while nations and groups argue about their different perceptions of permissible and impermissible international behavior. It might have been anticipated that although terrorism would be condemned in principle, the failure to agree in substance and the unwillingness to create any enforcement mechanism would mean that the crime would not be deterred. The humanitarian right of asylum from *persecution* was being distorted to grant asylum from *prosecution* to those who had disregarded all humanitarian considerations. Failure to act effectively against terrorism produces more terrorism. Inability to stop aggression stimulates new aggression. As long as sovereign States are not prepared to take the steps logically required to produce an international anarchy can be expected to continue. Yet there are many positive signs that the old order is changing. The lights of progress flicker and grow dim from time to time, but as one studies the historical evolution of ideas, there can be little doubt that the general trend illuminates a brighter future. The very fact that the subjects are being debated is itself an encouraging sign. It proves that unbridled sovereignty is being replaced by a determination to find solutions to problems that are now recognized to be the legitimate concern of the entire family of nations. A Brighter Future In only the past quarter of a century the world has witnessed the dissolution of a colonial system that carried within it the seeds of its own destruction. This major upheaval of international society brought many new States into being, eliminated the automatic majorities formerly commended by the western world and fragmented the structure of the United Nations. Within the newly developing nations, rival religious, ethnic, political or religious factions fought to obtain power or control. They demanded a more equitable share of the bounty enjoyed by the developed world. Their political allegiances became the target of competing social systems – one stressing the civil and political rights of individual freedom, and the other focusing on economic stability and the security of the State. Both superpowers, the Soviet Union and the United States, sought a world order based on their own models. It is not surprising that in the search for accommodation, there have been pitfalls and setbacks. International society is still an undeveloped community, and it is moving slowly along its difficult and winding road. Nevertheless in the struggle between socialism and capitalism we must now allow humanitarianism to become the victim. As we scan the horizon, in the fields of economics, human rights and law, significant progress is clearly visible. The worst excesses of laissez-faire economics have gradually been reduced. Many States now tax a portion of private and corporate wealth according to ability to pay for the common welfare. The dispute is not whether there should be State controls but the extent of those controls. A multitude of international agencies have been created to cope with the economic needs of the underdeveloped regions. The efforts to deal with the world's monetary system, development loans, transfer of technology, the conduct of multi-national corporations, the elimination of trade barriers, and the creation of norms of economic behavior, all reflect the growing movement toward cooperation among States. International economic problems are far from being resolved, but they are increasingly being dealt with on a world-wide basis. The distribution of natural and national resources is no longer a matter of purely domestic concern. It is increasingly being recognized that no nation can be an economic entity unto itself and that it must act in concert with other countries if it is to enhance the interests of its own people. Nations are beginning to think about a Charter of Economic Rights and Duties and a New International Economic Order. Reform of the UN system and charter in order to improve the functioning of international society is already

under consideration. The special committee on the charter of the United Nations and on strengthening the role of the Organization has had a series of meetings since being established in 1975, and has made a number of proposals for strengthening the UN system. The rising cost of armaments, estimated at over a billion dollars a day, is directly related to the economic problems of the world. Admittedly, the cost of defense is consuming the very resources needed to diminish the privation that gives rise to the threats that jeopardize the social order. Yet agreements have been reached in areas that could

never have been imagined even a few years ago. United Nations Peace-Keeping Forces have played an important peace-keeping role in Egypt, Lebanon and other parts of the world as reported by the Secretary-general in his report of Sept. 11, 1979 (A/34/1). Treaties have banned the testing of nuclear weapons in outer-space and on the ocean floor. Non-proliferation treaties are in force. A new treaty seeks to govern the activities of States on the moon and other celestial bodies. Despite the current difficulties with Salt II, the efforts to limit strategic arms have made some progress even thought they are far from adequate. It will take time but people are slowly coming to realize that unless we destroy all weapons of mass destruction the weapons will destroy us all. Growing awareness of the link between economic and human rights can be seen in other dramatic developments of recent years. It was only in 1967 that Arvid Pardo of Malta gave expression to the inspiring dream that the resources of the ocean should be used as "the common heritage of humankind" so that its immense wealth could benefit those most in need. It now appears that there is growing support for a Common Heritage Fund, for a Sea-Bed Authority and for an advanced dispute-settlement system through judicial-type procedures. It is expected that a Law of the Sea Treaty will be adopted by most of the nations in the world in the not-

too distant future. If such substantial progress can be recorded regarding governance of four-fifths of the surface of the planet can the remaining one-fifth be far behind? States are learning that the voluntary surrender of part of their sovereignty is not only in their own interest but is also an essential prerequisite for a **peaceful life in the 21st century.** New values of caring and sharing will have to be learned as part of the process of adapting national needs to international needs. Today, too often, slogans replace reason and politics displace principle. Too often innocent persons are subjected to cruelties and deprivation because they do not share the color, religion or political conviction of those in power. Universal tolerance and compassion must be learned, and is being learned through such new institutions as the courts of human rights, the European Parliament, the Helsinki accords, and all of the agencies of the United Nations that deal problems of world health,

conditions of labor, refugees, children, the rights of women, and the myriad other problems that affect the lives of every human being. None of these new programs is complete. People are still persecuted and millions still cry for their fair share of humanity. But the significant change in recent years is the widespread recognition that evil and intolerable conditions should be charged. Moral obligations widely acclaimed have a way of eventually attracting sufficient public support to make flouting them a perilous adventure for any government. The Road Ahead Legal agreements and law provide the framework in which international society balances its inconsistent and conflicting interests. In an interdependent world there are limits to the extent that any group can determine its own destiny**. A legal system that allows the parties to interpret the law as they see fit is unworthy of respect because it is no system at all.** Until all people are secure in their rights no people will be secure.

The Nuremberg Tribunals held forth the promise that all people would, in future, be accountable to the law, and that aggression and crimes against humanity would not go unpunished. Many acts were condemned as international crimes but no permanent international court was ever created to punish the guilty. Efforts to extend the compulsory jurisdiction of the International Court at the Hague have been intensified but that court has no authority over individuals or their crimes. The creation of an international criminal court was debated in meticulous detail at the United Nations over twenty years ago, but the "time was not yet ripe." It's getting riper every day. The United Nations has on its agenda for the end of 1980 the long-delayed *Code of Offenses against the Peace and Security of Mankind.* The fundamental rights and duties of States

will have to be reconsidered. The parties will have to think about providing compulsory and binding authority to an international criminal court as well as more effective procedures for international law enforcement. National security of States depends not on **weapons that are suicidal** but upon the peaceful, just and binding settlement of conflicts. It is not a matter of idealism but of self-interest and **survival**. As nations resume the debate about a code for peace and a court to enforce it they will, hopefully, begin to understand each other better. Even if, as is to be expected in these formative years, the resolutions seeking to define international crimes against world order are faulty or ignored, the process of debate and drafting will be a learning experience. Learning is the

beginning of wisdom, and wisdom, not force, is the road to enduring peace. Conclusion No one can say with certainty whether **civilization will win its race with disaster.** Without law and order in international affairs there will be chaos. Despair is not a viable alternative to hope, and, at the risk of being branded

an optimist, I have noted the movement, however hesitant, toward universal human standards that are slowly beginning to supplant the selfish sovereignty that has governed this planet for centuries. The next two decades will see changes that are today unforeseeable. New mechanisms will be created to cope with international crimes that now disrupt international society and its inhabitants. It may be anticipated that the technology that brought men to the moon and created the awesome capability of thermonuclear annihilation will, some day, be applied to the cause of peace. Those who cherish life on earth must encourage governments and decision-makers to act in accordance with humanitarian rather than political considerations. Those who yearn for the welfare of all human beings must combine their efforts in a vast multinational network of like-minded individuals and organizations to replace the existing values of violence and greed with new rules for a more just and tranquil world community, where law and order is the practice rather than only a distant dream.

Credible international law solves all their war scenarios

Courier-Journal 1/3/**3**

Nuclear war is now thinkable. India and Pakistan, both nuclear powers, dispute control of Kashmir, while North Korea, an emerging nuclear power, threatens South Korea and Japan. The United States threatens nuclear war against Iraq, should Iraq attempt to defend itself with its own weapons of mass destruction. All three of these confrontations are potential wars that have been actual wars in the recent past. The difference now is the growing presence of nuclear weapons, and stated intentions to use them. Nuclear war in the present generation is highly likely, but not inevitable. Peace also is thinkable. There are two things that everyone can do to make war less likely. The first is to think globally. **We need a permanent system of enforced international law to resolve conflicts between nations**. This may conflict with the supposed sanctity of national sovereignty, but **it is the only way to prevent nuclear warfare** in the 21st Century. We need to create and support global institutions to resolve global problems.

2NC ICJ Solves Ilaw Cred

Credible icj necessary for the smooth functioning of international law

Vachon, JD-Denver, **98**

(26 Denv. J. Int'l L. & Pol'y 691, Summer)

New security concerns emanate from global threats to human security such as devastation of the environment. n42 Acting alone, individual nation-states can no longer expect to overcome current national and international problems. n43 This process, described as a crisis for nation-states, challenges a state's sovereignty and requires a change from the old way. n44 Globalization requires greater cooperation among nation-states. n45 The World Bank's recent reaffirmation of its commitment to improving the global environment provides evidence of continuing globalization. Pursuant to its articles of incorporation, the World Bank should not take human rights concerns into account when lending money. However, the World Bank indicated that improvements in the global environment directly affect a country's development. n46 Similarly, the recent international effort to save the troubled Asian economies demonstrates the necessity of global aid to secure a country from crisis. As the Asian economies went into a "free fall," the international financial community cringed in fear. n47 The Asian economies ability to pull themselves back together requires international financial assistance. n48 Going forward it is anticipated that the international community, especially foreign banks, will continue to play an impressive role in the Asian economies. n49

Globalization increases the need for international institutions to [*697] implement limitations and regulations. n50 These institutions assist in a smooth transition from a collection of sovereign states to a global community by establishing universal rules. n51 Judicial institutions, such as the **ICJ are key to the development of an international rule of law**. n52 The judicial institutions must be able to reliably resolve disputes using the international rule of law. n53 Through resolution of disputes, judicial institutions will also develop new aspects of the rule of law. n54

2NC US Key

US leadership is the only way to revive international law

Spiro, Law-Hofstra, 2K

(Foreign Affairs, Nov/Dec)

For now, however, the New Sovereigntist grip over Washington imposes significant costs by retarding the advance of international law. **The United States** may be increasingly vulnerable to international pressure, but it **is still the biggest kid on the block. Persistent** American **rejection will hurt the progress of even well-established international regimes by giving cover to other nonparticipants, and incipient norms will lose the boost that** would otherwise come **with American acceptance.** And **U.S. noncompliance** with international **accords saps its authority to press other nations to respect the rule of international law.** Above all, the United States compromises its own interests by formally refusing to adopt widely accepted international regimes. Treaty committees and other international institutions usually extend participation rights only to member states**. America** thereby **forfeits any right to help shape those regimes that it rejects. It has no voice in shaping international norms at a critical stage of their development,** even as its ability to resist their imposition diminishes. It plays the part of the complaining, unregistered voter on the international stage, refusing to participate in processes that nevertheless bind him. Sure to lose in the long run, New Sovereigntism also hurts America in the here and now.

Us support for icj jurisdiction necessary to restore credibility to the court

Charnovitz, Law—GWU, **8**

(102 A.J.I.L. 551, July)

In conclusion, the continuing U.S. delinquency in the Avena matter could have been avoided if the Supreme Court had given more respectful consideration to the Supremacy Clause. The world community is now watching to see whether Congress will act to implement the ICJ judgment. If it fails to act, that inaction would confirm the Court's skepticism about the political acceptability of giving ICJ judgments direct effect in U.S. law. This essayist hopes that Congress is up to the task of implementing the UN Charter. As Edward S. Corwin noted nearly a century ago, "[T]he United States cannot afford to multiply the occasions of its accountability before the world's tribunal by the crassest sort of negligence to provide the proper legal machinery for carrying its treaty obligations into effect." n78

2NC A2- CP Causes backlash that undermines international law

Risk of international backlash against the decision is small---erosion of international law now

Burroughs, Executive Director-Lawyers' Committee on Nuclear Policy, **7**

http://lcnp.org/wcourt/memoreturnICJhead.pdf

A third concern is that the Court could issue an opinion that would subsequently be ignored, to the detriment of the Court's institutional standing and international law generally. Some would say undermining of the Court's stature has been an outcome of the 1996 opinion on nuclear weapons as well as the 2004 opinion on the Israeli wall built in Palestinian territory. However, the Court issues judgments and opinions on many matters. In most, there is clear-cut compliance. That the Court occasionally grapples with difficult, politically charged, and prominent issues adds to its visibility and does not limit its utility in other settings. Regarding the erosion of international law, **that is already taking place; the question is how to reverse it**. Generally, in IALANA's opinion, in view of the serious challenges facing the world in multiple sectors, we must act as if international law and institutions will be central to meeting those challenges, because that is what is needed. Further, in the words of U.S. Chief Justice Marshall in the landmark 1803 opinion, Marbury v. Madison,9 words which have shaped the evolution of constitutional law in the United States: "It is emphatically the province and duty of the judicial department to say what the law is." Conclusion Return to the International Court of Justice on questions of compliance with the nuclear disarmament obligation is a feasible project within the control of non-nuclear weapon states. It most probably would make a significant contribution to advancing the disarmament process. **The risks of undermining existing law on disarmament and nuclear weapons are negligible.** IALANA urges non-nuclear weapon states to start preparing now for a UNGA resolution to be adopted in the 2008 session.

***Multilateral Institutionalism NB

***1NC Shell

Counterplan exchanges unilateral surveillance for multilateral approaches- makes future international relations sustainable

Harvard Journal on Legislation, "Protecting National Sovereignty in an Era of International Meddling: An Increasingly Difficult Task" Representative Bob Barr, **2002**. 39 Harv. J. on Legis. 299. Lexis.

> The U.N. Charter proscribes "non-pacific" conduct unless necessary to counter threats to peace, breaches of peace, acts of aggression, or to act in self-defense. [28] By potentially giving the ICJ the compulsory jurisdiction to adjudicate "all legal disputes concerning treaties," the United States has effectively tied its hands to resolve such disputes in a manner deemed to be in accord with the ICJ-- and within the general proscriptions of the Charter to forego the use of force in such disputes. The Senate never should have agreed to such a provision, as it presents a potential conflict with the United States Constitution, 29 which grants Congress alone the power to declare war 30 and gives the President the sole power as Commander-in-Chief to wage war on behalf of our sovereign nation. 31 The Constitution does not grant the federal governm, ent the power to cede such authority. So long as the United States had the power, the understanding, and the will to restrict the U.N. provisions to the supremacy of our Constitution, such a problem may have been tolerable. Now, however, the understanding and will are largely absent from national debates, and a serious problem presents itself.
>
> The most dramatic and recurrent example of the United Nations exerting powers reserved by the United States Constitution is the de facto transfer of war powers from our government to the mechanism of the [*305] U.N. [32] Constitutional grant to Congress to declare war and to the President to wage that war [33] is thwarted when international organizations attempt to interject their views on when and where such combat is legitimate. For example, the U.N. Charter mandates that, "all Members . . . undertake to make available to the Security Council, *on its call* . . . armed forces, assistance, and facilities . . . ." [34] This provision of the charter usurps congressional power to declare war by allowing the Security Council to have direct influence and/or control over America's fighting forces and resources. [35] By allowing the U.N. to interpret when United States troops are to be made available on its own beckoning, the *unilateral* and *sovereign* power of the United States becomes diluted and weakened. It is into these muddy waters that the United States has been repeatedly pulled or led in the last years of the twentieth century, and into the beginning years of the twenty-first, with little or no long-term forethought to the consequences or bases for such action by the United States.

US leadership is unsustainable without a highly visible commitment to multilateralism- answers all your DA's

Lake, 10– Professor of Social Sciences, distinguished professor of political science at UC San Diego (David A., "Making America Safe for the World: Multilateralism and the Rehabilitation of US authority", http://dss.ucsd.edu/~dlake/documents/LakeMakingAmericaSafe.pdf

The safeguarding of US authority requires multilateralism that is broader and certainly deeper than in the 1990s—more like NATO than the ad hoc coalitions of the new world order. Indeed, absent the constraints exerted by competition with the Soviet Union, the institutional fetters through which the United States must bind its own hands will have to be even stronger than those in NATO. 47 The great

paradox of contemporary international politics is that the unprecedented international power of the United States requires even more binding constraints on its policy is fit to preserve the authority that it has built over the last half-century and extend it to new areas of the globe.

The advanced military capabilities of the United States will make it a key actor in any such multilateral institution and will allow it to set the collective agenda. Since it is highly unlikely that anything will happen in the absence of US involvement, as in Bosnia where the Europeans dithered until the United States stepped to the fore, 48 Americans need not be overly concerned about "runaway" organizations or global mission creep. At the same time, if any organization is to be an effective restraint on the United States, other countries will have to make serious and integral contributions to the collective effort. Both sides to this new multilateral bargain will need to recognize and appreciate the benefits of a stable international order to their own security and prosperity and contribute to its success - 480 Making America Safe for the World. The United States will need to continue to play a disproportionate role in providing international order, even as it accepts new restraints on its freedom of action. Other countries, however, must also contribute to the provision of this political order so that they can provide a meaningful check on US authority.

Americans are likely to resist the idea of tying their hands more tightly in a new multilateral compact. After six decades, US leadership and its fruits— security, free trade, economic prosperity—have developed a taken-for-granted quality. It is hard for average Americans to tally the myriad benefits they receive from the country's position of authority, but it is relatively easy for them to see multilateral institutions constraining the country's freedom of action. Precisely because unipolarity makes coercion and unilateralism possible, and for some attractive, any constraints on US foreign policy may appear too high a price to bear. 49

But if the United States is to remain the leader of the free world and possibly beyond, it must make its authority safe for others. To sustain US authority over the long term, it must be embedded in new, more constraining multilateral institutions. Americans trust their government only because of its internal checks and balances. Although there may be disagreements on exactly where the appropriate scope of government authority ends, nearly all Americans agree that limited government is the best form of government. This same principle extends abroad. If the United States is to exercise authority over other states, and enjoy its fruits, that authority must be **checked and balanced** as well. The height of hubris is not that the United States might govern the world, at least in part. This is a fact of international politics. Rather, hubris arises in the belief that the virtue of its people and leaders will restrain the United States sufficiently such that other peoples will voluntarily cede a measure of their sovereignty to it. 50 Politicians and peoples may occasionally be saintly, but it would be folly to rely on this quality at home or abroad. Recognizing the universal need to restrain authority, the United States should, in its own self-interest, lead the way to a new world order.

Reliance on unilateralism will collapse US leadership and cause global wars with weapons of mass destruction

Montalván, 10 - a 17-year veteran of the U.S. Army including multiple combat tours in Iraq, master's of science from Columbia University's Graduate School of Journalism (Luis, "Multilateralism is Essential

for Peace in the 21st Century" Huffington Post, 4/23, http://www.huffingtonpost.com/luis-carlos-montalvan/multilateralism-is-essent_b_550332.html)

Unilateralism is the wrong approach for American Diplomacy. There is nothing to suggest its efficacy since 9/11. There is nothing to suggest its usefulness for future conflict. In allowing the US to go it alone, America's partners and allies risk the havoc and catastrophic consequences that will accompany "Imperial Overstretch." The residue of overstretch will include loss of US leadership in the world, an economy whose decline affects billions of dollars in international markets, and certainly emboldens rogue states. The whole world will pay the price if we let unilateralism pervade this century.

As the bloodiest 100 years in recorded history, the 20th Century is replete with examples of how policy and practice intersect to foment war. The proliferation of nuclear, biological and chemical weapons and the constantly mutating dynamic of terrorism inform our current, dangerous reality.

Amidst this backdrop of destruction, there are lessons for those who are looking for them. Seeds of peacemaking and conflict resolution were planted which we must germinate in order to halt and then reverse the trend toward violence and chaos. Perhaps the 21st Century could be the first 100 years in which nations invest more in building peace than in making war.

In the 20th Century, local conflicts ignited global tensions and genocide on an unprecedented scale, costing incalculable life and treasure. The two world wars and other explosive conflicts erupted over such issues as ethnic disputes, the securing of natural resources, corporate interests, ideology and religion. The international business of war produced economies of scale prompted by the industrial, technological, and communications revolutions.

The assassination of Archduke Franz Ferdinand of Austria and his wife in Sarajevo by anarchist Gavrilo Princip was the spark that ignited WWI. In time, some 15 million people would be killed. The sheer brutality of that war led Woodrow Wilson to issue his "Fourteen Points" in 1918, which included the establishment of a League of Nations "for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike." Just like our present-day difficulties in pursuing compromise, the US Congress politicized the concept, bucked the President, and did not support that initiative. The subsequent failure of the League of Nations to prevent WWII may have galvanized our culture's distrust of multilateralism.

Throughout the 20th Century and until today, nations and other entities have invested precious financial, intellectual, social, institutional and political capital into arming themselves with weaponry, instead of building their capacity for peace. Technologies change and improve with increasing rapidity, but those advances have included improvements in how to kill more people more efficiently and with smaller devices.

WWII was the shining example of multilateralism and its power. Vietnam and Korea were examples of its limitations. South Africa and India demonstrated that the support of the international community could enable countries to pull themselves up by their own bootstraps. All these contribute and form the basis of the state of nations today.

The 20th Century left us at a crossroads: will we perpetuate the machinery and culture of war or surpass our greatest dreams by encouraging and enforcing peace policies and practices worldwide?

The 21st Century began ominously with the attacks of September 11, 2001, which ushered in a new era of US foreign policy and global response to war, conflict and terrorism. Rather than engage a sympathetic world in developing multilateral and inclusive strategies similar to the precursors to the 2003 Iraq War and as was done before the Persian Gulf War, the US squandered its global capital to pursue "pre-emptive" unilateral military action. The equal and increasingly matching reaction is a global culture of **military aggression and war**.

The resulting disintegration of the international community contributed to the most serious economic disaster since the Great Depression. Already struggling to survive amidst broken economies, the proliferation of nuclear, biological and chemical weapons and global terrorism strains multilateralism when it should embolden it. If it is true that every weapon invented is eventually used, we have much to fear if we do not reverse this lethal trend.

Since national conflicts frequently spill over into regional and world-wide conflict, multilateral organizations have been very strong supporters of Truth and Reconciliation Commissions. Even the US found a way to first investigate and then come to terms with its terrible policy of putting Japanese-Americans in internment camps during WWII and apologized and paid reparations to survivors and their children. There were important Truth and Reconciliation Commissions in South Africa, supported by the international community. Victims and perpetrators of Apartheid who participated in Truth and Reconciliation Commissions demonstrated in compelling ways the healing and restorative power of those gatherings. Perhaps more importantly, they showed the world that a nonviolent response to unthinkable oppression and injustice can foster the peaceful development of a society intent upon making amends for the past and embarking upon a brighter, shared future. Since conflict-resolution and peacemaking at the local or national level work, why not apply it multilaterally?

Concerned about the resurgence of unilateralism in the US's current Marjeh and Kandahar operations in Afghanistan, former Assistant Secretary of State Gene Dewey recently noted that "it's been very lonely being a leading multilateralist in Washington over the last nine years. Too few policy-makers have sensed where our unilateralism has led, and is leading."

Saudi Arabia and other authoritarian Islamic countries generated the seeds that not only birthed the terrorists who carried out 9/11, but also attacks in Madrid, London, Mumbai and Chechnya. No matter where terrorists are determined to attempt to disrupt the lives of others, it's time for countries to realize that the only way to confront contemporary terrorism is through multilateralism. This must be a multilateralism that is thoroughly infused with peacemaking and conflict-resolution, instead of only "joint forces."

At this crossroads, we can use the knowledge economy, social network and the international community to turn the rhetoric of hope into reality. We sit upon an historical precipice of policies and practices of sustainable, culturally responsive peace-building and violence prevention within and beyond our borders.

Despite their faults, the institutions set up after in response to WWII (UN) and the Cold War (NATO) can be the 21st Century's vehicles for peace. We can use those instruments of multilateralism to build the peacekeeping, disaster relief, and conflict resolution forces that bring countries together.

"Actually, I believe we have strategically shifted from that of a global war on terror (GWOT) to containing violent extremism (CVE). That said, the reason extremists do what they do is because they recruit from amongst the most desperate people on the earth. And, the reasons for desperation are strategic---but not necessarily military in nature. In fact, we have the capability to wage peace that is just as sophisticated as our capability to make war. Water, AIDS, mass migration of people, desertification, poverty, hunger, and disease---What would happen if our National Security Strategy became a **multilateral one** of economic engagement, and used the brain power and resources available to mitigate these issues?" -- Lt. Col. Matthew Canfield, U.S. Army (Currently on his second tour in Iraq)

Concerns over economic stability, limited resources and security have divided us. Now is the time to create rather than divide common ground.

2NC A2: Perm- Multilat Institution Version

Compulsory jurisdiction means that only the ICJ has the authority to rule on ____- simultaneously submitting the plan area to the Supreme Court would not grant the ICJ compulsory jurisdiction, it would retain US compulsory jurisdiction

Only the counterplan's submission of surveillance to compulsory jurisdiction is a sufficient structural change to transition to multilateral institutionalism- the perm is just an empty gesture that retains domestic and unilateral authority

David A. **Lake**, UC San Diego June 10, **2009**, Making America Safe for the World: Multilateralism and the Rehabilitation of U.S. Authority, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1417667

Unipolarity and the excesses of the Bush administration it permitted have finally ¶ brought the authority of the United States into public discourse – and into question. The ¶ "American empire" discussed in the mainstream media for the first time since at least the ¶ Vietnam War is an exaggeration, but the new use of the term reveals the increasingly ¶ problematic status of American rule.4¶ The Obama administration is moving quickly to ¶ reverse the assertive unilateralism of its predecessor. This may help reinforce the ¶ crumbling foundations of U.S. authority. **Yet, the problem is deeper, more structural, and ¶ cannot be solved simply by a change of diplomatic tone or adopting more collaborative policies**. To secure the international order that has been so beneficial in the last century – ¶ and to succeed in extending that order to countries that do not yet enjoy its fruits – ¶ requires a new, more restraining, multilateral solution that binds the hands of the United ¶ States **far more tightly than in the past**. To rule legitimately requires **tying** the suzerain's ¶ hands.

Only the counterplan is sufficiently binding to solve the net benefit- internal checks and balances are no longer sufficient because we already our allies with decades of unilateralism and bullying- only true compulsory jurisdiction solves

David A. **Lake**, UC San Diego June 10, **2009**, Making America Safe for the World: Multilateralism and the Rehabilitation of U.S. Authority, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1417667

These natural restraints were reinforced by a self-imposed strategy of ¶ multilateralism, the hallmark of American foreign policy since 1945.17 Multilateralism ¶ gives other states a voice over American policy. It also creates a set of "fire alarms" that ¶ can be pulled should the United States transgress the limits to its authority. By its need to ¶ hold coalitions together, the United States constrains its ability to abuse those same ¶ subordinates. Finally, by its willingness to give other countries a voice and an ability to ¶ monitor and sanction its policies, the United States signals its willingness to operate ¶ within the bounds of international consensus on its rightful role as leader. ¶ In the absence of great power competition, a dominant state is restrained only by ¶ its internal checks and balances and its willingness to restrain itself through multilateralism. This self-restraint depends upon virtue, a recognition of limits, and a ¶ concern for sustaining the authority of the dominant state over the long term. **Yet, virtue ¶ is a weak fetter**. As James Madison, architect of the division of powers in the U.S. ¶ Constitution wrote, "the truth is that all men having power ought to be mistrusted." ¶ President George W. Bush and his advisors were seduced by the condition of ¶ unipolarity and the unprecedented coercive power of the United States.18

Frightened by ¶ the first significant attack on the United States in 50 years, Americans demanded that the ¶ administration "do something." Responding to this pressure, Congress and even the ¶ courts failed to exert their normal checks on the executive branch. Fearing that they ¶ would be held responsible for any future attacks, the administration eschewed ¶ multilateralism and insisted upon unrestricted unilateral action in pursuit of the nation's ¶ interests. Believing that other states would fall into line once they observed the ¶ overwhelming coercive power of the United States, the administration asserted new rights ¶ of intervention and regime change in the Persian Gulf **that went far beyond what others ¶ were prepared to accept**. In essence, the Bush administration followed its predecessors in ¶ seeking to extend America's authority to new regions of the globe, but broke with the ¶ practice of embedding that authority in multilateral institutions. ¶ By untying the nation's hands in an attempt to smash and intimidate foreign ¶ opponents, President Bush did more to weaken the carefully cultivated authority of the ¶ United States over other states than perhaps **any other leader in our nation's history**. ¶ Confronted with the country's unfettered coercive power and the administration's ¶ assertion of bold new rights, other states – including many long term subordinates who ¶ would normally legitimate American actions -- reacted predictably by opposing the war, refusing to participate in the peacemaking, and denying all claims to new authority by the ¶ United States. By breaking the restraints that had previously limited America's ¶ international authority, the administration caused many to question whether the United ¶ States could be trusted to abide by its existing social contracts. Americans reacted with ¶ new calls to restore the legitimacy of their country – and elected a new president who ¶ promised to take foreign policy in a new direction. ¶ How to Bind a Giant ¶ How then can America's authority be made safe for the world? **Once broken, can ¶ a country retie its own fetters?** To the extent that the international authority of the United ¶ States is important for the maintenance and possible expansion of international order, to ¶ simply allow America's authority to wither would have serious consequences not only for ¶ the United States but for other states as well. **But now that its hands are free, it is hard to ¶ mask their power simply by slipping the old ropes back on**. Knowing that coercion can ¶ still be used, other countries will be far less likely to grant the United States authority ¶ over their affairs. With less authority, the United States will be more tempted to resort to ¶ coercion to achieve its ends. **The authority of the United States**, and the political orders ¶ its supports, **threaten to unravel in a vicious circle**. ¶ President Barack Obama and his administration appear to recognize the need to ¶ bolster the authority and legitimacy of the United States in the world. But virtue alone ¶ cannot provide credible guarantees against future American opportunism. Unipolarity is ¶ an enabling condition that persists. The problem of credibility is **structural**, and not one ¶ that a new administration can solve simply by a new style or approach to foreign policy. ¶ Ironically, **to safeguard its authority requires that the United States embed its coercive capabilities even deeper into multilateral institutions that can provide real checks on ¶ potential opportunism**.

2NC Only CP Solves Heg/Binding Critical

Only **the counterplan solves hegemony- binding the US's authority is critical**

David A. **Lake**, UC San Diego June 10, **2009**, Making America Safe for the World: Multilateralism and the Rehabilitation of U.S. Authority, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1417667

Over the last century, the United States has built and sustained informal empires over states on the Caribbean littoral, spheres of exclusive political and economic influence over countries in South America, and after 1945 protectorates over key "allies" in Western Europe and Northeast Asia. In pursuit of a New World Order, the United States has in recent decades attempted to expand its authority over other states into Eastern Europe, with a measure of success, and the Middle East, which has been far more problematic. The authority wielded by the United States over its subordinates, despite occasional abuses, has been enormously beneficial. This order provides **security** both internally and externally and permits unprecedented **prosperity**. Americans, in turn, gain from writing the rules of that order and, especially, from turning possible rivals into reliable subordinates that largely comply with its rules. The key foreign policy task is not to diminish U.S. authority but to safeguard that authority and its preserve its benefits into the future. To secure the international order that has been so beneficial in the last century – and to succeed in **extending that order** to countries that do not yet enjoy its fruits – requires a new, more restraining, multilateral solution that binds the hands of the United States far more tightly than in the past. To rule legitimately requires tying the suzerain's hands.

Submission of war powers authority to binding international jurisdiction solves multilateralism- generates an international social contract and is the only way to make US leadership attractive

David A. **Lake**, UC San Diego June 10, **2009**, Making America Safe for the World: Multilateralism and the Rehabilitation of U.S. Authority, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1417667

The handmaiden of authority is **restraint by the ruler**. Within the United States, ¶ the Constitution divides power and creates checks and balances such that each branch of ¶ government will restrain the others. **International authority is no different**. Checks and ¶ balances are necessary to constrain the authority of the dominant state. ¶ A state's decision to subordinate itself to another is one of the most profound ¶ choices it can make. Not only does it thereby agree to follow the rules of the dominant ¶ state, but it opens itself to the possibility of costly punishments if it does not comply with ¶ those commands. Equally, once vested, a dominant state can use its authority to encroach ¶ further on the rights of its subordinates over time. To enter and remain in such a ¶ relationship requires confidence by subordinates that the authority they grant to dominant states will not be used to violate the social contract by making illegitimate demands or ¶ expanding authority further in the future. In domestic politics, this is known as the ¶ problem of tying the hands of the sovereign.15 In international politics, the problem is ¶ how to tie the suzerain's hands. ¶ Throughout the Cold War, the authority of the United States was restrained ¶ naturally by the competition with the Soviet Union, which created an alternate pole ¶ around which abused subordinates, like Cuba, or states that feared American opportunism ¶ could rally. The United States was also restrained by its own democratic institutions, ¶ which revealed its intentions to other states and made deviations from current policy ¶ more difficult. Together, these natural constraints had the paradoxical effect of making ¶ America's domination **far more attractive**

than it otherwise would have been. So ¶ constrained, the United States enjoyed what Gier Lundestad once called an "empire by ¶ invitation."16

2NC ICJ=Key to International Binding

Delegation bolsters the credibility of u.s. committments

Slaughter, Dean-Woodrow Wilson School at Princeton, **5**

(http://www.princeton.edu/~slaughtr/Articles/IntlTribunals.pdf)

The benefits that states derive from independent tribunals far exceed the provision of information to the disputing parties. Independent tribunals act as trustees to **enhance the credibility of international commitments in specific multilateral contexts**. They do so by raising the probability that violations of those commitments will be detected and accurately labeled as noncompliance. Such violations create short-term material and reputational costs for the state in default. But detection of these violations also **encourages future compliance**, maximizing the long-term value of the agreement to all parties to the multilateral regime, including the defecting state.

delegation promotes cooperation and spurs international compliance

Slaughter, Dean-Woodrow Wilson School at Princeton, **5**

(http://www.princeton.edu/~slaughtr/Articles/IntlTribunals.pdf)

Nearly eight years ago, in Toward a Theory of Effective Supranational *Adjudication*, we wrote that supranational adjudication in Europe was a remarkable and surprising success.[15] To a world growing ever more interdependent, the prospect that any group of nations could create genuinely effective supranational tribunals held enormous promise for **promoting interstate cooperation**. With national borders increasingly permeable to people, goods, and information, governments faced a growing and diverse array of regulatory problems that required multilateral solutions. Effectuating those solutions, however, **required states to comply with their international commitments**. This question of compliance has plagued generations of international lawyers and political theorists who understand the constraints of an international legal system that lacks the coercive enforcement authority of domestic law. In this relatively anarchic environment, the creation of adjudicatory and dispute settlement mechanisms often bears little relationship to their efficacy. Yet the nations of Europe have somehow managed to establish not one but two supranational courts—the ECJ and the ECHR—with active dockets, extensive and well-reasoned case law, and, most importantly, judgments with which governments have habitually complied. If the factors that contributed to the success of the ECJ and ECHR **could be isolated and replicated** in other parts of the globe, **they could significantly enhance the compliance opportunities for international law in general and for international adjudication in particular**.

2NC Multilat Solves War

Multilateralism prevents nuclear war with rising Asian powers

Kugler, 6– Professor of World Politics at Claremont Graduate University (Jacek, "The Asian Ascent: Opportunity for Peace or Precondition for War?", http://sobek.colorado.edu/~lewiso/Kugler%20-%20The%20Asian%20Ascent.pdf)//NG

Given the fundamental importance of demographic and economic forces in establishing the roster of states capable of fundamentally affecting the structure of world politics, whatever resolution there might be to the Global War on Terror will not alter the major challenge faced by the United States. In the long run, China's demographic and hence economic power cannot be denied. By the same reasoning, the Middle East has no long-run demographic or economic power. The U.S. courts long-term peril by being obsessively distracted by short-term objectives. To ensure real peace, the U.S. would be much better advised to preserve strong links with the EU, maintain and improve cordial relations with Russia, and most importantly, open a sincere dialogue with India and China designed to maximize their support for the existing status quo. To be sure, positive, but limited, steps have been taken by the United States. American support for China's entry into the World Trade Organization was important because it helps integrate China's growing economy more fully into the capitalist world economy. Similar recognition for India, not to mention support for Indian membership on the United Nations Security Council, would also be beneficial. Because Taiwan and Korea have replaced the Cold War's Berlin as focal points for potential Great Power conflict, finding an accommodation that meets the desires of the main parties with respect to them is central to the preservation of long-term peace. The economic, demographic, and political science research summarized above suggests that American foreign policy attention must center on China and India as the major future contenders for global leadership. Although China retains a political ideology inconsistent with democracy, there are good reasons to expect and thus to work toward change to a participatory system based on increasing prosperity (Feng 2003; Feng and Zak 2003). India is the largest democracy in the world, but like China it is still not a major partner of the Western world. While these relationships may develop and prosper on their own, the relative amount of attention paid to these rising giants compared with the Global War on Terror is simply insupportable. Neither convergence arguments nor power transition theory suggests that future Great Power war between Asia and the West is inevitable. The research described here offers evidence about probabilistic relationships between parity and status quo evaluations on the one hand, and war on the other. Thus, while China's overtaking of the U.S. may be relatively certain, the result of that overtaking is not. Power transition research supports claims that overtakings are dangerous when policy makers fail to accommodate them. A conflict between China or India and the United States as the Asian giants emerge from the shadows of underdevelopment is not inevitable. Rather, the political negotiations among contenders determine whether potential challengers can be made satisfied with the rules and norms governing world politics. If the declining dominant state is able to engineer a satisfactory compromise between the demands of the rising state and its own requirements (as Britain and the U.S. did when peacefully passing the mantle of international leadership), war is not expected. If the two sides remain intransigent, war is expected. It is clear that such a war in the twenty-first century would have a very high probability of involving nuclear weapons. A clear counterexpectation can be drawn from classical nuclear deterrence arguments. They involve a fundamental assumption that as the costs of war increase, the probability of war decreases. Nuclear weapons are then alleged to alter calculations substantially because they raise the expected costs of war so high that war becomes unthinkable. According to this logic, a global war

between a newly predominant China and a declining U.S. will never occur thanks to the pacifying influence of the balance of terror. A new Cold War is anticipated by this nuclear deterrence argument. Consistent with this theory, various scholars have advocated the proliferation of nuclear weapons as one method to prevent wars (Intriligator and Brito 1981; Waltz 1981; Bueno de Mesquita and Riker 1982). An odd paradox is raised by the fact that many world leaders accept nuclear deterrence claims, such as that about the stability of mutual assured destruction (MAD), while rejecting the logical concomitant that proliferation of nuclear weapons to more and more states is desirable. What follows logically has stubbornly resisted practical implementation. Thus, using some other logic, leaders of nuclear nations seem to agree that deterrence is stable under MAD but nevertheless also agree that nuclear proliferation must be prevented in order to preserve peace. If decision makers really believed MAD is stable, it is impossible to understand why they would oppose nuclear proliferation to Iran, thereby creating stable nuclear parity in the Middle East. This inconsistency was noted years ago by Rosen (1977), but subsequently conveniently overlooked. Theory and policy may frequently be at odds, but seldom when the costs of such logical inconsistency are so high. Power transition theorists are inherently suspicious of MAD arguments about nuclear stability because they essentially resurrect traditional balance of power arguments. Rather than focusing on conventional balance as a pacifying influence, nuclear deterrence proponents of MAD suggest that a nuclear balance will maintain the peace. Given a fortuitous absence of wars among nuclear states thus far, it is impossible to test arguments such as that about MAD. But what we can observe is not promising. It is not only policy makers who doubt the veracity of MAD when they deny the logical consequence of ''beneficial'' proliferation. Recent formal presentations of deterrence arguments strongly suggest that a preponderance of nuclear capabilitiesFspecifically in the possession of satisfied statesFis more amenable to peace than is MAD (Zagare and Kilgour 2000). Power transition theorists, informed by their own as well as by decades of demographic and economic research, strongly doubt that nuclear parity between the U.S. and a risen but dissatisfied China could preserve the peace. Conclusions It is entirely reasonable to anticipate that Asia will dominate world politics by the end of the century. The most important issue facing American decision makers is how to handle the anticipated overtaking. The research summarized here indicates that the one element of Asia's ascent that Western decision makers can manipulate is Asia's relative acceptance of the international system's existing norms and values. War is not an inevitable certainty. The opportunity for peace is at hand. If Western decision makers can persuade Chinese and Indian leaders through word and deed to join with the current global status quo, peace and prosperity should endure. If, on the other hand, China and India cannot be persuaded to join the existing structure of relations, then the chances for conflict increase around mid-century. The research summarized here suggests this is true even in the face of the enormous costs that reasonably would be anticipated from a nuclear war

Multilateralism solves war

Dyer '4– independent journalist, cites Frans de Waal, Ph. D in biology, works at Yerkes National Primate Center (Gwynne, "The End of War: Our Task Over the Next Few Years is to Transform the World of Independent States into a Genuine Global Village", http://www.commondreams.org/views04/1230-05.htm)//NG

About 20 years ago, a disaster struck the Forest Troop of baboons in Kenya. There was a tourist lodge within their range, and the biggest and toughest males in the troop would regularly go to the garbage dump there to forage for food. Subordinate males, however, did not go so when the brutal and despotic alpha males of Forest Troop all ate meat infected with bovine tuberculosis at the dump and promptly died, the less aggressive 50 per cent of the group's males survived. And the troop's whole culture changed. Male baboons are so obsessed with status that they are always on a hair-trigger for aggression and it isn't just directed at male rivals of equal status. Lower-ranking males routinely get bullied and terrorized, and even females (who weigh half as much as males) are frequently attacked and even bitten. You really would not want to live your life as a baboon. Yet after the biggest, baddest males of Forest Troop all died off at once, the whole social atmosphere changed. When it was first studied by primatologists in 1979-82, it was a typical, utterly vicious baboon society, but after the mass die-off of the bullies the surviving members relaxed and began treating one another more decently. The males still fight even today they are baboons, after all but they quarrel with other males of equal rank rather than beating up on social inferiors, and they don't attack the females at all. Everybody spends much more time in grooming, huddling close together, and other friendly social behavior, and stress levels even for the lowest-ranking individuals (as measured by hormone samples) are far lower than in other baboon troops. Most important of all, these new behaviors have become entrenched in the troop's culture. Male baboons rarely live more than 18 years: The low-status survivors of the original disaster are all gone now. All the current adult males of the Forest Troop are baboons who joined it as adolescents after 1982, so by now the range of male personalities in Forest Troop must have returned to the normal baboon distribution. But the level of aggression has not returned to baboon-normal. "We don't yet understand the mechanism of transmission," said Robert Sapolsky, a biology and neurology professor at Stanford University who co-authored the 2004 report on the Forest Troop phenomenon, "but the jerky new guys are obviously learning: We don't do things like that around here.'" Human beings are less aggressive and more co-operative than baboons or even chimpanzees, and a thousand times more flexible in our cultural arrangements: Most of us now live quite comfortably in pseudo-bands called nations that are literally a million times bigger than the bands our ancestors lived in until the rise of civilization. War is deeply embedded in our history and our culture, probably since before we were even fully human, but weaning ourselves away from it should not be a bigger mountain to climb than some of the other changes we have already made in the way we live, given the right incentives. And we have certainly been given the right incentives: The holiday from history that we have enjoyed since the early '90s may be drawing to an end, and another great-power war, fought next time with nuclear weapons, may be lurking in our future. The "firebreak" against nuclear weapons use that we began building after Hiroshima and Nagasaki has held for well over half a century now. But the proliferation of nuclear weapons to new powers is a major challenge to the stability of the system. So are the coming crises, mostly environmental in origin, which will hit some countries much harder than others, and may drive some to desperation. Add in the huge impending shifts in the great-power system as China and India grow to rival the United States in GDP over the next 30 or 40 years and it will be hard to keep things from spinning out of control. With good luck and good management, we may be able to ride out the next half-century without the first-magnitude catastrophe of a global nuclear war, but the potential certainly exists for a major die-back of human population. We cannot command the good luck, but good management is something we can choose to provide. It depends, above all, on preserving and extending the multilateral system that we have been building since the end of World War II. The rising powers must be absorbed into a system that emphasizes co-operation and makes room for them, rather

than one that deals in confrontation and raw military power. If they are obliged to play the traditional great-power game of winners and losers, then history will repeat itself and everybody loses. Our hopes for mitigating the severity of the coming environmental crises also depend on early and concerted global action of a sort that can only happen in a basically co-operative international system. When the great powers are locked into a military confrontation, there is simply not enough spare attention, let alone enough trust, to make deals on those issues, so the highest priority at the moment is to keep the multilateral approach alive and avoid a drift back into alliance systems and arms races. And there is no point in dreaming that we can leap straight into some never-land of universal brotherhood; we will have to confront these challenges and solve the problem of war within the context of the existing state system. The solution to the state of international anarchy that compels every state to arm itself for war was so obvious that it arose almost spontaneously in 1918. The wars by which independent states had always settled their quarrels in the past had grown so monstrously destructive that some alternative system had to be devised, and that could only be a pooling of sovereignty, at least in matters concerning war and peace, by all the states of the world. So the victors of World War I promptly created the League of Nations. But the solution was as difficult in practice as it was simple in concept. Every member of the League of Nations understood that if the organization somehow acquired the ability to act in a concerted and effective fashion, it could end up being used against them, so no major government was willing to give the League of Nations any real power. Instead, they got World War II, and that war was so bad – by the end the first nuclear weapons had been used on cities – that the victors made a second attempt in 1945 to create an international organization that really could prevent war. They literally changed international law and made war illegal, but they were well aware that all of that history and all those reflexes were not going to vanish overnight. It would be depressing to catalogue the many failures of the United Nations, but it would also be misleading. The implication would be that this was an enterprise that should have succeeded from the start, and has failed irrevocably. On the contrary; it was bound to be a relative failure at the outset. It was always going to be very hard to persuade sovereign governments to surrender power to an untried world authority which might then make decisions that went against their particular interests. In the words of the traditional Irish directions to a lost traveler: "If that's where you want to get to, sir, I wouldn't start from here." But here is where we must start from, for it is states that run the world. The present international system, based on heavily armed and jealously independent states, often exaggerates the conflicts between the multitude of human communities in the world, but it does reflect an underlying reality: We cannot all get all we want, and some method must exist to decide who gets what. That is why neighboring states have lived in a perpetual state of potential war, just as neighboring hunter-gatherer bands did 20,000 years ago. If we now must abandon war as a method of settling our disputes and devise an alternative, it only can be done with the full co-operation of the world's governments. That means it certainly will be a monumentally difficult and lengthy task: Mistrust reigns everywhere and no nation will allow even the least of its interests to be decided upon by a collection of foreigners. Even the majority of states that are more or less satisfied with their borders and their status in the world would face huge internal opposition from nationalist elements to any transfer of sovereignty to the United Nations. The good news for humans is that it looks like peaceful conditions, once established, can be maintained. And if baboons can do it, why not us? The U.N. as presently constituted is certainly no place for idealists, but they would feel even more uncomfortable in a United Nations that actually worked as was originally intended. It is an association of poachers turned game-keepers, not an assembly of saints, and it would not make its decisions according to some impartial standard of justice. There is no impartial concept of

justice to which all of mankind would subscribe and, in any case, it is not "mankind" that makes decisions at the United Nations, but governments with their own national interests to protect. To envision how a functioning world authority might reach its decisions, at least in its first century or so, begin with the arrogant promotion of self-interest by the great powers that would continue to dominate U.N. decision-making and add in the crass expediency masquerading as principle that characterizes the shifting coalitions among the lesser powers in the present General Assembly: It would be an intensely political process. The decisions it produced would be kept within reasonable bounds only by the need never to act in a way so damaging to the interest of any major member or group of members that it forced them into total defiance, and so destroyed the fundamental consensus that keeps war at bay. There is nothing shocking about this. National politics in every country operates with the same combination: a little bit of principle, a lot of power, and a final constraint on the ruthless exercise of that power based mainly on the need to preserve the essential consensus on which the nation is founded and to avoid civil war. In an international organization whose members represent such radically different traditions, interests, and levels of development, the proportion of principle to power is bound to be even lower. It's a pity that there is no practical alternative to the United Nations, but there isn't. If the abolition of great-power war and the establishment of international law is truly a hundred-year project, then we are running a bit behind schedule but we have made substantial progress. We have not had World War III, and that is thanks at least in part to the United Nations, which gave the great powers an excuse to back off from several of their most dangerous confrontations without losing face. No great power has fought another since 1945, and the wars that have broken out between middle-sized powers from time to time • Arab-Israeli wars and Indo-Pakistani wars, mostly • seldom lasted more than a month, because the U.N.'s offers of ceasefires and peacekeeping troops offered a quick way out for the losing side. If you assessed the progress that has been made since 1945 from the perspective of that terrifying time, the glass would look at least half-full. The enormous growth of international organizations since 1945, and especially the survival of the United Nations as a permanent forum where the states of the world are committed to avoiding war (and often succeed), has already created a context new to history. The present political fragmentation of the world into more than 150 stubbornly independent territorial units will doubtless persist for a good while to come. But it is already becoming an anachronism, for, in every other context, from commerce, technology, and the mass media to fashions in ideology, music, and marriage, the outlines of a single global culture (with wide local variations) are visibly taking shape. It is very likely that we began our career as a rising young species by exterminating our nearest relatives, the Neanderthals, and it is entirely possible we will end it by exterminating ourselves, but the fact that we have always had war as part of our culture does not mean that we are doomed always to fight wars. Other aspects of our behavioral repertoire are a good deal more encouraging. There is, for example, a slow but quite perceptible revolution in human consciousness taking place: the last of the great redefinitions of humanity. At all times in our history, we have run our affairs on the assumption that there is a special category of people (our lot) whom we regard as full human beings, having rights and duties approximately equal to our own, and whom we ought not to kill even when we quarrel. Over the past 15,000 or 20,000 years we have successively widened this category from the original hunting-and-gathering band to encompass larger and larger groups. First it was the tribe of some thousands of people bound together by kinship and ritual ties; then the state, where we recognize our shared interests with millions of people whom we don't know and will never meet; and now, finally, the entire human race. There was nothing in the least idealistic or sentimental in any of the previous redefinitions. They occurred because they were useful in advancing

people's material interests and ensuring their survival. The same is true for this final act of redefinition: We have reached a point where our moral imagination must expand again to embrace the whole of mankind. It's no coincidence that the period in which the concept of the national state is finally coming under challenge by a wider definition of humanity is also the period that has seen history's most catastrophic wars, for they provide the practical incentive for change. But the transition to a different system is a risky business: The danger of another world war which would cut the whole process short is tiny in any given year, but cumulatively, given how long the process of change will take, it is extreme. That is no reason not to keep trying. Our task over the next few generations is to transform the world of independent states in which we live into some sort of genuine international community. If we succeed in creating that community, however quarrelsome, discontented, and full of injustice it will probably be, then we shall effectively have abolished the ancient institution of warfare. Good riddance.

This diplomatic approach prevents conflict escalation. Only the AFF can access a large war impact

Wright 10 – Executive director of studies at The Chicago Council on Global Affairs (Thomas, "Strategic Engagement's Track Record," The Washington Quarterly)//NG

The obstacles to a new international order are not just due to free-riding, barriers to coordination, misunderstandings, or relatively minor differences, which can eventually be overcome in pursuit of the common good. There are also significant divergences in preferences and perceived interests. In the Western order of the Cold War, the closest economic partners of the United States were also its political allies. These allies not only shared the same problems but also had a broadly similar view about how to tackle the problem. In today's global order, however, the United States needs the support of countries with which it not only disagrees but also views international politics as a relative-sum game. Unlike the geopolitical competition between the United States and the Soviet Union or European great power competition of the first half of the twentieth century, today's competition takes place within the framework of the existing international order. It is a competition bound by limitsa struggle for influence within the order, over the rules, and even limited disputes over borders and boundaries, rather than a struggle against a belligerent revisionist power intent on overthrowing the status quo in its entirety. Henry Kissinger noted this distinction in his book, A World Restored:

A legitimate order does not make conflicts impossible, but it limits their scope. Wars may occur, but they will be fought in the name of the existing structure and the peace which follows will be justified as a better expression of the 'legitimate,' general consensus. Diplomacy in the classic sense, the adjustment of differences through negotiation, is possible only in 'legitimate' international orders.49

2NC Multilat Solves Laundry List

Multilateralism is failing now and solves the economy, crime, and global warming

Legler, 10– Professor of Political Science at Universidad Iberoamericana, Mexico City (Thomas, "Multilateralism and Regional Governance in the Americas", http://www.iadb.org/intal/intalcdi/PE/2010/06396.pdf)//NG

In the absence of world or regional governments, multilateralism is an anchor for diverse governance schemes, from addressing international economic crisis to combatting transnational crime to countering global warming. In theory, as the main embodiment of multilateralism, formal international organizations contribute in practical ways to governance challenges, such as the ability to centralize collective activities for member states or to serve as independent and neutral thirdparty arbiters in conflict resolution. Informal and formal multilateral groupings can promote the creation of new norms and the construction of new international regimes, as well as enhance communications, share knowledge, and coordinate approaches among member states. Nonetheless, the multilateral base for Latin American and Caribbean regional governance remains relatively weak. Before LAC leaders can truly seize this historic opportunity, they must address a series of multilateral challenges, six of which are identified here. Briefly, multilateral governance in the Americas is impeded by: a tradition of defensive multilateralism; the lack of strong regional identity; problems of competition and overlapping mandates caused by multilateral proliferation; the question of who foots the bill; a club mentality; and the reluctance to delegate national authority to international organizations.

Multilateralism solves Iran and North Korean Proliferation

Hinderdael, 11– M.A. candidate at SAIS Bologna Center (Klaas, "Breaking the Logjam: Obama's Cuba Policy and a Guideline for Improved Leadership", http://bcjournal.org/volume-14/breaking-the-logjam.html?printerFriendly=true)//NG

Conclusion

The two countries' histories have long been intertwined, particularly after the Monroe Doctrine of 1823 gave rise to the American belief that it would become the hemisphere's protector. Until the immediate aftermath of Fidel Castro's revolution, Cuba provided a testing ground for the promotion of American ideals, social beliefs, and foreign policies.

In the context of Raúl shifting course in Cuba, the Obama administration has the opportunity to highlight the benefits of both the use of soft power and a foreign policy of engagement. As evidence mounts that the United States is ready to engage countries that enact domestic reforms, its legitimacy and influence will grow. Perhaps future political leaders, in Iran or North Korea for example, will be more willing to make concessions knowing that the United States will return in kind.

The United States should not wait for extensive democratization before further engaging Cuba, however. One legacy of the Cold War is that Communism has succeeded only where it grew out of its

own, often nationalistic, revolutions. As it has with China and Vietnam, the United States should look closely at the high payoffs stemming from engagement. By improving relations, America can enhance its own influence on the island's political structure and human rights policies.

At home, with the trade deficit and national debt rising, the economic costs of the embargo are amplified. Recent studies estimate that the US economy foregoes up to $4.84 billion a year and the Cuban economy up to $685 million a year.50While US-Cuban economic interests align, political considerations inside America have shifted, as "commerce seems to be trumping anti-Communism and Florida ideologues."51 Clearly, public opinion also favors a new Cuba policy, with 65 percent of Americans now ready for a shift in the country's approach to its neighboring island.52

At this particular moment in the history of US-Cuban relations, there is tremendous promise for a breakthrough in relations. In a post-Cold War world, Cuba no longer presents a security threat to the united States, but instead provides it with economic potential. American leaders cannot forget the fact that an economic embargo, combined with diplomatic isolation, has failed to bring democracy to Cuba for over 50 years.

American policymakers should see Cuba as an opportunity to reap the political, economic, and strategic rewards of shifting its own policies toward engagement. By ending the economic embargo and normalizing diplomatic relations with the island, President Obama would indicate that he is truly willing to extend his hand once America's traditional adversaries unclench their fists.

Multilateralism solves every conceivable debate impact

Tharoor, 3– Minister of State for Human Resources Development (Shashi, "Why America Still Needs the United Nations", p. 67)//NG

The UN's relevance does not stand or fall on its conduct on any one issue. When the crisis has passed, the world will still be left with, to use Annan's phrase, innumerable "problems without passports" -- threats such as the proliferation of weapons of mass destruction (WMD), the degradation of our common environment, contagious disease and chronic starvation, human rights and human wrongs, mass illiteracy and massive displacement. These are problems that no one country, however powerful, can solve alone. The problems are the shared responsibility of humankind and cry out for solutions that, like the problems themselves, also cross frontiers. The UN exists to find these solutions through the common endeavor of all states. It is the indispensable global organization for a globalizing world.

Large portions of the world's population require the UN's assistance to surmount problems they cannot overcome on their own. As these words are written, civil war rages in Congo and Liberia and sputters in Cote d'Ivoire, while long-running conflicts may be close to permanent solution in Cyprus and Sierra Leone. The arduous task of nation building proceeds fitfully in Afghanistan, the Balkans, East Timor, and Iraq. Twenty million refugees and displaced persons, from Palestine to Liberia and beyond, depend on the UN for shelter and succor. Decades of development in Africa are being wiped out by the scourge of hiv-aids (and its deadly interaction with famine and drought), and the Millennium Development Goals --

agreed on with much fanfare in September 2000, at the UN's Millennium Summit, the largest gathering of heads of government in human history -- remain unfulfilled. Too many countries still lack the wherewithal to eliminate poverty, educate girls, safeguard health, and provide their people with clean drinking water. If the UN did not exist to help tackle these problems, they would undoubtedly end up on the doorstep of the world's only superpower.

The UN is also essential to Americans' pursuit of their own prosperity. Today, whether one is from Tashkent or Tallahassee, it is simply not realistic to think only in terms of one's own country. Global forces press in from every conceivable direction; people, goods, and ideas cross borders and cover vast distances with ever greater frequency, speed, and ease. The Internet is emblematic of an era in which what happens in Southeast Asia or southern Africa -- from democratic advances to deforestation to the fight against aids -- can affect Americans. As has been observed about water pollution, we all live downstream now.

Thus U.S. foreign policy today has become as much a matter of managing global issues as managing bilateral ones. At the same time, the concept of the nation-state as self-sufficient has also weakened; although the state remains the primary political unit, most citizens now instinctively understand that it cannot do everything on its own. To function in the world, people increasingly have to deal with institutions and individuals beyond their country's borders. American jobs depend not only on local firms and factories, but also on faraway markets, grants of licenses and access from foreign governments, international trade rules that ensure the free movement of goods and persons, and international financial institutions that ensure stability. There are thus few unilateralists in the American business community. Americans' safety, meanwhile, depends not only on local police forces, but also on guarding against the global spread of pollution, disease, terror, illegal drugs, and WMD. As the World Health Organization's successful battle against the dreaded sars epidemic has demonstrated, "problems without passports" are those that only international action can solve.

Fortunately, the UN and its broad family of agencies have, in nearly six decades of life, built a remarkable record of expertise and achievement on these issues. The UN has brought humanitarian relief to millions in need and helped people rebuild their countries from the ruins of war. It has challenged poverty, fought apartheid, protected the rights of children, promoted decolonization and democracy, and placed environmental and gender issues at the top of the world's agenda. These are no small achievements, and represent issues the United States cannot afford to neglect.

The United Nations is a valuable antidote to the tendency to disregard the problems of the periphery -- the kinds of problems Americans may prefer not to deal with but that are impossible to ignore. Handling them multilaterally is the obvious way to ensure they are tackled; it is also the only way. Americans will be safer in a world improved by the UN's efforts, which will be needed long after Iraq has passed from the headlines.

KEEPING GULLIVER ON BOARD

The exercise of American power may well be the central issue in world politics today, but that power is only enhanced if its use is perceived as legitimate. Ironically, although many in Washington distrust the world body, many abroad think the Security Council is too much in thrall to its most powerful member. The debates over Iraq proved that that is not always the case; but even if it were, it is far better to have a world organization that is anchored in geopolitical reality than one that is too detached from the

verities of global power to be effective. A UN that provides a vital political and diplomatic framework for the actions of its most powerful member, while casting them in the context of international law and legitimacy (and bringing to bear on them the perspectives and concerns of its universal membership) is a UN that remains essential to the world in which we live.

The goals of the charter, however, cannot be met without embracing the fundamental premise that President Harry Truman enunciated in 1945:

We all have to recognize that no matter how great our strength, we must deny ourselves the license to do always as we please. No one nation ... can or should expect any special privilege which harms any other nation. ... Unless we are all willing to pay that price, no organization for world peace can accomplish its purpose. And what a reasonable price that is!

The UN, from the start, assumed the willingness of its members to accept restraints on their own short-term goals and policies by subordinating their actions to internationally agreed rules and procedures, in the broader long-term interests of world order. This was an explicit alternative to the model of past centuries, when strong states developed their military power to enforce their politics, and weak states took refuge in alliances with stronger ones. This formula guaranteed large-scale warfare; as Franklin Roosevelt put it to both houses of Congress after the Allied conference at Yalta, the UN would replace the arms races, military alliances, balance-of-power politics, and "all the arrangements that had led to war" so often in the past. The UN was meant to help create a world in which its member states would overcome their vulnerabilities by embedding themselves in international institutions, where the use of force would be subjected to the constraints of international law. Power politics would not disappear from the face of the earth but would be practiced with due regard for universally upheld rules and norms. Such a system also offered the United States -- then, as now, the world's unchallenged superpower -- the assurance that other countries would not feel the need to develop coalitions to balance its power. Instead, the UN provided a framework for them to work in partnership with the United States.

This is the system to which the world must now rededicate itself. Votaries of the UN have long argued that if the world body did not exist, we would have to invent it. Sadly, it is hard to believe that today's leaders could manage such a feat. Hammarskjold once described the UN as an adventure -- a Santa Maria battling its way through storms and uncharted oceans to a new world, only to find that the people on shore blamed the storms on the ship itself. Five decades later, Hammarskjold's metaphor stillholds true: the UN continues to sail in turbulent waters and is still blamed for the squalls that assail it.

This brings to mind another metaphor: if international institutions serve principally as ropes that tie Gulliver down, then Gulliver will have every interest in snapping the ropes and breaking free of the constraints imposed on him. If, however, these institutions constitute a vessel sturdy enough for Gulliver to sail, and the Lilliputians cheerfully help him man the bridge and hoist the mainsail because they want to travel to the same destination, then Gulliver is unlikely to jump ship and try to swim on alone. So the world should similarly hold fast to its determination to live by shared values and common rules and to steer together the multilateral institutions that the enlightened leaders of the last century bequeathed to us. Only by doing so will our ship best the storm -- with Gulliver still on board.?

Multilateralism solves international frameworks that prevent extinction

Masciulli 11—Professor of Political Science at St Thomas University (Joseph, "The Governance Challenge for Global Political and Technoscientific Leaders in an Era of Globalization and Globalizing Technologies," Bulletin of Science, Technology & Society February 2011 vol. 31 no. 1 pg. 3-5)//NG

What is most to be feared is enhanced global disorder resulting from the combination of weak global regulations; the unforeseen destructive consequences of converging technologies and economic globalization; military competition among the great powers; and the prevalent biases of short-term thinking held by most leaders and elites. But no practical person would wish that such a disorder scenario come true, given all the weapons of mass destruction (WMDs) available now or which will surely become available in the foreseeable future. As converging technologies united by IT, cognitive science, nanotechnology, and robotics advance synergistically in monitored and unmonitored laboratories, we may be blindsided by these future developments brought about by technoscientists with a variety of good or destructive or mercenary motives. The current laudable but problematic openness about publishing scientific results on the Internet would contribute greatly to such negative outcomes.

To be sure, if the global disorder-emergency scenario occurred because of postmodern terrorism or rogue states using biological, chemical, or nuclear WMDs, or a regional war with nuclear weapons in the Middle East or South Asia, there might well be a positive result for global governance. Such a global emergency might unite the global great and major powers in the conviction that a global concert was necessary for their survival and planetary survival as well. In such a global great power concert, basic rules of economic, security, and legal order would be uncompromisingly enforced both globally and in the particular regions where they held hegemonic status. That concert scenario, however, is flawed by the limited legitimacy of its structure based on the members having the greatest hard and soft power on planet Earth.

At the base of our concerns, I would argue, are human proclivities for narrow, short-term thinking tied to individual self-interest or corporate and national interests in decision making. For globalization, though propelled by technologies of various kinds, "remains an essentially human phenomenon . . . and the main drivers for the establishment and uses of disseminative systems are hardy perennials: profit, convenience, greed, relative advantage, curiosity, demonstrations of prowess, ideological fervor, malign destructiveness." These human drives and capacities will not disappear. Their "manifestations now extend considerably beyond more familiarly empowered governmental, technoscientific and corporate actors to include even individuals: terrorists, computer hackers and rogue market traders" (Whitman, 2005, p. 104).

In this dangerous world, if people are to have their human dignity recognized and enjoy their human rights, above all, to life, security, a healthy environment, and freedom, we need new forms of comprehensive global regulation and control. Such effective global leadership and governance with robust enforcement powers alone can adequately respond to destructive current global problems, and prevent new ones. However, successful human adaptation and innovation to our current complex environment through the social construction of effective global governance will be a daunting collective task for global political and technoscientific leaders and citizens. For our global society is caught in "the

whirlpool of an accelerating process of modernization" that has for the most part "been left to its own devices" (Habermas, 2001, p. 112). We need to progress in human adaptation to and innovation for our complex and problematical global social and natural planetary environments through global governance. I suggest we need to begin by ending the prevalent biases of short-termism in thinking and acting and the false values attached to the narrow self-interest of individuals, corporations, and states.

I agree with Stephen Hawking that the long-term future of the human race must be in space. It will be difficult enough to avoid disaster on planet Earth in the next hundred years, let alone the next thousand, or million. . . . There have been a number of times in the past when its survival has been a question of touch and go. The Cuban missile crisis in 1962 was one of these. The frequency of such occasions is likely to increase in the future. We shall need great care and judgment to negotiate them all successfully. But I'm an optimist. If we can avoid disaster for the next two centuries, our species should be safe, as we spread into space. . . . But we are entering an increasingly dangerous period of our history. Our population and our use of the finite resources of planet Earth, are growing exponentially, along with our technical ability to change the environment for good or ill. But our genetic code still carries the selfish and aggressive instincts that were of survival advantage in the past. . . . Our only chance of long term survival is not to remain inward looking on planet Earth, but to spread out into space. We have made remarkable progress in the last hundred years. But if we want to continue beyond the next hundred years, our future is in space." (Hawking, 2010)

Nonetheless, to reinvent humanity pluralistically in outer space and beyond will require securing our one and only global society and planet Earth through effective global governance in the foreseeable future. And our dilemma is that the enforcement powers of multilateral institutions are not likely to be strengthened because of the competition for greater (relative, not absolute) hard and soft power by the great and major powers. They seek their national or alliance superiority, or at least, parity, for the sake of their state's survival and security now. Unless the global disorder-emergency scenario was to occur soon—God forbid—the great powers will most likely, recklessly and tragically, leave global survival and security to their longer term agendas. Pg. 4-5

2NC Multilat K/T Heg

Even if heg decline is inevitable, multilateralism solves your transition war arguments

He, 10—Professor of Political Science at Utah State University (Kai He, "The hegemon's choice between power and security: explaining US policy toward Asia after the Cold War," Review of International Studies (2010), 36, pg. 1121–1143)//NG

When US policymakers perceive a rising or a stable hegemony, the anarchic nature of the international system is no longer valid in the mind of US policymakers because the preponderant power makes the US immune from military threats. In the self-perceived, hierarchic international system with the US on the top, power-maximisation becomes the strategic goal of the US in part because of the 'lust for power' driven by human nature and in part because of the disappearance of the security constraints imposed by anarchy. Therefore, selective engagement and hegemonic dominion become two possible strategies for the US to maximise its power in the world. The larger the power gap between the US and others, the more likely selective engagement expands to hegemonic dominion. When US policymakers perceive a declining hegemony in that the power gap between the hegemon and others is narrowed rather than widened, US policymakers begin to change their hierarchic view of the international system. The rapid decline of relative power causes US policymakers to worry about security imposed by anarchy even though the US may remain the most powerful state in the system during the process of decline. Offshore balancing and multilateralism, therefore, become two possible policy options for the US to maximise its security under anarchy. The possible budget constraints during US decline may lead to military withdrawals from overseas bases. In addition, the US becomes more willing to pay the initial 'lock-in' price of multilateral institutions in order to constrain other states' behaviour for its own security.

US foreign policy towards Asia preliminarily supports the power-perception hegemonic model. When President George H. W. Bush came to power, the US faced 'dual deficits' even though the US won the Cold War and became the hegemon by default in the early 1990s. The domestic economic difficulty imposed a declining, or at least uncertain, hegemony to the Bush administration. Consequently, Bush had to withdraw troops from Asia and conducted a reluctant offshore balancing strategy in the early 1990s. Although the US still claimed to keep its commitments to Asian allies, the US words with the sword became unreliable at best.

During President Clinton's first tenure, how to revive US economy became the first priority of the administration. The perception of a declining hegemon did not totally fade until the middle of the 1990s when the US economy gradually came out of the recession. Multilateral institutions, especially APEC, became Clinton's diplomatic weapon to open Asia's market and boost US economy. In addition, the US also endorsed the ARF initiated by the ASEAN states in order to retain its eroding political and military influence after the strategic retreats in the early 1990s.

However, the US 'new economy' based on information technology and computers revived policymakers' confidence in US hegemony after the Asian miracle was terminated by the 1997 economic crisis. The second part of the 1990s witnessed a rising US hegemony and the George W. Bush administration reached the apex of US power by any measure in the early 21st century. Therefore, since Clinton's second tenure in the White House, US foreign policy in general and towards Asia in particular has

become more assertive and power-driven in nature. Besides reconfirming its traditional military alliances in Asia, the US deepened its military engagement in the region through extensive security cooperation with other Asian states.

The selective engagement policy of the US in the late 1990s was substantially expanded by the Bush administration to hegemonic dominion after 9/11. The unrivalled hegemony relieved US of concerns over security threats from any other states in the international system. The 'lust for power' without constraints from anarchy drove US policymakers to pursue a hegemonic dominion policy in the world. The 'pre-emption strategy' and proactive missile defence programs reflected the power-maximising nature of the hegemonic dominion strategy during the George W. Bush administration.

What will the US do in the future? The power-perception hegemonic model suggests that the US cannot escape the fate of other great powers in history. When US hegemony is still rising or at a stable stage, no one can stop US expansion for more power. When its economy can no longer afford its power-oriented strategy, the US will face the same strategic burden of 'imperial overstretch' that Great Britain suffered in the 19th century. However, the power-perception hegemonic model also argues that US foreign policy depends on how US policymakers perceive the rise and fall of US hegemony.

If historical learning can help US policymakers cultivate a prudent perception regarding US hegemony, the early implementation of offshore balancing and multilateralism may facilitate the soft-landing of declining US hegemony. More importantly, the real danger is whether the US can make a right choice between power and security when US hegemony begins to decline. If US policymakers cannot learn from history but insist on seeking more power instead of security even though US hegemony is in decline, the likelihood of hegemonic war will increase. However, if US policymakers choose security over power when US hegemony is in decline, offshore balancing and multilateralism can help the US maximise security in the future anarchic, multipolar world. Pg. 1141-1143

Multilat leads to global coop and power sharing

Pouliot 11—Professor of Political Science at McGill University (Vincent Pouliot, "Multilateralism as an End in Itself," International Studies Perspectives (2011) 12, 18–26)//NG

Because it rests on open, nondiscriminatory debate, and the routine exchange of viewpoints, the multilateral procedure introduces three key advantages that are gained, regardless of the specific policies adopted, and tend to diffuse across all participants. Contrary to the standard viewpoint, according to which a rational preference or functional imperative lead to multilateral cooperation, here it is the systematic practice of multilateralism that creates the drive to cooperate. At the theoretical level, the premise is that it is not only what people think that explains what they do, but also what they do that determines what they think (Pouliot 2010). Everyday multilateralism is a self-fulfilling practice for at least three reasons. First, the joint practice of multilateralism creates mutually recognizable patterns of action among global actors. This process owes to the fact that practices structure social interaction (Adler and Pouliot forthcoming).2 Because they are meaningful, organized, and repeated, practices generally convey a degree of mutual intelligibility that allows people to develop social relations over time. In the field of international security, for example, the practice of deterrence is premised on a

limited number of gestures, signals, and linguistic devices that are meant, as Schelling (1966:113) put it, to ''getting the right signal across.'' The same goes with the practice of multilateralism, which rests on a set of political and social patterns that establish the boundaries of action in a mutually intelligible fashion. These structuring effects, in turn, allow for the development of common frameworks for appraising global events. Multilateral dialog serves not only to find joint solutions; it also makes it possible for various actors to zoom in on the definition of the issue at hand—a particularly important step on the global stage. The point is certainly not that the multilateral procedure leads everybody to agree on everything—that would be as impossible as counterproductive. Theoretically speaking, there is room for skepticism that multilateralism may ever allow communicative rationality at the global level (see Risse 2000; Diez and Steans 2005). With such a diverse and uneven playing field, one can doubt that discursive engagement, in and of itself, can lead to common lifeworlds. Instead, what the practice of multilateralism fosters is the emergence of a shared framework of interaction—for example, a common linguistic repertoire—that allows global actors to make sense of world politics in mutually recognizable ways. Of course, they may not agree on the specific actions to be taken, but at least they can build on an established pattern of political interaction to deal with the problem at hand—sometimes even before it emerges in acute form. In today's pluralistic world, that would already be a considerable achievement. In that sense, multilateralism may well be a constitutive practice of what Lu (2009) calls ''political friendship among peoples.'' The axiomatic practice of principled and inclusive dialog is quite apparent in the way she describes this social structure: ''While conflicts, especially over the distribution of goods and burdens, will inevitably arise, under conditions of political friendship among peoples, they will be negotiated within a global background context of norms and institutions based on mutual recognition, equity in the distribution of burdens and benefits of global cooperation, and power-sharing in the institutions of global governance rather than domination by any group'' (2009:54–55). In a world where multilateralism becomes an end in itself, this ideal pattern emerges out of the structuring effects of axiomatic practice: take the case of NATO, for instance, which has recently had to manage, through the multilateral practice, fairly strong internal dissent (Pouliot 2006). While clashing views and interests will never go away in our particularly diverse world, as pessimists are quick to emphasize (for example, Dahl 1999), the management of discord is certainly made easier by shared patterns of dialog based on mutually recognizable frameworks. Second, the multilateral procedure typically ensures a remarkable level of moderation in the global policies adopted. In fact, a quick historical tour d'horizon suggests that actors engaged in multilateralism tend to avoid radical solutions in their joint decision making. Of course, the very process of uniting disparate voices helps explain why multilateralism tends to produce median consensus. This is not to say that the multilateral practice inevitably leads to lowest common denominators. To repeat, because it entails complex and often painstaking debate before any actions are taken, the multilateral procedure forces involved actors to devise and potentially share similar analytical lenses that, in hindsight, make the policies adopted seem inherently, and seemingly ''naturally,'' moderate. This is because the debate about what a given policy means takes place before its implementation, which makes for a much smoother ride when decisions hit the ground. This joint interpretive work, which constitutes a crucial aspect of multilateralism, creates outcomes that are generally perceived as inherently reasonable. Participation brings inherent benefits to politics, as Bachrach (1975) argued in the context of democratic theory. Going after the conventional liberal view according to which actors enter politics with an already fixed set of preferences, Bachrach observes that most of the time people define their interests in the very process of participation. The argument is not that interests formed in the course of social interaction are in any sense more altruistic. It rather is that

the nature and process of political practices, in this case multilateralism, matter a great deal in shaping participants' preferences (Wendt 1999). In this sense, not only does the multilateral practice have structuring effects on global governance, but it is also constitutive of what actors say, want, and do (Adler and Pouliot forthcoming). Third and related, multilateralism lends legitimacy to the policies that it generates by virtue of the debate that the process necessarily entails. There is no need here to explain at length how deliberative processes that are inclusive of all stakeholders tend to produce outcomes that are generally considered more socially and politically acceptable. In the long run, the large ownership also leads to more efficient implementation, because actors feel invested in the enactment of solutions on the ground. Even episodes of political failure, such as the lack of UN reaction to the Rwandan genocide, can generate useful lessons when re-appropriated multilaterally—think of the Responsibility to Protect, for instance.3 From this outlook, there is no contradiction between efficiency and the axiomatic practice of multilateralism, quite the contrary. The more multilateralism becomes the normal or self-evident practice of global governance, the more benefits it yields for the many stakeholders of global governance. In fact, multilateralism as an end in and of itself could generate even more diffuse reciprocity than Ruggie had originally envisioned. Not only do its distributional consequences tend to even out, multilateralism as a global governance routine also creates self-reinforcing dynamics and new focal points for strategic interaction. The axiomatic practice of multilateralism helps define problems in commensurable ways and craft moderate solutions with wide-ranging ownership—three processual benefits that further strengthen the impetus for multilateral dialog. Pg. 21-23

2NC Leadership Impact

***Note: Only read this if they don't say the counterplan destroys leadership- otherwise it doesn't really get you much

US primacy prevents global conflict – diminishing power creates a vacuum that causes transition wars in multiple places

Brooks et al 13 [Stephen G. Brooks is Associate Professor of Government at Dartmouth College.G. John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs. He is also a Global Eminence Scholar at Kyung Hee University.William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College. "Don't Come Home, America: The Case against Retrenchment", Winter 2013, Vol. 37, No. 3, Pages 7-51,http://www.mitpressjournals.org/doi/abs/10.1162/ISEC_a_00107, GDI File]

A core premise of deep engagement is that it prevents the emergence of a far more dangerous global security environment. For one thing, as noted above, the United States' overseas presence gives it the leverage to restrain partners from taking provocative action. Perhaps more important, its core alliance commitments also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged U.S. power dampens the baleful effects of anarchy is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the "American Pacifier" is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive wartemptations, regional rivalries, and even runs at regional hegemony and full-scale great power war. 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia's security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia's major states could manage regional multipolarity peacefully without theAmerican pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins toswing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimismregarding the region's prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to **obtain a nuclear capacity** and increase their military commitments, which could stoke a **destabilizing reaction from China**. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by astill-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism's sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism's optimism about what would happen if the United States retrenched is very much dependent on itsparticular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. Burgeoning research across the social and other sciences, however,undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and theyengage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would

result in a significant deterioration in the security environment in at least some of the world's key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts that the withdrawal of the American pacifier will yield either a competitive regional multipolarity complete with associated insecurity, arms racing, crisis instability, nuclear proliferation, and the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional great power war).

2NC Warming Mod

Multilateralism creates international cooperation to solve warming

Lee et al 10 –Research Director, Energy, Environment and Resource Governance at Chatham House (Bernice, "The United States and climate change: from process to action," 2-23, http://www.chathamhouse.org.uk/files/16489_us0510_lee_grubb.pdf)//NG

Despite the crucial importance of national and regional initiatives, the world ultimately cannot solve the climate problem without an effective multilateral approach. Ironically, the election of a more multilateralist US president and the events of 2009 culminating with the Copenhagen Accord have only served to increase debate around the form it might take and how inclusive it needs to be. In reality, any major deal is always built upon smaller coalitions **of powerful actors**. Many proposals have been made for a core of US leadership, bilateral or trilateral leadership by variants of the US–EU–China/Japan/Asia nexus, the G8, the G8+5, the G20, or the Major Economies Forum (MEF). Doubtless, action by most of these groupings is necessary, though it is also of interest that the MEF process did not reach any specific deal until the relationships fostered during the year were put under the pressure of the Copenhagen summit. Ultimately all such efforts face serious limitations if there is no recognition of the need for a truly multilateral framework. This is for three main reasons: scope, competitiveness and political legitimacy. First, carbon emissions are so widespread geographically that any subset of countries becomes increasingly unable to solve the problem unless others are involved. The dominance of US, EU and Chinese emissions today would be swamped by 2050 if these countries delivered steep reductions while others did not. And none of these are significant contributors to land-use emissions (such as deforestation), which involve a wholly different group of countries. Moreover, models which centre upon innovative solutions by a 'critical mass' of the private sector diffusing technology and investment globally without government incentives can founder – carbon capture and storage (CCS), which inevitably involves significant extra costs over and above coal plants without CCS, is a case in point. Second, a partial solution that encompassed the big emitters would not solve the perceived risks of loss of competitiveness in energy-intensive sectors vis-à- vis non-participants (to smaller economies such as Singapore, for example). Third, a deal between the big emitters only is unlikely to secure global legitimacy. In no legal or moral system can a solution be imposed by those inflicting the damage, without at some level engaging those that would most suffer the consequences of inadequate action. Thus **all roads ultimately lead back to the need for a global deal**. That was perhaps the most difficult, but ultimately completed, journey for the Bush administration, as it conceded at the G8 Heiligendamm summit in June 2007 the need for solutions to be negotiated under UN auspices. Notwithstanding the relative success of the Bali negotiations, most of the key difficulties, fault lines and questions that arose in the 1990s remained unresolved. A commentary by David Sandalow23 argued that the Bali battle over emission targets showed that the EU has learned nothing about realistic engagement with the United States; Japan sat uneasily in its seat as a potential but never actual mediator on the transatlantic divide; and a resurgent Russia remained largely apart.

It's real and anthropogenic –emissions reductions are key to avoid dangerous climate disruptions

Somerville 11 – Professor of Oceanography @ UCSD

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1n early 2007, at the time of the publication of WG1 of AR4, the mainstream global community of climate scientists already understood from the most recent research that the latest observations of climate change were disquieting. In the words of a research paper published at the same time as the release of AR4 WG1, a paper for which I am a co-author, "observational data underscore the concerns about global climate change. Previous projections, as summarized by IPCC, have **not exaggerated** but may in some respects even have **underestimated the change**" (Rahmstorf et al. 2007). Now, in 2011, more recent research and newer observations have demonstrated that climate change continues to occur, and in several aspects the magnitude and rapidity of observed changes frequently **exceed the estimates of earlier projections**, including those of AR4. In addition, the case for attributing much observed recent climate change to human activities is **even stronger now** than at the time of AR4. Several recent examples, drawn from many aspects of climate science, but especially emphasizing atmospheric phenomena, support this conclusion. These include temperature, atmospheric moisture content, precipitation, and other aspects of the hydrological cycle. Motivated by the rapid progress in research, a recent scientific synthesis, The Copenhagen Diagnosis (Allison et al. 2009), has assessed recent climate research findings, including: -- Measurements show that the Greenland and Antarctic ice-sheets are losing mass and contributing to sea level rise. -- Arctic sea-ice has melted far beyond the expectations of climate models. -- Global sea level rise may attain or exceed 1 meter by 2100, with a rise of up to 2 meters considered possible. -- In 2008, global carbon dioxide emissions from fossil fuels were about 40% higher than those in 1990. -- At today's global emissions rates, if these rates were to be sustained unchanged, after only about 20 more years, the world will **no longer have a reasonable chance of limiting warming** to less than 2 degrees Celsius, or 3.6 degrees Fahrenheit, above 19th-century pre-industrial temperature levels, This is a much- discussed goal for a maximum allowable degree of climate change, and this aspirational target has now been formally adopted by the European Union and is supported by many other countries, as expressed, for example, in statements by both the G-8 and G-20 groups of nations. The Copenhagen Diagnosis also cites research supporting the position that, in order to have a reasonable likelihood of avoiding the risk of **dangerous climate disruption**, defined by this 2 degree Celsius (or 3.6 degree Fahrenheit) limit, global emissions of greenhouse gases such as carbon dioxide must peak and then start to **decline rapidly** within the next five to ten years, reaching near zero well within this century.

Warming is an existential risk – quickening reductions is key to avoiding extinction

Mazo 10 – PhD in Paleoclimatology from UCLA

(Jeffrey Mazo, Managing Editor, Survival and Research Fellow for Environmental Security and Science Policy at the International Institute for Strategic Studies in London, 3-2010, "Climate Conflict: How global warming threatens security and what to do about it," pg. 122)//BB

The best estimates for global warming to the end of the century range from 2.5-4.~C above pre-industrial levels, depending on the scenario. Even in the best-case scenario, the low end of the likely range is 1.goC, and in the worst 'business as usual' projections, which actual emissions have been matching, the range of likely warming runs from 3.1--7.1°C. Even keeping emissions at constant 2000 levels (which have already been exceeded), global temperature would still be expected to reach 1.2°C (O'9""1.5°C)above pre-industrial levels by the end of the century." **Without early and severe reductions** in emissions, the effects of climate change in the second half of the twenty-first century are **likely to be catastrophic**for the stability and security of countries in the developing world - not to mention the associated human tragedy. Climate change couldeven undermine the strength and stability of emerging and advanced economies, beyond the knock-on effects on security of widespread state failure and collapse in developing countries.' And although they have been condemned as melodramatic and alarmist, many informed observers believe that unmitigated climate change beyond the end of the century could pose an **existential threat**to civilisation." What is certain is that there is **no precedent** in human experience for such rapid change or such climatic conditions, and even in the best case adaptation to these extremes would mean profound social, cultural and political changes.

2NC A2: Everyone Doesn't Get on Board

Don't have to win that to win the net benefit- our multilateralism argument is about retaining authority over our existing sphere of influence- that's areas like Europe and Latin America, who will get on board if the US does. Europe has empirically proven its willingness to surrender sovereignty to international organizations.

Other countries will follow us- IR isn't anarchic

David A. **Lake**, UC San Diego June 10, **2009**, Making America Safe for the World: Multilateralism and the Rehabilitation of U.S. Authority, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1417667

In the modern era, the right of one country to rule in whole or part over another ¶ derives not from tradition, divine right, or any normative consensus but from an exchange ¶ or social contract.9¶ The dominant state produces a political order that protects persons, ¶ property, and promises. It secures individuals in a subordinate state from bodily harm at ¶ the hands of both fellow citizens and other countries, defends their property from challenges that are constant or without limit at home or abroad, and ensures that ¶ promises, once made, will be kept. In return, the subordinates comply with the rules and ¶ the extractions necessary to produce that order and accept as legitimate the position of the ¶ dominant state. The dominant state gains from writing and enforcing rules that are biased ¶ in its favor, subject to the willingness of subordinates to comply with those rules. ¶ Subordinates gain from the security provided by the political order and the attendant ¶ opportunity to invest, specialize, and prosper. Subordinates escape a Hobbesian state of ¶ nature in which life is "solitary, poor, nasty, brutish, and short" and enter an international ¶ civil society. In contemporary practice, this means that the United States produces ¶ political order within and between subordinate states in return for their compliance with ¶ its rules and recognition of its special position in international relations. The authority exercised by the United States produces a syndrome of unique ¶ foreign policy behaviors. Protected in part from external threats, states subordinate to the ¶ United States spend substantially less on defense as a share of GDP than non-subordinate ¶ states. Having committed to their defense, in return, the United States is significantly ¶ more likely to come to the aid of its subordinates in international crises. Protected under ¶ its security umbrella and following rules set down by the United States for the ¶ international economy, subordinate states are more open to trade (measured by ¶ trade/GDP) and especially more likely to trade more with countries also subordinate to ¶ the United States. In implicit acknowledgement of their status, subordinate states join ¶ U.S.-led multinational coalitions more often than non-subordinates, calling into question ¶ the notion of a "coalition of the willing." Finally, exercising its right of enforcement, the ¶ United States is more likely to intervene militarily in subordinate states.10 All of these patterns are hard to explain if relations between states really are anarchic and, more ¶ important, are consistent with the existence of a social contract. ¶ The social contract, in turn, has been enormously beneficial for both dominant ¶ and subordinate states.11 Under American rule, Latin America, Western Europe, and ¶ Northeast Asia have emerged as zones of peace and prosperity, with some variation. ¶ Although Latin American states often rattle their sabers at one another, few crises ¶ actually result in military clashes.12 Western Europe, and the North Atlantic area more ¶ generally, is perhaps the only example of what Karl Deutsch originally called a pluralistic ¶ security community in which the use of force is ruled out in relations between states.13 ¶ Japan's relations with its neighbors and its foreign policy in general are legendarily ¶ pacific. Overall, the regions

dominated by the United States look very different politically ¶ and economically than, say, Africa or South Asia where Washington possesses relatively ¶ little authority.

This is critical to stopping global proliferation---pure unilateralism will be greeted with resistance and skepticism but a credible commitment can marshal the support of all nations

Cirincione, 6/11/**5**

http://www.carnegieendowment.org/static/npp/Rome_Conference_Paper.pdf

However, if stopping the spread of nuclear weapons requires more international resolve than previous administrations could muster, it also demands more genuine international teamwork than the Bush administration recognizes. Nuclear weapons and fissile materials are problems wherever they are, not just in a handful of "evil" states. The threat cannot be eliminated by removing whichever foreign governments the United States finds most threatening at any given time. History has repeatedly shown that today's ally can become tomorrow's problem state. Moreover, terrorists will seek nuclear weapons and materials wherever they can be found, irrespective of a state's geopolitical orientation. The United States cannot defeat the nuclear threat alone, or even with small coalitions of the willing. **It needs sustained cooperation** from dozens of diverse nations— including the leading states that have forsworn nuclear weapons, such as Argentina, Brazil, Germany, Japan, South Africa, and Sweden—in order to broaden, toughen, and stringently enforce nonproliferation rules. To obtain that cooperation, the nuclear weapon states must show that tougher nonproliferation rules not only benefit the powerful, but constrain them as well. **Success will depend on the United States' ability to marshal legitimate authority that motivates others to follow**. As Francis Fukuyama notes, "**Other people will follow the American lead if they believe it is legitimate; if they do not, they will resist, complain, obstruct, or actively oppose what we do.**"Recent events, most dramatically the war in Iraq, have undermined America's legitimacy. With societies bristling at U.S. government rhetoric and action, elected leaders in key countries continue to distance themselves from U.S. initiatives. Even when others share U.S. views of the nuclear threat, they may balk at following U.S. policies because they do not see Washington acting on *their* priorities, for example, the Comprehensive Test Ban Treaty, the International Criminal Court, actions to minimize climate change, or other measures affecting global security. In Robert Kagan's words, "The United States can neither appear to be acting only in its self-interest, nor can it, in fact, act as if its own national interest were all that mattered."5

***Politics NB

1NC/2NC NB

Politics is a net benefit---delegating to international courts doesn't cause domestic political backlash and allows the president to avoid getting involved

Alter, Political Science-Northwestern, **3**

(Journal of Asian and Pacific Studies, Vol. 25, P. 51-74)

2) Delegating to courts may be an attractive way to commit when a government wants to play on uncertainty for political reasons. Because having full information is key in shaping any rational decision, rational choice explanations see the lack of information, or manipulation of information, as a factor shaping political decision-making. From this insight comes the notion that delegation itself may be a tool to play on or manipulate information and thereby shape the political outcome. By intentionally committing to a fairly vague rule, and delegating responsibility to a court to apply the rule on a case-by-case basis, a government **can fool those actors who might oppose a given rule to tacitly support the international agreement.** By committing through delegation, the government locks-in its larger objective, and has someone else to blame when the costs of the commitment become clear and domestic actors complain (Moravcsik 1998, 74).

3) When issues are technically complex, and thus less amenable to political negotiation and political control, legal systems may be attractive. Governments may want to shield themselves from having to master and negotiate minutia after minutia—turning the issue over to seemingly neutral technocrats (perhaps a supra-national administrator or a specialized courts) to resolve (Moravcsik 1998, 69). Or, having courts fill in the blanks can seem more efficient than bringing together all parties to specify an agreement, especially if any such agreement would require formal state ratification (Abbott and Snidal 2000, 430-431; Pollack 1997, 104).

4) When governments want to remove certain issues from the domestic or international political process, an international legal system may be helpful. Here the argument is not that it is attractive to play on uncertainty, but rather **politicians may believe that the political process leads to sub-optimal outcomes or that having an issue actively debated in the political process is itself destructive**. For example, Beth Simmons found that one reason states turned territorial over disputes over to a third-party to resolve was to neutralize the contested issue by **removing it from domestic political debate** (Simmons 2001). Robert Hudec notes that governments may decide to turn a problem over to an international legal body to **appease and thus demobilize domestic political actors, to buy time, or to avoid being directly involved in resolving an issue yet still be seen as doing something** (Hudec 1987). Governments may also simply want to get rid of disputes that aggravate a bi- lateral relationship. For example, according to a negotiator of the North American Free Trade Agreement, NAFTA's chapter 19 was added because the US did not want to harmonize its law with Canada, nor did it want to turn disputes over countervailing duties into an inter-governmental issue.7 By delegating to bi-national panels the authority to resolve these disputes, **governments could remove a politically divisive issue** in US-Canadian relations and escape the pressure of domestic firms.8

2NC A2- CP Links to Politics

1. the counterplan avoids the link and solves the turns--

A) Stops dissent---it allows policymakers to blame international courts for requiring that they take the action---it quells opposition from people who would oppose the unilateral implementation of the plan—that's alter

B) mobilizes interest groups---delegation spurs domestic constituencies to defend the policy which saves capital

Slaughter, Dean-Woodrow Wilson School at Princeton, **5**

(http://www.princeton.edu/~slaughtr/Articles/IntlTribunals.pdf)

The circularity objection described above also fails to account for domestic politics. The informational and reputational consequences of establishing a tribunal operate principally on an interstate level. However, tribunals and the decisions they issue also make international law more salient for domestic interest groups and political actors. By clarifying the meaning of an agreement, finding facts, and determining whether a particular course of conduct is justified, **tribunal rulings can mobilize compliance constituencies to press governments to adhere to their treaty obligations.** This effect is most pronounced for those supranational tribunals where private parties may invoke the tribunal's jurisdiction directly, since no "political filter" exists to screen out cases that are legally meritorious but diplomatically or politically embarrassing.125 But the effect can also operate in purely interstate adjudication, if the tribunal's rulings benefit domestic interest groups who are motivated to lobby governments in favor of compliance.126 In either case, the domestic political costs of international adjudication make it more difficult for states to shirk compliance. Anticipating this result, states will view international agreements superintended by tribunals (especially supranational tribunals) as more credible than agreements that do not provide for judicial review. This conception of international tribunals as credibility enhancers is inconsistent with the theory of dependent adjudication that Posner and Yoo adopt. Indeed, international tribunals can *only* make state commitments more credible if they are independent. If a tribunal were dependent—that is, if it were susceptible to pressure to conform its decisions to state interests at the time a dispute arises—the credibility enhancement flowing from the initial act of delegation would vanish. States would anticipate that the dependent tribunal would bow to these pressures and, as a result, that they could elude their international law obligations with relative ease. As a consequence, defections would increase and the long-term benefits of interstate cooperation would quickly unravel.

2. the initial step is bipartisan---no backlash from increasing our commitment to international legal institutions

Charnovitz, Law—GW, **8**

http://opiniojuris.org/2008/11/12/after-medellin-a-proposed-icj-decisions-implementation-act/

Fifth, the legislative pathway provides a fast track procedure but not one as automatic as the one used in international trade. Although I still support the trade fast track model for future US trade agreements and perhaps for other agreements, such as climate, I would not propose it for ICJ implementation

purposes. Rather I have borrowed an expedited procedure available for budget issues and incorporated it by reference into my proposal. I have also included a specific provision requiring bipartisan leadership support for the legislation before it could gain use of these procedures. In my view, international law is not a partisan issue, so I don't see why there would be a problem in getting bipartisan support for holding a Congressional vote on complying with U.S. obligations on US treaty commitments.

US may consent but not enforce an icj decision

Coleman 3

Andrew, The International Court of Justice and highly political matters., Melbourne Journal of International Law, Lexis

It could be argued that the disadvantages caused by non-appearance where the ease proceeds to judgment are a concern only for the non-appearing party and are entirely self-inflicted. What non-appearance does, however, is raise a perception in the broader international community of the irrelevance of the ICJ in resolving international disputes. If it is perceived that a party is the victor simply by virtue of its appearance in the absence of the other party, rather than due to the strength of its claim, then this raises serious concerns about the validity of the Court's findings, undermining the Court's credibility in the eyes of the international community. Credibility is important to all courts, but particularly to the ICJ **given the problems of enforceability** that it faces. **Even if states do consent to the ICJ's jurisdiction,** who or **what enforces the Court's decision**? Whilst provision is made in both the Statute of the ICJ and the UN Charter for the Court's judgments and advisory opinions to be enforced through resolutions of the Security Council, (58) there is no international police force that will actually ensure compliance with the resolution itself. As Couvreur notes, in municipal orders, the court, whose jurisdiction is compulsory, acts on behalf of and in the capacity of ... the fully integrated sovereign state; the latter is responsible for the continuity and efficacy of the peacemaking process initiated by the court ... The case is patently quite different in the international order: ... this community, which is not integrated, or scarcely so, and which itself is entirely based on a juxtaposition of sovereignties, is in no wise [sic] comparable to a sovereign state. (59)

Historically likely- we already did that once

Ereli 9

Anthony, Deputy Chief of Mission at the U.S. Embassy in Doha, Qatar, THE UNITED STATES' WITHDRAWAL FROM INTERNATIONAL COURT OF JUSTICE JURISDICTION IN CONSULAR CASES: REASONS AND CONSEQUENCES, Duke Journal of Int'l Law, Lexis

On 7 March 2005, the Secretary-General received from the Government of the United States of America, a communication notifying its withdrawal from the Optional Protocol. The communication reads as follows: ". . . the Government of the United States of America [refers] to the Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes, done at Vienna April 24, 1963. This letter constitutes notification by the United States of America that it hereby withdraws from the aforesaid Protocol. As a consequence of this withdrawal, the United States will no longer recognize the jurisdiction of the International Court of Justice reflected in that Protocol."

War powers authority cannot be submitted for compulsory jurisdiction to the ICJ- that's unconstitutional and gets rolled back and tanks hegemony

Harvard Journal on Legislation, "Protecting National Sovereignty in an Era of International Meddling: An Increasingly Difficult Task" Representative Bob Barr, **2002**. 39 Harv. J. on Legis. 299. Lexis.

The U.N. Charter proscribes "non-pacific" conduct unless necessary to counter threats to peace, breaches of peace, acts of aggression, or to act in self-defense. [28] By potentially giving the ICJ the compulsory jurisdiction to adjudicate "all legal disputes concerning treaties," the United States has effectively tied its hands to resolve such disputes in a manner deemed to be in accord with the ICJ-- and within the general proscriptions of the Charter to forego the use of force in such disputes. The Senate never should have agreed to such a provision, as it presents a potential conflict with the United States Constitution, [29] which grants Congress alone the power to declare war [30] and gives the President the sole power as Commander-in-Chief to wage war on behalf of our sovereign nation. [31] The Constitution does not grant the federal governm, ent the power to **cede such authority.** So long as the United States had the power, the understanding, and the will to restrict the U.N. provisions to the supremacy of our Constitution, such a problem may have been tolerable. Now, however, the understanding and will are largely absent from national debates, and a serious problem presents itself.

The most dramatic and recurrent example of the United Nations exerting powers reserved by the United States Constitution is the de facto **transfer of war powers** from our government to the mechanism of the [*305] U.N. [32] Constitutional grant to Congress to declare war and to the President to wage that war [33] is thwarted when international organizations attempt to interject their views on when and where such combat is legitimate. For example, the U.N. Charter mandates that, "all Members . . . undertake to make available to the Security Council, *on its call* . . . armed forces, assistance, and facilities . . . ." [34] This provision of the charter usurps congressional power to declare war by allowing the Security Council to have direct influence and/or control over America's fighting forces and resources. [35] By allowing the U.N. to interpret when United States troops are to be made available on its own beckoning, the *unilateral* and *sovereign* power of the United States becomes diluted and weakened. It is into these muddy waters that the United States has been repeatedly pulled or led in the last years of the twentieth century, and into the beginning years of the twenty-first, with little or no long-term forethought to the consequences or bases for such action by the United States.

Strong icj sets a terrible precedent against use of force – prevents the ability to deter global conflict

Sofaer 3

Abraham, Senior Fellow, The Hoover Institution, Stanford University. Legal Adviser, U.S. Department of State, The International Court of Justice and Armed Conflict, http://www.law.northwestern.edu/journals/jihr/v1/4/#note

The Court has in fact carved out a potentially significant role in the area of use of force in international security. I will go through informally a series of points that show where the ICJ has indicated through some ruling or some practice that it intends to keep itself in the game when it comes to use of force

decisions. ¶ 4 First, the ICJ has insisted on the right to decide its own jurisdiction. That in itself gives the Court great power to become involved in these kinds of questions. Second, the Court has broadly construed treaties to assume power over use of force situations. The Oil Platforms case2 is an example: the Court took a Friendship, Commerce, and Navigation treaty and found that even though this treaty did not address the issue of use of force directly—because the parties used the treaty to engage in commerce and be friends—the preliminary words of the treaty were enough of a ground to take jurisdiction. And this decision was made even though a separate treaty between Iran and the United States—the Agreement of Cooperation of 19593—actually dealt with the use of force and reserved to each party the right to do whatever it needed to do in its national security interests. So, the Court has shown a willingness, and indeed maybe an eagerness, to construe treaties that are before it broadly to take jurisdiction over use of force issues. ¶ 5 Next, the Court in the Nicaragua case broadly construed the concept of customary international law to assume authority over use of force decisions—even where the states involved took reservations from a multi-lateral treaty covering the same area of the law that "customary law" covered.4 The Court also has broadly construed its advisory opinion jurisdiction, as it did in the Nuclear Weapons case,5 to take an active role in deciding the legality of possessing or using nuclear weapons. Furthermore, in the Lockerbie case the Court took jurisdiction to decide the legality of Security Council resolutions bearing upon international security as it did in 1998.6 ¶ 6 In taking jurisdiction over these cases, the Court has disregarded or treated lightly doctrines limiting the ICJ's power or discretion to avoid political questions.7 The Court has swept aside any indication in the earlier jurisprudence of the Permanent Court of International Justice, and in scholarly work, urging the Court to be reluctant to exercise jurisdiction in use of force cases.8 ¶ 7 In the area of provisional measures, the Court has shown its willingness to assert itself, even in a use of force or security context, or at least to retain the right to assert itself.9 This is very significant not only because now provisional measures must be treated as mandatory rules, but because the Court has no tradition of applying the provisional measures doctrine in a manner similar and analogous to the way the U.S. or Britain applies preliminary injunctive law with strong emphasis on likelihood of success. The ICJ in the Paraguay case10 declined even to address the issue of likelihood of success. The language the Court used, and the way the Court went about issuing preliminary relief, explicitly avoided an evaluation of the meaning of the treaty at issue, causing the United States to feel that it could disregard the preliminary order. ¶ 8 The combined effect of these positions (and others) gives the Court a substantial set of opportunities to speak out on use of force issues. Keeping in mind that the Court, while now over fifty-years-old, has only relatively recently become activist on use of force questions, we should expect that in the next twenty-years we will see opinions that will deal with use of force questions that could have a major impact either in terms of articulating principles that are followed by states (and therefore a major impact in shaping the law on conduct of states), or undermining the Court's credibility and status by articulating principles that fail to serve well the practical and conceptual needs of international security. ¶ 9 Therefore, the important jurisdiction that the Court has carved out for itself, based on all the principles that I have just described, is neither good nor bad. Much depends on how the jurisdiction is used. The law on the use of force is in transition and it is unclear whether the ICJ will develop a set of rules that has a positive impact on the world. I find evidence that the Court has started off on the wrong foot and much must be done to improve the chances that the ICJ will play a constructive and meaningful role going forward. ¶ 10 First, the Court's basic approach to the use of force **is flawed**. International lawyers tend to take a "push button" approach in applying U.N. Charter rules. They look at Article 2.4,11 and conclude that force may not be used without Security Council approval even to advance Charter purposes. They look at Article 5112 and international lawyers in general and most international decisions that bear on this issue conclude that self-defense may be exercised only in response to an "attack", even though that provision states that nothing in the Charter should be read to limit that "inherent" right.13 The push-button approach then leads to the conclusion that, if a particular use of force does not satisfy one of those bases for using force, it's illegal.14 If it does, then it's legal. ¶ 11 This approach conflicts with the process we know rational human beings really go through when they decide whether to act in a certain manner. People do not appraise the wisdom of conduct by looking at each of the factors and doctrines relevant to that question in isolation. Rather, we consider what evidence there is that bears on whatever the criteria are that we believe should be looked at to determine propriety (including legality). And if on balance we conclude that a strong case exists for using force, we say it should be lawful. If on balance we conclude that it's a weak case on using force, we conclude that force should be prohibited. In this regard, if you look at Article 2.4 of the Charter,15 it isn't at all something that would justify anyone saying, "This is a clear prohibition on the use of force for any purpose whatsoever." The article is quite complex and parts of it are substantively significant. By that I mean parts of it signify a preference with a regard to values, and this of course has been anathema in most international law scholarship. The idea that you could use force more justifiably for purpose "A" as opposed to purpose "B" has been something, especially during the Cold War, that has been treated as inappropriate and wrong. ¶ 12 But Article 2.4 at one point refers to the purposes of the Charter as a relevant factor in evaluating the use of force.16 And we know what the Charter stands for, it's not a mystery, it's written there. The Charter stands for human rights. The Charter stands for equal treatment of women and men. The Charter stands for religious freedom. The Charter stands for states not being able to acquire other territory through the use of force. The Charter suggests specific moral and ethical principles, and those principles have in fact been developed in subsequent treaties. ¶ 13 I have argued that the Charter's language supports the use of force approach of the United States, which is based in part on an early Abe Chayes' article, in which he called for a "common lawyer" approach to the use of force, and which he wrote while he was Legal Adviser.17 I have been a big advocate of the early Abe Chayes, though Chayes changed his position after leaving office. I investigated whether other Legal Advisers advocated the "common lawyer" approach while in office, and found a few articles written while they were Legal Advisers advocating the same approach.18 But most Legal Advisers who served before me never speak up in favor of this approach once they leave office. ¶ 14 Kosovo created a major problem for international lawyers who supported the push-button approach. Those who favored intervening could not secure Security Council approval of a resolution saying that force could be used. Some Security Council resolutions demanded a cessation of the grotesque treatment of 800,000 Muslim Kosovars. But they did not authorize force. Nor could the U.S. justify the use of force on the basis of self-defense, collective or individual. We couldn't call the flood of three-quarters of a million people coming into the territories of NATO allies an "attack". They were just people trying to find safety. Finally, the U.S. could not contend on the basis of any respectable doctrine that a decision by NATO was the equivalent of a decision by the Security Council. Clearly it is not. ¶ 15 NATO nonetheless went ahead and stopped the monstrous treatment of the Kosovars. NATO did so, moreover, without giving any legal rationale for its conduct. NATO couldn't simply create a new category for using force legitimately based on what NATO claimed was lawful. Furthermore, the doctrine of humanitarian intervention had not been accepted broadly as an independent basis for using force in Kosovo. What we were left with was a series of factors that taken together made an overwhelming case for intervening in Kosovo, though no single factor taken alone could have justified the action. I went through those factors in an article in the Stanford International Law Journal.19 ¶ 16 First, the Security Council had acted under Chapter 7 of the Charter, and had found that the situation in Kosovo posed a threat to international peace and security. Under the push-button approach, the fact that the Council had found a threat to international peace and security is not merely an insufficient ground in itself for using force, it is worth nothing. Under the push button approach one couldn't consider that action even as a factor to weigh with all the other factors to determine whether to use force. ¶ 17 The same thing was true of other factors that clearly motivated NATO's action. While the doctrine of humanitarian intervention could not be relied upon as an independently acceptable basis for action, the fact is that the humanitarian crisis was triggered by conduct that violated several widely accepted norms incorporated into treaties. These include probably the Genocide Convention,20 certainly the Laws of War,21 the Geneva Convention,22 and some other provisions that established that the Yugoslav government was violating international law. ¶ 18 Another factor was that the NATO states unanimously considered the situation a threat to the stability of Europe. Several U.N. Security Council resolutions relating to Yugoslavia had found that Yugoslavia had already violated international law and was violating international law within its territory in its treatment of Muslims. An International Criminal Court had been created, which had jurisdiction over international crimes committed by officials of the Yugoslav government. Thus, even though the Security Council had not authorized the use of force,23 very strong moral and legal case existed for its use. ¶ 19 Now, what happened? International lawyers in general concluded that what NATO did in Kosovo was illegal by accepted principles, but that it was necessary and morally justifiable. It was necessary and moral, but nonetheless illegal! Most international lawyers concluded that Kosovo should be treated as a particular situation, limited to its special facts. I would be satisfied with that rationale, as long as I could cite what was done in Kosovo in future cases if the same factors once again appeared in another situation. This would represent the common lawyer technique in determining the propriety of using force. This is a process where you're not going to blind yourself to a factor just because it alone does not establish authority to act. ¶ 20 The same limited approach is applied under Article 51.24 The greatest evil of all evils, Professor Louis Henkin wrote in an article based on a debate at the New York City Bar Association,25 is using force, even in self-defense. In the Nicaragua case,26 the ICJ interpreted an attack in a way that **significantly narrowed** the inherent right of self-defense. Anything short of a full-fledged attack, such as providing arms, strategic advice or tactical assistance to a country that was trying to overthrow a government of another country, cannot be considered an attack under Article 51 for purposes of collective self-defense. That served the Soviet Union's purposes very well. They were assisting communist groups and governments around the world in trying to undermine elected governments. So long as they did not engage in an all-out attack, the U.S. and other allies could not use force to counter their efforts. ¶ 21 Under long-accepted traditional principles, what rule should be applied when you have a lesser attack? Well, it would seem that if you have a lesser attack you can only respond in a lesser way; you can only respond with lesser, proportionate measures, individually or collectively. But in Nicaragua, the Court created a new category of attacks that denied the collective use of force. It also purported to establish formalistic requirements of notice of requests for cooperative defense that no one had ever heard of,27 and limited collective self-defense to military action on the territory of the state that had been attacked.28 ¶ 22 In retrospect, several writers and the former President of the Court, Stephen Schwebel, have concluded that the authority of the Nicaragua decision is questionable.29 I agree. That decision certainly has not facilitated the defense of sovereign states or the respectability of international law. ¶ 23 The threat of terrorism has led the U.N. Security Council, at least, to interpret self-defense in a manner that is far more robust than the ICJ's approach. Security Council resolutions adopted after 9/11 did not explicitly authorize the use of force in Afghanistan. But they do say that the U.S. is justified in exercising self-defense, and call on all states to act to assure that the Taliban regime will perform its obligations under international law.30 Resolution 1373 details, like a statute, the obligations of states vis-a-vis terrorists that operate within their borders.31 ¶ 24 Many, if not most international lawyers, have reacted to the need to use force in self-defense and in the defense of humanitarian rights by seeking to preserve what they consider the purity of international law. Tom Franck, whom I admire greatly, wrote a little piece in Foreign Affairs entitled "Break It, Don't Fake It."32 In other words, break international law if you have to, go ahead, but don't fake it, don't make up international law to justify your conduct. It would be like people in the 1930's dealing with Constitutional issues in the U.S. saying "Don't make up new constitutional law, it's going to mess up our Constitution. Just break the Constitution, violate the Constitution, with no explanation, and that way we will keep the purity of this rigid Constitution that the pre-New Deal Supreme Court was insisting on applying. Everything will be fine someday when we all return to the purity of the intended words." ¶ 25 Well, the international legal system should not be immune to the development of moral, workable rules dealing with humanity's problems going forward. The international lawyers who contend that the military actions in Kosovo and Afghanistan were illegal based their position on their understanding of the purpose of the Charter. How they got that understanding is difficult to understand. Why did the League of Nations collapse? Why did we have that horrendous Second World War? Because we did not use force against the Nazis when we still had an opportunity to stop them. To think that Harry Truman and Franklin Roosevelt and all the other great statesmen that participated in drafting the Charter would have favored narrow interpretations of use of force doctrine in the Charter is baseless. Read what they have written, look at what they did, and you know what kind of people they were.33 They were determined to bring about freedom, to advance the protection of human rights, to seek to establish justice in the world. ¶ 26 Lawyers, as Dean Acheson said, are not noted for their capacity to make strategic judgments.34 While the use of the criminal law is a proper part of any effort to end international crimes, states have to use force to stop people

determined to engage in terrorism or major violations of human rights. The same is true of monsters like Milosevic.35 Criminal prosecution is fine, but to be effective one must sometimes bomb and destroy military factions, in order to save the non-combatants at risk—such as the 800,000 human beings who were being pushed out of Kosovo and treated as cattle as they were driven away from their homes. ¶ 27 The bias against the use of force explains many of the most damaging practices and policies of the United Nations over the last decade. The threats, the rhetoric, not followed up by force, have led people, led states, led evil leaders to feel that they can do horrible things to human beings with impunity. Measured uses of force applied early can have a tremendously positive effect on the world and may well be far more morally justifiable than measures like the economic sanctions in Iraq, where hundreds of thousands of people suffered because of Saddam Hussein. ¶ 28 The use of force in Rwanda would have prevented the single most monstrous act of disregard of human suffering that has happened since the Cambodian mass murders. President Clinton went to Africa and apologized to the African people for what he had failed to do. Allowing those people to die without using force to protect them was disgraceful, even though it was clear that acting without Security Council approval to stop that genocide would have violated the Charter. ¶ 29 I will end with this comment. Humanitarian law and the defense of human rights are bound up with the rules governing the use of force. The ICJ's reluctance to embrace human rights stems ultimately from the same moral neutrality in interpreting international law that underlies its use of force attitudes. The use of force is necessary sometimes to preserve life and human rights. So long as some states' area is controlled by thugs, force must be given its proper position in law if human rights are to be taken seriously and made a universal reality.

Overemphasis on victims' rights tanks cred

Walton 8

Patrick, John Tait Memorial Lecture in Law and Public Policy, http://www.justice.gc.ca/eng/dept-min/pub/jtml-cmjt/kir2.html

And then there are the victims. The Court gives victims a special, privileged role for some very good reasons. In ad hoc tribunals, victims have been used as tools of the prosecution or the defence rather than being given due consideration in light of their own circumstances. The International Criminal Court has therefore set up an extensive guidance and counselling system for victims of physical violence, with specialized services for cases involving sexual crimes and those involving children, for example. Victims can participate in every stage in the proceedings, from the Pre-Trial Chamber on. There are systems providing financial compensation for victims, based on assets used by the War Crimes Commission, and a trust fund as well. So the victims will play a major role, but the Court must make sure that it is not paralyzed by large numbers of victims and the generous treatment they receive. In cases involving crimes against humanity, war crimes, and genocide, we can expect thousands of victims to appear before the Court, so the proceedings will be difficult to manage. To establish its credibility, the Court will not only have to act fairly and effectively but also appear to be doing so.

2AC Solvency Deficit - General

War powers authority cannot be submitted for compulsory jurisdiction to the ICJ- that's unconstitutional and gets rolled back and tanks hegemony

Harvard Journal on Legislation, "Protecting National Sovereignty in an Era of International Meddling: An Increasingly Difficult Task" Representative Bob Barr, **2002**. 39 Harv. J. on Legis. 299. Lexis.

The U.N. Charter proscribes "non-pacific" conduct unless necessary to counter threats to peace, breaches of peace, acts of aggression, or to act in self-defense. [28] By potentially giving the ICJ the compulsory jurisdiction to adjudicate "all legal disputes concerning treaties," the United States has effectively tied its hands to resolve such disputes in a manner deemed to be in accord with the ICJ-- and within the general proscriptions of the Charter to forego the use of force in such disputes. The Senate never should have agreed to such a provision, as it presents a potential conflict with the United States Constitution, [29] which grants Congress alone the power to declare war [30] and gives the President the sole power as Commander-in-Chief to wage war on behalf of our sovereign nation. [31] The Constitution does not grant the federal governm, ent the power to **cede such authority.** So long as the United States had the power, the understanding, and the will to restrict the U.N. provisions to the supremacy of our Constitution, such a problem may have been tolerable. Now, however, the understanding and will are largely absent from national debates, and a serious problem presents itself.

The most dramatic and recurrent example of the United Nations exerting powers reserved by the United States Constitution is the de facto **transfer of war powers** from our government to the mechanism of the [*305] U.N. [32] Constitutional grant to Congress to declare war and to the President to wage that war [33] is thwarted when international organizations attempt to interject their views on when and where such combat is legitimate. For example, the U.N. Charter mandates that, "all Members . . . undertake to make available to the Security Council, *on its call* . . . armed forces, assistance, and facilities . . . ." [34] This provision of the charter usurps congressional power to declare war by allowing the Security Council to have direct influence and/or control over America's fighting forces and resources. [35] By allowing the U.N. to interpret when United States troops are to be made available on its own beckoning, the *unilateral* and *sovereign* power of the United States becomes diluted and weakened. It is into these muddy waters that the United States has been repeatedly pulled or led in the last years of the twentieth century, and into the beginning years of the twenty-first, with little or no long-term forethought to the consequences or bases for such action by the United States.

2AC ICJ Bad- Deterrence

Strong icj sets a terrible precedent against use of force – prevents the ability to deter global conflict

Sofaer 3

Abraham, Senior Fellow, The Hoover Institution, Stanford University. Legal Adviser, U.S. Department of State, The International Court of Justice and Armed Conflict, http://www.law.northwestern.edu/journals/jihr/v1/4/#note

The Court has in fact carved out a potentially significant role in the area of use of force in international security. I will go through informally a series of points that show where the ICJ has indicated through some ruling or some practice that it intends to keep itself in the game when it comes to use of force decisions. ¶ 4 First, the ICJ has insisted on the right to decide its own jurisdiction. That in itself gives the Court great power to become involved in these kinds of questions. Second, the Court has broadly construed treaties to assume power over use of force situations. The Oil Platforms case2 is an example: the Court took a Friendship, Commerce, and Navigation treaty and found that even though this treaty did not address the issue of use of force directly—because the parties used the treaty to engage in commerce and be friends—the preliminary words of the treaty were enough of a ground to take jurisdiction. And this decision was made even though a separate treaty between Iran and the United States—the Agreement of Cooperation of 19593—actually dealt with the use of force and reserved to each party the right to do whatever it needed to do in its national security interests. So, the Court has shown a willingness, and indeed maybe an eagerness, to construe treaties that are before it broadly to take jurisdiction over use of force issues. ¶ 5 Next, the Court in the Nicaragua case broadly construed the concept of customary international law to assume authority over use of force decisions—even where the states involved took reservations from a multi-lateral treaty covering the same area of the law that "customary law" covered.4 The Court also has broadly construed its advisory opinion jurisdiction, as it did in the Nuclear Weapons case,5 to take an active role in deciding the legality of possessing or using nuclear weapons. Furthermore, in the Lockerbie case the Court took jurisdiction to decide the legality of Security Council resolutions bearing upon international security as it did in 1998.6 ¶ 6 In taking jurisdiction over these cases, the Court has disregarded or treated lightly doctrines limiting the ICJ's power or discretion to avoid political questions.7 The Court has swept aside any indication in the earlier jurisprudence of the Permanent Court of International Justice, and in scholarly work, urging the Court to be reluctant to exercise jurisdiction in use of force cases.8 ¶ 7 In the area of provisional measures, the Court has shown its willingness to assert itself, even in a use of force or security context, or at least to retain the right to assert itself.9 This is very significant not only because now provisional measures must be treated as mandatory rules, but because the Court has no tradition of applying the provisional measures doctrine in a manner similar and analogous to the way the U.S. or Britain applies preliminary injunctive law with strong emphasis on likelihood of success. The ICJ in the Paraguay case10 declined even to address the issue of likelihood of success. The language the Court used, and the way the Court went about issuing preliminary relief, explicitly avoided an evaluation of the meaning of the treaty at issue, causing the United States to feel that it could disregard the preliminary order. ¶ 8 The combined effect of these positions (and others) gives the Court a substantial set of opportunities to speak out on use of force issues. Keeping in mind that the Court, while now over fifty-years-old, has only relatively recently become activist on use of force questions, we should expect that in the next twenty-years we will see opinions that will deal with use of force questions that could have a major impact either in terms of articulating principles that are followed by states (and therefore a major impact in shaping the law on conduct of states), or undermining the Court's credibility and status by articulating principles that fail to serve well the practical and conceptual needs of international security. ¶ 9 Therefore, the important jurisdiction that the Court has carved out for itself, based on all the principles that I have just described, is neither good nor bad. Much depends on how the jurisdiction is used. The law on the use of force is in transition and it is unclear whether the ICJ will develop a set of rules that has a positive impact on the world. I find evidence that the Court has started off on the wrong foot and much must be done to improve the chances that the ICJ will play a constructive and meaningful role going forward. ¶ 10 First, the Court's basic approach to the use of force **is flawed**. International lawyers tend to take a "push button" approach in applying U.N. Charter rules. They look at Article 2.4,11 and conclude that force may not be used without Security Council approval even to advance Charter purposes. They look at Article 5112 and international lawyers in general and most international decisions that bear on this issue conclude that self-defense may be exercised only in response to an "attack", even though that provision states that nothing in the Charter should be read to limit that "inherent" right.13 The push-button approach then leads to the conclusion that, if a particular use of force does not satisfy one of those bases for using force, it's illegal.14 If it does, then it's legal. ¶ 11 This approach conflicts with the process we know rational human beings really go through when they decide whether to act in a certain manner. People do not appraise the wisdom of conduct by looking at each of the factors and doctrines relevant to that question in isolation. Rather, we consider what evidence there is that bears on whatever the criteria are that we believe should be looked at to determine propriety (including legality). And if on balance we conclude that a strong case exists for using force, we say it should be lawful. If on balance we conclude that it's a weak case on using force, we conclude that force should be prohibited. In this regard, if you look at Article 2.4 of the Charter,15 it isn't at all something that would justify anyone saying, "This is a clear prohibition on the use of force for any purpose whatsoever." The article is quite complex and parts of it are substantively significant. By that I mean parts of it signify a preference with a regard to values, and this of course has been anathema in most international law scholarship. The idea that you could use force more justifiably for purpose "A" as opposed to purpose "B" has been something, especially during the Cold War, that has been treated as inappropriate and wrong. ¶ 12 But Article 2.4 at one point refers to the purposes of the Charter as a relevant factor in evaluating the use of force.16 And we know what the Charter stands for, it's not a mystery, it's written there. The Charter stands for human rights. The Charter stands for equal treatment of women and men. The Charter stands for religious freedom. The Charter stands for states not being able to acquire other territory through the use of force. The Charter suggests specific moral and ethical principles, and those principles have in fact been developed in subsequent treaties. ¶ 13 I have argued that the Charter's language supports the use of force approach of the United States, which is based in part on an early Abe Chayes' article, in which he called for a "common lawyer" approach to the use of force, and which he wrote while he was Legal Adviser.17 I have been a big advocate of the early Abe Chayes, though Chayes changed his position after leaving office. I investigated whether other Legal Advisers advocated the "common lawyer" approach while in office, and found a few articles written while they were Legal Advisers advocating the same approach.18 But most Legal Advisers who served before me never speak up in favor of this approach once they leave office. ¶ 14 Kosovo created a major problem for international lawyers who supported the push-button approach. Those who favored intervening could not secure Security Council approval of a resolution saying that force could be used. Some Security Council resolutions demanded a cessation of the grotesque treatment of 800,000 Muslim Kosovars. But they did not authorize force. Nor could the U.S. justify the use of force on the basis of self-defense, collective or individual. We couldn't call the flood of three-quarters of a million people coming into the territories of NATO allies an "attack". They were just people trying to find safety. Finally, the U.S. could not contend on the basis of any respectable doctrine that a decision by NATO was the equivalent of a decision by the Security Council. Clearly it is not. ¶ 15 NATO nonetheless went ahead and stopped the monstrous treatment of the Kosovars. NATO did so, moreover, without giving any legal rationale for its conduct. NATO couldn't simply create a new category for using force legitimately based on what NATO claimed was lawful. Furthermore, the doctrine of humanitarian intervention had not been accepted broadly as an independent basis for using force in Kosovo. What we were left with was a series of factors that taken together made an overwhelming case for intervening in Kosovo, though no single factor taken alone could have justified the action. I went through those factors in an article in the Stanford International Law Journal.19 ¶ 16 First, the Security Council had acted under Chapter 7 of the Charter, and had found that the situation in Kosovo posed a threat to international peace and security. Under the push-button approach, the fact that the Council had found a threat to international peace and security is not merely an insufficient ground in itself for using force, it is worth nothing. Under the push button approach one couldn't consider that action even as a factor to weigh with all the other factors to determine whether to use force. ¶ 17 The same thing was true of other factors that clearly motivated NATO's action. While the doctrine of humanitarian intervention could not be relied upon as an independently acceptable basis for action, the fact is that the humanitarian crisis was triggered by conduct that violated several widely accepted norms incorporated into treaties. These include probably the Genocide Convention,20 certainly the Laws of War,21 the Geneva Convention,22 and some other provisions that established that the Yugoslav government was violating international law. ¶ 18 Another factor was that the NATO states unanimously considered the situation a threat to the stability of Europe. Several U.N. Security Council resolutions relating to Yugoslavia had found that Yugoslavia had already violated international law and was violating international law within its territory in its treatment of Muslims. An International Criminal Court had been created, which had jurisdiction over international crimes committed by officials of the Yugoslav government. Thus, even though the Security Council had not authorized the use of force,23 very strong moral and legal case existed for its use. ¶ 19 Now, what happened? International lawyers in general concluded that what NATO did in Kosovo was illegal by accepted principles, but that it was necessary and morally justifiable. It was necessary and moral, but nonetheless illegal! Most international lawyers concluded that Kosovo should be treated as a particular situation, limited to its special facts. I would be satisfied with that rationale, as long as I could cite what was done in Kosovo in future cases if the same factors once again appeared in another situation. This would represent the common lawyer technique in determining the propriety of using force. This is a process where you're not going to blind yourself to a factor just because it alone does not establish authority to act. ¶ 20 The same limited approach is applied under Article 51.24 The greatest evil of all evils, Professor Louis Henkin wrote in an article based on a debate at the New York City Bar Association,25 is using force, even in self-defense. In the Nicaragua case,26 the ICJ interpreted an attack in a way that **significantly narrowed** the inherent right of self-defense. Anything short of a full-fledged attack, such as providing arms, strategic advice or tactical assistance to a country that was trying to overthrow a government of another country, cannot be considered an attack under Article 51 for purposes of collective self-defense. That served the Soviet Union's purposes very well. They were assisting communist groups and governments around the world in trying to undermine elected governments. So long as they did not engage in an all-out attack, the U.S. and other allies could not use force to counter their efforts. ¶ 21 Under long-accepted traditional principles, what rule should be applied when you have a lesser attack? Well, it would seem that if you have a lesser attack you can only respond in a lesser way; you can only respond with lesser, proportionate measures, individually or collectively. But in Nicaragua, the Court created a new category of attacks that denied the collective use of force. It also purported to establish formalistic requirements of notice of requests for cooperative defense that no one had ever heard of,27 and limited collective self-defense to military action on the territory of the state that had been attacked.28 ¶ 22 In retrospect, several writers and the former President of the Court, Stephen Schwebel, have concluded that the authority of the Nicaragua decision is questionable.29 I agree. That decision certainly has not facilitated the defense of sovereign states or the respectability of international law. ¶ 23 The threat of terrorism has led the U.N. Security Council, at least, to interpret self-defense in a manner that is far more robust than the ICJ's

approach. Security Council resolutions adopted after 9/11 did not explicitly authorize the use of force in Afghanistan. But they do say that the U.S. is justified in exercising self-defense, and call on all states to act to assure that the Taliban regime will perform its obligations under international law.30 Resolution 1373 details, like a statute, the obligations of states vis-a-vis terrorists that operate within their borders.31 ¶ 24 Many, if not most international lawyers, have reacted to the need to use force in self-defense and in the defense of humanitarian rights by seeking to preserve what they consider the purity of international law. Tom Franck, whom I admire greatly, wrote a little piece in Foreign Affairs entitled "Break It, Don't Fake It."32 In other words, break international law if you have to, go ahead, but don't fake it, don't make up international law to justify your conduct. It would be like people in the 1930's dealing with Constitutional issues in the U.S. saying "Don't make up new constitutional law, it's going to mess up our Constitution. Just break the Constitution, violate the Constitution, with no explanation, and that way we will keep the purity of this rigid Constitution that the pre-New Deal Supreme Court was insisting on applying. Everything will be fine someday when we all return to the purity of the intended words." ¶ 25 Well, the international legal system should not be immune to the development of moral, workable rules dealing with humanity's problems going forward. The international lawyers who contend that the military actions in Kosovo and Afghanistan were illegal based their position on their understanding of the purpose of the Charter. How they got that understanding is difficult to understand. Why did the League of Nations collapse? Why did we have that horrendous Second World War? Because we did not use force against the Nazis when we still had an opportunity to stop them. To think that Harry Truman and Franklin Roosevelt and all the other great statesmen that participated in drafting the Charter would have favored narrow interpretations of use of force doctrine in the Charter is baseless. Read what they have written, look at what they did, and you know what kind of people they were.33 They were determined to bring about freedom, to advance the protection of human rights, to seek to establish justice in the world. ¶ 26 Lawyers, as Dean Acheson said, are not noted for their capacity to make strategic judgments.34 While the use of the criminal law is a proper part of any effort to end international crimes, states have to use force to stop people determined to engage in terrorism or major violations of human rights. The same is true of monsters like Milosevic.35 Criminal prosecution is fine, but to be effective one must sometimes bomb and destroy military factions, in order to save the non-combatants at risk—such as the 800,000 human beings who were being pushed out of Kosovo and treated as cattle as they were driven away from their homes. ¶ 27 The bias against the use of force explains many of the most damaging practices and policies of the United Nations over the last decade. The threats, the rhetoric, not followed up by force, have led people, led states, led evil leaders to feel that they can do horrible things to human beings with impunity. Measured uses of force applied early can have a tremendously positive effect on the world and may well be far more morally justifiable than measures like the economic sanctions in Iraq, where hundreds of thousands of people suffered because of Saddam Hussein. ¶ 28 The use of force in Rwanda would have prevented the single most monstrous act of disregard of human suffering that has happened since the Cambodian mass murders. President Clinton went to Africa and apologized to the African people for what he had failed to do. Allowing those people to die without using force to protect them was disgraceful, even though it was clear that acting without Security Council approval to stop that genocide would have violated the Charter. ¶ 29 I will end with this comment. Humanitarian law and the defense of human rights are bound up with the rules governing the use of force. The ICJ's reluctance to embrace human rights stems ultimately from the same moral neutrality in interpreting international law that underlies its use of force attitudes. The use of force is necessary sometimes to preserve life and human rights. So long as some states' area is controlled by thugs, force must be given its proper position in law if human rights are to be taken seriously and made a universal reality.

2AC CIL Turn

The decision of the CP would have to be based on customary international law.

Hugh **Thirlay '5, Principle Legal Secretary-ICJ, 2005**, Interrogating the Treaty: Essays in the Contemporary law of Treaties, ed. M. Craven & M. Fitzmaurice, p. 12-3

In its advisory opinion on *Legality of the Threat or Use of Nuclear Weapons*, the Court examined "whether there is any prohibition of recourse to nuclear weapons as such" in international law, and indicated that it would "first ascertain whether there is a conventional prescription in treaty law, "to this effect." It examined the provisions of a number of multilateral and plurilateral conventions; none of them were universally binding, and many contained provisions reserving the possibility of recourse to nuclear weapons in certain circumstances. There was thus no universal "conventional" rule, rule of treaty law, prohibiting recourse to nuclear weapons. The Court then turned "to an examination of customary international law" to determine whether such a prohibition flowed from that source of law, in this context it examined in particular the argument that General Assembly resolutions embodied or represented customary law on the question. However, before expressly turning to its examination of custom, the Court dealt with the argument of a number of States that the multilateral treaties cited "bear witness, in their own way, to the emergence of a rule of complete legal prohibition of all uses of nuclear weapons." Its conclusion on the point was that: "these treaties could…be seen as foreshadowing a future general prohibition of the use of such weapons, but they do not constitute such a prohibition by themselves." The Court thus dealt with this contention in the context of treaty law (conventional law); but given the express terms of the treaties cited, the argument was surely not that the parties to the treaties had already committed themselves to a total prohibition, but rather that the treaties constituted, or evidenced, a trend of State practice justifying the conclusion that a rule of *customary law* had emerged. This indeed was the sense of the Court's finding just quoted that, to apply the wording of the *North Sea* judgment: "this process is a perfectly possible one and does from time to time occur; it constitutes indeed one of the recognized methods by which new rules of *customary* international law may be formed. At the same time this result is not lightly to be regarded as having been attained," and had not, *in casu*, been attained. The structure of the Court's judgment is thus confused: having clearly distinguished treaty law (*droit conventionnel*), the obligations imposed by treaties, from general international law of customary nature, it proceeded to discuss under the former heading a question of possible custom-formation. While not of any profound significance, this anomaly does indicate the ways in which treaty law and custom may become intellectually intertwined.

Internal link turn – cil kills international institution cred and turns the net benefit

J. Patrick **Kelly, Law Professor Widener University Law, 2000,** Virginia Journal of International Law, Winter, 40 Va. J. Int'l L. 449, p. 540-2

In addition to these specific concerns, there are several overarching systemic reasons why CIL should be eliminated as a source of international law in the modern era. First, the continued use and abuse of CIL has promoted cynicism and disenfranchisement of many nations and peoples. The nations excluded from this process are well aware of CIL's historic failure. n361 CIL undermines the integrity of the international legal system which in turn encourages disrespect for the entire system of international law.

Second, the CIL process does not encourage compliance. With few effective means of enforcing norms, the international system relies on commitment and reciprocal self-interest for compliance. Nations that played no role in the formation of norms nor had their interests considered are unlikely to honor such norms. Third, CIL creates inconsistency and exceptionalism. CIL theory is used by powerful nations to conjure up exceptions to fundamental norms such as the prohibition on the use of force in the Charter of the United

Nations. n362 Similarly, less powerful nations and advocacy scholars use non-binding resolutions to promote their own vision of a just order removed from actual agreement or effective action. Neither form of manipulation of legal material will contribute to a viable international order. Fourth, there are a variety of other means of developing international norms that are more effective and more likely to promote a vital legal order. The ozone and trade regimes demonstrate that the world possesses a wealth of possible trade-offs, incentives, and other means of encouraging participation and compliance. Nations that perceive that it is in their interest to sign an environmental treaty or human rights convention will participate. Even nations that do not consider a treaty in their interest can be motivated to participate: China and India have reversed their positions and signed the treaty to protect the ozone layer. China, contrary to its earlier expressed will, is slowly entering into consensual human rights relationships in order to fully participate in and exercise a leadership role on the world stage. n363 Indeed, China cannot afford to not participate. Over time the powerful levers of World Bank and International Monetary Fund resources, as well as the inducement of foreign aid, have enticed nations to hold democratic elections, release political prisoners, and consider environmental protection measures. The pressure of world opinion and the changing attitudes of a country's citizens, impacted by satellite television and the Internet, will make participation in important treaties irresistible for most nations. Patience, as well as vision, is a virtue. Finally, the fundamental question for international society is: Through what processes will international law be made? The CIL process cannot generate norms perceived as legitimate when there is conflict about these norms or their formulation. Domestic legislatures find it difficult to resolve normative conflicts even in relatively homogenous societies. The CIL process encourages posturing and the hardening of positions, not the development of general law with majority support. In fact, this process, as it now stands, may engender bitterness and noncompliance. Wide participation, trade-offs, and negotiations are necessary to resolve differences in values and interests in a manner that engenders legitimacy, promotes commitment to agreed norms, and ultimately encourages compliance. CIL provides only "paper", and not viable, norms, which vary from culture to culture.

2AC FDI DA

Alien torts claims don't cover the environment now because CIL isn't binding

Emeka Duruigbo, Stanford Law School and Research Fellow, 2004, Minnesota Journal of Global Trade, Winter, 14 Minn. J. Global Trade 1, p. 35-6

Further, subject matter jurisdiction under the statute is limited to a small number of norms of customary international law and jus cogens, and does not cover all human rights and environmental abuses. n212 In particular, courts have been reluctant to extend the ATS to environmental harms. n213 Foreign claimants must explore other bases for subject matter jurisdiction, even when human rights and environmental abuses are involved. n214 The importance of environmental claims is highlighted by the fact that many of the allegations of corporate misdeeds center on environmental abuses. Some scholars believe that the ATS should cover environment-related cases on the grounds that a right to a clean environment exists in international law. n215 Even cases that fit the ATS rarely make their way to U.S. courts because of financial costs and other constraints. Thus, many victims are left without an effective remedy.

COURTS WILL DETERMINE CIL RIGHT TO HEALTHY ENVIRONMENT

John Lee, 2000, Columbia Journal of Environmental Law, 25 Colum. J. Envtl. L. 283, p. 305-6

A right to a healthy environment will probably find its acceptance as a principle of customary international law. This right has not been explicitly recognized in a multilateral treaty or convention that legally binds the nations of the world to that recognition, nor is there any indication that anytime soon it will be. n101

That could destroy international FDI

Donald J. Kochan, Law Professor Chapman, 2006, Fordham International Law Journal, February, 29 Fordham Int'l L.J. 507, p. 550-1

Finally, economic development and its concomitant contribution to the advancement of human rights and democracy can be threatened when the judiciary meddles in foreign and international law. n180 If corporate investment is chilled because of potential international "law" liability, then economic development, democracy, and the enhancement of human rights are chilled as well. If courts have **free reign** to adopt foreign and international laws, the certainty and **predictability** of law are unsettled and thus may cause detrimental concerns. After all, people need to know the rules they are playing by in order to be fully willing and able to play the game. That effort is much easier if there is a corpus of law that is identifiable. It is identifiable when companies or individuals know the source of lawmaking authority - at home and abroad. Recognizing that judges might invoke precedents from extraterritorial sources makes this process difficult and indeterminate, necessarily creating investment risks that will affect market and development activities. For example, when private companies become subject to ATS suits, such suits threaten to discourage the very overseas investment and development that help expand individual liberty, human rights, and democracy abroad. New liabilities will discourage foreign investment, handicapping the advancement of human rights in developing countries. The uncertainties of applicable law that arise when judges intonate that they can look outside our borders when deciding cases have the same effect on investment predictability both within and outside the walls of the United States.

The result would be no more global growth

E. Borenszteina, IMF Research Department J. De Gregoriob, Center for Applied Economics at Universidad de Chile, and J-W. Leec, Economics Department, Korea University, 1998 "How Does Foreign Direct Investment Affect Economic Growth?" Journal of International Economics 45

Technology diffusion plays a **central role in the process of economic development**. In contrast to the traditional growth framework, where technological change was left as an unexplained residual, the recent growth literature has highlighted the dependence of growth rates on the state of domestic technology relative to that of the rest of the world. Thus, growth rates in developing countries are, in part, explained by a 'catch-up' process in the level of technology. In a typical model of technology diffusion, the rate of economic growth of a backward country depends on the extent of adoption and implementation of new technologies that are already in use in leading countries. Technology diffusion can take place through a variety of channels that involve the transmission of ideas and new technologies. Imports of high-technology products, adoption of foreign technology and acquisition of human capital through various means are certainly important conduits for the international diffusion of 3 technology. Besides these channels, foreign direct investment by multinational corporations (MNCs) is considered to be a **major channel** for the access to advanced technologies by developing countries. MNCs are among the most technologically advanced firms, accounting for a substantial part of the world's research and development (R and D) investment. Some recent work on economic growth has highlighted the role of foreign direct investment in the technological progress of developing countries. Findlay (1978) postulates that foreign direct investment increases the rate of technical progress in the host country through a 'contagion' effect from the more advanced technology, management practices, etc. used by the foreign firms. Wang (1990) incorporates this idea into a model more in line with the neoclassical growth framework, by assuming that the increase in 'knowledge' applied to production is determined as a function of foreign direct investment (FDI). The purpose of this paper is to examine empirically the role of FDI in the process of technology diffusion and economic growth in developing countries. We motivate the empirical work by a model of endogenous growth, in which the rate of technological progress is the main determinant of the long-term growth rate of income. Technological progress takes place through a process of 'capital deepening' in the form of the introduction of new varieties of capital goods. MNCs possess more advanced 'knowledge', which allows them to introduce new capital goods at lower cost. However, the application of this more advanced technologies also requires the presence of a sufficient level of human capital in the host economy. The stock of human capital in the host country, therefore, limits the absorptive capability of a developing country, as in Nelson and Phelps (1966), and Benhabib and Spiegel (1994). Hence, the model highlights the roles of both the introduction of more advanced technology and the requirement of absorptive capability in the host country as determinants of economic growth, and suggests the empirical investigation of the complementarity between FDI and human capital in the process of productivity growth. We test the effect of FDI on economic growth in a framework of cross-country regressions utilizing data on FDI flows from industrial countries to 69 developing 5 countries over the last two decades. Our results suggest that FDI is in fact an important vehicle for the transfer of technology, contributing to growth in larger measure than domestic investment. Moreover, we find that there is a strong complementary effect between FDI and human capital, that is, the contribution of FDI to economic growth is enhanced by its interaction with the level of human capital in the host country. However, our empirical results imply that FDI is more productive than domestic investment only when the host country has a minimum threshold stock of human capital. The results are robust to a number of alternative specifications, which control for the variables usually identified as the main determinants of economic growth in cross-country regressions. This sensitivity analysis along the lines of Levine and Renelt (1992) shows a **robust relationship** between economic growth, FDI and human capital.

The impact is extinction

Michael G. Zey, executive director of the Expansionary Institute, Professor at Montclair State,1998, Seizing the Future, p. 34, pp. 39-40

> However, no outside force guarantees the continued progress of the human species, nor does anything mandate that the human species must even continue to exist. In fact, history is littered with races and civilizations that have disappeared without a trace. So, too, could the human species. There is no guarantee that the human species will survive even if we posit, as many have, a special purpose to the species' existence. Therefore, the species innately comprehends that it must engage in purposive actions in order to maintain its level of growth and progress. Humanity's future is conditioned by what I call the Imperative of Growth, a principle I will herewith describe along with its several corollaries. The Imperative of Growth states that in order to survive, any nation, indeed, the human race, must grow, both materially and intellectually. The Macroindustrial Era represents growth in the areas of both technology and human development, a natural stage in the evolution of the species' continued extension of its control over itself and its environment. Although 5 billion strong, our continued existence depends on our ability to continue the progress we have been making at higher and higher levels. Systems, whether organizations, societies, or cells, have three basic directions in which to move. They can grow, decline, or temporarily reside in a state of equilibrium. These are the choices. Choosing any alternative to growth, for instance, stabilization of production/consumption through zero-growth policies, could have alarmingly pernicious side effects, including **extinction**.

2AC A2: Cred NB- Defense

One issue isn't key – the us will backslide in the future

Ereli 9

Anthony, Deputy Chief of Mission at the U.S. Embassy in Doha, Qatar, THE UNITED STATES' WITHDRAWAL FROM INTERNATIONAL COURT OF JUSTICE JURISDICTION IN CONSULAR CASES: REASONS AND CONSEQUENCES, Duke Journal of Int'l Law, Lexis

Because, precisely because, we respect the international system, because we respect the authorities and the jurisdictions of international institutions when we sign up to those international—when we sign up and submit ourselves to those jurisdictions. So it shows that, look, even though we don't like something, even though we think it's wrong, if we submitted ourselves to that jurisdiction freely and according to international obligations, then we will honor those international obligations. I mean, that's why we are complying with the case. But we're also saying in the future we're going to find other ways to resolve disputes that come under the Vienna Convention **other than submitting them to the ICJ**. We'll do something else. So we're still committed to the Vienna Convention. We're still committed to upholding its principles and fulfilling our obligations under that convention. What we are saying is when there are questions about that, we'll seek to resolve them in a venue other than the ICJ. Given that the ICJ in this case, as well as the Lagrand case, established a precedent of using this mechanism to affect our domestic legal system

Overemphasis on victims' rights tanks cred

Walton 8

Patrick, John Tait Memorial Lecture in Law and Public Policy, http://www.justice.gc.ca/eng/dept-min/pub/jtml-cmjt/kir2.html

And then there are the victims. The Court gives victims a special, privileged role for some very good reasons. In ad hoc tribunals, victims have been used as tools of the prosecution or the defence rather than being given due consideration in light of their own circumstances. The International Criminal Court has therefore set up an extensive guidance and counselling system for victims of physical violence, with specialized services for cases involving sexual crimes and those involving children, for example. Victims can participate in every stage in the proceedings, from the Pre-Trial Chamber on. There are systems providing financial compensation for victims, based on assets used by the War Crimes Commission, and a trust fund as well. So the victims will play a major role, but the Court must make sure that it is not paralyzed by large numbers of victims and the generous treatment they receive. In cases involving crimes against humanity, war crimes, and genocide, we can expect thousands of victims to appear before the Court, so the proceedings will be difficult to manage. To establish its credibility, the Court will not only have to act fairly and effectively but also appear to be doing so.

2AC US Doesn't Enforce

US may consent but not enforce an icj decision

Coleman 3

Andrew, The International Court of Justice and highly political matters., Melbourne Journal of International Law, Lexis

It could be argued that the disadvantages caused by non-appearance where the ease proceeds to judgment are a concern only for the non-appearing party and are entirely self-inflicted. What non-appearance does, however, is raise a perception in the broader international community of the irrelevance of the ICJ in resolving international disputes. If it is perceived that a party is the victor simply by virtue of its appearance in the absence of the other party, rather than due to the strength of its claim, then this raises serious concerns about the validity of the Court's findings, undermining the Court's credibility in the eyes of the international community. Credibility is important to all courts, but particularly to the ICJ **given the problems of enforceability** that it faces. **Even if states do consent to the ICJ's jurisdiction,** who or **what enforces the Court's decision**? Whilst provision is made in both the Statute of the ICJ and the UN Charter for the Court's judgments and advisory opinions to be enforced through resolutions of the Security Council, (58) there is no international police force that will actually ensure compliance with the resolution itself. As Couvreur notes, in municipal orders, the court, whose jurisdiction is compulsory, acts on behalf of and in the capacity of ... the fully integrated sovereign state; the latter is responsible for the continuity and efficacy of the peacemaking process initiated by the court ... The case is patently quite different in the international order: ... this community, which is not integrated, or scarcely so, and which itself is entirely based on a juxtaposition of sovereignties, is in no wise [sic] comparable to a sovereign state. (59)

Historically likely- we already did that once

Ereli 9

Anthony, Deputy Chief of Mission at the U.S. Embassy in Doha, Qatar, THE UNITED STATES' WITHDRAWAL FROM INTERNATIONAL COURT OF JUSTICE JURISDICTION IN CONSULAR CASES: REASONS AND CONSEQUENCES, Duke Journal of Int'l Law, Lexis

On 7 March 2005, the Secretary-General received from the Government of the United States of America, a communication notifying its withdrawal from the Optional Protocol. The communication reads as follows: ". . . the Government of the United States of America [refers] to the Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes, done at Vienna April 24, 1963. This letter constitutes notification by the United States of America that it hereby withdraws from the aforesaid Protocol. As a consequence of this withdrawal, the United States will no longer recognize the jurisdiction of the International Court of Justice reflected in that Protocol."

Can't just rely on int'l pressure

Coleman 3

Andrew, The International Court of Justice and highly political matters., Melbourne Journal of International Law, Lexis

The lack of an overall sovereign means there is no real means of enforcement other than 'peer group pressure' from other nation states. (60) Indeed, Ojo writes that '[t]here is no independent international legal system, capable of enforcing agreements and international law. The system is defective because it depend [sic] so much on the behavior and attitude of those it is suppose [sic] to regulate.' (61)

Large history of non-comliance

Coleman 3

Andrew, The International Court of Justice and highly political matters., Melbourne Journal of International Law, Lexis

This dependency provides states with the ability, unheard of in domestic legal systems, to avoid the ICJ's authority (62) to a degree that leads some to argue that the expectations placed upon international adjudication as an instrument of international dispute resolution have been unable to be realised. (63) The history of noncompliance with the Court's rulings strengthens this already substantial argument.

India

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Text

The United States federal government should condition sustaining nuclear power deals and weapon sales to India if and only if India shuts down its Central Monitoring System.

The counterplan solves – nuclear deals are a top priority in the US-India partnership

The Editorial Board 14 -- (The Editorial Board @ The New York Times, 2014, "India's Role in the Nuclear Race," New York Times, July 5th, Available Online at http://www.nytimes.com/2014/07/06/opinion/sunday/indias-role-in-the-nuclear-race.html?_r=0, Accessed 07-21-15) PMG

India has long sought to carve out a special exception for itself in the nuclear sphere. For many years, the country was barred from nuclear trade by the United States and other major states after it tested its first nuclear weapon in 1974 with materials and equipment acquired from Canada and the United States, ostensibly for peaceful purposes, and tested again in 1998. It has refused to sign the Nuclear Nonproliferation Treaty, which commits all states (except the United States, Britain, France, Russia and China) to forsake nuclear weapons.

That situation started to change in 2008 when the United States signed a **civilian nuclear trade deal** with India, a rising economic power with a huge need for energy.

President George W. Bush was so eager to use the agreement as the centerpiece of a **new India-America relationship** that he cut a weak deal. India did not have to limit its nuclear weapons, stop producing bomb-making material or forsake nuclear testing. Even India's promise that American business would benefit from nuclear technology contracts has not been fulfilled because of an Indian liability law that imposes hefty financial responsibility on contractors if there is an accident.

India already has a partnership arrangement with the suppliers group, and membership would advance its status as a nuclear weapons state, even though it has not signed the nonproliferation treaty. Moreover, since the group operates on consensus, membership would give India a veto over decision making, including any decision involving Pakistan, which is not being considered for membership.

To enhance its membership bid, India recently said it was ratifying a long-promised agreement that lets the International Atomic Energy Agency do more oversight on India's civilian nuclear program. But the agreement carries fewer obligations than those agreed to by other major states, and there would still be no verification or check on India's growing military-related nuclear program.

According to IHS Jane's, a defense research group, India is expanding a uranium enrichment plant that could support the development of nuclear bombs. That is sure to make Pakistan, which has the world's fastest growing nuclear arsenal, more anxious than ever. India is believed to have 90-110 nuclear weapons; Pakistan, about 100-120; and China, about 250.

India's new prime minister, Narendra Modi, who plans to visit President Obama at the White House in September, has made economic growth a **priority**. **The Americans are eager to capitalize on tha**t, as are other Western powers, with a **focus** on winning Indian defense and nuclear energy contracts. If India

wants to be part of the nuclear suppliers group, it needs to sign the treaty that prohibits nuclear testing, stop producing fissile material, and begin talks with its rivals on nuclear weapons containment.

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India Wants the Deal

The nuclear deal hits the center of the US-India partnership – now's key to secure ties – other countries are moving in and India's nuclear hungry

Baru 7/21 -- (Sanjaya Baru, Director for Geo-economics and strategy at the International Institute of Strategic Studies, member of India's National Security Advisory Board in the Prime Minister's Office, Professor at the Indian Council for Research on International Economic Relations in New Delhi, Ph.D and Master's Degree in economics from Jawaharlal Nehru University in New Delhi, 2015, "An agreement that was called a deal," The Hindu, July 21st, Available Online at http://www.thehindu.com/opinion/lead/indiausa-stand-in-nuclear-deal/article7444348.ece, Accessed 07-22-15) PMG

Ten years ago, on the morning of July 19, 2005, the readers of The Hindu would have seen a boxed news item next to the front page lead story with an innocuous headline that read "Manmohan expresses satisfaction over talks". It was not just the byline of the writer (N. Ravi, the newspaper's former Editor-in-Chief) that justified the placement of that report, but its stunning opening line: "In a significant development after the meeting that Prime Minister Manmohan Singh had with American President George Bush at the White House, the United States, acknowledging that India is a nuclear weapons power, agreed to cooperate with it in the area of civilian nuclear energy."

Thus began the long, rocky and uncertain journey of the "Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy" that finally secured the Indian Parliament's imprimatur three years later. The agreement came to be called a "deal" because it was viewed in transactional terms by many in both countries. One U.S. Congressman put it bluntly during a meeting with Dr. Singh, "it's 123 for 126" — the reference being to the 123 Agreement that had to be signed and the 126 fighter jets that the United States hoped India would buy from it. Others rejected such a transactional interpretation and viewed the agreement as the key that enabled both countries to open the door to a longer term strategic partnership.

The 10th anniversary

Interestingly, a decade later it was left to a think tank in Washington DC to bring together a group of some of the former U.S. and Indian officials, associated in various capacities and to varying degrees, with the negotiation of the agreement. There has been no similar high level celebration of the 10th anniversary of the Bush-Singh "deal" in India. Even the Congress Party has remained silent, not making any statement so far to remind the people of an important achievement of its own government. For a party that observes so many ritual anniversaries, it is indeed puzzling that there has been no celebration of such a historic achievement of its last Prime Minister. Of all his achievements in the Prime Minister's Office (PMO), Dr. Singh will be remembered for the nuclear deal.

" Neither the Congress nor the BJP has been willing to openly endorse the fact that the deal was made possible by the actions of successive Congress and BJP Prime Ministers"

In the U.S., on the other hand, given the bipartisan support for the agreement, the gathering last week in Washington DC was addressed by U.S. Vice President Joseph Biden. It may be recalled that as a member of the U.S. senate at the time, President Barack Obama had actually voted against the 123

agreement. In government, Mr. Obama has not only endorsed the agreement entered into between Mr. Bush and Dr. Singh but also joined hands with Prime Minister Narendra Modi to complete the journey begun a decade ago by endorsing a mutually agreed fudge on India's civil nuclear liability law.

Political reading

Despite the fact that the Congress and the Bharatiya Janata Party (BJP) are implicitly on the same side as far as the civil nuclear agreement and the strategic partnership with the U.S. are concerned, neither party has been willing to openly endorse the fact that this agreement was made possible by the actions of successive Congress and BJP Prime Ministers — P.V. Narasimha Rao, Atal Bihari Vajpayee, Manmohan Singh and Narendra Modi. As I recorded in my book, The Accidental Prime Minister, on completing the 123 agreement with the U.S., Dr. Singh told Mr. Vajpayee, "I have only completed what you began." In tying up the loose ends of the civil nuclear liability law, Mr. Modi can say much the same to Dr. Singh! **While the Bush-Singh agreement was not just about nuclear energy, but also about defining a new relationship between two great democracies, the immediate considerations that defined the timetable of the agreement getting finalised had as much to do with Mr. Bush's tenure coming to an end as it had with uranium shortage in India and the falling capacity utilisation at nuclear power plants.** With some nuclear power plants on the verge of shutdown and with even friendly countries like Russia insisting that India needed the approval of the Nuclear Suppliers Group (NSG) before any fresh export of uranium could be authorised, getting the 123 agreement done became **important in itself**, and not just as a step towards a U.S.-India strategic partnership.

An energy initiative

An important reason why the agreement was projected as an energy initiative was because many in government believed that politically it would be difficult to sell to the public a complex technical agreement without giving it a popular basis. Some political leaders like Lalu Prasad and Sharad Pawar recalled how the Narasimha Rao government was put on the defensive during the Uruguay Round of world trade negotiations because the Opposition projected the "Dunkel Draft", a draft agreement authored by Arthur Dunkel (the last director-general of GATT — General Agreement on Tariffs and Trade) as anti-farmer. Few in India may have actually read the Dunkel Draft but millions of farmers agitated against an imaginary enemy named "Uncle Dunkel".

It was for this reason that a document was prepared explaining how the nuclear deal was all about delivering electricity to people, especially power starved rural India. The document was translated into all languages and copies made available to members of Parliament and State legislatures. The media campaign that followed generated adequate public support for the nuclear deal so that every public opinion poll conducted during the period 2006-2008 showed majority opinion supporting the government on the deal.

This is not to say that India was not serious about increasing generation of nuclear energy. It is not widely known that for years the plan target for nuclear energy generation was that it would constitute a mere 3.0 per cent of total energy generation at home. In actual fact, in the mid-2000s it was not even 2.0 per cent. The proponents of the nuclear deal hoped that with easier access to uranium and new nuclear plants, India could try double nuclear generation capacity by 2020. No more.

The counterplan boosts cooperation and India loves it – 5 reasons

Mohan 7/21 -- (C. Raja Mohan, consulting editor on foreign affairs for The Indian Express, distinguished fellow at the Observor Research Foundation in New Delhi, , Dehli, nonresident Senior Associate in Carnegie's South Asia Program with a focus on international security, defense, and Asian strategic issues, Ph.D from Jawaharlal Nehru University in New Delhi, 2015, "Transformation of the bilateral relationship is the real big deal," The Indian Express, July 20th , Available Online at http://indianexpress.com/article/explained/10-yrs-of-indo-us-civil-nuclear-deal-transformation-of-the-bilateral-relationship-is-the-real-big-deal/1/, Accessed 07-22-15) PMG

Although the full potential of the civil nuclear initiative is yet to be realised, there is no denying the broader transformation of the bilateral relationship over the last decade. Few could predict how far and how fast the India-US engagement has moved since July 2005. Consider the following five developments over the last decade:

One, the US has removed many high technology sanctions imposed on India since 1974. If Delhi was prevented by law from importing anything for its nuclear programme over the last few decades, it is **boosting atomic power generation** in India through imported uranium and is negotiating with multiple vendors for purchase of new reactors.

Two, the US has become India's largest trading partner in goods and services; and the two sides have set an ambitious goal of **half a trillion dollars for future trade.** The growing commercial engagement has been reinforced by an intensification of people-to-people contact and the presence of the 3 million strong Indian diaspora in America.

Three, **cooperation on counter-terrorism and intelligence-sharing have expanded** rapidly over the last decade. The US has become one of India's major suppliers of arms, and the two sides are discussing ideas that would once have been dismissed as inconceivable — for example, US support in the development of India's next generation aircraft carrier.

Four, in refusing to extend the civil nuclear initiative to Islamabad, Washington removed the hyphen in its relations with Delhi and Islamabad. Since 2005, America has also discarded the idea of mediating between India and Pakistan, especially on the Kashmir question.

Equally significant has been America's decision to view India as a potential great power in the same league as China, assist in the **expansion of India's comprehensive national power,** and encourage Delhi to play a larger role in **stabilising the Asian balance of power.**

Five, while traditional differences between Delhi and Washington on global issues have endured, the two sides are now avoiding confrontation in multilateral fora dealing with **trade and climate change.**

None of these developments would have been possible without the civil nuclear initiative that generated **greater trust** and provided the enabling environment for **broadening the partnership.** As India reflects on the decade of transformation in its relations with the US, it must also wonder how Delhi made such heavy weather of an agreement so patently in India's favour.

India's looking to expand nuclear capabilities now

Farley 15 -- (Robert Farley, Assistant Professor at the Patterson School, Ph.D from the University of Washington Department of Political Science, specialization in military diffusion, maritime affairs, and

national security, 2015, “India’s Mighty Nuclear Weapons Program: Aimed at China and Pakistan?,” National Interest, January 3rd, Available Online at http://nationalinterest.org/feature/indias-mighty-nuclear-weapons-program-aimed-china-pakistan-11956, Accessed 07-21-15) PMG

India’s nuclear weapons program is a cornerstone of New Delhi’s security strategy for the 21st century. For most of the post-war period, India badly trailed the established nuclear powers in weapon quality, quantity, and the sophistication of delivery systems. In recent years, however, India has indicated a **willingness** to take the steps necessary to becoming a **first rate nuclear power.**

This article examines the development of the nuclear program over history, the current state of the program and its associated delivery system projects, the strategic rationale of India’s nuclear efforts, and the likely future contours of the program. The current balance of nuclear power in South and East Asia is unstable, and likely to result in a nuclear arms race involving Pakistan, India, and China.

History of the Program:

Indian work on nuclear technology began even prior to independence from the United Kingdom, but a period of instability and insecurity beginning in 1960 accelerated development. Indian defeat in the Sino-Indian War demonstrated conventional vulnerability, which the inconclusive 1965 Indo-Pakistani exacerbated. US efforts to intimidate New Delhi during the 1971 war with Pakistan also played a role.

India detonated its first nuclear device in 1974, in a “peaceful” nuclear demonstration. Yielding between 6 and 15 kilotons, the test drew widespread international criticism. Indian nuclear development progressed through fits and starts over the next two decades, with New Delhi reaching an uneasy accommodation with the world’s nuclear community to keep the program in the shadows. Ballistic missile development continued alongside the nuclear program.

This accommodation broke down in May, 1998, when India tested five devices (four fission, and one thermonuclear device that likely failed). Driven by domestic politics and deteriorating relations with Pakistan, the tests strained India’s relations with the United States, and with the international non-proliferation community. However, they did indicate India’s commitment to a future nuclear defense profile, and confirmed India’s progress with weapons design over the previous two decades.

How Many Nukes Does India Have?

According to the Arms Control Association, India likely possesses around 100 nuclear weapons, mostly of a low yield fission variety. However, reports indicate that India has **stepped up** its **production** of fissile material, in conjunction with its nuclear submarine program. This could give India the ability to produce more and larger weapons in a relatively short time frame. It is certainly within India’s means to vastly increase the size of its arsenal, and plans to construct four ballistic missile submarines (each carrying twelve missiles) almost certainly indicates an **intention to expand.**

The US-India nuclear deal is the center of their partnership

Desai 14 -- (Ronak D. Desai, Affiliate at the Belfer Center’s India and South Asia Program at Harvard University and a Fellow at the Truman National , 2014, “Understanding Richard Verma’s Swift Senate Confirmation as U.S. Ambassador to India,” Huffington Post, December 12th, Available Online at http://www.huffingtonpost.com/ronak-d-desai/understanding-richard-ver_b_6312120.html, Accessed 07-20-15) PMG

Verma has spent more than two decades shaping U.S. foreign policy at the highest levels. His experience both inside and outside the government is exhaustive, and includes his time as an Assistant Secretary of State under Hillary Clinton, and as National Security Advisor, Counsel, and Foreign Policy Advisor to Senate Majority Leader Harry Reid (D-NV). During his tenure in the Senate, Verma played a quiet but crucial role in securing passage of the landmark U.S.-India civilian nuclear deal. **The historic accord is considered the centerpiece of the U.S.-India strategic partnership.** Verma's nomination was met with virtually universal acclaim across the diplomatic, national security, business, and trade communities. The prospect of Verma becoming the first Indian-American ambassador to India also ignited fierce pride within the Indian diaspora in the United States.

This portended a smooth confirmation process for Verma. The Senate Foreign Relations Committee (SFRC) wasted little time scheduling a confirmation hearing for him on December 2 during the final days of the Congressional lame duck session. During the hearing, Verma provided keen insights about the multidimensional strategic partnership and President Obama's upcoming visit to India. He expertly fielded questions on a host of complex topics ranging from gender violence and intellectual property rights, to South Asian geopolitics and the **unconsummated civilian nuclear deal**. His performance garnered widespread praise from the Committee's members, who voted unanimously to send Verma's confirmation for a full Senate vote just two days after the hearing. One short week later, the United States Senate confirmed Verma by a voice vote, providing unanimous consent to his nomination.

Nuclear power in India has potential

Biswas 15 -- (Soutik Biswas, India Online Editor at BBC for 12 years, Dehli correspondent, 2015, "Will the India-US nuclear deal work?," BBC News, January 26th, Available Online at http://www.bbc.com/news/world-asia-india-30978152, Accessed 07-20-15) PMG

Despite new reactors, nuclear power is on the decline. It is generating less than 11% of the world's electricity production, the lowest level since 1982, according to the International Atomic Energy Agency (IAEA) in its latest report. (Coal is still the fuel of choice.) On the one hand, Germany plans to phase out nuclear power by 2022; on the other, China plans to treble nuclear power capacity by 2020.

"Nuclear power is at a paradoxical stage," says the IAEA. "On the one hand, it appears to have entered an era of declining expectations. Yet a wave of countries is poised to introduce nuclear power, and the long-term potential remains high." Economic, technological, and political changes, as we have seen, can influence the spread of nuclear power. **India is not an exception.**

Relations High

US-India relations are high and durable – boosts counterplan solvency -- litany of examples including nuclear deals and surveillance prove

Desai 14 -- (Ronak D. Desai, Affiliate at the Belfer Center's India and South Asia Program at Harvard University and a Fellow at the Truman National , 2014, "U.S.-India Relations Will Endure Despite the Khobragade Controversy," Huffington Post, January 13th, Available Online at http://www.huffingtonpost.com/ronak-d-desai/devyani-khobragade_b_4578443.html, Accessed 07-16-15) PMG

But is the U.S.-India strategic partnership really so fragile? Although the heated rhetoric surrounding the Khobragade episode would suggest otherwise, the United States and India have confronted other challenges far more formidable than the ongoing diplomatic row that has erupted between the two countries over the young diplomat's arrest and the circumstances surrounding it.

India's close relationship with Iran, for example, long constituted a major irritant in ties between Washington and New Delhi. At a time when the United States was leading international efforts to isolate Iran over its disputed nuclear program, American officials were chagrined to see India continue to import Iranian oil to meet its voracious energy demands. Some experts predicted an inevitable train wreck in U.S.-India relations over New Delhi's relationship with Tehran, which would lead to long-term damage in U.S.-India ties. The train wreck never occurred. On the contrary, American and Indian officials collaborated closely together in a manner consistent with Washington's goals regarding Iran's nuclear program, while accommodating India's legitimate concerns about its energy supply.

The stringent liability legislation enacted by India's parliament shortly after passage of the landmark U.S.-India civilian nuclear deal has also posed a potent challenge to bilateral relations for more than five years.

Inconsistent with governing international standards on nuclear liability, the Indian law effectively precludes American companies from entering India's lucrative nuclear market and realizing the benefits of the historic nuclear accord. While some observers worried that the liability legislation would derail U.S.-India ties by rendering the centerpiece of the strategic partnership fundamentally irrelevant, these fears proved to be unfounded. Officials in both capitals refused to allow the relationship to be hijacked by one single issue, focusing instead on other opportunities for cooperation, **including within the nuclear energy arena**.

More recently, documents leaked by former National Security Agency contractor Edward Snowden revealed that India was among one of the NSA's top surveillance targets and that its United Nations mission in New York and embassy in Washington were bugged and monitored by the agency. While similar revelations of American surveillance on other friends and allies abroad provoked outrage and condemnation in capitals around the world, New Delhi's tepid response highlighted its resolve **not to let the disclosures impact U.S.-India ties.**

Each one of these challenges implicated equities more central to core American and Indian national interests than the ones supposedly affected by the Khobragade arrest. Officials in both capitals, however, remembered the larger value of the strategic partnership to both countries and found a way to move it forward. In fact, profound differences continue to exist between the United States and India

on a host of issues, including climate change, intellectual property protection for American pharmaceuticals sold in India, and global trade, for instance. But while these differences are serious ones unlikely to be resolved anytime soon, decision-makers in Washington and New Delhi have so far not allowed them to compromise the overall integrity and forward momentum of the relationship.

Viewed within this context, dire predictions regarding the future of U.S.-India relations appear exaggerated and inconsistent with the history of the strategic partnership. Ultimately, the overall trajectory of the U.S.-India ties is unlikely to be affected by the brewing controversy in the long-term. The underlying strategic logic of bilateral ties remains unchanged despite Khobragade's arrest and the ongoing spat between the two countries. Robust U.S.-India ties remain as important as ever with issues like the pending withdrawal of American troops from Afghanistan, regional stability, terrorism, and managing China's rise continuing to top the agenda for both countries. American and Indian leaders would be wise to remember this as tensions continue to persist even after Khobragade's departure from the United States.

To be sure, the current diplomatic dispute is a significant one that has put genuine strain on the strategic partnership. But **U.S.-India relations have proven remarkably durable and resilient in the face of even more daunting challenges.** The Khobragade controversy is unlikely to change that.

Singh and Obama prove relations are high now – 10 years of democratic ties and cooperation on various policies

Desai 14 -- (Ronak D. Desai, Affiliate at the Belfer Center's India and South Asia Program at Harvard University and a Fellow at the Truman National , 2014, "Dr. Singh Goes to Washington: Why US-India Relations Still Matter," Huffington Post, September 27th, Available Online at http://www.huffingtonpost.com/ronak-d-desai/dr-singh-goes-to-washington_b_3999664.html, Accessed 07-26-15) PMG

With President Obama and Indian Prime Minister Manmohan Singh scheduled to meet today in Washington regarding a host of different issues, expectations surrounding their bilateral talks are modest at best. Although the meeting constitutes the culmination of a series of high-level exchanges that have taken place between the two countries over the past year, neither side expects the upcoming talks to result in any significant breakthroughs or substantive developments in the U.S.-India relationship.

The meeting comes at a time when the president and prime minister are confronting profound challenges both at home and abroad. In the United States, President Obama's agenda continues to be stymied by a recalcitrant, polarized Congress threatening to shut down the government while the country's economic recovery remains uneven. Chemical weapons use in Syria and a potential diplomatic opening with Iran have forced him to reorient Washington's foreign policy back toward the Middle East despite the administration's initial efforts to "pivot" toward Asia.

In India, Singh's governing Congress Party has been hobbled by a series of unending corruption scandals while the unprecedented plunge in the value of the rupee in conjunction with rising inflation have further compounded the country's mounting economic woes. Foreign policy officials in New Delhi are preparing for the prime minister's UN meeting with his Pakistani counterpart, Nawaz Sharif, as the decades-old Kashmir dispute continues to simmer.

Simply put, the United States and India are each focused elsewhere. There is a growing sense that ties between the two countries have markedly cooled, and the feeling of unlimited opportunity that pervaded the relationship just four years ago has palpably waned. Several differences have emerged between the two countries, including a multitude of increasingly acrimonious trade disputes, the adequacy of New Delhi's current patent protection regime, the impact of India's nuclear liability legislation, proposed changes to U.S. immigration rules, and the impending withdrawal of American troops from Afghanistan. As a result, a rather large chasm seems to exist between the rhetoric and reality surrounding the so-called U.S.-India "strategic partnership."

Against such a backdrop, one might be tempted to conclude that neither country should make the strategic partnership a priority at present, or worse, that U.S.-India relations have plateaued, are adrift, or were oversold as some critics have alleged.

This would be a mistake. Despite the challenges facing the bilateral relationship, a few simple, but undeniable, truths remain regarding the strategic partnership. **First**, US-India relations are stronger now than they ever have been in their history, multidimensional in character and multifaceted in scope. Unprecedented progress has been seen in virtually every area of cooperation including defense, trade, development, education, space, energy, and **security**. The U.S. military relationship with India is arguably the fastest growing one in the world as evidenced recently by Deputy Secretary of Defense Ashton Carter's highly lauded trip to India earlier this month. Bilateral trade and investment has quadrupled since 2006 to nearly $100 billion. One need only look back 10 years to the state of U.S.-India relations to understand just how far -- and fast -- bilateral ties have come and grown.

Second, the underlying strategic logic of the relationship remains sound even in light of all the difficulties currently vexing U.S.-India ties. Unveiled in 2005, the strategic partnership was predicated on the premise that a closer, deeper bilateral relationship with New Delhi advanced U.S. interests in several different ways. Architects of the partnership viewed **India as a stabilizing force and critical partner in South Asia**, particularly one that could help manage China's own unpredictable rise and counter a bevy of enduring global threats such as terrorism and nuclear proliferation. Additionally, cultivating stronger economic ties with one of the world's largest economies and fastest growing middle classes also compelled a greater degree of cooperation. The two countries had already commenced greater engagement in this arena, and embarking upon a strategic partnership would serve to accelerate this trend. And perhaps most importantly, the United States and India both recognized that they shared many of the key values so critical to the strength and durability of their respective democracies: secularism, pluralism, and genuine respect for the rule of law. These key motivating principles animating U.S.-India ties are no less true now than they were almost a decade ago.

Finally, the potential for what the United States and India can achieve together remains significant, even in light of the obstacles afflicting bilateral ties at the moment. The two countries are witnessing a convergence of interests in an increasing number of critical and diverse arenas. The momentum behind the relationship -- while undoubtedly stalled at times -- appears to have become irreversible. Ultimately, what binds the two countries together far exceeds those differences that drive them apart.

The meeting between President Obama and Prime Minister Singh today represents a powerful demonstration of their commitment to the U.S.-India strategic partnership. At a time when many are questioning the value and importance of ties between Washington and New Delhi, the talks serve as critical reminder of the importance that both leaders -- and their respective governments -- attach to

the relationship. Along with their recent predecessors, both President Obama and Prime Minister Singh have built a solid foundation for U.S.-India relations that will endure long after they have left office. Their meeting tomorrow is one more important step toward ensuring that remains the case.

AT: Nuclear Deals DA

No impact – cooperation is high and conflicts are minor – their evidence reflects Western bias

Mashru 13 -- (Ram Mashru, South Asia analyst and freelance journalist published in a range of leading publications on Indian politics, social affairs, human development and international relations, 2013, "Rethinking India-Pakistan Relations," October 15th, Available Online at http://thediplomat.com/2013/10/re-thinking-india-pakistan-relations/1/, Accessed 07-22-15) PMG

The story of an enduring Indo-Pakistan rivalry is a familiar one, in which the neighboring states, born of a bloody partition, are trapped in an endless cycle of conflict. But this narrative perpetuates two false habits. The first is **a static understanding** of Indo-Pakistan relations, pessimistic in its fixation on their violent history. The second is a reductive understanding, in which the emphasis on security obscures the long and successful record of cooperation. In the context of increasingly adverse domestic political environments – with India's jingoistic right wing and Pakistan's irredentist military hindering the diplomatic process – there is an even greater need to re-think India- Pakistan relations.

The (in)Security Complex

The two countries have maintained a patchy ceasefire over the de facto border in Kashmir – the "Line of Control" – since 2003. This year's ceasefire violations began in January with the beheading of an Indian soldier, with a further 150 breaches since then, far exceeding last year's total of 117. Things came to a head last month when, on the eve of high-profile talks between Nawaz Sharif and Manmohan Singh in New York, militants who had secretly crossed the Pakistani border killed eight Indian security personnel and a civilian. The attack was deliberately timed, and follows a pattern of attempts by terrorists to frustrate the bilateral peace process.

These latest attacks prompted uncompromising statements by Manmohan Singh who chose his speech at the UN General Assembly to denounce Pakistan as the "epicenter of terrorism." India's President Pranab Mukherjee, on a foreign trip to Belgium, echoed these words, condemning Pakistan for failing to apprehend terrorists operating on its soil. These warring words were fodder to journalists keen to report on "growing tensions." But the timing and venues are significant: international visits, far removed from governmental roundtables, are opportunities for leaders to send policy-free signals. Singh and Mukherjee's bold declarations were aimed therefore not at their Pakistani counterparts, but were placatory statements calculated to appease increasingly hawkish elements in India's domestic politics.

Both sides face powerful obstacles to bilateral talks. In Pakistan, Nawaz Sharif must wrestle control over foreign policy from the army, the institution that toppled him in a coup in 1999, and his ability to tame militant groups, who threaten to jeopardize Pakistan's security policy, remains in doubt. Across the border, there is a sense of stasis. Singh can do little between now and next year's national election, when his term as prime minister will end. The ascendant BJP – India's ultra-nationalist party – advocates a zero-tolerance approach to (alleged) Pakistan-sponsored terrorism. Though the foreign policy of Narendra Modi, the BJP's prime ministerial candidate, remains unclear, many fear he betrayed his position after his vociferous criticism of Singh's decision to go ahead with talks.

But this preoccupation with cross-border terrorism masks a number of important facts. First, **the emphasis on low intensity conflict is the result of Indo-Pakistan relations being largely peaceful**.

Second, attributing militant attacks to Pakistan is almost impossible. Pakistan is experiencing a "sorcerer's apprentice problem": having once funded and trained combatants, militant groups have turned renegade and now act according to their own interests. Third, as recent bomb blasts in Peshawar prove, of the two it is Pakistan is acutely vulnerable to sectarian, extremist and terrorist violence. Lastly, though low intensity conflict persists, **figures show a consistent decline in violence between India and Pakistan** since the 1990s.

Some insist that the theater of war has moved from Kashmir to Afghanistan. In a provocative essay for Brookings, "A Deadly Triangle," William Dalrymple argued that Afghanistan had become the site of an Indo-Pakistan proxy war. Pakistan's attitude to India, he explained, is shaped by its fear of being caught in an Indian "nutcracker": trapped between an age-old enemy to the south and a war-ridden, pro-Delhi state to the north. But such analyses quickly collapse under scrutiny.

India has many interests in Afghanistan, none of which pose existential threats to Pakistan. First, stability in Afghanistan is necessary for regional stability and so preventing the establishment of terror networks in Afghanistan is India's security priority. Second, in addition to many historical and cultural links, India and Afghanistan's social and economic ties run deep. They have signed a Strategic Partnership Agreement, which commits India to a host of post-conflict nation-building efforts. It is for this reason that India is among Afghanistan's largest aid donors. For India, Afghanistan also represents a prestige project: India takes on the role of a generous ally, assumes the mantle of a democracy promoter and wins credit for its assistance with institution building. India's activities are not entirely benign – Afghanistan's mineral deposits are worth trillions of dollars and the country serves as a market for Indian goods and services – but nor are they an attempt to encircle Pakistan.

Water, Trade & Talks

Most problematic however, is the tendency **to observe the region through Anglo-American spectacles**, **a distorting lens** that emphasizes conflict, militarism and terrorism. This **reductive understanding** obscures a successful record of co-operation on, among other things, trade, resources and post-conflict strategies.

India and Pakistan have cooperated, long and successfully, over rights to the crucial water-flow from the Indus river system, a treaty that has remained intact since 1960. The two countries have also maintained ties through SAARC, a regional body that encourages interaction in relation to commerce, culture and technology. People-to-people contact is facilitated by India's granting of ten thousand visas per month. And in the past decade bilateral trade has increased almost six-fold, from $370 million per year to $2.4 billion. Most importantly, the two continue to cooperate on confidence building measures (CBMs) in Kashmir. Singh and Sharif reaffirmed their commitment to CBMs and also agreed, for the first time, to bring senior military officials to the table in the effort to restore the ceasefire.

Cooperation over water, trade and talks has survived changes in government, of various political stripes, on both sides of the border. Analysts are therefore confident of resource and trade-led rapprochement. Economic ties are underpinned by India's granting of most favored nation status to Pakistan – a conferral of trade benefits – and though unimplemented, Pakistan has pledged to do the same. **Conflict risks severing these economic ties, something Pakistan's economy can ill afford**.

Points of contention remain: India and Pakistan persist in a foolish territorial war over the uninhabitable Siachen Glacier and Pakistan's failure to bring to justice the perpetrators of the 2008 Mumbai terror attacks leaves many in doubt about its willingness or ability to combat home-grown terrorists. But these aside, the recent Singh-Sharif talks in New York are a significant achievement. The talks represented a return on the vast political capital both leaders have invested in making Indo-Pakistan relations durable, the two met in the face of shrill domestic opposition and the inclusion of senior military officials in the Kashmir peace process marks major strategic progress. Underpinned by strengthening trade ties, **these** incremental **advances promise** the long-awaited **return to good relations**.

Recent meetings disprove – there are agreements

Thompson 14 -- (Julia Thompson, research associate at the Stimson Center, a nonprofit and nonpartisan international security think tank, 2014, "High-Level Military Meetings Between India and Pakistan Could Cool Down Regional Tensions," January 17th, Available Online at http://www.ibtimes.com/high-level-military-meetings-between-india-pakistan-could-cool-down-regional-tensions-1543565, Accessed 07-22-15) PMG

Nuclear-armed neighbors India and Pakistan have the opportunity to lower cross-border tensions this year, but it's uncertain whether the Indian government can take meaningful steps to improve ties before elections later this spring and how far a cautious leadership in Islamabad is prepared to go. A meeting between high-ranking military leaders held Dec. 24 and follow-up meetings between flag officers across the Kashmir divide – including one held on Friday– could pave the way for new measures that strengthen stability in the region or at least affirm existing measures, but only if political leaders are determined to improve relations.

Pakistan and India once again exchanged lists of nuclear installations and facilities earlier this month in a confidence-building measure that has been repeated annually since 1992, pursuant to a 1988 agreement prohibiting attacks on nuclear installations. The exchange, while undoubtedly a positive act for India-Pakistan relations, did not expand the scope or significance of the non-attack agreement.

The downward slide in Pakistan-India relations, marked by increased firing and other incidents across the disputed Kashmir border, seems to have been halted as a result of the Dec. 24 meeting between the Indian and Pakistani directors-general of military operations. The recent meetings stem from the September meeting between Indian Prime Minister Manmohan Singh and Pakistani Prime Minister Nawaz Sharif in New York on the periphery of the U.N. General Assembly meeting.

The prime ministers promised to reinstitute the 2003 cease-fire along the Line of Control dividing Kashmir, but these pledges had little effect. Now, at last, this downward slide seems to have stopped. The December meeting ended a 14-year hiatus from in-person India-Pakistan military leaders' meetings – a pause initiated by the 1999 Kargil War in Kashmir. Since then, regular use of military hotlines, rather than direct meetings, has been the norm for communication between the two states' armies.

However, weekly use of the hotline has proved insufficient to maintain the cease-fire along the Kashmir divide, build confidence, or reduce nuclear risks between Pakistan and India. Instead, crisis management had been contracted out to the United States during the Kargil War and after the 2008 terrorist attacks in Mumbai.

Indian National Security Adviser Shivshankar Menon reported that both leaders had tasked senior military officials with seeking mechanisms for strengthening the ceasefire along the Line of Control. Pakistan's Sharif termed the September meeting a "new beginning." However, this unusual in-person meeting does not necessarily foreshadow significant, long-term movement for the countries' strategic relationship.

The situation along the Line of Control in Kashmir had deteriorated significantly in 2013, with repeated violations of the cease-fire by both India and Pakistan. Tensions first flared in January last year, with the deaths of two Indian and three Pakistani soldiers attributed to cross-border attacks.

The situation deteriorated further over the summer, when Indian and Pakistani soldiers were killed in June, July, and August as a result of shelling and cross-border attacks. Deaths and cease-fire violations continued in October – after the prime ministers' meeting in New York. These incidents come on top of repeated cross-border shooting incidents and incursions that did not result in soldiers' deaths.

The Dec. 24 meeting marked an important step towards calming the Line of Control. It also revealed an understanding on both sides that the increase in cease-fire violations and flare-ups had gone too far. According to a statement by both sides, delegations led by Indian Lt. Gen. Vinod Bhatia and Pakistani Maj. Gen. Aamer Riaz met in "a cordial, positive and constructive atmosphere," agreed "to re-energize the existing mechanisms" for maintaining the cease-fire, and reached a consensus to make their military hotline contact more **"effective and result oriented."** However, this meeting, like the exchange earlier this month, reaffirms previous agreements rather than forges new ones.

Importantly, in order "to carry forward the positive spirit of [the] meeting," the delegations agreed that two 'flag meetings' between brigade commanders would be held on the Line of Control in the near future. The first was held Friday.

The Stimson Center's recent publication, Deterrence Stability and Escalation Control in South Asia, found that when compared to military and nuclear advances in South Asia, diplomacy has accomplished little, and has completely stalled since the 2008 Mumbai attacks. Over the past 15 years, four agreements stand out as having notable impact on strategic stability: the 1999 Lahore Memorandum of Understanding, the 2003 ceasefire along the Line of Control, the 2005 agreement on ballistic missile flight-test pre-notification, and the 2007 agreement to reduce the risk from accidents relating to nuclear weapons. Nearly eight years have passed since the latest accord.

The Dec. 24 and Friday meetings have shown leadership's desire to restore the cease-fire in Kashmir and could **halt the deterioration in bilateral relations.** It remains to be seen whether leadership in India and Pakistan can build upon this progress prior to the Indian elections.

Russia

1NC

Text

The United States federal government should condition withdrawing support for Ukrainian independence to Russia if and only if Russia ___ (insert internal link).

Failure to give up Ukraine is the root cause of US - Russia conflicts, guarantees war

Parry 15 - Investigative reporter and founder of the Consortium for Independent Journalism (CIJ), a non-profit US-based independent news service. [Robert Parry (Broke the Iran-Contra stories for The Associated Press and Newsweek in the 1980s.), "Ready for Nuclear War over Ukraine?" *Consortiumnews.com*, February 23, 2015, pg. http://tinyurl.com/qbp5pr7

A senior Ukrainian official is urging the West to risk a nuclear conflagration in support of a "full-scale war" with Russia that he says authorities in Kiev are now seeking, another sign of the extremism that pervades the year-old, U.S.-backed regime in Kiev. In a recent interview with Canada's CBC Radio, Ukraine's Deputy Foreign Minister Vadym Prystaiko said, "Everybody is afraid of fighting with a nuclear state. We are not anymore, in Ukraine — we've lost so many people of ours, we've lost so much of our territory."

Prystaiko added, "However dangerous it sounds, we have to stop [Russian President Vladimir Putin] somehow. For the sake of the Russian nation as well, not just for the Ukrainians and Europe." The deputy foreign minister announced that Kiev is preparing for "full-scale war" against Russia and wants the West to supply lethal weapons and training so the fight can be taken to Russia.

"What we expect from the world is that the world will stiffen up in the spine a little," Prystaiko said.

Yet, what is perhaps most remarkable about Prystaiko's "Dr. Strangelove" moment is that it produced almost no reaction in the West. You have a senior Ukrainian official saying that the world should risk nuclear war over a civil conflict in Ukraine between its west, which favors closer ties to Europe, and its east, which wants to maintain its historic relationship with Russia.

Why should such a pedestrian dispute justify the possibility of vaporizing millions of human beings and conceivably ending life on the planet? Yet, instead of working out a plan for a federalized structure in Ukraine or even allowing people in the east to vote on whether they want to remain under the control of the Kiev regime, the world is supposed to risk nuclear annihilation.

The Ukraine situation is the only scenario that risks total extinction

Baum 14 - Executive Director @ Global Catastrophic Risk Institute [Seth Baum (Ph.D. in Geography @Pennsylvania State University and a Post-Doctoral Fellowship @ Columbia University Center for Research on Environmental Decisions), "Best And Worst Case Scenarios for Ukraine Crisis: World Peace And Nuclear War," *Huffington Post*, Updated: 05/07/2014 5:59 am EDT, pg. http://tinyurl.com/lxx49og

Here's the short version: The best case scenario has the Ukraine crisis being resolved diplomatically through increased Russia-Europe cooperation, which would be a big step towards world peace. The worst case scenario has the crisis escalating into **nuclear war** between the United States and Russia, causing **human extinction**.

Let's start with the worst case scenario, nuclear war involving the American and Russian arsenals. How bad would that be? Put it this way: Recent analysis finds that a "limited" India-Pakistan nuclear war could kill two billion people via agricultural declines from nuclear winter. This "limited" war involves just 100 nuclear weapons. The U.S. and Russia combine to possess about 16,700 nuclear weapons. **Humanity may not survive** the aftermath of a U.S.-Russia nuclear war.

It seems rather unlikely that the U.S. and Russia would end up in nuclear war over Ukraine. Sure, they have opposing positions, but neither side has anywhere near enough at stake to justify such extraordinary measures. Instead, it seems a lot more likely that the whole crisis will get resolved with a minimum of deaths. However, the story has already taken some surprising plot twists. We **cannot rule out** the possibility of it ending in direct nuclear war.

A nuclear war could also occur **inadvertently**, i.e. when a false alarm is misinterpreted as real, and nuclear weapons are launched in what is believed to be a counterattack. There have been several alarmingly close calls of inadvertent U.S.-Russia nuclear war over the years. Perhaps the most relevant is the 1995 Norwegian rocket incident. A rocket carrying scientific equipment was launched off northern Norway. Russia detected the rocket on its radar and interpreted it as a nuclear attack. Its own nuclear forces were put on alert and Boris Yeltsin was presented the question of whether to launch Russia's nuclear weapons in response. Fortunately, Yeltsin and the Russian General Staff apparently sensed it was a false alarm and declined to launch. Still, the disturbing lesson from this incident is that nuclear war could begin even during periods of calm.

Traditional deterrence doesn't apply to Russia's nuclear arsenal absent the counterplan- even the threat of conventional warfare would trigger nuclear retaliation, 5 warrants (This card is killer)

-Paranoid political culture

-Hairtrigger nuclear Arsenal

-Collapsing Economy

-National Grievance

-A vulnerable antagonist

Thompson 15 –[Loren Thompson, focus on the strategic, economic and business implications of defense spending as the Chief Operating Officer of the non-profit Lexington Institute and Chief Executive Officer of Source Associates. Previously Director of the Security Studies Program at Georgetown University, taught courses in strategy, technology and media affairs at Georgetown. Professor at Harvard University's Kennedy School of Government. Doctoral and masters degrees in government from Georgetown University and a bachelor of science degree in political science from Northeastern University.] N.H

Like the stock market crashes that periodically wipe out so many fortunes, military crises are hard to predict. Washington's track record as a seer of future threats is remarkably poor. From the bombing of Pearl Harbor in the 1940s to North Korea's invasion of the South in the 1950s to the Cuban Missile Crisis in the 1960s to the collapse of South Vietnam in the 1970s to the breakup of the Soviet empire in the 1980s to Iraq's invasion of Kuwait in

the 1990s to the 9-11 attacks and rise of ISIS in the new millennium, America's policy elite never seems to see looming danger until it is too late.

So don't be surprised if the economic sanctions Washington has led the West in imposing on Russia look like a bad idea a year from now. At the moment, a combination of sanctions and plummeting oil prices seems to be dealing the government of President Vladimir Putin a heavy blow — just retribution, many say, for its invasion of Ukraine and annexation of Crimea last year. But as Alan Cullison observed in the Wall Street Journal this week, sanctions sometimes provoke precisely the opposite response from what policymakers hope. In Russia's case, that could mean a threat to America's survival. Let's briefly consider how Russia's current circumstances could lead to dangers that dwarf the challenges posed by ISIS and cyber attacks.

A paranoid political culture. Russia's moves on Ukraine look to many Westerners like a straightforward case of aggression. That is not the way they look to Vladimir Putin's inner circle of advisors in Moscow, nor to most Russians. That inner circle is drawn mainly from the Russian security services — Putin himself spent 16 years in the KGB — and to them the revolution in Ukraine was a U.S.-backed coup aimed at weakening Russia. Putin describes the Crimea as a birthplace of Russian culture, and his government has repeatedly warned against the expansion of Western economic and political influence into a region historically regarded as Moscow's sphere of influence. Putin relies heavily on the Kremlin bureaucracy to provide him with intelligence (he avoids the Internet), so his briefings tend to reinforce the view that Moscow was forced to intervene in Ukraine by Western subversion aimed at undermining his rule.

A nuclear arsenal on hair trigger. Between the two of them, Russia and America control over 90% of the world's nuclear weapons. However, Moscow is far more dependent on its nuclear arsenal for security, because it cannot afford to keep up with U.S. investments in new warfighting technology. So Russian military doctrine states that it might be necessary to use nuclear weapons to combat conventional attacks from the West. Many Russians think that attacks on their country are a real possibility, and that their nuclear deterrent — which consists mainly of silo-based missiles in known locations — might have to be launched quickly to escape a preemptive strike. Moscow staged a major nuclear exercise during last year's Ukraine crisis in which it assumed missiles would have to be launched fast on warning of a Western attack. A senior Russian officer has stated that 96% of the strategic rocket force can be launched within minutes.

A collapsing economy. Much of Putin's popularity within Russia is traceable to the impressive recovery of the post-Soviet economy on his watch. Since he came to power in 2001, the country's gross domestic product has grown sixfold, greatly increasing the size and affluence of the Russian middle class. But that growth has been based in large part on the export of oil and gas to neighboring countries at a time when energy prices reached record highs. Now the price of oil has fallen at the same time that economic sanctions are beginning to bite. The ruble lost nearly half its value against the dollar last year, and the economy has begun to

shrink. Putin blames sanctions for 25-30% of current economic hardships. Many Westerns believe a prolonged recession would weaken Putin's support, but because he can blame outsiders, economic troubles might actually strengthen his hand and accelerate the trend toward authoritarian rule.

A deep sense of grievance. Blaming outsiders for domestic troubles has a long pedigree in Russian political tradition, and it feeds into a deep-seated sense that Russia has been deprived of its rightful role in the world by the U.S. and other Western powers. Russia may have little past experience with democracy, but it was a major power for centuries prior to the collapse of communism. Like authoritarian rulers in other nations, Putin has built his political base by appealing to nationalism, fashioning a revisionist view of recent events in which Russia is the victim rather that the author of its own misfortunes. He has called the break-up of the Soviet Union a tragedy of epic proportions, and apparently really believes it. By tapping into a deep vein of resentment in Russian political culture, Putin has created a broad constituency for standing up to outsiders even if it means prolonged economic hardship and the danger of war.

A vulnerable antagonist. Federal Reserve chair Janet Yellen says America faces little danger from Russia's current troubles, but that's because she thinks in economic terms. In a broader sense, America potentially is in great danger because Putin and his advisors really believe they are the target of a Western plot to weaken their country. The biggest concern is that some new move by Russia along its borders degenerates into a crisis where Moscow thinks it can improve its tactical situation by threatening local use of nuclear weapons, and then the crisis escalates. At that point U.S. policymakers would have to face the reality that (1) they are unwilling to fight Russia to protect places like Ukraine, and (2) they have no real defenses of the American homeland against a sizable nuclear attack. In other words, the only reason Washington seems to have the upper hand right now is because it assumes leaders in Moscow will act "rationally."

2NC/1NR

Ukraine Negotiations Key

Russia and the U.S are uniquely open to co-op now but Ukraine remains an issue

VOA 15 – [Voice of America News, News organization covering complete coverage of the U.S, Asia, Africa and the Mideast, July 4 2015 "Putin: US-Russian Relations Key for Solving Global Crises" Voice of America, http://www.voanews.com/content/putin-us-russian-relations-global-crisis-resolution/2848840.html

Russian President Vladimir Putin has said relations between Moscow and Washington remain the most important factor in ensuring stability and security in the world. In a congratulatory message to U.S. President Barack Obama Saturday on the U.S. Independence Day, Putin said that despite the differences, Russia and the U.S. could find solutions for the most difficult international problems and meet the global challenges together, if they engage in a dialogue based on equality and respect for each other's interests. Putin has also offered cooperation to the Obama administration to fight the threat of terrorism from the Islamic State group. According to the Kremlin, Putin has tasked Foreign Minister Sergei Lavrov to discuss a joint anti-terrorism strategy with the U.S. Secretary of State John Kerry. U.S.-Russian relations have reached the lowest point since the post-Cold War era because of the conflict in eastern Ukraine and the Russian annexation of Crimea in 2014. Russia has been increasingly antagonistic in its remarks toward the United States ever since claiming that Western sanctions against Moscow are the result of U.S. pressure on EU countries. The West has leveled accusations against Russia for supporting the insurgency in eastern Ukraine, which Russia has denied, saying that Russians fighting alongside separatists in the Donbas region are volunteers.

Putin and Obama agree: cooperation is possible

RBH 15 – [Russia beyond the headlines, News on Russian politics, economics, international news, society, opinion, "Russian-U.S. relations remain crucial factor of world stability – Putin, http://rbth.com/news/2015/07/04/russian-us_relations_remain_crucial_factor_of_world_stability_-_putin_47470.html, July 4th 2015]

Despite some disagreements existing between Russia and the U.S., relations between the two countries remain a crucial factor of international stability, Russian President Vladimir Putin said in a message of greetings to U.S. President Barack Obama on the occasion of Independence Day celebrated in the U.S. on Saturday, the Kremlin press service reports.

"In his greetings telegram, the Russian chief of state noted that Russian-American relations, despite disagreements existing between the two countries, remain a crucial factor of world stability and security," it said.

Putin said he was convinced that, "by maintaining dialogue based on principles of equitability and mutual respect for each other's interests, Russia and the U.S. are capable of finding solutions to the most complicated international problems and efficiently opposing global challenges and threats," it said.

Russia wants freedom to deal with Ukraine

Chance 15 – [Matthew Chance, CNN Senior International Correspondent in Moscow, "What does Russia's President Putin really want?" February 11, 2015, CNN, http://www.cnn.com/2015/02/11/world/chance-putin-analysis/] N.H

Putin, though, Is an enigma His unflinching support for rebel separatists in Eastern Ukraine, despite their alleged excesses, has plunged Russia's relations with the West into their worst crisis since the end of the Cold War. Even in the face of mounting international sanctions that have isolated Russia and helped hobble its fragile economy, Western officials say weapons and manpower continue to flow across the border, although the Kremlin insists it is supplying neither. Clearly, Putin is determined to get his way in Ukraine. We already know, essentially, what this means in terms of a peace deal -- a truce was signed last September, although it didn't hold. The Minsk Protocol agreed that, among other things, autonomy would be granted to Ukraine's southeastern regions. The Russian language would be given official status. A buffer zone would be established along the front lines and heavy weapons would be pulled back from civilian areas. But Putin may actually want much more. On an official visit to Egypt this week, the Russian president dropped a large hint -- and not for the first time. In an interview with the Al-Ahram newspaper he rejected Russian responsibility for the crisis in Ukraine. "It emerged in response to the attempts of the U.S.A. and its Western allies, who considered themselves winners of the Cold War, to impose their will everywhere," Putin told the newspaper.

US-Russia conflict stems from interventionist policies -- specifically Ukraine

Krastev 14 - [Ivan Krastev, Bulgarian political scientist. He is the Chairman of the Centre for Liberal Strategies in Sofia, and permanent fellow at the IWM, Institute of Human Sciences in Vienna, "What does Russia want and why?" Prospect Magazine, March 6, 2014,] N.H

This might be what Russia hopes to gain in terms of territory and influence, but the question of why Putin appears so resistant to the West still needs to be addressed. The popular assumption is that the Russian President behaves as he does simply because he can. He is convinced that the Ukraine is more important to Russia than it is to the West and that any Western retaliation would be noisy but ineffective. Putin is aware that the EU is crippled by its economic problems and nervous about the rise of right-wing populist parties in many of its member states. And, crucially, he has judged on the evidence of the US's decision to avoid intervention in Syria that the American public will oppose any military adventure far away from its borders.

But Putin's opposition to Europe and the US can't be reduced to realpolitik arguments such as the strategic importance of the Sevastopol naval base or the need to retain control over the gas pipeline that runs through Ukraine**.** If prior to the crisis Putin was unhappy with the behaviour of the United States and Europe towards Russia, now his disappointment is with the decadent and, as he sees it, immoral state of modern Europe and the destabilising role he believes the United States is playing in world politics. An analysis of Putin's recent statements shows that Russian president sees his mission not as Russia's integration in to Europe but as a defence of traditional Russian values against the EU's post-modernism**.** "Europeans are dying out…same sex marriage cannot produce children" Putin said last September during the meeting of the Valdai Club which meets to analyse Russia's political, cultural and

economic future. The recent anti-gay and anti-lesbian legislation passed by the Russian parliament is a clear expression of the new conservatism of Putin's elites who feel threatened by more liberal European societies.

Russia has its sights set on Ukraine

Motyl 11 – [Alexander J. Motyl, Professor of political science at Rutgers University-Newark, A specialist on Ukraine, Russia, and the USSR, and on nationalism, revolutions, empires, and theory, "A Russian Threat to Ukraine?" World Affairs, Oct 28 2011, http://www.worldaffairsjournal.org/blog/alexander-j-motyl/russian-threat-ukraine] N.H

According to Pipes, the Russians "do pose a threat to their ex-republics. They have no problem with Central Asia, because those [states] are rather docile. But they can't reconcile themselves to the loss of the three Baltic Republics [Estonia, Latvia, and Lithuania] and Ukraine and Georgia. I feel fairly confident that if Georgia or the Ukraine were to join NATO, as they would like to, the Russians would invade and destroy their independence."

According to Trenin, **"**Russia's remarkable disinterest in its former empire has been paralleled by the other former Soviet republics distancing themselves from the former imperial center**.** Several have proclaimed a European vision or vocation. Others reaffirmed Muslim roots and focused on their neighborhoods. A couple have gone into isolation."

So, who's right—the Harvard historian or the director of the Carnegie Moscow Center? If Pipes is right, then the Ukrainians should be building a Maginot Line on their eastern frontier. If Trenin is right, they should be pulling out the corks and drinking to Mother Russia's eternal health.

The answer is: neither. Pipes's mistake is to suggest that Russia has the capacity to invade a country the size of Ukraine. It doesn't. Trenin's mistake is to suggest that Russia no longer has the desire to in-gather its former imperial lands. It does.

The reality is both simpler and more complex. Russia is a post-imperial state with post-imperial aspirations and post-imperial capacities**.** On the one hand, many Russian policymakers and significant segments of the Russian public continue to think of their country as unjustly robbed of their empire and would be happy to correct that perceived wrong. On the other hand, the Russian-led Soviet Union wouldn't have fallen apart if it had been a strong state, and the post-Soviet Russian Federation, having inherited many of the USSR's weaknesses, is as incapable of reestablishing full imperial control as the Soviet Union was capable of maintaining it.

US-Russia War

U.S Russia conflict leads to extinction

Barrett et al. 13—PhD in Engineering and Public Policy from Carnegie Mellon University, Fellow in the RAND Stanton Nuclear Security Fellows Program, and Director of Research at Global Catastrophic Risk Institute—AND Seth Baum, PhD in Geography from Pennsylvania State University, Research Scientist at the Blue Marble Space Institute of Science, and Executive Director of Global Catastrophic Risk Institute—AND Kelly Hostetler, BS in Political Science from Columbia and Research Assistant at Global Catastrophic Risk Institute (Anthony, 24 June 2013, "Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia," Science & Global Security: The Technical Basis for Arms Control, Disarmament, and Nonproliferation Initiatives, Volume 21, Issue 2, Taylor & Francis)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have **globally catastrophic effects** such as severely **reducing food production** for years, [1] potentially leading to **collapse of modern civilization** worldwide, and [even] the **extinction** of humanity. [2] Nuclear war between the United States and Russia could occur by various routes, including accidental [or] unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 3 (Brinkmanship strategies incorporate elements of all of the above, in that they involve intentional manipulation of risks from otherwise accidental or inadvertent launches. 4) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, and numerous measures also were taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side's forces and command-and-control capabilities led to both sides' development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. [5] Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. [6] However, it also has been argued that inadvertent nuclear war between the United States and Russia has continued to present a **substantial risk**. [7] While the United States and Russia are not actively threatening each other [with war,] they have **remained ready** to **launch nuclear missiles** in response to indications of attack. [8] False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. [9] Second, **terrorist groups** or other actors might **cause attacks** on either the United States or Russia that **resemble** some kind of **nuclear attack by the other nation** by actions such as exploding a stolen or improvised nuclear bomb, [10] especially if such an event occurs during a crisis between the United States and Russia. [11] A variety of nuclear terrorism scenarios are **possible**. [12] Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. [13] Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. [14] It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.–Russian crisis conditions, [15] with the Cuban Missile Crisis being a prime historical example. It is possible that U.S.–Russian relations will significantly deteriorate in the future, increasing nuclear tensions. There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. [16]

US-Russia War leads to nuclear winter

Helfand 12 -[Ira Helfand is co-president of International Physicians for the Prevention of Nuclear War and recipient of the 1985 Nobel Peace Prize, December 18, Inter Press Service News Agency, "The Frightening Scenario of the Nuclear War," http://www.ipsnews.net/2012/12/the-frightening-scenario-of-the-nuclear-war/, accessed July 7, 2014,]

Since 2008, we have gained a fuller understanding of the dangers posed by nuclear weapons. For decades we have known that a large-scale war between the U.S. and Russia would have catastrophic humanitarian consequences for the whole world**.**

We now understand that even a much more "limited", regional nuclear war, as might take place in South Asia, would also pose a threat to all of humanity. Studies by Alan Robock, Owen Brian Toon, and their colleagues have looked at a scenario in which India and Pakistan each use 50 Hiroshima sized bombs – only 0.4 percent of the world's nuclear arsenal of more than 25,000 warheads - against urban targets in the other country. The consequences would be beyond our comprehension**.**

The explosions, firestorms and radiation would kill 20 million people over the first week. But the worldwide consequences would be even more catastrophic. The firestorms would loft five million tonnes of soot into the upper atmosphere, blocking out sunlight and reducing temperatures around the world by an average of 1.3 degrees Celsius for an entire decade. This sudden drop in temperature, and the resulting decline in precipitation and shortening of the growing season, would cut food production in areas far removed from South Asia.

According to a study by Mutlu Ozdogan, U.S. corn production would fall an average of 12 percent for an entire decade. A study by Lili Xia has shown that Chinese middle season rice would decline15 percent over a full decade. Recent preliminary studies have shown even larger shortfalls for other grains.

The world is not prepared to deal with a decline in food production of this magnitude**.** World grain reserves currently equal less than three months' consumption and would provide an inadequate buffer against these shortfalls. Further, according to the most recent data from the United Nations, there are currently more than 870 million people in the world who are malnourished. An additional 300 million people receive adequate nutrition today but live in countries that import much of their food. All of these people, more than one billion in all, would be at risk of starvation in the aftermath of this "limited" war.

A large-scale war between the U.S. and Russia would be even more catastrophic. Hundreds of millions of people would be killed directly; the indirect climate effects would be even greater. Global temperatures would drop an average of eight degrees Celsius, and more than 20 degrees Celsius in the interior of North America and Eurasia. In the Northern Hemisphere, there would be three years without a single day free of frost. Food production would stop and the vast majority of **the human race would starve**.

Since the end of the Cold War we have acted as though this kind of war simply can't happen. But it can: the two nuclear superpowers still have nearly 20,000 nuclear warheads; more than two thousand of them are maintained on missiles that can be fired in less than 15 minutes, destroying the cities of the other power 30 minutes later.

Nuclear winter guarantees extinction

Masters, no date [Jeff Masters, Ph.D. in Meteorology, co-founded The Weather Underground, Inc., “The Effect of Nuclear War on Climate” Weather Underground, http://www.wunderground.com/resources/climate/nuke.asp] N.H

In the 1980s and early 1990s, a series of scientific papers published by Soviet scientists and Western scientists (including prominent scientists Dr. Carl Sagan, host of the PBS "Cosmos" TV series, and Nobel Prize winner Paul Crutzen) laid out the dire consequences on global climate of a major nuclear exchange between the U.S. and Soviet Union. The nuclear explosions would send massive clouds of dust high into the stratosphere, blocking so much sunlight that a nuclear winter would result. Global temperatures would plunge 20°C to 40°C for several months, and remain 2 - 6°C lower for 1-3 years. Up to 70% of the Earth's protective stratospheric ozone layer would be destroyed, allowing huge doses of ultraviolet light to reach the surface. This UV light would kill much of the marine life that forms the basis of the food chain, resulting in the collapse many fisheries and the starvation of the people and animals that depend it. The UV light would also blind huge numbers of animals, who would then wander sightlessly and starve. The cold and dust would create widespread crop failures and global famine, killing billions of people who did not die in the nuclear explosions. The "nuclear winter" papers were widely credited with helping lead to the nuclear arms reduction treaties of the 1990s, as it was clear that we risked catastrophic global climate change in the event of a full-scale nuclear war.

Even a limited nuclear exchange can cause a climate disaster

Well, it turns out that this portrayal of nuclear winter was overly optimistic, according to a series of papers published over the past few years by Brian Toon of the University of Colorado, Alan Robock of Rutgers University, and Rich Turco of UCLA. Their most recent paper, a December 2008 study titled, "Environmental Consequences of Nuclear War", concludes that "1980s predictions of nuclear winter effects were, if anything, underestimates". Furthermore, they assert that even a limited nuclear war poses a significant threat to Earth's climate. The scientists used a sophisticated atmospheric/oceanic climate model that had a good track record simulating the cooling effects of past major volcanic eruptions, such as the Philippines' Mt. Pinatubo in 1991. The scientists injected five terragrams (Tg) of soot particles into the model atmosphere over Pakistan in May of 2006. This amount of smoke, they argued, would be the likely result of the cities burned up by a limited nuclear war involving 100 Hiroshima-sized bombs in the region. India and Pakistan are thought to have 109 to 172 nuclear weapons of unknown yield.

Figure 1. Global average temperature departure from normal since 1880 (top) and A.D. 1000 (bottom) in black, and those projected after a limited nuclear exchange between Pakistan and India of 100 Hiroshima-sized weapons in 2006 (in red). Temperatures are forecast to plunge 1.2°C (2.2°F) after such a war, reaching levels colder than anything

seen in the past 1000 years. The 1815 eruption of Tambora in Indonesia produced a similar cooling, and led to the notorious "Year Without a Summer". Image credit: "Climatic consequences of a regional nuclear conflict" by Robock et al., Atmospheric chemistry and Physics, 7, 2003-2012, 2007.

The intense heat generated by the burning cities in the models' simulations lofted black smoke high into the stratosphere, where there is no rain to rain out the particles. The black smoke absorbed far more solar radiation than the brighter sulfuric acid aerosol particles emitted by volcanic eruptions. This caused the smoke to heat the surrounding stratospheric air by 30°C, resulting in stronger upward motion of the smoke particles higher into the stratosphere. As a result, the smoke stayed at significant levels for over a decade (by contrast, highly reflective volcanic aerosol particles do not absorb solar radiation and create such circulations, and only stay in the stratosphere 1-2 years). The black soot blocked sunlight, resulting in global cooling of over 1.2°C (2.2°F) at the surface for two years, and 0.5°C (0.9°F) for more than a decade (Figures 1 and 2). Precipitation fell up to 9% globally, and was reduced by 40% in the Asian monsoon regions.

This magnitude of this cooling would bring about the coldest temperatures observed on the globe in over 1000 years (Figure 1). The growing season would shorten by 10-30 days over much of the globe, resulting in widespread crop failures. The effects would be similar to what happened after the greatest volcanic eruption in historic times, the 1815 Tambora eruption in Indonesia. This cooling from this eruption triggered the infamous Year Without a Summer in 1816 in the Northern Hemisphere, when killing frosts disrupted agriculture every month of the summer in New England, creating terrible hardship. Exceptionally cold and wet weather in Europe triggered widespread harvest failures, resulting in famine and economic collapse. However, the cooling effect of this eruption only lasted about a year. Cooling from a limited nuclear exchange would create two to three consecutive "Years Without a Summer", and over a decade of significantly reduced crop yields. The authors found that the smoke in the stratosphere cause a 20% reduction in Earth's protective ozone layer, with losses of 25-45% over the mid-latitudes where the majority of Earth's population lives, and 50-70% ozone loss at northern high latitude regions such as Scandinavia, Alaska, and northern Canada. A massive increase in ultraviolet radiation at the surface would result, capable of causing widespread and severe damage to plants and animals. Thus, even a limited nuclear exchange could trigger severe global climate change capable of causing economic chaos and widespread starvation.

Figure 2. Top: Time variation of global average surface air temperature and precipitation for a limited nuclear exchange between Pakistan and India of 100 Hiroshima-sized weapons, assuming they inject 5 Tg of Black Carbon (BC) into the stratosphere. The global average precipitation is 3 mm/yr, so the changes in years 2-4 represent a 9% global average reduction in precipitation. Bottom: Time variation of sunlight (shortwave

radiation) at the surface, in watts per meter squared, due to the 1991 eruption of Mt. Pinatubo in the Philippines (blue line) and the limited nuclear war between India and Pakistan (black line). The effects of a limited nuclear war are far more severe and long lasting than the eruption of Pinatubo, the greatest eruption of the 20th century. Image credit: "Climatic consequences of a regional nuclear conflict" by Robock et al., Atmospheric chemistry and Physics, 7, 2003-2012, 2007.

Climate change and the Doomsday Clock

It is sobering to realize that the nuclear weapons used in the study represented only 0.3% of the world's total nuclear arsenal of 26,000 warheads. Fortunately, significant progress was made in the 1990s and 2000s to reduce the threat of nuclear war. If the 2002 Strategic Offensive Reductions Treaty (SORT) is fully implemented by the U.S. and Russia as planned, by 2012 the world's stockpile of nuclear weapons will be just 6% of the 70,000 warheads that existed at the peak of the cold war in 1986. However, the threat of a more limited regional nuclear war has increased in recent decades, since more countries have been joining the nuclear club--an average of one country every five years. The 2007 move by the Bulletin of the Atomic Scientists to move the hands of their Doomsday Clock two minutes closer to midnight--the figurative end of civilization--helped call attention to this increased threat. In addition, they also mentioned climate change for the first time as part of the rationale for moving the clock closer to midnight. The twin disasters of a limited nuclear war, coupled with the devastating global climate change it could wreak, should remind us that there is no such thing as a small scale nuclear war. Even a limited nuclear war is a huge threat to Earth's climate. Thus, there is no cause more important to work for than peace.

Terror Add On

Failure to act on Ukraine leads to terrorist acquisition of nuclear weapons- empirics

Cohen 15 –[Josh Cohen, former USAID project officer involved in managing economic reform projects in the former Soviet Union, May 26 2015, "Breakdown in U.S.-Russia relations raises risk of nuclear-armed jihadists" Reuters, http://blogs.reuters.com/great-debate/2015/05/26/why-a-breakdown-in-u-s-russia-relations-increases-the-risk-of-nuclear-armed-jihadists/] N.H

In the last several years, a number of troubling events have revealed weaknesses in Russian nuclear security. A Russian general in command of nuclear weapon storage sites was fired due to massive corruption. A colonel in the Russian Ministry of Interior in charge of nuclear security inspections was arrested for soliciting bribes to overlook security violations. One American researcher visiting a nuclear facility was told it would take merely $100 to bribe his way in.

Graft in Russia is rife, and corruption plus available uranium is a troubling combination. This vulnerability is heightened by the fact that at many nuclear sites the accounting systems to track uranium and plutonium could not sufficiently identify thefts of newly manufactured or older stored fissile materials. More broadly, Russia does not possess a master baseline inventory of all nuclear materials produced in the former Soviet Union — and where all of it is today.

At a 2010 summit of world leaders, President Barack Obama described nuclear terrorism as "the single biggest threat to U.S. security." He's right — but as the crisis in Ukraine festers, recent U.S. actions have unraveled decades of successful cooperation with Russia to reduce the risk.

While some argue that the United States needs to "punish" Russia due to Moscow's contribution to the crisis in Ukraine, this is akin to cutting off our nose to spite our face. Given the threat from "loose nukes" to our national security, the United States should take steps to jump-start U.S.-Russian nuclear security cooperation.

When the Soviet Union collapsed in 1991, American policymakers suddenly faced a frightening new threat: Poverty and chaos caused a complete breakdown in security throughout the former Soviet nuclear complex. Insiders at top-secret Russian nuclear weapons plants tried to steal and sell nuclear materials on the black market. Unpaid guards at nuclear sites left their posts to search for food. A senior White House science adviser even discovered more than 150 pounds of highly enriched uranium — enough for several nuclear bombs — sitting unguarded in lockers in the middle of Moscow.

In response to this threat, the United States spent billions of dollars under the Cooperative Threat Reduction (CTR) program to help Russia secure its nuclear materials and facilities. From the deactivation of almost 8,000 Russian nuclear warheads to the building of a massive storage facility for 27 tons of fissile materials, CTR was arguably the most successful American foreign aid program in history.

Following the conclusion of the CTR program in 2013, the U.S. Department of Energy (DOE) and Russia's state-owned nuclear company Rosatom signed a comprehensive

nuclear cooperation agreement. This agreement, which was designed to build trust between the two countries, called for projects ranging from the development of advanced nuclear security and safety technologies, to visits by each side's scientists to the other's most sensitive nuclear labs and facilities.

Less than seven months after the agreement was signed, however, the DOE dealt a devastating blow to Russian-American nuclear security cooperation, banning Russian nuclear scientists from visiting the United States while also banning DOE nuclear scientists from visiting Russia.

The current defense budget, passed seven months after the DOE's action, also bars all funding for nuclear nonproliferation activities and assistance in Russia.

Its pride wounded, Russia retaliated, first announcing it would boycott the 2016 nuclear security summit in Chicago and then informing U.S. officials it would no longer accept American aid to help secure Russia's weapons-grade uranium and plutonium — a significant blow to U.S. national security.

Nuclear security in Russia is undoubtedly better than it was in the 1990s. Guards at nuclear sites are paid on time. Perimeter fences surrounding these sites no longer have holes. Fissile materials are no longer stored in lockers. That's the good news.

The bad news is that while physical security at nuclear sites is greatly improved, real problems still remain. Russia continues to have the world's largest nuclear stockpile and there are more than 200 buildings and bunkers where highly enriched uranium or separated plutonium is stored. Sophisticated criminals could still exploit the remaining weaknesses in Russian nuclear security.

We know that Osama bin Laden considered a nuclear attack targeting American civilians to be a legitimate action, and last year Islamic State stole 88 pounds of non-enriched uranium compounds from a university in Mosul. With nearly 2,000 Russian citizens fighting with Middle East extremist groups, if fissile material does end up in the hands of militants, it is quite possible it will have originated from Russia.

The DOE should work with Rosatom to restart the September 2013 agreement and implement the reciprocal nuclear site visits, scientist-to-scientist cooperation and joint-research the agreement envisions. The personal relationships developed over decades of cooperation between Russian and American scientists are too important to jeopardize — we are only shooting ourselves in the foot by cutting these off.

The United States should also understand that the narrative from the 1990s whereby the United States is a donor and Russia is an aid recipient is no longer acceptable in Moscow. Going forward, nuclear cooperation must be reframed as a partnership of equals, with both sides contributing to the conversation about how and why to strengthen security. Republicans and Democrats should put aside partisan differences and fully fund U.S.-Russian nuclear security cooperation — whatever that ultimately involves. The Obama administration is

proposing to spend $348 billion upgrading the U.S. nuclear arsenal over the next ten years. It's worth spending a tiny fraction of that money to prevent loose nukes.

All of these steps require that the United States end the linkage between nuclear security cooperation with Russia and the crisis in Ukraine. While the current political environment makes this difficult, not doing so is foolhardy.

Nuclear terrorism is a new internal link to U.S Russian nuc war- acquisition leads to nuclear spoofing

Barrett et al. 13—PhD in Engineering and Public Policy from Carnegie Mellon University, Fellow in the RAND Stanton Nuclear Security Fellows Program, and Director of Research at Global Catastrophic Risk Institute—AND Seth Baum, PhD in Geography from Pennsylvania State University, Research Scientist at the Blue Marble Space Institute of Science, and Executive Director of Global Catastrophic Risk Institute—AND Kelly Hostetler, BS in Political Science from Columbia and Research Assistant at Global Catastrophic Risk Institute (Anthony, 24 June 2013, "Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia," Science & Global Security: The Technical Basis for Arms Control, Disarmament, and Nonproliferation Initiatives, Volume 21, Issue 2, Taylor & Francis)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have **globally catastrophic effects** such as severely **reducing food production** for years, [1] potentially leading to **collapse of modern civilization** worldwide, and [even] the **extinction** of humanity. [2] Nuclear war between the United States and Russia could occur by various routes, including accidental [or] unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 3 (Brinkmanship strategies incorporate elements of all of the above, in that they involve intentional manipulation of risks from otherwise accidental or inadvertent launches. 4) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, and numerous measures also were taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side's forces and command-and-control capabilities led to both sides' development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. [5] Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. [6] However, it also has been argued that inadvertent nuclear war between the United States and Russia has continued to present a **substantial risk**. [7] While the United States and Russia are not actively threatening each other [with war,] they have **remained ready** to **launch nuclear missiles** in response to indications of attack. [8] False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 9 Second, **terrorist groups** or other actors might **cause attacks** on either the United States or Russia that **resemble** some kind of **nuclear attack by the other nation** by actions such as exploding a stolen or improvised nuclear bomb, [10] especially if such an event occurs during a crisis between the United States and Russia. [11] A variety of nuclear terrorism scenarios are **possible**. [12] Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 13 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 14 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.–Russian

crisis conditions, 15 with the Cuban Missile Crisis being a prime historical example. It is possible that U.S.–Russian relations will significantly deteriorate in the future, increasing nuclear tensions. There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 16

Yes loose nukes---Ukraine crisis destroys US-Russian cooperation

Matthew **Bunn** is a professor at Harvard Kennedy School's Belfer Center for Science and International Affairs and is co-principal investigator with the Belfer Center's Project on Managing the Atom. He is a former adviser on nonproliferation in the White House Office of Science and Technology Policy, where he focused on control of nuclear weapons and materials, "The Real Nuclear Nightmare When It Comes to U.S.-Russian Ties," **1/24/'15**, http://nationalinterest.org/feature/the-real-nuclear-nightmare-when-it-comes-us-russian-ties-12102

In the dark days at the turn of the year, all but a few bits of U.S.-Russian cooperation to strengthen nuclear security in Russia came to a halt. No longer, for now at least, will U.S. experts work with counterparts at major Russian nuclear facilities to implement better means to prevent insiders from stealing fissile material, or to improve accounting, so a theft would be quickly detected. The crisis in Ukraine, adding to issues that have chilled relations with Moscow for years, provoked a **deep freeze** in U.S.-Russian relations. A two-decade era in which the United States and Russia worked together to dismantle and secure the deadly legacies of the Cold War appears to have drawn almost **entirely** to a close. **The danger of nuclear bomb material falling into terrorist hands will be higher as a result of this downturn in cooperation – putting** U.S., Russian, and **global security at greater risk.**

Russian insider threat is real

Matthew **Bunn** is a professor at Harvard Kennedy School's Belfer Center for Science and International Affairs and is co-principal investigator with the Belfer Center's Project on Managing the Atom. He is a former adviser on nonproliferation in the White House Office of Science and Technology Policy, where he focused on control of nuclear weapons and materials, "The Real Nuclear Nightmare When It Comes to U.S.-Russian Ties," **1/24/'15**, http://nationalinterest.org/feature/the-real-nuclear-nightmare-when-it-comes-us-russian-ties-12102

But nuclear security is never "finished." It must be **constantly improving** in the face of evolving threats. There are still weaknesses in nuclear security in Russia that thieves could exploit – particularly corrupt insiders who understand how security systems work. And no one knows whether Russia will devote the resources necessary to sustain the levels of security that are now in place. **The insider threat is real**: in 2012, for example, the director and two of the deputy directors of one of Russia's largest plutonium and highly enriched uranium facilities were arrested for millions of dollars' worth of corruption (though not stealing nuclear material).

China Add On

Russian instability draws in Great Powers like China

David 99 – [Steven David, Professor of Political Science at Johns Hopkins, "Saving America from the Coming Civil Wars", 1999, Foreign Affairs, http://www.foreignaffairs.com/articles/54626/steven-r-david/saving-america-from-the-coming-civil-wars]

If internal war does strike Russia, economic deterioration will be a prime cause. From 1989 to the present, the GDP has fallen by 50 percent. In a society where, ten years ago, unemployment scarcely existed, it reached 9.5 percent in 1997 with many economists declaring the true figure to be much higher. Twenty-two percent of Russians live below the official poverty line (earning less than $ 70 a month). Modern Russia can neither collect taxes (it gathers only half the revenue it is due) nor significantly cut spending. Reformers tout privatization as the country's cure-all, but in a land without well-defined property rights or contract law and where subsidies remain a way of life, the prospects for transition to an American-style capitalist economy look remote at best. As the massive devaluation of the ruble and the current political crisis show, Russia's condition is even worse than most analysts feared. If conditions get worse, even the stoic Russian people will soon run out of patience. A future conflict would quickly draw in Russia's military. In the Soviet days civilian rule kept the powerful armed forces in check. But with the Communist Party out of office, what little civilian control remains relies on an exceedingly fragile foundation -- personal friendships between government leaders and military commanders. Meanwhile, the morale of Russian soldiers has fallen to a dangerous low. Drastic cuts in spending mean inadequate pay, housing, and medical care. A new emphasis on domestic missions has created an ideological split between the old and new guard in the military leadership, increasing the risk that disgruntled generals may enter the political fray and feeding the resentment of soldiers who dislike being used as a national police force. Newly enhanced ties between military units and local authorities pose another danger. Soldiers grow ever more dependent on local governments for housing, food, and wages. Draftees serve closer to home, and new laws have increased local control over the armed forces. Were a conflict to emerge between a regional power and Moscow, it is not at all clear which side the military would support. Divining the military's allegiance is crucial, however, since the structure of the Russian Federation makes it virtually certain that regional conflicts will continue to erupt. Russia's 89 republics, krais, and oblasts grow ever more independent in a system that does little to keep them together. As the central government finds itself unable to force its will beyond Moscow (if even that far), power devolves to the periphery. With the economy collapsing, republics feel less and less incentive to pay taxes to Moscow when they receive so little in return. Three-quarters of them already have their own constitutions, nearly all of which make some claim to sovereignty. Strong ethnic bonds promoted by shortsighted Soviet policies may motivate non-Russians to secede from the Federation. Chechnya's successful revolt against Russian control inspired similar movements for autonomy and independence throughout the country. If these rebellions spread and Moscow responds with force, civil war is likely. Should Russia succumb to internal war, the consequences for the United States and Europe will be severe. A major power like Russia -- even though in decline -- does not suffer civil war quietly or alone. **An embattled Russian Federation might provoke opportunistic attacks from enemies such as China.** Massive flows of refugees would pour into central and western Europe. Armed struggles in Russia could easily spill into its neighbors. Damage from the fighting, particularly attacks on nuclear plants, would poison the environment of much of Europe and Asia. Within Russia, the consequences would be even worse. Just as the sheer brutality of the last Russian civil war laid the basis for the privations of Soviet

communism, a second civil war might produce another horrific regime. Most alarming is the real possibility that the violent disintegration of Russia could lead to loss of control over its nuclear arsenal. No nuclear state has ever fallen victim to civil war, but even without a clear precedent the grim consequences can be foreseen. Russia retains some 20,000 nuclear weapons and the raw material for tens of thousands more, in scores of sites scattered throughout the country. So far, the government has managed to prevent the loss of any weapons or much material. If war erupts, however, Moscow's already weak grip on nuclear sites will slacken, making weapons and supplies available to a wide range of anti-American groups and states. Such dispersal of nuclear weapons represents the greatest physical threat America now faces. And it is hard to think of anything that would increase this threat more than the chaos that would follow a Russian civil war.

Brazil

1NC

Text

The United States federal government should condition removing all restrictions on Brazilian ethanol exports if and only if Brazil ends ____(insert program)___.

Ethanol

Brazil wants ethanol exports now but U.S tariff removes possibility

Hanson 12 – Stephanie Hanson is associate director and coordinating editor at CFR.org, the website of the Council on Foreign Relations. She manages the editorial production of the website and covers economic and political development in Africa and Latin America, 2012 ("Brazil on the International Stage", Council on Foreign Relations, July 2, 2012, available at http://www.cfr.org/brazil/brazil-international-stage/p19883 // Date accessed - 7/20/12 K.K)

The United States and Brazil have agreements aimed at increasing ethanol use throughout Latin America and creating a global market for biofuels, but frictions persist about the U.S. tariff on Brazilian ethanol. The 54-cent per gallon tariff protects the U.S. domestic, corn-based ethanol industry from Brazilian sugar-based ethanol, which is produced at a lower cost. Though some U.S. legislators have proposed ending the tariff, segments of the U.S. agriculture lobby oppose such a measure. The Brazilian government has threatened to file a complaint with the World Trade Organization if the tariff is not reassessed, but Obama has signaled that he plans to continue the tariff. Experts are split on how serious this disagreement is and what implications it has for the broader relationship. Some policymakers, including U.S. Assistant Secretary of State Thomas Shannon, have highlighted U.S.-Brazil cooperation on ethanol as grounds for a wider partnernship. The cooperation currently is based on a 2007 memorandum of understanding and an announcement one year later that both countries would help Guatemala, Honduras, Jamaica, Guinea-Bissau, and Senegal create biofuel industries. Some experts say these initiatives are too narrow. "This limited dialogue is not broad enough to help address U.S. energy needs, climate change, or to build a global market for ethanol," writes Kellie Meiman. She recommends that the United States reduce its ethanol tariff.

Solvency

Now is key – brazil appeasement sustains relations

Weisbrot 13 - Mark Weisbrot is co-director of the Center for Economic and Policy Research, in Washington, D.C, 2013, ("U.S. Relations with Brazil and South America Still Worsening", CEPR, 2013, available at http://www.cepr.net/publications/op-eds-columns/us-relations-with-brazil-and-south-america-still-worsening // date accessed 7/21/15 K.K)

The only thing missing from Brazilian President Dilma Rousseff's speech at the U.N. General Assembly in September was "it still smells like sulfur." For those who don't remember, these were the immortal words of then-President Hugo Chávez of Venezuela in 2006, describing the podium where "the devil" – his name for President George W. Bush – had spoken the day before. Chávez's speech received hearty applause and prompted some New Yorkers to hang a banner from a highway overpass that said "Wake Up and Smell the Sulfur." Dilma's speech also got a lot of applause at the General Assembly, and because she spoke immediately before President Obama, her remarks were even more pointed. She presented a stinging rebuke to the Obama administration's mass surveillance operations, at home and abroad: "As many other Latin Americans, I fought against authoritarianism and censorship, and I cannot but defend, in an uncompromising fashion, the right to privacy of individuals and the sovereignty of my country. In the absence of the right to privacy, there can be no true freedom of expression and opinion, and therefore no effective democracy. In the absence of the respect for sovereignty, there is no basis for the relationship among Nations." "We face, Mr. President, a situation of grave violation of human rights and of civil liberties; of invasion and capture of confidential information concerning corporate activities, and especially of disrespect to national sovereignty." Dilma also took a swipe at Obama's previously-planned – and then cancelled due to popular demand – bombing of Syria: "[W]e repudiate unilateral interventions contrary to International Law, without Security Council authorization." Her remarks were a reminder, and for some a new discovery, that the differences between the newly independent governments of South America on hemispheric and foreign policy issues were mostly a matter of style and rhetoric, not of substance. The speech came in the wake of the cancellation of Dilma's scheduled October state visit to the White House, which would have been the first by a Brazilian president in nearly two decades. It was another blow to the Obama administration's tepid efforts to improve relations with Brazil, and with South America in general. At this moment U.S.-South American relations are probably even worse than they were under the George W. Bush administration, despite the huge advantage that President Obama has in terms of media image, and therefore popularity, in the hemisphere. This illustrates how deeply structural the problem in hemispheric relations has become, and how unlikely they are to become warmer in the foreseeable future. The fundamental cause of the strained relationship is that Washington refuses to recognize that there is a new reality in the region, since left governments have been elected by the vast majority of South America. In Washington's foreign policy establishment – including most think tanks and other sources of analysis and opinion – there has been almost no acknowledgement that a new strategy might be necessary. Of course, most of the foreign policy establishment doesn't care much about Latin America. And there is no electoral price to be paid for stupidity that leads to worsening relations with the region. On the contrary, the main electoral pressure on the White House comes from the far right, including neocons and old guard Cuban Americans. And Obama is not above caving to these interests when the White House and State Department are not already on their side. But among those who do care about Latin America – from an imperial point of view -- the lack of imagination is breathtaking. The establishment has, over the past 15

years, sometimes adopted a "good left, bad left" strategy that sought first and foremost to try and isolate Venezuela, often lumping in Bolivia, Ecuador, and sometimes Argentina as the "bad left." But in the halls of power, they really don't like any of the left governments and are hoping to get rid of them all. In 2005, according to State Department documents obtained under the Freedom of Information Act, the U.S. government promoted legislation within Brazil that would have weakened the Workers' Party. So it is not surprising that Brazil has, according to the documents revealed by former NSA contractor and whistleblower Edward Snowden, been the top Latin American target for U.S. spying. It's a lot like all the other left governments that Washington would like to get rid of, only bigger. It is true that countries with U.S.-allied governments like Mexico were also targeted, but in the context of Brazil's alliance with other left governments, the large-scale espionage there – which reportedly included monitoring of Dilma's personal phone calls and emails -- takes on a different meaning. In the past decade of Workers' Party government, Brazil has lined up fairly consistently with the other left governments on hemispheric issues and relations with the United States. When the Bush administration tried to expand its military presence in Colombia, Brazil was there with the rest of the region in opposition. The same was true when Washington aided and abetted the overthrow of "targets of opportunity" among the left governments: Honduras in 2009 and Paraguay in 2012 – although in these cases the U.S. and its allies still prevailed. Brazil also supported other efforts at regional integration and independence, including UNASUR (the Union of South American Nations), which has played an important role in defending member countries from right-wing destabilization attempts: as in Bolivia in 2008; or the April elections in Venezuela, where the Obama administration supported opposition efforts to overturn the results with obviously false claims of electoral fraud. (A CEPR study showed that the probability of getting the April 14 election day audit results confirming Nicolás Maduro's win, if the vote had actually been stolen, was less than one in 25 thousand trillion.) Lula made a conscious decision that Brazil would look more to the south and less to the United States as a leader in its foreign and commercial policy. In a recent interview with the Argentine daily Pagina/12, he explained how important the turning point of Mar del Plata was, when the proposed Free Trade Area of the Americas was finally buried at the Summit of the Americas in 2005: "It was fundamental that we had stopped this proposal to form the FTAA, at Mar del Plata. It was not a true project of integration, but one of economic annexation. With its sovereignty affirmed, South America looked for its own path and a much more constructive one … When we analyze this history of South America we can see that it is one great conquest. If we had not avoided the FTAA, the region would not have been able to take the economic and social leap forward that it did in the past decade. Argentina, Brazil, and Venezuela played a central role in this process. Néstor Kirchner and Hugo Chávez were two great allies in accomplishing this." In 2002, when Lula was elected, Brazil's exports to the U.S. were 26.4 percent of its total exports. By 2011, they were down to 10.4 percent. Meanwhile, China's economy is by some measures already bigger than the U.S. economy, and it will probably double in size over the next decade. The United States will become increasingly less important to Brazil, and to South America generally. Given that Washington still does not respect Latin American sovereignty, much less the goals and aspirations of its democratic governments, that has to be seen as a good thing for the region.

2NC/1NR

Ethanol

Brazil leading in Ethanol exports

Parker No Date – Mario Parker is a reporter for Bloomberg News in Chicago, ("Strong Dollar Threatens U.S. Ethanol Exporter Gains Over Brazil", Bloomberg news, available at http://www.bloomberg.com/news/articles/2015-04-14/strong-dollar-threatens-u-s-ethanol-exporters-gains-over-brazil // date accessed 7/22/15 K.K)

Over the last four years, the title of world's top ethanol exporter has changed hands three times: The U.S. took it from Brazil in 2011, lost it back a year later and retook it again in 2014. The fourth title change -- back over to Brazil -- may be taking place already. The soaring dollar is making U.S. ethanol more expensive in overseas markets while a tumble in Brazil's currency, the real, is giving a lift to exporters there. The South Americans are winning sales in the Middle East and Asia, two growing markets. The greenback has jumped as much as 24 percent against the real in 2015 to a 12-year high, and is currently up 15 percent at 3.0351 reais. "The dollar and the weakness in the real could wash out some of the exports from America," Jordan Fife, a trader at Biourja Trading LLC in Houston, said in a telephone interview. "The Arabian Gulf is the biggest swing" market, he said. Americans captured the export crown last year as the Brazilians, hobbled by a severe drought that hurt output, saw sales drop by more than 50 percent. Shipments abroad are key to U.S. producers even though they made up only 5.9 percent of total sales in 2014 because domestic demand is stagnant. U.S. ethanol capacity has grown almost threefold in the last decade on the back of a 2005 law championed by then-President George W. Bush to use the fuel as a way to reduce dependence on foreign oil. The Renewable Fuels Standard has required refiners to blend increasing amounts of gasoline with ethanol. Dollar's Rise Denatured ethanol for May delivery gained 2.8 cents to settle at $1.591 a gallon on the Chicago Board of Trade. Brazil, which uses sugarcane to make ethanol, increased exports 16 percent in January from December, while the U.S., which uses corn, saw sales decline 9 percent, according to government data. Brazilians sent ethanol to the United Arab Emirates, the U.S.'s third-largest market in 2014, and their exports to South Korea were triple the amount of U.S. shipments to that country. Last year, the U.S. exported 847.4 million gallons of the fuel additive, while the Brazilians shipped just 369 million. Government estimates show the challenge facing U.S. distillers. They'll produce 14.4 billion gallons of ethanol this year and next. Projected gasoline demand will be 139 billion gallons in 2015 and 137.9 billion in 2016. That means when ethanol is blended at the 10 percent ratio to gasoline required by federal law, there will be at least 500 million gallons of the additive left over each year.

Brazil ethanol is cheaper and sustains Brazilian economy

Parker No Date – Mario Parker is a reporter for Bloomberg News in Chicago, ("Strong Dollar Threatens U.S. Ethanol Exporter Gains Over Brazil", Bloomberg news, available at http://www.bloomberg.com/news/articles/2015-04-14/strong-dollar-threatens-u-s-ethanol-exporters-gains-over-brazil // date accessed 7/22/15 K.K)

Averting Glut The only way to avert a glut or to keep plants from shutting is for exports to make up the difference, Ann Duignan, an analyst at JPMorgan Chase & Co., wrote in a March report. With 867 million gallons of ethanol in storage, U.S. inventories are about 29 percent higher than a year ago. Now the strength in the dollar is making it harder to reduce the excess supply, said Will Babler, a broker at Atten

Babler Risk Management in Galena, Illinois. Meanwhile, Brazil's economic woes are creating the conditions that will help its ethanol producers ramp up exports. With Brazilian growth sputtering and a political scandal deepening, the currency is likely to remain weak, making the country's ethanol competitive for the foreseeable future, Christoph Berg, managing director at F.O. Licht GmbH, in Ratzeburg, Germany, said in a March telephone interview. Brazilian Fuel Ethanol in Sao Paulo has fallen 19 percent in dollar terms this year, making it cheaper than in two of four key U.S. regions, data compiled by Bloomberg show. The fuel cost $1.63 a gallon last week in Sao Paulo, 8 cents cheaper than ethanol on the U.S. West Coast. Brazilian prices in March touched $1.58 a gallon, the lowest since July 2009. America may still benefit from Brazil's decision this year to boost the level of ethanol in its gasoline to 27 percent from 25 percent because more of it will be needed domestically, Marcus Ludtke, vice president of Commodity Marketing Company Inc., an Albert Lea, Minnesota-based brokerage, said in an April 9 telephone interview. The impact of the stronger dollar will be "minimal" in the export market because of Brazil's increased domestic consumption and America's cheaper cost of production, Bob Dinneen, president of the Washington-based Renewable Fuels Association, which represents U.S. ethanol-producing companies, said in a telephone interview April 13. U.S. ethanol export data for February and March aren't yet available from the Energy Department. Brazilian figures show its shipments for February and March were 9 percent and 43 percent higher than a year ago, respectively. Brazil may be poised to snatch the export lead back, Jim Damask, a trader at StarFuels Inc. in Jupiter, Florida, said. "Some of these guys in Brazil may be picking up the phone and saying, 'Hey, we have some stuff sitting around, what price would you want to take it?'," Damask said.

Brazil Ethanol sustains U.S biofuels

Wisner 12 – Dr. Robert Wisner University Professor Emeritus, Iowa State University and Biofuels Economist, 2012, ("brazil ethanol developments & implications for the u.s. ethanol industry", Agricultural Marketing Resource Center, October 2012, available at http://www.agmrc.org/renewable_energy/ethanol/brazil-ethanol-developments--implications-for-the-us-ethanol-industry/ // date accessed 7/22/15 K.K)

For many years, Brazil was the world's largest producer of fuel ethanol. The U.S. is now the No.1 ethanol producer but Brazil's ethanol policies, production, and exports are an important influence on the U.S. biofuels industry. Through government incentives, Brazil's ethanol industry became a major source of bio-based motor fuel in the 1990s and in recent years has been a major ethanol exporter. Brazilian ethanol is produced from sugar cane, a low-cost feedstock that also allows processors to use the cane stalks as fuel for processing plants after the juice has been removed for ethanol or cane sugar production. Sugar cane is a perennial crop that needs to be replanted only every 6 to 8 years. The sugar marketing year in Brazil's major center-south sugar producing region runs from May through April, although crushing of sugar cane has sometimes started as early as late March. In the northeastern Brazil sugar area, the marketing year runs from September through August. Brazil sources indicate 90% of the crop is produced in the center-south region. With large ethanol production, Brazil's government has been able to mandate ethanol-gasoline average blends of 18% to 25%. The percentage blend can vary from time to time, depending on the available supply of ethanol. In October 2011, it was lowered from 25% to 20%, due to tight sugar and ethanol supplies. In August 2012, it was expected to remain at that level until at least the start of the 2013-14 sugar marketing year. (1) In recent years before June 2012,

Brazil had a federal tax on gasoline but not on ethanol, thus helping to provide an economic advantage for ethanol. In June 2012, the gasoline tax was removed, thus tending to reduce the advantage of ethanol relative to gasoline. Individual states continue to tax gasoline at varying levels. (2) The number of flex-fuel vehicles in Brazil's automobile fleet has increased rapidly in the last few years and now accounts for most new car sales. As a result, Brazil has a large fleet of vehicles that can be powered by hydrous ethanol, a mixture that includes a small amount of water in ethanol and no gasoline. Alternatively, anhydrous ethanol can be blended with gasoline to create the 20 or 25 percent ethanol-gasoline blends. Motorists in Brazil have indicated to us that E-100 needs about a 30% price discount per liter to offset its lower fuel mileage than gasoline. This year, the U.S. faces a drought-reduced corn crop and tight U.S. domestic ethanol feedstock supplies. U.S. ethanol production is projected to decline from last season. The impact of reduced domestic production on supplies and cost of ethanol for U.S. motorists, profitability of domestic ethanol processors, corn use for ethanol, and corn and distillers grain and solubles (DGS) prices will be influenced partly by potential imports from Brazil and the amount of competition U.S. ethanol exports face from Brazilian ethanol. factors affecting the economics of brazilian ethanol production The economics of ethanol production, exports, and use for motor fuel in Brazil depend on a number of factors including (1) the world sugar price, (2) the exchange rate of the Brazilian currency (the real) vs. the dollar and other major currencies, (3) the size of Brazil's sugar crop, (4) its government-controlled domestic gasoline price, and (5) tax policies. Brazil is the world's largest sugar producer. The size of its crop and that of India (the No. 2 sugar producer) have a major impact on world refined sugar cane prices. Those prices influence Brazil's sugar processors in determining how much of its production should be refined as sugar vs. processed into ethanol. In the last two years, sugar cane crops in Brazil and India have been disappointing because of less than ideal weather. World sugar prices have been high, signaling to Brazilian processors to increase the percentage of the crop devoted to sugar production rather than ethanol. This tendency has been reinforced by at least two other developments. Brazil's governmental petroleum company, Petrobras, has kept gasoline prices artificially low during the last few years to help restrain inflation. Low domestic prices for gasoline have kept domestic ethanol prices low, thus discouraging increased use of sugar cane for ethanol. That tendency has been reinforced by removal of the federal gasoline tax. Also, attractive returns for corn and soybeans have encouraged farmers to place greater emphasis on those crops. As a result, part of Brazil's sugar cane crop is becoming aged and in need of replanting. After reaching peak production, productivity of sugar cane plants tends to decline in the last few years before replanting. Early indications are that Brazil's early 2012 sugar crop was near or slightly below last season. However, availability of sugar for ethanol production in the 2012-13 U.S. corn marketing year is still uncertain and will depend strongly on the size of Brazil's spring 2013 sugar crop.

Brazil is the leading exporter of ethanol

Voegele 14 – Erin Voegele currently serves as an Associate Editor for Ethanol Producer Magazine, Biomass Magazine, and Pellet Mill Magazine, and has written for several other BBI International publications in the past. She aims to provide members of the biorefining industry with accurate, timely, and relevant information that is vital to operating their businesses. Voegele has been with BBI International since 2008. She earned a bachelor's degree in Mass Communication from North Dakota State University, 2014, ("UNICA: Brazilian ethanol production up, exports down", December 19, 2014,

available at http://ethanolproducer.com/articles/11760/unica-brazilian-ethanol-production-up-exports-down // date accessed 7/22/15 K.K)

UNICA, the Brazilian sugarcane energy association, has announced ethanol production from the start of the current season through the end of November is up 3.54 percent when compared to last year. According to UNICA, mills in the south-central region of Brazil crushed 15.75 million tons of sugarcane during the second half of November, up 40 percent from the same period of last year. From the start of the current season through the end of November, approximately 554.09 million tons have been crushed, down 3 percent from the same period of last year. UNICA reported that 136 mills in the south-central region of the country had wrapped up the current season by the end of November, compared to 73 mills last year. When compared to last year, the volume of total recoverable sugars is up slighting. From the start of the current season through the end of November, total recoverable sugars averaged 137.14 kilograms per ton of sugarcane, up 2.66 percent when compared to the same period of last year. Of the sugarcane processed during the second half of November, 60.03 percent went to ethanol production, up from 56.17 percent during the same period of last year. According to UNICA, 56.49 percent of the sugarcane harvest has went to ethanol production since the beginning of the current season. During the second half of November, ethanol production totaled 803.36 million liters (212.23 million gallons), including 295.6 million liters of anhydrous ethanol and 507.76 million liters of hydrous ethanol. When compared to the same period of last year, ethanol production was down 28.79 percent. Ethanol production from the start of the season through the end of November, however, is up 3.54 percent compared to last year, reaching 25.18 billion liters. The production of hydrous ethanol was up 6.12 percent, with the production of hydrous ethanol increasing by only 0.18 percent. According to UNICA, producers in the south-central region of Brazil sold 2.05 billion liters of ethanol in November, up 2.06 percent from the same period of last year. Only 137.73 of that volume was destined for export, with 1.92 billion liters supplying Brazil's domestic market. From the start of the current season through the end of November, ethanol sales totaled 16.33 billion liters, down 6.89 percent compared to last year. UNICA indicated the drop reflects a 55 percent reduction in exports, which have totaled only 957.78 million liters this year, down from 2.15 billion liters last year. From April through November, sales into the domestic Brazilian market totaled 15.37 billion liters, down slightly from 15.39 million liters during the same period of last year.

The ethanol tariff hurts both brazil and u.s economic policy

Hofstrand 9 – Don Hofstrand is a retired professor of agriculture at iowa state and an agriculture specialist, 2009, ("Brazil's ethanol exports", Iowa State University Extension and Outreach, May 2009, available at https://www.extension.iastate.edu/agdm/articles/hof/HofMay09.html May 2009 // date accessed 7/22/15 // K.K)

U.S. Ethanol Import Tariffs Ethanol consumed in the United States receives a subsidy of 51 cents per gallon. The subsidy (Volumetric Ethanol Excise Tax Credit) is provided to the blender of the ethanol with gasoline. For example, a ten percent blend of ethanol (10% ethanol and 90% gasoline) receives a subsidy of 51 cents per gallon of ethanol or 5.1 cents per gallon of blended fuel. The subsidy was implemented to help the fledgling U.S. ethanol industry develop. However, the subsidy is available for all blended ethanol regardless of whether the ethanol is domestically produced or imported. To offset the subsidy for imported ethanol so U.S. taxpayers are not subsidizing foreign ethanol production, an import duty

was imposed. The import duty is 54 cents per gallon, slightly larger than the current subsidy of 51 cents. So, the "actual" import duty is 3 cents (54 cents less 51 cents = 3 cents). When the subsidy is reduced to 45 cents the actual import duty will be 9 cents. The tariff on ethanol imports is scheduled to expire in 2010, unless extended. The import tariff is imposed on all countries except the Caribbean Basin Initiative (CBI) countries. The CBI consists of nineteen qualifying countries in the Caribbean and Central America. These countries can export ethanol to the U.S. duty free. To export to the U.S. under this rule, the ethanol must be produced from the country's domestic feedstocks. In other words, they cannot import Brazilian sugar, convert it into ethanol, and sell it duty free to the U.S. However, there is another twist to the rules. A CBI country can import the feedstock, process it into ethanol, and sell it into the U.S. duty free if the total amount sold by all of the CBI countries to the U.S. does not exceed an amount equal to seven percent of the U.S. annual ethanol consumption. For example, in 2006 the U.S. consumed 4.86 billion gallons. So the seven percent limit was 340 million gallons. This is advantageous for CBI countries like Jamaica and Trinidad. Policy decisions by the new U.S. administration and congress could have significant repercussions for Brazil and the CBI countries. The CBI comes up for renewable in 2010. A movement to further protect the U.S. ethanol industry by not renewing the CBI would be detrimental to both the CBI countries and Brazil. Conversely, a movement to open up ethanol trade by removing the 54 cent import tariff would be advantageous to Brazil at the expense of the CBI countries. Why doesn't the U.S. import Brazilian sugar and process it into ethanol domestically? Brazil would get the benefit of a market for the sugar feedstock that is sold into the U.S market duty free. However, the U.S. has long had import quotas on foreign sugar. The quotas were designed to protect the U.S. sugar beet industry from competition by lower-cost foreign sugar cane. These quotas keep U.S. sugar prices substantially above world sugar prices. In addition to the 54 cent import duty, an "ad valorem" tax is also placed on ethanol imports. The tax is equal to 2.5 percent of the value of the imported ethanol. For example, $2.00 ethanol would be taxed 5 cents per gallon ($2.00 X .025 = 5 cents). Adding the 5 cent tax to the 54 cent duty will result in a total cost of 59 cents per gallon of $2.00 ethanol.

Foreign biofuels key to national industrialization and combating emissions

Fahey and Mayfrowitz 15 – Jonathan Fahey and Scott Mayfrowitz are AP Business Writers, 2015, ("Airlines turning to biofuels to meet emissions rules, capitalize on growth in air travel", AP/USNews, July 21, 2015, available at http://www.usnews.com/news/business/articles/2015/07/21/why-airlines-keep-pushing-biofuels-they-have-no-choice // date accessed 7/22/15 K.K)

NEW YORK (AP) — The number of global fliers is expected to more than double in the next two decades. In order to carry all those extra passengers, airlines are turning to a technology very few can make work on a large scale: converting trash into fuel. They have no other choice. As people in countries such as China, India and Indonesia get wealthier they are increasingly turning to air travel for vacation or business, creating an enormous financial opportunity for the airlines. The number of passengers worldwide could more than double, to 7.3 billion a year, in the next two decades, according to the International Air Transport Association. But many in the industry believe that without a replacement for jet fuel, that growth could be threatened by forthcoming rules that limit global aircraft emissions. "It's about retaining, as an industry, our license to grow," says Julie Felgar, managing director for environmental strategy at plane maker Boeing, which is coordinating sustainable biofuel research programs in the U.S., Australia, China, Brazil, Japan and the United Arab Emirates. Cars, trucks and trains

can run on electricity, natural gas, or perhaps even hydrogen someday to meet emissions rules. But lifting a few hundred people, suitcases and cargo 35,000 feet into the sky and carrying them across a continent requires so much energy that only liquid fuels can do the trick. Fuel from corn, which is easy to make and supplies nearly 10 percent of U.S. auto fuel, doesn't provide enough environmental benefit to help airlines meet emissions rules. "Unlike the ground transport sector, they don't have a lot of alternatives," says Debbie Hammel, a bioenergy policy expert at the Natural Resources Defense Council. That leaves so-called advanced biofuels made from agricultural waste, trash, or specialty crops that humans don't eat. United Airlines last month announced a $30 million stake in Fulcrum Bioenergy, the biggest investment yet by a U.S. airline in alternative fuels. Fulcrum hopes to build facilities that turn household trash into diesel and jet fuel. FedEx, which burns 1.1 billion gallons of jet fuel a year, promised Tuesday to buy 3 million gallons per year of fuel that a company called Red Rock Biofuels hopes to make out of wood waste in Oregon. Southwest Airlines had already agreed to also buy some of Red Rock's planned output. These efforts are tiny next to airlines' enormous fuel consumption. U.S. airlines burn through 45 million gallons every day. But airlines have little choice but to push biofuels because the industry is already in danger of missing its own emissions goals, and that's before any regulations now being considered by the U.S. Environmental Protection Agency and international agencies. The industry's international trade group has pledged to stop increasing emissions by 2020 even as the number of flights balloons. By 2050, it wants carbon dioxide emissions to be half of what they were in 2005. Like airlines, the U.S. military is also supporting development of these fuels for strategic and financial reasons. For biofuels makers, it is a potentially enormous customer: The military is the biggest single energy consumer in the country. Making biofuels at large, commercial scale is difficult and dozens of companies have gone belly up trying. The logistics of securing a steady, cheap supply of whatever the fuel is to be made from can take years. Financing a plant is expensive because lenders know the risks and demand generous terms. A sharp drop in the price of crude oil has made competing with traditional fuels on price more difficult.

Solvency

Brazil wants to reform and sustain diplomatic ties

Sotero 6/23 - Paulo Sotero is the Director of the Brazil Institute and the Woodrow Wilson International Center for Scholars, 2015, ("In Trouble at Home, Rousseff Travels to Washington", Huffington Post, 6/23/15, available at http://www.huffingtonpost.com/paulo-sotero/in-trouble-rousseff-seeks_b_7639204.html // date accessed 7/21/15 K.K)

Brazilian President Dilma Rousseff's visit to the United States at the end of this month will be the fourth attempt in four years to transform a shallow dialogue marked by unfulfilled expectations, suspicion, and mutual frustrations, into the productive relationship both governments say they want to build. It may also be the most promising. It will take place at a particularly inauspicious moment for the Brazilian leader. Her popularity is at an all-time low,, and the June 19 arrests of the CEOs and senior executives of Brazil largest construction companies has deepened the crisis brought by economic mismanagement and revelations of widespread corruption at state oil giant Petrobras. Discredited and politically isolated at home, Rousseff, who was narrowly reelected last October, has only to gain from engaging President Barack Obama in initiatives to expand and deepen Brazil's ties with the United States and turn them into solutions to the crisis of confidence - mostly self-inflicted - she confronts at home and abroad. If it is true that you know who your friends are in times of trouble, this is the time to affirm the friendship between the two largest democracies in the Americas. The role economics played in the planning of the three-day visit suggests the Brazilian leader sees the meetings she will have in Washington, New York and San Francisco as the way to convey her understanding that rapprochement with the U.S. now is not only important, but also urgent. Rousseff actually turned down an offer by the White House to upgrade her official trip to Washington to a state visit, like the one cancelled two years ago after disclosures of National Security Agency spying in Brazil, if she could wait until next year. She could not. Fundamentally, the visit is the message. New context favors opens for a private sector driven agenda A changed context makes Rousseff's trip to the U.S. more promising than previous efforts - assuming she survives the crisis, and expectations are kept in check. The largest investor in Brazil and principal destination of the country's value added exports, the U.S. is recovering from its own self-inflicted crisis, the 2008 financial meltdown, while China, Brazil's top trading partner since 2009, had slowed down. The likelihood of approval by the US Congress of Trade Promotion Authority to advance trade liberalization agreements in the Pacific and the Atlantic, will add to the pressure on Brazil to abandoned its protectionist policies or risk further economic isolation. It will certainly strengthen Obama's international legacy, which already already encompasses the historic initiative to normalize relations between Washington and Havana, and the expected conclusion, at the end of the month, of a U.S.-led nuclear agreement with Iran. In this new context, Rousseff's visit should contribute to improve the political atmosphere in which Brazil and the U.S. will explore anew the enormous potential of their relationship. As U.S. envoy to Brasilia, Liliana Ayalde recently observed, "Brazil and the U.S. have much in common and no unsurmountable differences." Rousseff's situation is politically precarious. Having started her second term as a virtual lame duck, she has practically no room to maneuver and may not be able to use the visit to strengthen her position at home and advance a new, market-oriented economic policy needed to rebuild investor's confidence. Nonetheless, her government new economic policy narrative is expressed in the mobilization of private sector leaders in both countries to focus the visit on an agenda of investment opportunities in infrastructure, human capital technology development, education, and innovation. These issues have gained ground as the crisis has exposed Brazil's obstacles to growth - they signal a

return to structural and regulatory reforms abandoned after the exit of Antonio Palocci from the Finance Ministry, in 2006. There is also a renewed focus on promoting greater economic openness and integration of Brazil into the global economy. These steps are essential to improve current conditions and to move the economy to a sustainable long-term growth path, one that envisages shared prosperity under the more demanding realities of the post-commodities boom. It is also the message Rousseff will hear when leading business executives in New York, Washington and San Francisco gather to exchange views on productive U.S.-Brazil engagement.

Existing trilateral cooperation proves Brazil and U.S relations possible but the counterplan necessary for bilateral cooperation

BWHA 12 - The Bureau of Western Hemisphere Affairs is headed by Assistant Secretary of State Roberta Jacobson, who is responsible for managing and promoting U.S. interests in the region by supporting democracy, trade, and sustainable economic development, and fostering cooperation on issues such as citizen safety, strengthening democratic institutions and the rule of law, economic and social inclusion, energy, and climate change, 2012, ("The United States and Brazil: Trilateral Cooperation", U.S Department of State, April 9, 2012, available at http://www.state.gov/p/wha/rls/fs/2012/187613.htm // date accessed 7/22/15 K.K)

The United States and Brazil have developed a record of effective partnership in jointly delivering development assistance to maximize resources. Under the 2010 Memorandum of Understanding (MOU) for the Implementation of Technical Cooperation Activities in Third Countries, we have collaborated successfully on dynamic initiatives in countries that face serious poverty challenges, particularly in Africa and Latin America. Current initiatives improve health and food security in Africa, combat and prevent child labor in Haiti, partner with Bolivia on counternarcotics cooperation, and promote biofuels in Central America, the Caribbean, and Africa. The United States and Brazil are exploring new trilateral cooperation initiatives, including programs to combat AIDS in Mozambique, promote domestic resource mobilization in partner countries, expand biofuels cooperation in Africa and Asia, as well as joint projects in Central America and the Caribbean under the Feed the Future program. We are also exploring additional trilateral cooperative projects on labor and employment issues under an MOU to advance "decent work." Examples of U.S.-Brazil trilateral assistance programs include: Cooperation in Food Security: Brazil is a Feed the Future Strategic Partner country and a leader in the region on food security issues. The United States and Brazil have developed a MOU on food security cooperation in third countries. In Mozambique, USAID and the Brazilian Cooperation Agency (ABC) help farmers increase the productivity of their vegetable crops and to improve post-harvest packing, storage, and processing of produce. USAID Mozambique and Brazil's agricultural research corporation, EMBRAPA, funded the development of the Mozambique Platform for Agricultural Research and Technology Innovation (PARTI), which brings the expertise of agricultural research centers around the world to work on specific problems in Mozambique. The United States and Brazil are commencing new trilateral cooperation to improve food security in Haiti. The three governments will work to increase agricultural yield and farmers' incomes, and to improve nutrition for rural farmers. Combating HIV/AIDS: Under the auspices of the Department of State's Global AIDS Coordinator, negotiations are proceeding on an MOU on HIV/AIDS cooperation in Mozambique. Programs would include monitoring and evaluation, civil society strengthening, communication activities aimed at changing public perceptions, and improving the supply chain of AIDS drugs. Combating Child and Forced Labor: As part of the State of Bahia's decent

work strategy, the United States is assisting Bahia to become the first state in Brazil free of child labor. The Department of Labor and the Government of Brazil provide complementary funding to combat child labor in several South American countries, including Ecuador, Bolivia, and Paraguay, and in Lusophone Africa. The United States has also funded programs to support law enforcement and to provide assistance to workers rescued from forced labor in Brazil. An initiative on decent work supports the International Labor Organization/International Program for the Elimination of Child Labor (ILO/IPEC) project to combat child labor in Haiti. . Biofuels Cooperation: Under the 2007 U.S.-Brazil MOU on Biofuels, the United States and Brazil have agreed to engage in third-party cooperation with member countries El Salvador, Honduras, Guatemala, the Dominican Republic, Haiti, Jamaica, and Senegal. Through independent projects focused on the same goal, Brazil has created high-level, detailed feasibility studies for biofuels implementation in the member countries. The United States has contributed through targeted projects, including technical support for the development of biofuels blending legislation in El Salvador, pilot validation studies to test ethanol blends in Guatemala and El Salvador, and a pilot bioethanol plant in Honduras. Environment and Conservation: The United States and Brazil have informal trilateral cooperative arrangements regarding forest conservation. The U.S. Forest Service (USFS), through collaboration with USAID, is working with the Brazilian Forest Service (SFB), the Chico Mendes Institute for the Conservation of Biodiversity (ICMBio), and the Brazilian Environment Institute (IBAMA) to share expertise and experiences with the Government of Peru's Forest Sector Initiative. USFS, USAID, SFB, ICMBio, and IBAMA have provided technical expertise in areas such as national forest inventory, sustainable forest management, and forest monitoring and timber tracking. Counternarcotics Cooperation: In January 2012, Bolivia, Brazil, and the United States agreed to a one-year pilot program to improve Bolivia's ability to measure excess coca cultivation and verify progress in meeting coca eradication targets. As part of the project, the United States will provide global positioning equipment and Brazil will provide satellite imagery and technical training.

Now is uniquely key, Brazil internet circumvention of the united states is eminent without appeasement

Trinkunas 13 - Harold Trinkunas is the Charles W. Robinson Chair and senior fellow and director of the Latin America Initiative in the Foreign Policy program. His research focuses on Latin American politics, particularly on issues related to foreign policy, governance and security. He is currently studying Brazil's emergence as a major power, and Latin American contributions to global governance on issues including energy policy, drug policy reform and internet governance. Trinkunas has also written on terrorism financing, borders and ungoverned spaces, 2103, ("U.S.-Brazil Relations and NSA Electronic Surveillance", Brookings, September 18, 2013, available at http://www.brookings.edu/blogs/up-front/posts/2013/09/18-us-brazil-nsa-surveillance-trinkunas // date accessed 7/22/15 K.K)

The Rousseff administration's immediate proposals to address the espionage revelations indicate that it is concerned to be seen as defending Brazilian sovereignty and its citizens. These include a government investigation of allegations that private telecommunications firms working in Brazil were conduits for NSA espionage. The administration has requested accelerated congressional consideration of legislation requiring that data collected by internet and social media companies be stored inside Brazil's borders. The Brazilian government has also proposed that the postal service create an encrypted national email system. They have even announced talks between the Argentine and Brazilian ministers of defense on combined cyber defense. Admittedly, some of these proposals have been made in haste, and there are few governments anywhere with a record of creating successful social media and internet alternatives.

Taken together, they indicate that the Rousseff administration wants to quickly get on the right side of public opinion on this issue, particularly since its popularity has only just begun to rebound after recent social unrest. The revelations of NSA intelligence collection are particularly bitter pill for President Rousseff and her advisors to swallow because they thought they had built a better relationship with the United States than their predecessors in the da Silva administration. The Obama and Rousseff administrations have pursued a highly ambitious bilateral agenda since 2010 characterized by four presidential-level dialogues and a large number of high-level working groups on economics and finance, education, science and technology, defense and security and global partnership. It is unlikely that this intense effort to improve relations would be cast aside permanently over revelations of espionage. In fact, the postponement may have the positive consequence of allowing bilateral working groups and meetings to complete their work under less fraught circumstances. It is in the U.S. interest for President Rousseff's state visit to take place at a time when Brazilian public opinion is more favorable to negotiations with the U.S., which would give President Rousseff more flexibility to cut deals and clear sticking points. On the other hand, it seems likely that cooperation on defense and security issues, closely linked in the public mind to intelligence, will suffer. For example, Brazilian politicians have already observed that Boeing's proposal to equip the Brazilian air force with F/A-18 E/Fs will be negatively affected, although this sale was likely to be postponed in any event due to budget cuts. It will also become even more difficult to secure Brazilian congressional approval of pending defense and security agreements with the United States, including the Defense Cooperation Agreement (DCA) and the General Security of Military Information Agreement (GSOMIA). These agreements, both of which have been awaiting legislative action since they were signed in 2010, are essential precursors to deeper collaboration on security and sharing of sensitive technologies between the two states. In the long run, revelations of NSA intelligence collection in Brazil are likely to have an impact on the ongoing debate over the international structure and governance of the internet. There are already a number of countries in Europe that require that data generated by their citizens be stored within their national boundaries, and Brazil has announced that it is moving in this direction. It already has strict privacy and data protection laws on the books and these are likely to be tightened and enforced more aggressively, at least for the moment. It is advocating the creation of networks in Brazil and South America that route around the U.S.-based systems that currently handle most of Brazil's internet traffic. A number of observers have already warned that this would decrease the functionality and effectiveness of the global internet. Beyond this, we should keep in mind that the current international structure and governing institutions for the global internet are highly favorable to the United States, which has played a central role since its inception. Large amounts of global internet traffic flow through U.S. territory, and U.S. public and private entities maintain a dominant voice in global internet governance. Brazil has now added itself to the list of countries that are exploring new ways to route their telecommunications data around the United States. It may also redouble the efforts of its highly professional diplomatic corps to work with the entities and countries that have advocated a reformed global internet governance structure for the past decade. The consequences of such a reform, if successful, would doubtfully favor U.S. interests.

Surveillance policies have angered Brazil, appeasement necessary for effective bilateral relations

Meacham 13 - Carl Meacham is director of the Americas Program at the Center for Strategic and International Studies (CSIS) in Washington, D.C. Michelle Sinclair, staff assistant with the Americas Program, provided research assistance, 2013, ("The Non-State Visit: What's Next for U.S.-Brazil Relations?", CSIS, October 22, 2013, available at http://csis.org/publication/non-state-visit-what-next-us-brazil-relations // date accessed 7/22/15 K.K)

In the short term, Rousseff's decision to indefinitely postpone the state visit and excoriate U.S. espionage on the international and domestic stages may appear wise. Her snub of the United States appears to have reinvigorated her support base within Brazil—and may have earned her respect as a resilient regional leader—all of which she desperately needs after the months of civil discontent. Her reelection prospects were further threatened by the recent Marina Silva–Eduardo Campos alliance of the Sustainability Network and Socialist Party earlier this month, whose political staying power presents an unprecedentedly unified left to challenge Rousseff in the impending electoral cycle—likely dashing her earlier hopes of sweeping electoral victory. The long term, however, is more complicated. Rousseff must proceed cautiously, aware that setting too strong an anti-U.S. precedent now will likely prove a stopping block to salvaging the bilateral relationship down the line. More NSA accusations could come to light as Brazil approaches its FX-2 decision, forcing Rousseff to forgo Boeing's offer in favor of another company, pushing the United States still further away. In short, Brazil must be wary—and try, to the extent possible, to position its firm stance on the NSA allegations in the broader context of regional and global relations. A failure to do so would only risk undermining its growing position on the world stage—a position that, more likely than not, would benefit from a strong relationship with the United States. Even in the face of the NSA controversy and the postponed state visit, the U.S. government has demonstrated its commitment to maintaining its relationship with Brazil. But with the FX-2 decision pending and the future of the bilateral relationship in the balance, the ball is firmly in Brazil's court. Will Rousseff let the opportunity fly by?

Escalating tensions risks collapse of bilateral relations – now is key

Meacham 13 - Carl Meacham is director of the Americas Program at the Center for Strategic and International Studies (CSIS) in Washington, D.C. Michelle Sinclair, staff assistant with the Americas Program, provided research assistance, 2013, ("The Non-State Visit: What's Next for U.S.-Brazil Relations?", CSIS, October 22, 2013, available at http://csis.org/publication/non-state-visit-what-next-us-brazil-relations // date accessed 7/22/15 K.K)

On October 23, Brazilian president Dilma Rousseff was scheduled to visit the White House in what would have been the first state visit of a Brazilian head of state in almost 20 years. But on September 27, Rousseff indefinitely postponed the trip in response to mounting domestic discontent over alleged NSA spying on the Brazilian government. Since the allegations first came to light in July, Rousseff has taken center stage in demanding answers from the United States—even using her position as opening speaker of the UN General Assembly to blast U.S. surveillance as a violation of international law and human rights. And domestically, she has pushed legislation to secure her country's servers to prevent such information gathering moving forward. Immediately following her postponement of the state visit, the approval ratings of Rousseff's government began to increase, after months of popular disapproval

following months of domestic political turmoil. But the spying allegations and Rousseff's response to them have come at a difficult moment for U.S.-Brazil relations. Just as the two countries began to come together and forge a closer partnership, the developments over the past four months have driven a wedge between the two powers. Given the mutual value of a "strategic partnership," what can the governments do to get their relationship back on track? Q1: What do Snowden's NSA accusations have to do with U.S.-Brazil relations? A1: Since July, American journalist Glenn Greenwald has been publishing highly classified documents leaked by former NSA contractor Edward Snowden—documents that indicate, among other things, large-scale NSA surveillance in Brazil. According to reports, NSA programs targeted the telecommunications of Brazilian citizens, intercepted Rousseff's private communications, and hacked the computer network of Petrobras, Brazil's state-run oil firm. Just last week, Greenwald spoke to the Comissão Parlamentar de Inquérito (CPI), the group of senators Rousseff assembled to investigate the espionage accusations. During the session, Greenwald insinuated that Brazil's best bet for learning the full extent of NSA surveillance operations would be to grant Snowden political asylum. Currently the CPI is pursuing permission from the Russian government to set up teleconferencing sessions with Snowden, who is currently residing in Russia under a temporary asylum grant. And though Greenwald has flatly refused to hand over documents sent to him by Snowden, CPI members are pushing for the legal authority to seize the documents in Greenwald's possession should they fail to establish a direct line of communication with Snowden himself. In the meantime, the Rousseff administration has made the investigation a top priority, demonstrating that Brazil cannot move forward in its relations with the United States until the issue is cleared. Q2: How have these surveillance developments affected the bilateral relationship? A2: The most obvious result of the spying allegations was, of course, the postponement of the state visit. But the effects to do not end there. Before the fallout over Snowden's revelations, it seemed likely that Chicago-based Boeing would win a US$4 billion deal to supply Brazil with 36 fourth-generation FX-2 fighter jets, intended to replace the Brazilian Air Force's aging fleet. In September, however, Rousseff announced that she would defer the FX-2 decision until 2015, after the presidential elections. To be sure, the mounting tensions between the United States and Brazil—tensions only worsened by the proliferation of NSA allegations—largely motivated that decision. And, as a result, the other contenders for the contract—primarily Dassault, Saab, and even Russia's Sukhoi—may well benefit from the delay. Just last week, Russian military officials visited Brazil, sparking speculation that Sukhoi was pulling ahead in the FX-2 competition. Closing the FX-2 deal could build the foundations for an institutional interdependence between the United States and Brazil—much as the Mérida Initiative, a joint U.S. Department of Defense and Mexican government cooperative security agreement, did for the United States and Mexico.

U.S appeasement of Brazil key to restore trust and increase bilateralism

Winter 13 – Brian Winter is a foreign relations reporter for Reuters, 2013, ("Analysis: Brazil and U.S., like star-crossed lovers, foiled again", Reuters, Sep 18, 2013, available at http://www.reuters.com/article/2013/09/18/us-brazil-us-diplomacy-analysis-idUSBRE98H11G20130918 // date acessed 7/22/15 K.K)

Every time Brazil and the United States get to the altar, the roof of the church seems to collapse. In 1982, U.S. President Ronald Reagan traveled to Brazil for a dinner banquet meant to herald a new era in ties between the Americas' two biggest countries. But when Reagan raised his wine glass and toasted "the people of Bolivia," it seemed to confirm his hosts' worst fears: that the United States saw Brazil as just another poor country in its so-called backyard. This week, hopes for a breakthrough fell apart once

again, in even more dramatic fashion. President Dilma Rousseff's decision to call off her upcoming state visit to the White House, the only formal event of its kind planned in Washington this year, is an embarrassing setback that will probably stymie cooperation on trade, regional affairs and other issues for years to come. Rousseff, a pragmatic leftist, was outraged over recent revelations that the U.S. National Security Agency spied on her private communications, as well as her top aides. While the two countries will retain generally cordial ties, Rousseff plans to take some retaliatory measures, including onerous new taxes and rules for U.S. Internet companies operating in Brazil, and ruling out a purchase of fighter jets from Chicago-based Boeing Co., officials told Reuters. She said the espionage is "incompatible" with a relationship among allies, and told aides it was pointless to go ahead with a trip whose ostensible purpose was to symbolize growing respect. The cancellation of such a high-profile visit despite two last-minute, personal appeals to Rousseff by President Barack Obama upset officials from both countries. It also caused a familiar sense of disappointment among observers who have long rooted for better ties between two giant democracies with similar histories as multiracial melting pots. In another recent example of a promising moment gone somewhat awry, Obama made a big show in 2011 of taking his wife and daughters on a trip to Brazil, heralding "even greater cooperation for decades to come." But many Brazilian officials felt that, when Obama showed up late at the presidential palace because he was coordinating U.S. missile strikes on Libya, it was a classic sign of a distracted imperial power. Moises Naim, a senior associate at the Carnegie Endowment for International Peace in Washington, said the state visit would have been a great opportunity to put such episodes firmly in the past and overcome a long legacy of mistrust. "We were so close this time," he lamented. "There are no two countries that could create so much progress so quickly as Brazil and the United States," Naim said. He cited potential for bilateral and regional trade deals, cooperation on Latin American political hotspots like Venezuela, and U.S. interest in Brazil's recent offshore oil discoveries. "But they don't know how to deal with each other," he added. "There are reasons this keeps happening." TRADE WAS WASHINGTON'S FOCUS Each country had big hopes for the October 23 event, which would have included a black-tie dinner at the White House and a military salute for Rousseff. For Brazil, the visit offered validation that after an economic boom over the past 20 years, their country had arrived as a global power worthy of Washington's highest formal honor. Rousseff hoped the trip would open up a new wave of U.S. investment in Latin America's largest economy, which has struggled since she took office in 2011. A photo-op with Obama would also have brandished her moderate credentials as she prepares for a likely re-election bid next year. For its part, Washington hoped that rolling out the red carpet for Rousseff would help bend her ear on several issues, above all in securing better access for U.S. firms to a huge market with 200 million increasingly voracious consumers. Because of high tariffs, Brazil has the most closed economy to trade in the Western Hemisphere. When U.S. Vice President Joe Biden visited in May, he urged Brazil to drop those barriers if it wants to become a strategic U.S. ally. "It's up to Brazil to decide whether to pursue this path and seize the opportunities," Biden said. In retrospect, that comment may have reflected an issue that has plagued Brazil-U.S. ties: Unrealistic expectations. Like most Brazilian politicians, Rousseff harbors a deep mistrust of free trade, particularly on Washington's terms. On several occasions, she has accused the United States of unfairly boosting its exports through expansionary monetary policy. As the visit grew closer, some Brazilian officials expressed concerns that Washington was placing too much emphasis on trade. It also became clear the trip would not yield breakthroughs on two long-time Brazilian goals: Visa-free travel for its citizens to the United States and U.S. support for Brazil's push to have a permanent seat on the United Nations Security Council.

Lack of bilateral relations hurts overall foreign policy

Winter 13 – Brian Winter is a foreign relations reporter for Reuters, 2013, ("Analysis: Brazil and U.S., like star-crossed lovers, foiled again", Reuters, Sep 18, 2013, available at http://www.reuters.com/article/2013/09/18/us-brazil-us-diplomacy-analysis-idUSBRE98H11G20130918 // date acessed 7/22/15 K.K)

'THE GHOSTS CAME BACK' Diplomats hoped the trip would at least give leaders a chance to build lasting personal bonds at the formal dinners that are part of state visits. There was a problem with this plan, though, which goes back to another longstanding obstacle. "They're two countries that just fundamentally don't understand each other," said Dan Restrepo, who until a year ago was Obama's top adviser on Latin America. Restrepo said that, with the possible exception of Argentina, there is no other country in Latin America whose senior leaders have spent so little time in the United States. Brazilian officials voice a similar complaint: that, outside of a few key positions, Latin America policy in Washington is dominated by Spanish-speaking Cold War veterans who know about Cuba or Guatemala, but don't understand the nuances of their continent-sized country. In that context, the NSA revelations seemed to exploit each country's worst suspicions of the other. Brazil saw the espionage, which also included U.S. monitoring of state-run oil company Petrobras, as another sign that the United States is an entrenched superpower that will do anything to block the rise of others. Meanwhile, many in Washington saw Rousseff's reaction to the revelations - which included a demand for an apology and a full accounting of U.S. intelligence activities - as further evidence of Brazil's exaggerated sense of self-importance and naivete about what it means to be a major world power. "All the ghosts came back," said Carlos Eduardo Lins da Silva, editor of Politica Externa, a foreign policy magazine. Nevertheless, both governments valued the visit enough to push for a solution until the bitter end. Despite other priorities, namely Syria, Obama spent 45 minutes with Rousseff at a September 5 summit in Russia to try to ease her concerns. He also made a last-minute plea by phone for 20 minutes on Monday. Rousseff, too, searched for a solution. But she believed she needed a stronger, public gesture of contrition from Obama to make the trip politically viable - to prevent the powerful left wing of her Workers' Party from attacking her as weak. "The Americans have no idea how hard it is to be pro-American in Brazil," one official close to Rousseff said. THE FALLOUT The last-minute push raised the stakes even more, and helps explain why the bad blood could linger for a while. In the short-term, there will be consequences for both sides. Rousseff has pushed new legislation that seeks to force Google Inc, Microsoft Corp and other foreign Internet companies to store locally gathered data on servers in Brazil. The bill is designed to improve Internet security and also retaliate for U.S. spying, Brazilian officials have said. Rousseff is likely to become an even more vocal opponent of U.S. espionage, including at this month's meeting of the United Nations, officials say. Meanwhile, Rousseff's handling of the episode has solidified impressions that she is unable to insert Brazil more fully into the world both economically and strategically. That's an impression that could linger among foreign companies looking to invest in Brazil, as well as other governments. "Brazil looked petulant," said Christopher Sabatini, editor of Americas Quarterly magazine. "That's not how major powers are supposed to act." Restrepo, the former Obama aide, said he thought Brazilian politics were the main reason the trip fell apart. But he also said the episode may finally bury the "wildly simplistic" idea that the two countries are suited for a diplomatic marriage because they share some common traits. "A lot of what gets people to the altar is all that superficial

understanding," Restrepo said. "And then they look and each other and say, 'Hmm, maybe we don't have that much in common after all.'"

AT: Deforestation Turn

Even if there is deforestation- no external impact and ethanol is the only viable choice- alt options are too expensive

Garner 9 - Timothy Gardner covers U.S. energy and environment policy and climate change, 2009, ("Land use emissions should not hurt ethanol" Reuters, Apr 21, 2009, available at http://www.reuters.com/article/2009/04/21/us-ethanol-clark-idUSTRE53K34820090421 // date accessed 7/26/15 K.K)

Making ethanol in Brazil does not cause new greenhouse gas emissions from deforestation and should not slow blending of the fuel in the United States, said retired U.S. Army General Wesley Clark, the co-chairman of an ethanol industry group. This week California is slated to approve a Low Carbon Fuel Standard in which the state with the most cars will try to regulate carbon dioxide emissions, not just over the life cycle of making and burning ethanol and other biofuels, but also any indirect emissions that arise when forests are cleared to grow crops that are feedstocks for the fuels. The concern is greatest about any increased emissions from Brazil, which is the world's second largest producer of ethanol after the United States. Making ethanol out of Brazil's sugarcane is more efficient than making it from corn, the main U.S. feedstock for ethanol. But as U.S. mandates call for increasing the amount of traditional ethanol to be blended into gasoline to 15 billion gallons by 2015, scientists are concerned that some of the Brazilian rain forest could be chopped down to grow soybeans displaced by sugar cane fields. Clark, the co-chairman of Growth Energy, disagreed. "Even if you produce no ethanol in the United States, you would still have Brazil operating on its rain forest," he told reporters at the Alternative Fuels and Vehicles conference in Orlando on Monday. "That causal linkage is way out of line as a matter of public policy." He said it was up to the governments of each country to regulate their own emissions and natural resources. A report this month, produced jointly by Greenpeace, other environmental groups, and the Brazilian soy industry, found that the beef industry is a bigger culprit in causing deforestation in Brazil than soy farming. The United States places tariffs on imports of ethanol, which Growth supports. But even with the tariff, Brazil exports to the United States because sugar cane fuel is cheaper to make than corn fuel. Growth is pushing for the U.S. government to approve the blending of 15 percent ethanol into gasoline that can be burned in regular cars, up from current levels of up to 10 percent. Clark said that would increase the production of cellulosic ethanol, which can be made from crop waste. Cellulosic, however, is currently more expensive than traditional ethanol, which is helping to delay its commercialization.

Ethanol production doesn't cause deforestation and solves the environment

Economist 9 - The Economist offers authoritative insight and opinion on international news, politics, business, finance, science, technology and the connections between them, 2009, ("Maized and confused", Aug 10th 2009, available at http://www.economist.com/node/14205727 // date accessed 7/26/15 K.K)

HOW green is ethanol? The Renewable Fuels Association (RFA), an American lobby for the stuff, obviously wants voters and politicians to think it is very green indeed. The association's cool-coloured website plays down claims that ethanol may actually harm the environment. The biggest target of those claims these days is that growing maize to make ethanol causes indirect changes in land use by altering

the incentives of other, often foreign, farmers. Adding ethanol to the traditional markets for maize (food and fodder) inevitably pushes the price up. That encourages farmers, including those in poor countries, to boost production. If some of those farmers plough up savannah or cut down forest to grow the extra crops, the carbon dioxide released from the plants destroyed and soil ploughed up reduce the benefits of substituting the ethanol produced for petrol. If forests that are still growing are cleared, the environment loses the effect of their future uptake of carbon dioxide, too. The benchmark paper on this, published in Science in February 2008, argues that, if such changes in land use are taken into account, ethanol is twice as carbon-intensive as petrol in the short run. Making ethanol and burning it in a car (without land changes) emits 20% less carbon dioxide than refining and burning petrol. But planting a hectare of ethanol causes someone to clear land for food crops elsewhere. That ethanol crop must provide that modest 20% reduction for 167 years to achieve a net carbon reduction. By then, of course, it is far too late to mitigate climate change. Bob Dinneen, the RFA's head, calls these worries “crying wolf” and a “big lie”. A video on the association's home page has a narrator, brow furrowed, looking puzzled while explaining land-use concerns—how could ethanol cause deforestation “halfway around the world”?—while the text on screen says flatly that ethanol has “no impact on rainforests”. In more sober language, the RFA says that crop yields will increase to meet the maize diverted to ethanol, and points to United Nations' estimates that there are still billions of hectares of unused arable land around the world. The latest row is over an investigation by America's Environmental Protection Agency (EPA) into the question of land-use changes. In June, the RFA asked for the EPA's data and models so that it could attempt to replicate any study that assigned land-use-change carbon to ethanol's overall green “score”. The EPA provided spreadsheets, but the RFA shot back last week that it still did not have the models that brought the data together, and that it wants to run its own sensitivity analysis. Despite Mr Dineen's hot language, it is clear that some changes of land-use are happening, but Mr Dineen argues that deforestation thousands of miles from American shores should not be pinned on Midwestern farmers. Is he right? Perhaps, in a narrow moral sense. The American farmer can understandably disclaim responsibility for what a Brazilian logger does. But the RFA's attitude borders on being in denial. Crop yields almost certainly cannot increase fast enough to make up for the diverted maize, and any tilling of virgin land does release carbon dioxide in large quantities. As much as the ethanol lobby claims to be surrounded by deceitful enemies (among them the oil industry), it is in fact protected by powerful congressmen. Indeed, existing mandates for ethanol production look set to get bigger in climate-change legislation coming through America's Congress. The House of Representatives' agriculture committee stripped changes in land use from consideration in the American Clean Energy and Security Bill that is now under scrutiny there, at least pending further study. Now the RFA looks as if it may want to muck about with that study. Asking for the EPA's models so it can run its own sensitivity analysis could be a way to run a blizzard of competing numbers past congressmen who are not scientifically equipped to tell who is right. A bigger problem, though, is the unstoppable desire of politicians to pick green winners—and not necessarily for green reasons. Ethanol, like “clean coal”, has a habit of being among them not because of its inherent virtues, but rather its political geography. Maize grows in crucial states, some of them “swing” states like Iowa and Ohio. Barack Obama thus recently renewed his support for American, maize-based ethanol. Letting Brazilian ethanol, made from sugarcane, into the market tariff-free would be cheaper and probably greener. But that, of course, is not on. Eventually, new crops such as switchgrass and new technologies that allow whole plants to be converted into ethanol, rather than just their sugar- or starch-rich parts, will change the equation by boosting yields. In the meantime, the truth about ethanol is murky.

Brazil ethanol production doesn't cause deforestation and turns the impact – solves warming and biodiversity decline

UNICA 9 - UNICA is a a partnership launched in January of 2008 between the Brazilian Sugarcane Industry Association and the Brazilian Export Promotion Agency, within the Federal Development, Industry and International Trade Ministry. The main objective of the partnership is to promote Brazilian sugarcane ethanol throughout the world as a clean, renewable energy source, 2009, ("Brazil's Sugar-Energy Industry Offers Realistic Solution to Mitigate Climate Change", UNICA, May 25th, 2009, available at http://english.unica.com.br/news/4112404592034358577O/brazil-por-centoE2-por-cento80-por-cento99s-sugar-energy-industry-offers-realistic-solution-to-mitigate-climate-change/ // date accessed 7/26/15 K.K)

Brazil's long-running, successful biofuels program is an example of how concrete results can be obtained in the effort to combat greenhouse gas emissions that threaten to worsen the effects of climate change. That was the key message brought to the World Business Forum in Copenhagen, on May 25th, by Brazilian Sugarcane Industry Association President Marcos Jank. In his speech, he detailed how Brazil's sugar-energy industry remains on a path of sustainable development, while offering a practical solution to avoid GHG that's available today and can be adopted by several countries around the world. "The sugar and energy industry is an example of how developing countries can generate both economic growth and benefit the health of the planet", he explained during a working group on Forestry and Terrestrial Carbon. "Several studies confirm that sugarcane ethanol reduces the GHG emission by 90% compared to gasoline. No other biofuel does that", stressed Jank. The fact that the increasing production of sugarcane ethanol does not impact food safety was another argument the president of UNICA used, outlining that only 1% of arable land in Brazil is occupied by cane intended for the production of ethanol. "The expansion of sugarcane plantations to meet the growing demand of ethanol does not cause deforestation in the Amazon or other sensitive biotopes. As much as 87% of the sugarcane production is located in the South-Central region of the country and the other 13% in the Northeast." The modernizing of the cattle industry has led to substantial quantities of land being freed for crops. "At the moment, the productivity of cattle raising has been 0.9 heads/ha, but the tendency is for that to increase to 1.4 heads/ha. By doing so, 70 million hectares could be freed for the expansion of crops, which would mean an area 20 times greater than the area currently used for the production of ethanol", foresees Jank. Indirect Land Use Change Currently, the potential of biofuels to reduce GHG emissions is being questioned because of possible indirect effects of the expansion of energy crops. The reasoning behind that argument is that expanding biofuels production would supposedly relocate other crops to more sensitive areas and through that cause greater carbon emissions into the atmosphere. Jank refutes the criticism arguing that the annual deforestation rate in Brazil has actually decreased since 2004, which covers the exact time period in which the cultivation of sugarcane has expanded in Brazil. "Although these types of arguments have awakened the interest of the scientific community, it should be recognized that it is not possible to determine the indirect effects of land use changes by considering only biofuels. Any human activity supposedly generates indirect effects", Jank stated, explaining that models focusing only on biofuels tend to draw false conclusions. "As the factors causing deforestation result from a complex set of combined elements, it takes ambitious public policy and awareness to address and eliminate deforestation." Jank pointed to the lack of formal land ownership titles as a cause for deforestation in Brazil, which is exacerbated by the illegal relocation of agriculture to

certain areas. The fragile legal system, poverty, an absence of environmental education, low value attributed to forestry products and the precarious governance structure of settlements in the Amazon are additional key background factors causing deforestation in the Rainforest. The president of UNICA called for establishing a consistent policy to combat deforestation, an initiative which the Brazilian sugar-energy sector strongly supports. He also recommended generating further value for the forests, considering, for example, carbon credits achieved through the preservation of forests. UNICA also encourages planned land use and stimulating the production and consumption of high-performance biofuels that have less of an impact on the use of land. Over 700 business leaders took part in the event, which was also attended by representatives of governments and international organizations, such as U.N. Secretary General Ban Ki-Moon, and former U.S. Vice President Al Gore. The CEO of BP, Tony Hayward, was also present, as well as high-level executives from Shell, who confirmed that biofuels are part of their alternative energy strategy.

1NC Nullification CP

Text

The fifty states should invoke their nullification power in order to

The counterplans assertion of state nullification power is an effective check on federal authority and is key to revitalizing decentralized federalism

Haworth-Ph.D., Ciceronian Society Foundation-13

(Editor-in-Chief Nomocracy)

http://nomocracyinpolitics.com/2013/09/25/real-federalism-includes-taking-interposition-and-nullification-seriously/

Real Federalism Includes Taking Interposition and Nullification Seriously

Crucially **missing in this debate** is recognition of the importance of **States checking federal authority** so as to protect their constitutional autonomy and generally **maintain themselves as vibrant political entities rather than mere federal lackeys** (i.e., self-interested seekers of the Federal Government's largesse). Both authors miss these points. Greve's call for "national scale" makes this obvious, but he even explicitly denounces nullification in a separate essay on that topic. Moreover, Reinsch's refusal to advocate interposition and nullification is also telling. In the sections that follow, I will elucidate the following: (1) why Calhoun's doctrine of nullification is a constitutional means of preserving the States' local liberty; (2) **how the lack of nullification** and interposition **has damaged the States viability as independent political entities** that do not need federal largesse; and (3) some final thoughts about the importance of interposition and nullification as well as the need to dismiss ad hominem arguments against these doctrines.[1] I. Calhoun's Doctrine of Nullification as a Constitutional Means of Preserving the States' Local Liberty: Professor Adam Tate has argued that John C. Calhoun's advocacy of nullification was crucially focused on maintaining the American union in a manner that preserved the liberty of the States. Liberty here is a State's political autonomy to self-govern its internal affairs within the framework of reserved powers that it retains via the 1789 Constitution. Calhoun desired union, but he opposed its pursuit via unconstitutional conceptions of federal supremacy that inevitably tended toward the Federal Government usurping powers reserved by the States. He implied his vision for both union and local liberty (and his opposition to federal dominance within the union) in his famous toast at the Jefferson Day Dinner in 1830: "The Union, next to our liberty, most dear." Nullification, then, is not aimed at disunion; rather, it seeks to maintain a union of States that protects the liberty (i.e., the constitutional political autonomy) of each State via allowing a State to defend itself against federal encroachments. With respect to Calhoun's constitutional theory, it is important to realize that he viewed the people of each State as a sovereign entity (even after they had ratified the 1789 Constitution) and, hence, capable of (at a minimum) revoking the delegation of powers granted to the Federal Government.[2] Sovereignty includes having supreme, ultimate, and unified power and authority over the internal affairs of people within established territorial boundaries. This is the first and primary issue with respect to federalism, for it elucidates where ultimate authority resides when a dispute arises between a State and the Federal Government. If the people of each State retain sovereignty within its borders, despite delegating powers to the Federal Government via ratifying the Constitution (i.e., a State's sovereignty is something separate from the sovereign powers it delegates), then a State People can decide to revoke its delegation of powers (to the Federal Government) via secession. With respect to nullification, which is a specific and strong mode of interposition, Calhoun believed that the same State sovereignty issues applied, but nullification is aimed at maintaining union in a manner that appropriately recognizes a State to be the unit-of-sovereignty that has justifiable unilateral authority to determine whether a federal law is unconstitutional (unless and until a State's nullification is overruled through the Article V amendment process). Calhoun believed that each State People had this ultimate legal authority through their role as original parties to the Constitutional Compact.[3] It was the State People who gave the Constitution life via their ratification; as many of the Framers' maintained, the Philadelphia Convention merely proposed a new system of union, but it was the States who had the authority to make it fundamental law. Moreover, with respect to the Constitution and its amendments as a constitutional compact, since the State Peoples were original contracting parties (or equivalent in sovereign status to the State Peoples who were the historical contracting parties) and since no higher authority existed to determine whether the Constitution was being appropriately followed by the Federal Government (i.e., whether the Federal Government stays within the scope of its delegated powers), final judgment about whether or not a federal law was constitutional was left to each State People and not a department within the Federal Government (e.g. the federal judiciary) whose very life and authority is a creature-level product granted by creator-level State Peoples.[4] It is also important to note that Calhoun did not view nullification as an act that would make a law unconstitutional throughout the union; rather, the judgment by each State People would only apply within the boundaries of its own State. Furthermore, the judgment of each State People could be reversed via the other States passing a constitutional amendment that was contrary to the decision of the State People in question. If this occurred, a nullifying State People would have to either (1) abide by the new amendment; or (2) secede from the union.[5] Readers can further consider Calhoun's theory in my article on his Confederation thesis in the 2010 Political Science Reviewer. With respect to the constitutional appropriateness of the compact theory and its concomitant principles of

interposition, nullification, and secession, it is appropriate to elaborate on how these were part of the original constitutional tradition, rather than something merely concocted by Calhoun in response to the tariff crisis. First, there is important evidence suggesting that interposition was employed by the States in response to perceived unconstitutional enactments by the Confederation Congress (e.g., its acceptance of the Treaty of Paris of 1783).[6] Second, interposition and secession (and de facto nullification) were understood and endorsed during the ratification debate about the proposed Constitution. [7] Federalists, such as Madison and Hamilton for example, were noted voices for interposition as a means of checking hypothetical federal usurpations. Secession was considered and endorsed as being constitutional by many during the ratification period, and a State's right to secession ultimately became a de facto part of the Constitution via Congress's acceptance of the ratifications of New York, Virginia, and Rhode Island, that were all qualified with secession statements. As I have argued elsewhere, such qualifications to the original compact legally inserted recognition of secession as a State reserved power into the Constitution's terms. Although Calhoun's elaborate development of nullification doctrine was not explicitly recognized during the Founding, an almost de facto version of it was intended by Virginia's ratifying convention.[8] Moreover, as Reinsch shows in his above-mentioned first essay, Madison "pen[ed a letter] to Thomas Jefferson in the fall of 1787 that the state governments will stand ready in the case of violations of their reserved powers under the Constitution to retake said powers." Moreover, a third relevant consideration is the fact that Madison and Jefferson invoked (respectively) interposition and nullification during the Alien and Sedition Act crisis in 1798. Madison drafted the Virginia Resolution, and Jefferson anonymously authored the Kentucky Resolution. The Virginia Resolution was issued by the State's General Assembly, and it included the following language: That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them. Near the end of the document, the Virginia Resolution "declares" the federal laws in question (i.e., the Alien and Sedition Acts) "unconstitutional": the General Assembly doth solemenly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid, are unconstitutional; and that the necessary and proper measures will be taken by each, for co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people. This has been considered an example of interposition (i.e., a State protesting and/or combating a federal law it deems to be unconstitutional without affecting its applicability and enforcement within the State), but Jefferson's Kentucky Resolution goes even further by suggesting that the States can nullify a federal law: That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy: That this commonwealth does upon the most deliberate reconsideration declare, that the said alien and sedition laws, are in their opinion, palpable violations of the said constitution; and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That although this commonwealth as a party to the federal compact; will bow to the laws of the Union, yet it does at the same time declare, that it will not now, nor ever hereafter, cease to oppose in a constitutional manner, every attempt from what quarter soever offered, to violate that compact: AND FINALLY, in order that no pretexts or arguments may be drawn from a supposed acquiescence on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of federal compact; this commonwealth does now enter against them, its SOLEMN PROTEST. Without considering the implications of the Kentucky Resolution's "nullification" language (i.e., whether it was also a mere act of interposition that took the added step of recognizing the legitimacy of nullification), it is sufficient for our purposes to merely note that Jefferson and Madison employed State interposition and (in Jefferson's case) the notion of nullification that had been part of a standing constitutional tradition, which dated back to at least 1783 when new States interposed, to some degree, to protest Congress exceeding its authority in authorizing the Treaty of Paris. This tradition was also alive and well during the 1787–89 ratification debate.[9] Fourth, interposition was invoked by New England politicians during the War of 1812 in protest to the federal embargo and, then, its call for conscription. In response to the latter, Daniel Webster, the future nationalist opponent of all things states' rights, argued: It will be the solemn duty of the State Governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State Governments exist; and their highest obligations bind them to the preservation of their own rights and the liberties of the people.[10] As Forrest McDonald elucidates, the Hartford Convention took a more moderate course than what was originally expected when it "adopted a resolution endorsing interposition and proposed a number of constitutional amendments to meet New England's persistent complaints."[11] Fifth and finally, de facto nullification and interposition was practiced and called for in Northern States during the antebellum period to mitigate undesirable effects of federal fugitive slave laws. Wisconsin, for example, practiced nullification via its State judiciary by repeatedly thwarting the incarceration of Sherman Booth for violating the Fugitive Slave Act via him "aiding in the rescue of a runaway slave from a federal marshall" After his arrest, "Booth requested a writ of habeas corpus from a judge of the Wisconsin supreme court, who granted the writ on the ground that the federal act was unconstitutional." Although the United States Supreme Court ordered reincarceration, the State supreme court released Booth again. This chain repeated itself from 1855 until the beginning of Civil War.[12] Here it is also worth noting how future anti-states' rights, pro-union Republicans found their states rights' mojo when arguing against attempts to expand the federal judiciary's jurisdiction in various cases related to federal officers who enforced the Fugitive Slave Act. Benjamin Wade, for example, said: "I am no advocate for Nullification, but in the nature of things, according to the true interpretation of our institutions, a State, in the last resort, crowded to the wall by the General Government seeking by the strong arm of its power to take away the rights of the State, is to judge of whether she shall stand on her reserved rights."[13] This broad swath of constitutional history suggests that Calhoun was systematically developing upon a well-established, constitutionally-grounded tradition of interposition and nullification. Arguably, he developed the most constitutionally-grounded mode of these doctrines in his Discourse on the Constitution and Government of the United States via demonstrating exactly how nullification should be understood according the text of the Constitution as a whole. Moreover, his argument that the people of a State (i.e., the authorities that ratified the Constitution and, hence, gave the Federal Government its delegated powers) should form nullification conventions that represented the State People in its sovereign capacity (i.e., the same institutional arrangement that State Peoples employed to ratify the Constitution) was more constitutionally persuasive than previous articulations of, and attempts at, interposition and nullification. Additionally, one should also note that there is no way to avoid either the Federal Government or a State People being the judge of its own cause in boundary disputes about the scope and limits of federal

delegated powers and a State's reserved powers. The conventionally accepted solution for federalism disputes (i.e., providing one or more departments in the Federal Government—e.g., the Supreme Court or Congress—with the authority to resolve such disputes) will (and has) result(ed) in the Federal Government winning most of these contests. Whereas, viewing each State as the ultimate authority in federalism disputes would likely **shift this bias in favor of the States**. Although bias, then, is inevitable, State nullification (rather than, for example, federal judicial supremacy) is still appropriate because it is grounded in a more sound understanding of the nature of the Constitution as a compact among States possessing the same sovereign status as those original States who were party to the Constitution's formation. **Accepting the authority of a State, as a final unilateral arbiter for judging the constitutionality of federal laws within their own boundaries**, is a far more intellectually intuitive solution than assigning this function to the federal judiciary, which is a mere creature-level institution whose powers are wholly derivative from what has been delegated to it by the States and whose historical performance has entailed prejudicially defending the questionable expansion of the Federal Government's very limited delegated powers. II. The Lack of Nullification and Interposition Has Damaged the States Viability as Political Entities That Do Not Need Federal Largesse: The general problem that both Greve and Reinsch identify, the travesty system of "cartel federalism" (i.e., States compete with one another to obtain federal revenue to fund programs and conduct operations that they could not afford independently), probably would not have arisen if Calhoun's confederation thesis, which allowed for nullification (and, hence, interposition), had been further incorporated and maintained within the constitutional system. Reincsh (in concession to Greve) complains, for example, about the States not challenging FDR's New Deal and their willingness to act as irresponsible political actors in search of federal funding. But there are straightforward explanations for why such undesirable characteristics have arisen. First, States were empowered more by the New Deal Court's willingness to defer to their regulations via the Court's presumption of the constitutionality of State regulations. As Randy Barnett shows, such deference to the State laws began with West Coast Hotel v. Parish (1937).[14] This was a remarkable turn from the pre-New Deal Court's willingness to strike down the States' attempts to regulate business and industry within their own borders. Although the pre-New Deal Court's record on federalism is mixed, for it both defended the States' reserved power as well as allowed federal usurpation, the Court of the late nineteenth century (from the late 1880s forward) and early twentieth century functioned with a pro-nationalist industry bent.[15] When State reserved powers were supportive of industry and commerce, the Court protected them from federal regulation; United States v. E.C. Knight and Hammer v. Dagenhart are good examples. When States regulated and, hence, impeded industry and commerce, the Court was less hospital to their constitutionally retained powers; examples of this are legion—e.g., Santa Clara County v. Southern Pacific Railroad Company, Wabash, St. Louis & Pacific Railroad Co. v. Illinois, Smyth v. Ames, and Lochner v. New York. Second, in a desperate move to challenge plutocracy that dominated the political system during the late nineteenth and early twentieth centuries, the imprudent doctrines of Populism and, then, Progressivism finally gained the upper hand in national politics. This prompted events such as the passage of the Sixteenth and Seventeenth Amendments, which ultimately weakened the States' political autonomy by removing their diplomatic checks on federal legislation and ultimately creating a low ceiling on the degree that the States could raise revenue by taxing their citizens. Such constitutional changes contributed significantly to the States becoming federal clients who seek to manipulate the disbursement of federal revenue. Without Senators who were beholden to State legislatures, they were now unhinged to directly appeal to the uninformed majorities in their States, which easily co-opted to support nationalist pet-policies rather than serious issues that affected their States' autonomy. With the creation of the income tax, the Federal Government seriously limited the States' ability to raise revenue; hence, they ultimately became dependent upon federal grant-in-aid, block grants, etc. As income taxes eventually have increased to significant levels, States were (and are) limited in how much they could (and can) collect in taxes from their citizens because, beyond a certain total tax-level threshold, people will seriously consider relocating to other States with lower taxes. It is important to ascertain the causal connection between these and the lack of interposition and nullification that had been effectively purged from the federal system via the Federal Government's triumph in the Civil War, which derailed the efficacy and acceptability of the historically correct compact theory of union. If nullification had still been viable after the Civil War, States could have (and many would have) defended themselves from Congressional and Court imposed dominance of nationalist business interests. In such an alternative historical reality, States could have better maintained their hold on regulating businesses that were operating within their borders, as well as protecting internal labor interests. This, in turn, would have allowed farmers, workers, and other such groups to lobby for appropriate State laws and policies, rather than making them feel compelled to compete for reform at the federal level in a manner that ultimately resulted in the rise of Populism and, later, Progressivism. Furthermore, it is important to see how Madison's Federalist #10 extended-republic-solution-to-majority-factions was not able to preclude various majority-faction crises, some of which resulted in weakening the States. As Adam Tate has observed, Madison's Federalist 10 solution has often failed to protect the liberty of minority entities (e.g., one or more States with contrary interests to a larger group of States), and Calhoun saw this. Madison thought that the difficulties entailed in forming national majorities, given the "multiplicity and diversity of interests," would largely preclude the formation and empowerment of majority factions. The history of the United States, however, has demonstrated that this is often not the case; instead, Madison's Federalist 10, extended-republic scheme has not protected minorities from national majorities imposing unconstitutional federal policies that illegally transgressed upon such minority interests. Moreover, some of these cases, especially during and after the Civil War, resulted in the States becoming weaker entities. During the Antebellum period, Madison's Federalist 10 solution did not preclude the formation of majority factions that unconstitutionally harmed minorities—i.e., a lone State or a minority section of States, but these tended not to significantly impair the overall strength of States as independent political entities. Interestingly, these instances coincided with a period in which nullification was still viable. Clyde Wilson argues that the imposition of the protective tariff was unconstitutional. The protective tariff sacrificed the Southern Atlantic States (i.e., a minority in the federal union) to the majority interests of the Northeastern and Western States; albeit, South Carolina's nullification showdown with President Andrew Jackson significantly contributed to resolving this problem in a manner that ultimately reduced the tariff to acceptable levels. The Civil War and Postbellum periods, however, severely damaged the viability of nullification, and this coincided with cases where States became weaker political entities as a result of majority-faction crises. When the Northern States developed an anti-slavery majority faction (i.e., the Republican Party) against the Southern States and were able to begin dominating the Federal Government, the Southern States sensed that

their liberty within the union would become increasingly compromised; thus, many elected to protect their liberty by seceding. Such Southern-State resistance through secession had severe consequences for this sectional minority in terms of its States' viability as independent political entities. In fact, the Southern States were reduced to economically impoverished (and, for a time, politically powerless and dependent) entities once the final conflict, due to their resistance, had passed. Another notable instance of a Postbellum majority-faction crisis that weakened the States occurred when the liberal progressive majority became dominant and both imposed crippling (and unconstitutional) regulations on businesses and significantly encroached upon constitutional State-powers via the New Deal. Here, again, nullification was not an option for dissenting States, and here again States ultimately became weaker, less independent entities as a result. This weakening of the States, however, was not just limited to a sectional minority like it had been for the South after the Civil War; it plagued all of the States. In these Postbellum cases, federal supremacy was used to enforce federal laws that were a boon to the majority faction coalition and a bane to the minorities who suffered under such legislation.[16] Moreover, such examples entailed questionable expansions of federal powers beyond their delegated limits for the sake of advancing the interests of the majority de jour. Finally, these examples illustrate the history of States becoming vulnerable to national majorities during a time in which they ultimately lost their vibrant autonomous status and, hence, had to begin acting as federal clients. Aside from the constitutional argument for nullification, acceptance of Calhoun's theory—especially his notion of concurrent majorities—would have greatly aided the ability of minorities to protect themselves against the factional policy of the various ruling coalitions. South Carolina's nullification of the protective tariff had already prompted Congress to enact legislation in order to reduce the tariff from levels that had threatened Southern economic interests. Nullification could have continued this function within the federal union if its acceptability had persisted into the late nineteenth and, then, twentieth centuries. Think, for example, how it might have been used to protect the States where the Grange movement had gained prominence. Think about how States could have challenged questionable Court doctrines like the personal status of corporations. On the other hand, imagine how the prudent States could have used nullification to challenge FDR's New Deal regulations upon industries operating within their borders. Reinsch's failure to see the effectiveness of interposition and nullification is somewhat remarkable given his awareness (seen in Part I of his above mentioned federalism essay) of Madison's position that the "people, not as composing one entire nation, but as composing distinct and independent states to which they respective belong" was the ultimate ratifying authority and that the State governments of these State Peoples could reclaim "said [delegated] powers" within the constitutional system. Reinsch recognizes Madison's position on these issues within the following passages: But listen to Madison in Federalist 39 on the states and the foundation of the new government: "the constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent states to which they respectively belong. It is to be the assent and ratification of the several states, derived from the supreme authority in each state . . . the authority of the people themselves. The act, therefore, establishing the constitution, will not be a national, but a federal act." Now join Madison's argument here in Federalist 39 with a letter he pens to Thomas Jefferson in the fall of 1787 that the state governments will stand ready in the case of violations of their reserved powers under the Constitution to retake said powers. Madison said something remarkably similar in Federalist 44 that should one or more branches of the national government use power beyond constitutional bounds, the state legislatures will mark the violation. The states will "sound the alarm to the people," Madison says. As the presentation of Calhoun's theory above suggests, the sovereign nature of each State Peoples is the ultimate basis of the constitutionality of secession, interposition, and nullification. But it was not just Calhoun who understood the importance of interposition and nullification doctrines: (1) the States had interposed against the Confederation Congress; (2) interposition, nullification, and secession had been considered a solution to Federal usurpation during the Founding period; (3) Jefferson and Madison were employing, respectively, nullification and interposition in response to the Alien and Sedition Acts; (4) interposition was invoked by New England politicians during the War of 1812; and (5) nullification and interposition were employed and invoked in reaction to the federal Fugitive Slave Act. Reinsch is fairly close to the compact theory, but Greve is a devout defender of nationalist-oriented capitalism that is a hallmark of neoconservatives and nationalist libertarians, etc. Those cohorts will not recognize the constitutional principles of States' rights until all hope is lost about controlling the center in order to implement their ideologies. Well-funded representatives of these groups currently operate in the cat-bird's seat—i.e., District of Columbia based think-tanks—where their ideologies can be advanced through access to and influence upon centralized power; thus, any decrease in central control would be a bane upon their current opportunity to shape public policy for the federal union as a whole. In addition to the essays and books cited within the above mentioned exchange with Reinsch, Greve has co-authored a book with Richard Epstein about federal preemption of the States' regulation of commerce. Greve has also advocated the Court vigorously defending a "'commercial Constitution'" aimed at advancing industry and commerce, and he has lambasted nomocratic justices like Scalia and Thomas for allowing their originalism to get in the way of this telocratic vision. While I tend to agree with Greve about the imprudent regulation of business, I cannot condone his willingness to practice ideological constitutionalism that sacrifices the Constitution's Rule of Law. III. Conclusion: Final Thoughts About the Importance of Interposition Nullification, and the Need to Avoid Bad Arguments Against These Doctrines The above point about well positioned nationalist groups seeking to control federal public policy calls for further reflection about the two main reasons why interposition and nullification are often disparaged by elites and "respectable" citizens: (1) these doctrines are a significant threat to unconstitutional centralization that has taken root during the past 150+ years (especially during the twentieth century); (2) nullification and interposition are frequently associated with their past advocates who have had problematic racial positions (e.g., John C. Calhoun's strong endorsement of slavery and, then, mid-twentieth century Southern State opposition to federal intervention against their segregation policies). These two reasons often operate as a vicious tag-team: elites who are interested in maintaining centralized control to advance their ideologies will scare "respectable" citizens into rejecting interposition and nullification by emphasizing instances where these doctrines have been associated with racism (and by ignoring the instances where the doctrines were employed to combat slavery, unfair economic policy, and unconstitutional war policy). Given the force of such opposition, the future of interposition and nullification is (in the short-term) in for some rough sledding. Nevertheless, honest, non-racist advocates of these doctrines can effectively begin to counter such bad propaganda by revealing its obvious absurdity–i.e., holding a good constitutional position hostage due to its past associations. Interposition and nullification in and of themselves are not racist. They were used by Northern States during the Antebellum period to avoid enforcement of undesirable federal fugitive slave laws. They were used by the New England States in 1814 to avoid unconstitutional federal policies during the War of 1812. They were used by Jefferson and Madison to protest unconstitutional violations of the First Amendment in the Alien and Sedition Acts. Thus, there is simply no moral problem with taking these doctrines seriously in our own day. Furthermore, it is also quite silly to discount John C. Calhoun's brilliant constitutional development of interposition and nullification doctrines because he also held problematic views concerning slavery. Doing so would entail committing the ad hominem logical fallacy of undermining an argument by attacking the person who makes the

argument, rather than focusing on the merits of the argument independently. Calhoun's legal analysis regarding the Constitution merits independent evaluation even if, for the sake of argument, his critics are correct that his problematic views on slavery motivated the development of his constitutional analysis. Even if scientists working to operationalize nuclear fission during the Second World War were motivated by a need to create a nuclear bomb that would annihilate an entire city population, this does not mean that the facts about atomic physics, which they discover, should be discounted as inherently evil. The scientific facts and truths discovered stand on their own merits, regardless of the motivations that prompted their development. Since the rationale and conclusions of the latter case can be and are widely accepted, logic demands the same treatment for the former case—i.e., recognizing the independent merit of Calhoun's constitutional analysis. In our America where vast portions of federal policy is technically illegal because it involves the Federal Government exceeding its constitutionally delegated powers, State interposition and nullification may be the only way to arrest such federal usurpation. Without these States' rights doctrines, Americans and their States will be virtually powerless as establishment elites continue to invent new creative case law and false constitutional theories that justify the amassing of even more power at the federal level. Without such doctrines of resistance, the current electoral status quo will persist; citizens will continue having to choose between two political parties that are both aimed at maintaining a Congress and President who often support (and definitely do not seriously seek to roll-back) central-level aggrandizement. These considerations (and conclusions from the above analysis) are why real **federalism demands taking** interposition and **nullification seriously**. The most plausible path for returning to true constitutional federalism, or even just preserving our current status quo, is through the States defending their reserved powers and the constitutional rights of their citizens by voiding unconstitutional federal laws within their borders. If such a practice became widespread and accepted, **the Federal Government would quickly scale back its reach for new powers**, if not even begin to return its current power-holdings back to those parties with rightful legal claims to them.

American federalism is modeled globally.

Krotoszynski 2010

Ronald J., Director of Faculty Research, and Professor of Law, University of Alabama School of Law The Shot (Not) Heard 'Round the World: Reconsidering the Perplexing U.S. Preoccupation with the Separation of Executive and Legislative Powers, Boston College Law Review 51:1 http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3103&context=bclr&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D20%26q%3Damerican%2Bmodel%2Bjudicial%2Breview%2Bexecutive%2Binternational%26hl%3Den%26as_sdt%3D0%2C18%26as_ylo%3D2009#search=%22american%20model%20judicial%20review%20executive%20international%22

The **U**nited **S**tates has been both an importer and an exporter of constitutional structure since at least the Federal Convention in 1787, at which the Framers considered a variety of foreign constitutional models, including both contemporary and ancient, when fashioning the Constitution.' Although Great Britain's unwritten constitution pro- vided the most obvious template, it was by no means the only available model.2 By 1787, most states had extensive experience with constitu- tional design.3 The adoption of the Declaration of Independence in 1776 led to a spate of new constitution-making at the state level, as the newly independent former colonies felt it necessary to establish new constitutions for their independent republics.4 The Articles of Confed- eration, drafted in 1776-1777, ratified in 1781, and now largely forgot- ten, also served as the first blueprint for federal governance.5 Thus, as Professor Paul (Harrington correctly states, "[w]hile the idea of a written constitution enforced by national courts was an American novelty, it was less novel than many may suppose."6 Of course, the Framers did not completely abandon the British model of constitutional structure.7 Congress, a bicameral institution, is loosely modeled on the British Parliament, which was—and still is— comprised of two chambers, the House of Commons and the House of Lords.8 Although the manner of selection and underlying purposes differ, the adoption of a bicameral legislature plainly reflects an hom- age to the British model.9 Similarly, specific provisions of the U.S. Con- stitution reflect longstanding British constitutional practices such as the Speech and Debate Clause10 and the Jury Trial Clause." To be sure, the Framers departed from the British model and did so in significant ways.12 The Framers' major structural innovations in- clude a written constitution (as opposed to the unwritten, or only par- tially written, British Constitution), a judiciary vested with the power to review legislative and executive acts for consistency with the Constitu- tion, **federalism featuring shared sovereignty between the states and the national government**, and the separation of powers between the legisla- tive, executive, and judicial branches of government.13 To this list one could add, by way of amendments quickly adopted by the first Congress and ratified by the states shortly thereafter, a written Bill of Rights.14 Most of these innovations in constitutional design have become commonplace; when other nations turn to the task of drafting a new constitution, the resulting product more often than not includes one or more of these elements.15 The Spanish Constitution, for example, adopted a federalist principle in order to overcome persistent difficul- ties with the status of Catalunya and the Basque Region.16 The South African (Constitution vests the judiciary with a power of judicial review and a duty to enforce entrenched human rights against the more de-mocratically accountable branches of government.17 Moreover, even common law jurisdictions that long maintained the principle of par-liamentary supremacy have moved closer to the U.S. model of en- trenched, judicially enforceable human rights.18 Canada, for example, adopted its (Charter of Rights and Freedoms in 1982, and vested the Canadian judiciary with a qualified power of judicial review.19 Even in the United Kingdom itself, adoption of the Human Rights Act of 1998 reflects a decision to adopt a junior varsity version of the U.S. model of entrenched, judicially enforceable human rights.20 Thus, the U.S. Constitution has provided a persuasive model for

other nations engaged in the task of writing a constitution. Judicial re- view and entrenched human rights are, if not a universal aspect of con- stitutions adopted after World War II, quite nearly so.21 As Robert Badinter, former President of the French Conseil Constituuonnel, and Associate Justice of the U.S. Supreme (Court Stephen Breyer have apdy observed, "[t]oday almost all Western democracies have come to be- lieve that independent judiciaries can help to protect fundamental human rights through judicial interpretation and application of written documents containing guarantees of individual freedom."22 Thus, the U.S. constitutional model has proven to be a very successful legal export in many important respects.23 In two significant respects, however, the U.S. template has not garnered many takers: separation of legisla- tive and executive powers, and strict judicial definition and enforce- ment of the boundaries between legislative and executive power.24

Prevents global violence and wars-best studies

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Cross-national studies covering over 100 countries have shown that federalism minimizes violent conflicts whereas unitary structures are more apt to exacerbate ethnic conflicts. Frank S. Cohen (1997) analyzed ethnic conflicts and inter-governmental organizations over nine 5-year —periods (1945-1948 and 1985-1989) among 223 ethnic groups in 100 countries. He found that federalism generates increases in the incidence of protests (low-level ethnic conflicts) but stifles the development of rebellions (high-level conflicts). Increased access to institutional power provided by federalism leads to more low-level conflicts because local groups mobilize at the regional level to make demands on the regional governments. The perceptions that conflicts occur in federal structure is not entirely incorrect. But the conflicts are low-level and manageable ones. Often, these are desirable conflicts because they are expressions of disadvantaged groups and people for equality and justice, and part of a process that consolidates democracy. In addition, they also let off steam so that the protests do not turn into rebellions. As the demands at the regional levels are addressed, frustrations do not build up. It checks abrupt and severe outburst. **That is why high levels of conflicts are found less in federal countries**. On the other hand, Cohen found high levels of conflicts in unitary structures and centralized politics. According to Cohen (1997:624): Federalism moderates politics by expanding the opportunity for victory. The increase in opportunities for political gain comes from the fragmentation/dispersion of policy-making power… the compartmentalizing character of federalism also assures cultural distinctiveness by offering dissatisfied ethnic minorities proximity to public affairs. Such close contact provides a feeling of both control and security that an ethnic group gains regarding its own affairs. In general, such institutional proximity expands the opportunities for political participation, socialization, and consequently, democratic consolidation. Saidmeman, Lanoue, Campenini, and Stanton's (2002: 118) findings also support Cohen's analysis that federalism influences peace and violent dissent differently. They used Minority at Risk Phase III dataset and investigated 1264 ethnic groups. According to Saideman et al. (2002:118-120): Federalism **reduces the level of ethnic violence.** In a federal structure, groups at the local level can influence many of the issues that matter dearly to them- education, law enforcement, and the like. Moreover, federal arrangements reduce the chances that any group will realize its greatest nightmare: having its culture, political and educational institutions destroyed by a hostile national majority. **These broad empirical studies support** the earlier **claims** of Lijphart, Gurr, and Horowitz **that power sharing and autonomy** granting institutions **can foster peaceful accommodation and prevent violent conflicts among different groups in culturally plural societies**. Lijphart (1977:88), in his award winning book Democracy in Plural Societies, argues that "Clear boundaries between the segments of a plural society have the advantage of limiting mutual contacts and consequently of limiting the chances of ever-present potential antagonisms to erupt into actual hostility". This is not to argue for isolated or closed polities, which is almost impossible in a progressively globalizing world. The case is that when quite distinct and self-differentiating cultures come into contact, antagonism between them may increase. Compared to federal structure, unitary structure may bring distinct cultural groups into intense contact more rapidly because more group members may stay within their regions of traditional settlements under federal arrangements whereas unitary structure may foster population movement. Federalism reduces conflicts because it provides autonomy to groups. Disputants within federal structures or any mechanisms that provide autonomy are better able to work out agreements on more specific issues that surface repeatedly in the programs of communal movement (Gurr 1993:298-299). Autonomy agreements have helped dampen rebellions by Basques in Spain, the Moros in the Philippines, the Miskitos in Nicaragua, the people of Bangladesh's Chittagong Hill Tracts and the affairs of Ethiopia, among others (Gurr 1993:3190) The Indian experiences are also illustrative. Ghosh (1998) argues that India state manged many its violent ethnic conflicts by creating new states (Such as Andhra Pradesh, Gujurat, Punjab, Harayana, Arunachal Pradesh, Goa, Himachal Pradesh, Meghalaya, Mizoram and Nagaland) and autonomous councils (Such as Darjeeling Gorkha Hill Council, Bodoland Autonomous Council, and Jharkhand Area autonomous Council, Leh Autonomous Hill Development Council). The basic idea, according to Ghosh (1998:61), was to devolve powers to make the ethnic/linguistic groups feel that their identity was being respected by the state. By providing autonomy, federalism also undermines militant appeals. Because effective autonomy provides resources and institutions through which groups can make significant progress toward their objectives, many ethnic activities and supporters of ethnic movements are engaged through such arrangements. Thus it builds long-term support for peaceful solutions and undermines appeals to militant action (Gurr 1993:303). Policies of regional devolution in France, Spain and Italy, on the other hand, demonstrate that establishing self-managing autonomous regions can be politically and economically less burdensome for central states than keeping resistant peoples in line by force: autonomy arrangements have transformed destructive conflicts in these societies into positive interregional competition". Federalism for Nepal Federalism is essential in plural countries like

Nepal because it provides cultural autonomy to different cultural groups within a country. By allowing ethnic groups to govern themselves in cultural and developmental matters, it lessens their conflicts with the central state. Many of the conflicts of the identity movements are in cultural issues like religion, language, education and so on. Once regional governments are established, either the contesting parties from their own governments at the regional level, and decides in those matters, and/or influence the outcome because their proportional presence at the regional level is more than in the national level. Thus, many ethnic and linguistic groups can effectively put more pressure to the regional governments. Under unitary system, numerous regionally concentrated groups have not been able to put pressure on the central government because their population and voice are small at the central context. Even if they are not, their nature will become different. Some of the conflicts will be regionally focussed. Hence, many of the conflicts will **decrease in intensity** and strength at the central level. The bureaucracy will also increasingly reflect the regional composition because the regional governments would hire local people in the administration. Bureaucrats with knowledge of local languages and specific local problems will be able to provide relatively more efficient administration. This will also reduce conflicts. Inclusion of more ethnic members into regional politics and administration will ensure more public politics directed toward regional needs, instead of irrelevant policies directed by the center. This will contribute to reducing conflicts arising out of mal-distribution of resources. If minorities want some form of autonomy to protect and promote their culture, develop their people and regions, and self-determine their future, they are likely to struggle for it unless some autonomy is provided. The struggle might take different form in different periods due to varying circumstances. Even if unfavorable circumstances may lead to non-actions during some periods, favorable conditions for mobilizations in other periods may lead to more activities, perhaps in violent ways. The growth of ethnic movements in Nepal after 1990 is an example. Thus, to address the conflicts arising out of issues of identity and cultural rights that are inherent human aspirations, autonomy is essential. Granting of federalism would in all likelihood bring an end to ethnic insurgencies like the Khambuwan Mukti Morcha because it meets their major demand. It will also prevent the possibilities of other ethnic insurgencies with demand for federalism. Territorial federalism can work for the benefit of large ethnic groups concentrated regionally but may not be able to address problems of the numerous low populated ethnic groups or groups that are not concentrated because they may not form majorities anywhere. For these groups, non-territorial federalism, as in Belgium, Austria etc. may address their needs. In non-territorial federalism, members of ethnic groups have rights to decide about their culture, education, language and so on by electing councils who have jurisdiction over cultural, social and developmental realms. The problems of the dalit and small ethnic groups can be addressed through non-territorial federalism. Federalism and its critics in Nepal The dominant group in Nepal often argues against federalism by raising the fear of secession. I have argued elsewhere that this fear is misplaced. In demanding only a few of the rights that mainly deal with cultural and social issues, the minority groups acknowledge that advantages of staying within the existing nation-state. On the other hand, devolution helps to avert separatism because granting of devolution meets substantial demand of the minorities. However, power has to be devolved in ways that make the state and minorities perceive benefit form it. Large numbers of ethnic groups with small population further minimize the secessionist possibilities in Nepal, if any. The lack of resources and difficult topography of settlement in may cases make the creation and sustenance of smaller independent nations difficult, more so when the groups are in a state of under development. On the other hand, experience elsewhere demonstrates that **absence of autonomy may lead to secessionist movements.** Federalism was considered "slippery" in the 60s in Sri Lanka when the Tamils demanded autonomy. Today, autonomy does not satisfy the demands of the movement that arouse out of its denial (Stepan 1999). Hence **federalism**, in fact, **may contribute in keeping a country together by satisfying communities have power over themselves, there is less need to secede**; hence, a federal structure can keep different communities united within a nation-state framework. **Where cultural autonomy has not been provided, many countries have seceded or are undergoing civil war or violent ethnic conflicts**. Many in Nepal ignorantly argue that a small country like Nepal does not need a federal structure. However, federal countries like Belgium, Switzerland, Israel, Papua New Guinea, Holland and Austria have less population than Nepal. This belies the widespread fallacy that 'small' country like Nepal does not require federalism. The difficult geographic terrain and the problems of transportation and communication, on the other hand, make Nepal effectively larger than its area and population indicates. The perception that Nepal is a small country is due to its sandwiched position between the world's two most populous countries. In terms of real and effective population, geography and cultural diversity, Nepal is not a small country. In fact, it is the 40th populous country among 227 countries in the world as of 2002 (US Census Bureau 2002). Federalism in not only in the interests if the marginalized groups, however. It is also in the interests of the dominant community because it lessens the underlying reasons for conflicts. Conflicts are more costly to the privilege sections of the society; hence as a toll for lessening the conflicts, federalism can serve the interests of the dominant community as well. Excerpts from the book "Nepal Tomorrow: Voices and visions" edited by D.B. Gurung.

Theory

2NC CP Legitimate

---The issue of nullification is intrinsic to the topic-the question of how to best curtail federal authority cannot leave out the counterplan

Woods 10

Nullification : how to resist Federal tyranny in the 21st century Google Books
Thomas E. "Tom" Woods, Jr. is an American historian, political analyst, and author. Woods is a New York Times best-selling author and has published eleven books

It is not clear what the alternative to Jefferson's remedy of nullification might be. Unconstitutional laws have indeed been passed, in very great abundance, so the question he poses about what to do in such a situation **is not merely academic**. Should people gather petitions, asking those who drafted the objection- able law to change their minds? Good luck with that They could instead appeal to the courts. Although it would be nice if the courts were to grant us relief, what if they do not? The federal courts have, for all intents and purposes, ceased to police the federal government. We cannot be expected to believe that the matter is settled, and an odious law to be complied with merely because a handful of politically well-connected lawyers whom we are urged to treat with superstitious awe have solemnly informed us that all is well. It is not difficult to find support in history for the general principle that an unconstitutional law is void. Alexander Hlamilton contended in Federalist #78 that "there is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid, lb deny this, would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men, acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid." This principle should be beyond debate. The controversy arises when we consider how and by whom an unconstitutional law should be declared void (and thus not enforced). It was Hamilton's view that the courts would put things right. But what if they didn't? And since the federal courts are themselves a branch of the federal government, how can the people be expected to consider them impartial arbiters? The Supreme Court itself, after all, although usually pointed to as the monopolistic and infallible judge of the constitutionality of the federal government's actions, is itself a branch of the federal government **So in a dispute between the states and the federal government, the resolution is to come from...the federal government**? Jefferson refused to accept that answer. Under that arrangement, the states would inexorably be eclipsed by the federal government. It was impossible for Jefferson to believe that the states would have agreed to a system that assured their unjust subordination. Spencer Roane, a Virginia judge who would have been appointed Chief Justice of the United States by Thomas Jeffer- son had John Adams not chosen John Marshall in the waning hours of his presidency, noted that if the federal judiciary were to arbitrate such a dispute between itself and the states, it would be presiding over its own case, a clear absurdity: It lias, however, been supposed by some that... the right of the State governments to protest against, or to resist encroachments on their authority is taken away, and transferred to the Federal judiciary, whose power extends to all cases arising under the Constitution; that the Supreme Court is the umpire to decide between the States on the one side, and the United States on the other, in all questions touching the constitutionality of laws, or **acts of the Executive**. There are many cases which can never be brought before that tribunal, and I do humbly conceive that the States never could have committed an act of such egregious lolly as to agree thai their umpire should he altogether appointed and paid by the other party. The Supreme Court may be a perfectly impartial tribunal to decide between two States, but cannot be considered in that point of view when the contest lies between the United States and one of its members—The Supreme Court is but a department of the general government. A department is not competent to do that to which the whole government is inadequate____They cannot do it unless we tread underfoot the principle which forbids a party to decide Ins own cause. Joseph Desha, governor of Kentucky, identified the very same problem in 182>: When the general government encroaches upon the rights of the State, is it a safe principle to admit that a portion of the encroaching power shall have the right to determine finally whether an encroachment has been made or not? in fact, most of the encroachments made by the general gov- ernment flow through the Supreme Court itself, the very tri- bunal which claims to be the final arbiter of all such disputes. What chance for justice have the States when the usurpers of their rights are made their judges? Just as much as individuals when judged by their oppressors. Desha concluded that it is "believed to be the right, as it may hereafter become the duty of the State governments, to protect themselves from encroachments, and their citizens from oppres- sion, by refusing obedience" to "unconstitutional mandates/ Once we accept the underlying premise that an unconstitu- tional law is ipso facto void, it is not a long way to Jefferson's commonsense conclusion that someone ought to protect the people from the enforcement of such a law, and that the state governments, each one speaking only for itself, arc the logical choice to do so.9

---<u>Counter-interpretation. Domestic Actor Model</u>. Fiat should be limited to domestic political actors in the United States. Debate is best understood as an adjunct to democratic decision making. This explains why we always select topics where we have at least some fractional impact on. This provides a fair limit on negative fiat as state or local action as an alternative to federal action is a recurrent issue in American politics.

---<u>Search for best policy justifies</u>. Net benefits checks abuse and is a warrant for voting negative. No rational decision-maker would reject the counterplan if it is a superior policy option to the affirmative.

---<u>Reciprocity isn't an argument</u>. First, the states are treated as a collective in the literature comparing state versus federal action. This checks against their infinite regression impact and proves the counterplan is reciprocal. Second, numerical standard is flawed since one state is clearly not equal to the federal government.

---<u>Solvency advocate isn't an argument</u>. First, all of our solvency evidence for the counterplan is a solvency advocate. Their interpretation is arbitrary. Second, At best this is a solvency argument.

---<u>Advocacy skills</u>---being forced to defend the federal government as the best actor teaches the aff how to defend their policy choice from all angles and encourages through research before deciding to read it, that kind of education outweighs because it is more portable.

2NC Perm-Do Both

Mutually exclusive-the plan removes the authority that the counterplan nullifies-Nullification literally requires authority to invalidate

Wolverton-prof American Government, Chattanooga State-5/7/12 The Case for Nullification

http://thenewamerican.com/usnews/constitution/item/11158-the-case-for-nullification

Americans who wish to reverse the growing power of the federal government only need to remember that any federal law that is unconstitutional has no legal effect. As the United States of America is manipulated closer and closer to an economic and social abyss, the concomitant consequences of this decline are becoming familiar to all citizens. In fact, many of the youth, whose future is being mortgaged by those determined to perpetuate never-ending war and ever-expanding national debt, are awakening to a sense of this dire situation. And they are recurring to the brief history of our nation to locate a lever for braking the runaway train hurtling toward the ruin of our Republic. This generation is subjected as none before them to the painful injection of government into every fiber of the body politic. On what seems like a daily schedule, the Congress passes and the President signs into law measures ostensibly permitting the manhandling of people at airports, the suspension of the requirements of due process, and the monitoring by the never-blinking eye of a surveillance state into the virtual and actual behavior of anyone believed to one day possibly pose a threat to the security of "the homeland." As they sift among the various legal methods available to them for the civil combat against economic enslavement and the federal government's intrusions into every aspect of our lives, they have stumbled across a timeless principle of self-defense used by our Founding Fathers to fight their own battle against the forces of federal oppression - nullification. Simply stated, nullification is a concept of legal statutory construction that endows each state with the right to nullify, or invalidate, any federal measure **that a state deems unconstitutional. Nullification is founded on the assertion that the sovereign states formed the union, and as creators of the compact, they hold** ultimate authority as to the limits of the power of the central government **to enact laws that are applicable to the states and the citizens thereof.**

It links to the net benefits:

A. Politics-still includes immediate legislative battles in congress over the plan that derail the agenda

B. Federalism-The actual nullification of authority is key to restoring the states as "vibrant political entities"---That's our Haworth evidence from the 1NC. Only the counterplan has the states challenge federal power-the plan literally removes the issue by bringing the states and federal government into alignment.

Our net benefit is about the process of nullification changing federal policy---fighting over the authority and winning is key to the federalism signal

Warbiany-contributor liberty papers-10

http://www.thelibertypapers.org/2010/08/17/point-nullification-is-the-civil-disobedience-of-federalism/

Point: Nullification Is The Civil Disobedience of Federalism

In federal politics, states are party to an uneasy compact with other states under the guise of a superior government. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. As such, they cede many powers to that national government, but one must think that they do not cede all of their own powers. Something must be held in reserve. The question is what? After all, this "Supremacy Clause" Constitution only grants supremacy to those laws made in pursuance of the Constitution itself — anything not permitted by the Constitution must not be considered to be Supreme. The real question, then, is who decides what is Constitutional? Since 1803 and John Marshall, half of that question has been decided. The US Supreme Court is the arbiter of what is, and what is not, Constitutional. Further, a critical tool of state protection against the overreaches of the national government, the state appointment of Senators, was stricken in 1913 by the Seventeenth Amendment. Thus, the only legal method of appeal to Constitutionality available to the States is appeal to the Supreme Court, a body that hasn't found many overreaches of national government since the New Deal.

Nullification, the doctrine that states can disregard federal laws, declaring them unconstitutional, is a provocation somewhere between fighting a battle at the Supreme Court level and secession. Appeal to the Supreme Court is basic and need not be addressed here. Secession is a far more drastic measure, far more controversial, and an area where I believe Doug and I disagree, so it does require some treatment. Secession is often equated with violence, and treated as "violent revolution", but I would say that most instances of violence were continued by the government trying to retain their subjects, not by those trying to withdraw. In the American Revolution, nothing that I've seen suggests that had the British peacefully withdrawn their troops, the colonists would have had any cause for continuation of violence. Even in the US Civil War, it is unlikely that, had the North allowed the South to secede, that the South would have ridden on Washington to impose slavery back upon the North. Secession is not overthrow of the government, it is withdrawal therefrom. Of course, Doug and I agree that, whether they had the right or not, the South's secession was for morally unconscionable reasons — the continuance of the despicable practice of slavery. But the South's secession was no different than the American Revolution in that they were NOT attempts to overthrow a government outside of the territories that wanted their freedom, they could have been peaceful separations. The breakup of the Soviet Union is a good example. While it was only peaceful because the Russians didn't have the power to hold it together, it was a peaceful secession nonetheless. So at this point we've sketched out two responses to potentially unconstitutional overreaches by a national government. The first is the relatively weak appeal to the Supreme Court — asking the government to self-regulate. This is a difficult option. A Senate prior to the Seventeenth Amendment might take seriously their "Advice and Consent" role in judicial nominations to only nominate those who would respect state sovereignty and Constitutional limits, but that ship has sailed. In its wake, it's left a court with an expansive view of national government authority. Secession, on the other hand, is all-or-nothing. And while it may not be a violent act, history has shown that it often will be. As Doug pointed out in all three posts I read of his referencing secession, Jefferson in the Declaration of Independence said that taking to arms should not be done "for light and transient causes". Leaving only these two options is a fool's game. Secession will only be legitimate in the face of absolutely unconscionably abuse, and appeal to the judiciary is impotent and unlikely to succeed [and further, the structure of the direct election of Senate and the Supreme Court nomination process makes it unlikely this will change]. If one wants to give the national government limitless power, asking only that it police itself, having only these two options is the roadmap… …**which is why we need nullification**. **Nullification is the civil disobedience of Federalism**. Is it legal? No. After all, the Supremacy Clause and judicial review see to that. But it wasn't legal for Rosa Parks to sit at the front of the bus, or for black students to sit at a "Whites-only" counter at Woolworth's. Sometimes, the law is a ass. Sometimes, you need to disobey to make a point. I'll give an example. Here in California, we have legalized marijuana for medical purposes. This is in DIRECT contradiction to the Controlled Substances Act, an act that empowered the regulation to be written that declares marijuana a Schedule I drug — with no medical use whatsoever. This is nullification in action. This is civil disobedience. California is not denying the Federal government's power to enforce the drug laws — but it is denying its compliance with those laws and its assistance to the Feds in such power. What will the result of this action be? Well, this (and potentially the follow-on Proposition 19) forces the people of California address the question of marijuana. Several states have followed on with their own medical marijuana laws. We now have a body of medical marijuana users which can be called upon to testify that marijuana does have medical use. We have families who have watched their loved ones, battling horrible diseases which sap their appetite, who have been able to eat enough to keep their strength. Hopefully the result of this action will be the government backing down and taking marijuana off Schedule I. Viewed this way, nullification is less about disobedience as it **is about changing policy**. Nullification is a tactic in a wider strategy. It is a way to register unhappiness with federal dictates without necessarily going full-bore and threatening secession. Further, it is a way to demonstrate, by direct example, that changes in policy are preferable to the way Washington demands.

More ev--Only the counterplan by itself solves—gives states *future leverage* and forces political tradeoffs in favor of the states—only that preserves federalism

Young 14 (Ernest Young; Oct. 28th 2014; Alston & Bird Professor of Law at Duke University, where he teaches constitutional law, federal courts, and foreign relations law. He is one of the nation's leading authorities on the constitutional law of federalism; "Federalism as a Constitutional Principle"; William Howard Taft Lecture on Constitutional Law;
http://chicago.ssrn.com/delivery.php?ID=584095096086109103085118077000008127032069023053024057123008012026070121029099118025037027038012044049023031013121092120010114119094030029067029093001121087066093036048114017027107101070084078080089012125102001075019122071065071066004084088092&EXT=pdf&TYPE=2) jskullz

19 To be sure, if federal officials don't like the ways that state officers are implementing federal program, they can generally take over the entire program and implement it with federal personnel and resources. But this is so burdensome as to be impracticable most of the time. One student of mine, who wrote a lovely paper on the EPA's ability to take over Clean Air Act i mplementation, concluded that much as the U.S. military tries to have a one-and-a-half war capability, the EPA has a one-and-a-half state capability. EPA could, in other words, fire

one medium-sized state (say North Carolina) and maybe a little bitty one (say New Hampshire) and implement the Act on its own in those states. But forget about taking over for California or Texas, or for more than a couple of smaller states at once. It seems unlikely that Congress would support the massive expansion of resources that it would take to alter this situation. So you can see why state implementation gives state officials a lot of leverage over the way that federal law is enforced and interpreted on the ground. Sometimes, as in the case of Colorado's marijuana policy, a state's decision not to cooperate in furthering a federal policy may simply mean that federal policy can't be pursued. 94 What the Colorado example makes clear is that, even when state and federal executive officers work closely in tandem (as state and fe deral law enforcement often do), state officials remain accountable to the state legislature and the state electorate. **This is a big part of what it means for a state to be "sovereign" in the modern regulatory environment**. 95 At the end of the day, state officials don't work for the federal government, and this translates into meaningful policy autonomy in a number of areas.

2NC Perm-Do CP

Severs out of USFG-this is the states' counterplan for crying out loud-severance is illegitimate because no counterplan would compete if the 2AC could pick which parts of the plan to defend

Dictionary of Government and Politics 1998
(PH Collin, pg 292)

United States of America (USA) [ju:'naitid 'steits av e'merike] noun independent country, a federation of states (originally thirteen, now fifty in North America; the United States Code = book containing all the permanent laws of the USA, arranged in sections according to subject and revised from time to time COMMENT: the federal government (based in Washington D.C.) is formed of a legislature (the Congress) with two chambers (the Senate and House of Representatives), an executive (the President) and a judiciary (the Supreme Court). Each of the fifty states making up the USA has its own legislature and executive (the Governor) as well as its own legal system and constitution

---Severs the unconditional adoption of the plan-it is analogous to the difference between Congress passing legislation and the President asking Congress to pass legislation.

---One actor directing another to act does not on face curtal

Marcus-Brandeis Center for Human Rights Under Law-9
Race & Social Problems, Vol. 1, No. 1, pp. 36-44, March 2009
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1678008

The post-9/11 surge in America's Muslim prison population has stirred deep-seated fears, including the specter that American prisons will become a breeding system for "radicalized Islam." With these fears have come restraints on Muslim religious expression. Some mistreatment of Muslim prisoners violates the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), which Congress passed in part to protect prisoners from religious discrimination. Despite RLUIPA, many Muslim prisoners still face the same challenges that preceded the legislation. Ironically, **while Congress directed courts to apply strict scrutiny to these cases, courts continue to reject most claims**. One reason is that many courts are applying a diluted form of the legal standard. Indeed, the "war on terror" has justified increasing deference to prison administrators to the determine of incarcerated Muslims and religious freedom.

---Severs "should" it means "must" and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, "Kelsey v. Dollarsaver Food Warehouse of Durant", 1994 OK 123, 11-8,
http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13] in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14] The answer to this query is not to be divined from rules of grammar;[15] it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16]
[CONTINUES – TO FOOTNOTE]
13 "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as **more** than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or

expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or ***immediately effective***, as opposed to something that *will* or *would* become effective *in the future* *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

Solvency

2NC Spill up

The Counterplan causes norm cascading that changes federal policy-it also avoids politics by building constituencies for the plan

Robinson-JD Yale-7 40 Akron L. Rev. 647

ARTICLE: Citizens Not Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy

4. Laws and actions that influence the nation's foreign policy Localities' actions often attempt to influence national foreign policy. Some of these actions merely help reinforce and support preexisting federal foreign policy. The most prominent example of this is localities' support of the U.S. military in their operations abroad. 305 However, localities' actions may also be in protest to U.S. foreign policy or designed to change it. The Central American sanctuary movement grew out of dissatisfaction with the U.S.'s policy towards Central America in the 1980's and the belief that refugees from El Salvador and Guatemala were politically persecuted despite U.S. support for these regimes. In all, "more than 20 cities and two states declared themselves sanctuaries for Central American refugees." 306 During this same period, 87 cities created sister city type relationships with communities in Nicaragua, in part to show solidarity against U.S. policy there. 307 U.S. sanctions on Cuba have similarly been a target of state and local action both on political and economic grounds. The Illinois and Texas state legislatures have passed resolutions in support of normal relations between the U.S. and Cuba. 308 Some cities in the United States have established "Sister City" type relations with Cuban cities to express their support for more normal relations between the United States and Cuba. 309 After lobbying by agricultural interests, Illinois Governor Ryan [*708] led a mission to Cuba in 1999 to promote trade and deliver aid. 310 During the trip he met with Cuban President Fidel Castro. 311 Shortly after returning he stated, "My hope is there will be other state delegations that go, and hopefully we'll lift this embargo." 312 In 2002, Havana hosted governors and other representatives from seven states at a Food and Agribusiness Exhibition. 313 Over one hundred cities passed resolutions calling for the end of the Iraq War. 314 In early 2005 during the annual town hall day in Vermont, 49 cities and towns passed a resolution that asked the state legislature to investigate what the impact of National Guard deployments to Iraq are having on the state. 315 Several cities across the country have passed resolutions calling on their states to withdraw their National Guard troops from Iraq. 316 Dozens of local ballot initiatives in communities across the country called on the federal government to bring the troops home from Iraq in the November 2006 elections. 317 State governors have also been openly critical of the U.S.'s involvement in the conflict in Iraq. 318 In March 2007, several towns in Vermont passed resolutions calling for the impeachment of President Bush and Vice President Cheney. In April 2007, the Vermont State Senate in a non-binding resolution called on members of the U.S. House of Representatives to begin impeachment proceedings against the President and Vice President because of their actions in the United States and abroad, including Iraq. These calls for [*709] impeachment, which highlight a deep internal divide within the United States over its policy in Iraq, were reported upon by media around the world. 319 States and localities have pushed to change U.S. foreign policy more broadly as well. For example, after the failure of SALT II during the Carter administration, the unwillingness of Reagan to support a nuclear test ban treaty, and the development of the Strategic Defense Initiative, citizens banded together to promote a freeze on the production of nuclear weapons in the 1980s. Through town meetings, local referenda, resolutions, or other initiatives, more than 900 local governments acted on the freeze issue. 320 After the end of the Cold War, at least 70 mayors in the United States as well as hundreds of mayors from over 100 countries have signed a statement in support of a nuclear free world. 321 State assemblies have similarly passed resolutions calling for the end of nuclear weapons. 322 Some states have taken a different approach towards this national defense issue with at least 10 states having passed resolutions calling upon the national government to deploy a missile defense system since 1997. 323 States have also urged the United States to sign and ratify international agreements. For example, several state governments have passed resolutions in support of the Convention on the Elimination of Discrimination Against Women (CEDAW). 324 Often state and local action arises out of dissatisfaction with the perceived inadequacy or incorrectness of a federal policy towards a foreign policy issue. Catherine Powell calls the impact of state and local [*710] laws on national foreign policy "dialogic federalism." 325 She argues that **enough local ordinances can create a norm cascade that affects federal policy**. 326 The U.S. federal sanctions against South Africa passed by Congress over President Reagan's veto in 1986 were arguably in part a result of just such a norm cascade created by anti-apartheid resolutions and laws at the state and local level. 327 In many ways, it is the mobilization of citizens around, more than the passage of a resolution or act on a foreign policy issue that leads to a norm cascade which changes federal policy. The effort required to convince legislators and their fellow citizens to support a locality's official action gives citizens a tangible and reachable local goal to focus their efforts on. This helps organize constituencies locally that can develop into a national coalition. For example, someone who has worked continuously to garner support for a local divestment initiative on Sudan is also more likely to call their Congressperson to urge them to pass the Darfur Accountability Act. Norm cascades created by localities' actions do not only impact the policy they are directed at, but have a wider impact as well. For instance, the South Africa or Sudan divestment campaigns can be seen as national human rights moments. These are moments in which a segment of the American public becomes unusually organized to promote a human rights-based foreign policy goal. Most voters remain generally unaware of how U.S. foreign policy implicates human rights in

other countries. Further, most voters do not base their vote on foreign policy human rights issues. **The signal given** by these human rights moments, however, creates an environment in which sympathetic legislators and policymakers can prioritize human rights concerns in other areas of foreign policy, knowing there is a **constituency that generally supports this type of action.**

2NC Enforcement

Nullification is a stronger check on authority than the plan

Woods 10

Nullification : how to resist Federal tyranny in the 21st century Google Books
Thomas E. "Tom" Woods, Jr. is an American historian, political analyst, and author. Woods is a New York Times best-selling author and has published eleven books

Nullification begins with the axiomatic point that a federal law that violates the Constitution is no law at all. It is **void and of no effect**. Nullification simply pushes this uncontroversial point a step further: if a law is unconstitutional and therefore void and of no effect, it is up to the states, the parties to the federal compact, to declare it so and thus **refuse to enforce it**. It would be foolish and vain to wait for the federal government or a branch thereof to condemn its own law. Nullification provides a shield between the people of a state and an unconstitutional law from the federal government. The central point behind nullification is that the federal government cannot be permitted to hold a **monopoly on constitutional interpretation**. If the federal government has the exclusive right to judge the extent of its own powers, warned James Madison and Thomas Jefferson in 1798, it will continue to grow- regardless of elections, the separation of powers, and other much-touted limits on government power. A constitution is, after all, only a piece of paper. It cannot enforce itself. Checks and balances among the executive, legislative, and judicial branches, a prominent feature of the Constitution, provide little guarantee of limited government, since these three federal branches can simply unite against the independence of the states and the reserved rights of the people. That is precisely what Jefferson warned William Branch Giles was already happening in 1825: "It is but too evident, that the three ruling branches of [the Federal government] are in combination to strip their colleagues, the State authorities, of the powers reserved by them, and to exercise themselves all functions for- eign and domestic."6 Much more important than the feeble restraint of "checks and balances" is the ability of the states to interpose to prevent the enforcement of unconstitutional laws. **That is a real check on federal power**.

The counterplan mobilizes the public as an effective check on executive power

Robinson-JD Yale-7 40 Akron L. Rev. 647

ARTICLE: Citizens Not Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy

Second, federalism provides a check on the over-centralization of power. Federalism embraces a "conception of justice" that implies that a diffuse political ordering is both "necessary and desirable." 175 In Federalist 51, James Madison reassures his readers that a federalist [*681] republic provides a "double security" against usurpations of power because power is not only divided between the different branches of the federal government, but also between the federal and state governments. 176 Justice O'Connor picks up this theme in Gregory v. Ashcroft where she remarks that "just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." 177 As areas of traditional local governance increasingly become objects of international concern there is an increased danger that localities will be weakened in their ability to act as a counterweight to federal and international power. Further, localities can play an **active role in checking abuses of federal foreign policy** in areas not traditionally associated with local governance. For example, localities may be able to resist perceived misuses of federal power that touch on foreign relations if they require the assistance of local authorities to implement. Several cities, such as San Francisco and Detroit, have passed resolutions denouncing the U.S. Patriot Act, and some cities have even gone so far as to decline to provide assistance to federal authorities in any instance where civil liberties might be jeopardized. 178 As will be discussed in the next section, localities have also taken a number of actions to oppose or attempt to **change federal foreign policy**, such as passing resolutions condemning the war in Iraq or adopting "Buy America" laws. These actions in and of themselves may have questionable impact on any perceived abuses of foreign policy decision-making power in Washington D.C., but they mobilize citizens around foreign policy issues at a local level. This mobilization of citizens is perhaps the **greatest check on usurpations of power by the federal government** and leads to the third justification for federalism in foreign relations: federalism creates control and independence at a local and state level which encourages [*682] citizen participation and empowerment. 179

Although fewer people vote in local elections than in national elections (in part because local elections tend to be more lop-sided affairs), more people try to influence local politics than national politics. 180 State and local politicians are usually more accessible than national ones. It is also often easier to create local and state constituencies. Sometimes these state or local constituencies are connected with or develop into national constituencies, but it is the chance to participate locally and impact the governance of one's locality that often mobilizes those involved. The idea that local action may then turn into a national movement can create synergetic inspiration. State and local democracy leads to large reservoirs of engaged and committed citizens participating in a diverse array of political communities. Not every citizen will take the opportunity to engage with the governments of their localities, but many will. Local political communities' involvement in questions of foreign relations ensures that debates around these topics will occur at multiple levels of government and in multiple forums. With pools of active and committed citizens, it is then more likely these citizens can and will **check an overzealous Congress or executive**. The involvement of engaged political classes in localities who also participate in national politics makes it more likely that the potential for tyranny in the federal government's policies will be checked both here and abroad.

Nullification effectively blocks federal action

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NDAA: Indefinite Detention

http://tracking.tenthamendmentcenter.com/issues/ndaa/

The federal government, under the 2012 National Defense Authorization Act (NDAA) and the 2001 Authorization to Use Military Force (AUMF), claims the power to arrest and detain people within the US and deny them access to courts, attorneys and more. In short, this is little more than government-sanctioned kidnapping. To learn more about the 2012 NDAA and indefinite detention, use the links in the sidebar of this page. The Liberty Preservation Act – and local ordinance – bans participation with or assistance in any way with any federal act which purports to authorize the indefinite detention of a person within the United States. Passage of the Liberty Preservation Act in your state, county, city and town will create obstacles to implementation that will help thwart the unconstitutional indefinite detention efforts of the federal government. State laws and local ordinances and resolutions are all important pieces of the puzzle to resist and nullify NDAA "indefinite detention." (model legislation here) MADISON'S BLUEPRINT James Madison, known as the Father of the Constitution, gave us a **blueprint for stopping federal overreach**. In Federalist 46, he argued that a "refusal to comply with officers of the Union" along with other actions at the state and local level would create a situation where the federal government would have an **almost impossible time enforcing their acts**. When several states join together and do the same, Madison said **it would "present obstructions which the federal government would hardly be willing to encounter.**" In the Virginia Resolutions of 1798, Madison wrote that "in case of a deliberate, palpable, and dangerous exercise" of power by the federal government, states "have the right, and are in duty bound, to interpose for arresting the progress of the evil." Thomas Jefferson, in the Kentucky Resolutions of 1798, wrote that "where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy" "that every State has a natural right in cases not within the compact to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them" **Indefinite Detention** represents just the kind of dangerous, palpable evil Madison was talking about, and the assumptions of power that Jefferson was talking about. Our model legislation is based on the principles and advice of James Madison and Thomas Jefferson. It's not going to be easy, and there's no guarantee of success. But, if we sit back and wait for the federal government to stop its own indefinite detention programs, we'll wait forever. So, as those founders advised, we're taking action without the feds, and taking every step possible to create "obstructions," and a "refusal to comply with officers of the Union," as Madison advised. The goal is to get enough states and localities on board so that **indefinite detention** is rendered null and void, as Jefferson advised. INDEFINITE DETENTION REPEALED? While some believe that the 2013 NDAA eliminated indefinite detention, it did not. Dianne Feinstein introduced a very weak amendment to 2013 – and it failed anyway. 2012 indefinite detention provisions remain intact – and the Obama administration is aggressively defending them in court today. Last year, Federal Judge Katherine Forrest struck down these indefinite detention powers as unconstitutional and issued a temporary court order blocking their use. That order was revoked by an appeals court and indefinite detention powers remain while the case is currently on appeal but not decided. Additionally, when Judge Forrest asked Obama administration attorneys if the federal government was using indefinite detention in violation of her temporary order blocking it, they refused to confirm, leaving the door open for potential use of these powers in secret, even in outright defiance of an order from the federal courts. All attempts to stop indefinite detention on a federal level – in **courts and the congress** – have so far failed. It remains the so-called "law of the land" and deserves to be nullified. SUPREMACY CLAUSE

Some opponents of these efforts claim that the U.S. Constitution's "supremacy clause" prevents your local community from taking action. But this is a complete misunderstanding, not only of the supremacy clause, but of the local legislation as well.

The Federal Government will give in---Noncompliance creates strong pressure to accept the mandates of the counterplan

Boldin-founder 10th amendment center-12

http://tenthamendmentcenter.com/2012/12/01/what-would-rosa-parks-do/#.UusrQPko4qg

Recently, as state and local governments have been passing legislation requiring non-compliance with the kidnapping provisions of the 2012 **NDAA,** a number of people who oppose NDAA have begun to attack these efforts to resist it – as little more than a sham. Vince Brown, for example, gets the ball rolling with this: "I don't find the appeal here, isn't all it says is that they will simply just sit back and watch the feds do what they want?" Brian Ryman goes a little deeper: "While the state of Virginia has passed what many feel to be the first significant blow against the NDAA , I have a few reservations about what is purported by some to be a victory. My main concern is that the bill has no provisions for Virginia state agencies to interpose themselves between the federal authorities and its citizens. This should be the focus of the legislation…." The implication here is that unless there's a state law passed requiring conflict – a state agency standoff vs a federal agency – which is dangerous indeed – then somehow there's little to no value. But is that really the case? Of course not. More later. Tom Rankin takes it a step further, insisting that anything but physical pushback on the feds is not only worthless, but some kind of a political trick. Here's what he had to say: "Just how does this stop the Feds from enforcing NDAA. All it says is you can enforce NDAA in my state but I will not help you. This is pure bull. It is just feel good legislation that gets the public off the politicians ass. I am very disappointed in The Tenth Amendment Center and question it's motives." Interesting. I've often heard that converts to a new religion are commonly known to be more zealous than people raised in those same beliefs. I guess here at the TAC we're finding the same thing in our own movement – for nullification. The problem, though, is this – these people, while probably quite well-intentioned, are either being misdirected, or are just misinformed about the big picture. **NON-COMPLIANCE IS A BIG DEAL** To clarify, we should first define the word nullification. It is "any act or set of acts which has as its end result a particular law being rendered null, void, or unenforceable in a specific area." Thomas Jefferson referred to nullification as the "moderate middle ground" – the effective path that lies between violent and bloody revolution on one hand and unlimited submission on the other. With that in mind, we can recognize that a nullification of a federal act can take on all kinds of different forms. It often requires an entire puzzle – and each piece of that puzzle plays an important part. There's education, outreach, non-compliance, and more. It doesn't always require a physical interposition by local agents – standing between you and the federal government. And while it sure gets the testosterone boiling, an O.K. Corral-style standoff is not needed, and is almost never effective. Consider the state-level resistance to the 2005 Real ID act. Over the past five years, we've learned that a **federal law can be effectively** held at bay or even **pushed back through non-compliance alone.** When Virginia's HB1160 was being debated, Delegate Bob Marshall gave a perspective on the importance of non-compliance when he said: "During World War II, the federal government incarcerated tens of thousands of loyal Japanese Americans in the name of national security. By this bill, Virginia declares that it will not participate in similar modern-day efforts." The federal government most certainly needs compliance, if not outright assistance, from the states when it does its dirty deeds. Information-sharing, logistics assistance, access to infrastructure, help from sheriffs blocking roads, and the like. They can rarely pull things off without help from state and local officials. Just ask the DEA when they come to California. They're never able to pull off a raid without the help of the local sheriff or police departments. Refusing compliance is a big deal – and it will set the stage for others to do the same.

General

Doesn't involve federal action and empirically works—Medical marijuana proves.

Sheriff 12 (Derek Sheriff; Nov. 14th 2012; "research analyst for the Tenth Amendment Center"; Nullification in One Lesson; Tenth Amendment Center; http://tenthamendmentcenter.com/2012/11/14/nullification-in-one-lesson/) jskullz

¶But in order to best-understand what Nullification IS, you should first understand some things nullification is NOT.¶¶Nullification is not secession or insurrection, but neither is it unconditional or unlimited submission. Nullification is not something that requires any decision, statement or action from any branch of the federal government. Nullification is not the result of obtaining a favorable court ruling. Nullification is not the petitioning of the federal government to start doing or to stop doing anything. **Nullification doesn't depend on any federal law being repealed**. Nullification does not require permission from any person or institution outside of one's own state.¶¶So just what IS nullification and how does it happen?¶¶Nullification is any act or set of acts, which has as its end result, a particular federal law being rendered null and void, or just plain unenforceable in your area.¶¶Nullification often begins with members of your state legislature declaring a federal act unconstitutional and then committing to resist its implementation. It usually involves a bill, passed by both houses and signed by your governor. In some cases, it might be approved by the voters of your state directly, in a referendum. It may change your state's statutory law, or it might even amend your state constitution. In this case, it is quite simply a refusal on the part of your state government to cooperate with, or enforce a particular federal law it deems unconstitutional.¶¶The same process can happen on a local level too. Your county board of commissioners or city council might take up a measure that rejects or resists a federal law. Once it gets passed, all local agencies might be required to refuse compliance with any federal agents trying to enforce the federal act in question.¶¶In either case, Nullification carries with it the force of state or local law. It cannot be legally repealed by Congress without amending the U.S .Constitution. It cannot be lawfully abolished by an executive order. It cannot be overruled by the Supreme Court if the people in the state reject the Court's opinion. It is the people of a state or local commnunity asserting their rights, acting as a political society in its highest sovereign capacity. It is the moderate, middle way that wisely avoids harsh remedies like secession on the one hand, and slavish, unlimited submission on the other.¶¶It is the constitutional remedy for unconstitutional federal laws.¶¶With the exception of a constitutional amendment, the federal government cannot oppose (except perhaps rhetorically), these actions to nullify an unconstitutional federal law without resorting to extra-legal measures or violence. But such measures would more than likely backfire, since most Americans still believe might does not make right.¶¶There is no question as to whether or when such "official" nullification will happen: It has ALREADY HAPPENED.¶¶In fact, not only has it happened recently, it has been a success! Perhaps this is why the federal government hopes you will never hear about it.¶¶With Massachusetts voters approving Question 3 on November 6, 2012, there are now 18 states that have legalized marijuana use for limited medicinal purposes – in flat out defiance of the Congress, the Executive Branch and the Supreme Court.

Nullification ensures the protection of liberty for states—only way to certainly check unconstitutionality and overreach

Haworth 13 (Peter Haworth; Sep. 9th 2013; Ph.D. in Government from Georgetown University in 2008, writes often on American Political Development, Traditionalist Thought, Constitutional Law, Southern Americana, Virtue Ethics, Natural Law, Political Theology, and many other topics within the history of political theory; "Real Federalism Includes Taking Interposition and Nullification Seriously,"; Nomocracy in Politics http://nomocracyinpolitics.com/2013/09/25/real-federalism-includes-taking-interposition-and-nullification-seriously/) jskullz

Crucially missing in this debate is recognition of the importance of States checking federal authority so as to protect their constitutional autonomy and generally maintain themselves as vibrant political entities rather than mere federal lackeys (i.e., self-interested seekers of the Federal Government's largesse). Both authors miss these points. Greve's call for "national scale" makes this obvious, but he even explicitly denounces nullification in a separate essay on that topic. Moreover, Reinsch's refusal to advocate interposition and nullification is also telling. In the sections that follow, I will elucidate the following: (1) why Calhoun's doctrine of nullification is a constitutional means of preserving the States' local liberty; (2) how the lack of nullification and interposition has damaged the States viability as independent political entities that do not need federal largesse; and (3) some final thoughts about the importance of interposition and nullification as well as the need to dismiss ad hominem arguments against these doctrines.[1]¶ I. Calhoun's Doctrine of Nullification as a Constitutional Means of Preserving the States' Local Liberty:¶ Professor Adam Tate has argued that John C. Calhoun's advocacy of nullification was crucially focused on maintaining the American union in a manner that preserved the liberty of the States. Liberty here is a State's political autonomy to self-govern its internal affairs within the framework of reserved powers that it retains via the 1789 Constitution. Calhoun desired union, but he opposed its pursuit via unconstitutional conceptions of federal supremacy that inevitably tended toward the Federal Government usurping powers reserved by the States. He implied his vision for both union and local liberty (and his opposition to federal dominance within the union) in his famous toast at the Jefferson Day Dinner in 1830: "The Union, next to our liberty, most dear." Nullification, then, is not aimed at disunion; rather, it seeks to maintain a union of States that protects the liberty (i.e., the constitutional political autonomy) of each State via allowing a State to defend itself against federal encroachments.¶ With respect to Calhoun's constitutional theory, it is important to realize that he viewed the people of each State as a sovereign entity (even after they had ratified the 1789 Constitution) and, hence, capable of (at a minimum) revoking the delegation of powers granted to the Federal Government.[2] Sovereignty includes having supreme, ultimate, and unified power and authority over the internal affairs of people within established territorial boundaries. This is the first and primary issue with respect to federalism, for it elucidates where ultimate authority resides when a dispute arises between a State and the Federal Government. If the people of each State retain sovereignty within its borders, despite delegating powers to the Federal Government via ratifying the Constitution (i.e., a State's sovereignty is something separate from the sovereign powers it delegates), then a State People can decide to revoke its delegation of powers (to the Federal Government) via secession.¶ With respect to nullification, which is a specific and strong mode of interposition, Calhoun believed that the same State sovereignty issues applied, but nullification is aimed at maintaining union in a manner that appropriately recognizes a State to be the unit-of-sovereignty that has justifiable unilateral authority to determine whether a federal law is unconstitutional (unless and until a State's nullification is overruled through the Article V amendment process). Calhoun believed that each State People had this ultimate legal authority through their role as original parties to the Constitutional Compact.[3] It was the State People who gave the Constitution life via their ratification; as many of the Framers' maintained, the Philadelphia Convention merely proposed a new system of union, but it was the States who had the authority to make it fundamental law. Moreover, with respect to the Constitution and its amendments as a constitutional compact, since the State Peoples were original contracting parties (or equivalent in sovereign status to the State Peoples who were the historical contracting parties) and since no higher authority existed to determine whether the Constitution was being appropriately followed by the Federal Government (i.e., whether the Federal Government stays within the scope of its delegated powers), final judgment about whether or not a federal law was constitutional was left to each State People and not a department within the Federal Government (e.g. the federal judiciary) whose very life and authority is a creature-level product granted by creator-level State Peoples.[4]

Nullification Good – key to prevent tyranny or revolution and leads to modeling

10th Amendment Center, 14 ("NDAA: Indefinite Detention", 10th amendment center, http://tenthamendmentcenter.com/2012/12/01/what-would-rosa-parks-do/#.UusrQPko4qg)//BW

To clarify, we should first define the word nullification. It is "any act or set of acts which has as its end result a particular law being rendered null, void, or unenforceable in a specific area." Thomas Jefferson referred to nullification as the "moderate middle ground" – the effective path that lies between violent and bloody revolution on one hand and unlimited submission on the other. With that in mind, we can recognize that a nullification of a federal act can take on all kinds of different forms. It often requires an entire puzzle – and each piece of that puzzle plays an important part. There's education, outreach, non-compliance, and more. It doesn't always require a physical interposition by local agents – standing between you and the federal government. And while it sure gets the testosterone boiling, an O.K. Corral-style standoff is not needed, and is almost never effective. Consider the state-level resistance to the 2005 Real ID act. Over the past five years, we've learned that a federal law can be effectively held at bay or even pushed back through non-compliance alone. When Virginia's HB1160 was being debated,

Delegate Bob Marshall gave a perspective on the importance of non-compliance when he said: “During World War II, the federal government incarcerated tens of thousands of loyal Japanese Americans in the name of national security. By this bill, Virginia declares that it will not participate in similar modern-day efforts.” The federal government most certainly needs compliance, if not outright assistance, from the states when it does its dirty deeds. Information-sharing, logistics assistance, access to infrastructure, help from sheriffs blocking roads, and the like. They can rarely pull things off without help from state and local officials. Just ask the DEA when they come to California. They’re never able to pull off a raid without the help of the local sheriff or police departments. Refusing compliance is a big deal – and it will set the stage for others to do the same.

War on Drugs

Solves drug policy

Young 14 (Ernest Young; Oct. 28th 2014; Alston & Bird Professor of Law at Duke University, where he teaches constitutional law, federal courts, and foreign relations law. He is one of the nation's leading authorities on the constitutional law of federalism; "Federalism as a Constitutional Principle"; William Howard Taft Lecture on Constitutional Law;
http://chicago.ssrn.com/delivery.php?ID=584095096086109103085118077000008127032069023053024057123008012026070121029099118025037027038012044049023031013121092120010114119094030029067029093001121087066093036048114017027107101070084078080089012125102001075019122071065071066004084088092&EXT=pdf&TYPE=2) jskullz

But we can also look closer to home. High-profile contemporary American conflicts about healthcare, immigration, and even climate change have all played out on the legal terrain of federalism, with individual states like Virginia, Arizona, and California, respectively, wanting to go their own way out of dissatisfaction with national policy. Or consider the legalization of recreational marijuana use in Washington and Colorado. I was taught in school that Andrew Jackson put to rest any suggestion that individual states have the power to "nullify" federal laws, but Colorado's new version of "Rocky Mountain High" is demonstrating that a state may establish an extensive legal regime and "a vibrant new industry predicated on the legality of an activity that federal law forbids.'2 The reason this works is that enforcement of national drug laws effectively depends, in most instances, on the cooperation and resources of state and local law enforcement. If a state opts out, there's not a whole lot the Feds can do a massive commitment of federal resources. Whatever one thinks of legalizing marijuana, there is no doubt that federalism is, literally, ripped from today's headlines.

NSA

Nullification solves surveillance—NSA data centers and programs require state and local governments to provide resources—the counterplan pulls those resources out.

OffNow No Date (OffNow; Last Accessed: July 1, 2015; advocacy group dedicated to surveillance nullification; "The Plan"; http://www.offnow.org/plan) jskullz

FACT: The spy agency needs resources like water and electricity. It simply cannot operate its facilities without these essential resources. State and local governments often supply them. For instance, the NSA storage facility in Bluffdale, Utah, will reportedly use up to 1.7 million gallons of water every single day when fully operational. The city holds the contract to supply that water. It doesn't have to. Nothing requires state or local governments to help the federal government violate your rights! Under the legal principle known as the anti-commandeering doctrine, the Supreme Court has consistently held that the federal government cannot force states to help implement or enforce federal acts or programs. It rests primarily on four Supreme Court cases: Prigg v. Pennsylvania (1842), New York v. US (1992), Printz v. US (1997) and National Federation of Businesses v. Sebelius (2012). Printz serves the cornerstone. "The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program…such commands are fundamentally incompatible with our constitutional system of dual sovereignty." 1. RESOURCES Instead of relying on the federal government to reform its own spy program, the OffNow plan involves working at the state level to create an environment that makes it politically and logistically impossible for the NSA and other federal agencies to continue illegal surveillance programs. The strategy centers around state and local legislation designed to deprive the NSA and other agencies engaged in warrantless spying of the resources and cooperation they need to operate and accomplish their goals. The short version? We intend to pull the rug out from under them, box them in and shut them down. This model legislation (HERE), ready for introduction in any state, would ban a state (and all its political subdivisions) from providing assistance or material support in any way to federal spying programs. Within the scope of current jurisprudence, state law cannot prevent the federal government from bringing in its own supplies. But, the 2006 power grid issue indicates that in many situations, the federal government simply cannot do this on its own. As a legal matter, contracts for water, electricity and other resources and services are simply voluntary agreements made between the federal government (or its agents) and the state or local government. States legitimately can and should decide whether to honor the request based on the state's own set of priorities. The states and local communities should simply turn it off. In fact, Nevada took this path against the powerful **D**epartment **o**f **E**nergy, and won.

Empirics—New Hampshire

Mac Donald 3/6 (Steve Mac Donald; June 3rd 2015; producer and co-host for GrokTALK!, political activist, and journalist; "It's not just Congress: New Hampshire taking steps to limit warrantless tracking"; Watchdog Arena; http://watchdog.org/222441/new-hampshire-warrantless-tracking-surveillance/) jskullz

At least one state is taking steps to curtail surveillance inside its borders: New Hampshire, which has a history of restricting arbitrary electronic data collection. The introduction of radio frequency identification (RFID) technology and license plate readers for use in automatic toll collection triggered a series of laws to limit how and where the data could be collected. These laws made New Hampshire the only state to ban license plate readers in the nation. But that is not the only way for the government to track you. Millions of smartphones, tablets, and other wireless devices make it possible to trace the physical movements of anyone using them. So starting in 2011, New Hampshire produced two pieces of

legislation to restrict access to this data. One bill prohibited the use of electronic devices to track an individual without their consent or a court order. The second bill prohibited a person from gathering geolocation information from an electronic communications device without the express consent of the person using the device. But legislators, uncomfortable with the language, set them aside to study and never picked them up again. The very next year, Edward Snowdon made domestic spying and bulk data collection a kitchen table issue. So in 2014, the New Hampshire Legislature took another look at addressing violations of personal privacy at the state level. House Bill 592, like the bills before it, would have also restrained warrantless tracking of personal electronic devices. But this version was voted down by the House after tech companies convinced legislators that the language would prevent "NH entrepreneurs (from) carving out a space in the growing app economy, which is based on these electronics." A 2014 bill has fared better than its predecessors. House Bill 468 has passed the New Hampshire House and is waiting on a vote in the state Senate, which states: No government entity shall place, locate, or install an electronic device on the person or property of another, or obtain location information from such an electronic device, without a warrant issued by a judge based on probable cause and on a case-by-case basis. There are noteworthy exceptions, many of which appeared in previous iterations. Tracking is permitted without a warrant with the informed consent of a device owner, unless the owner knowingly loaned it to a third party. You can track calls for 911 emergencies. A parent or legal guardian can provide informed consent to locate a missing child. The government can track its own property or employees in possession of that property. And alcohol ignition interlock control devices placed by court order would also be traceable without a warrant. But this is a state-level bill. While it is critical to limit state agencies and law enforcement from warrantless tracking or data collection, the bill would not prevent federal intrusion. HB 468 "shall not apply to a federal government agency to the extent that federal statute preempts such application." After last Sunday, of course, this is largely a moot point. Congress failed to reauthorize those portions of the Patriot Act that allow bulk data collection by the NSA. And just last week a U.S. Court of appeals ruled that the NSA's collection of metadata based on its interpretation of the Patriot Act provisions was unlawful. The USA Freedom Act hints at eliminating the bulk collection of meta-data altogether but Judge Andrew Napolitano, in an opinion piece at Fox News, says this is not the case:The Freedom Act gets the NSA physically out of the telecoms' offices, but lets them come back in digitally whenever one of these secret FISA courts says so, and the standard for saying so is not probable cause as the Constitution requires. It is whatever the government wants and whenever it wants it. The so-called Freedom Act would actually legitimize all spying all the time on all of us in ways that the Patriot Act fails to do. If New Hampshire passes HB 468, it will place important limits on bulk or warrantless tracking. But if they are truly interested in protecting their citizens' privacy, that bill is a small toe in a very deep, dark pond still teeming with secret FISA warrants and NSA sharks, a pond Congress has no intention of draining anytime soon. The state will need to make a stronger case for Fourth Amendment rights and privacy, even if it means a state challenge to federal law.

The counterplan solves domestic surveillance policy

Wolverton, 14 (Joe II J.D., correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state, "Nullification vs. Constitutional Convention: How to Save Our Republic", The New American, http://www.thenewamerican.com/usnews/constitution/item/17892-nullification-vs-constitutional-convention-how-to-save-our-republic)//BW

Nullifying unconstitutional federal laws is very achievable, if constitutionalists were to inform themselves of this approach and then pursue it. Because the understanding is better in some states than it is in the nation as a whole, it is very possible for states to win victories via nullification to stop

unconstitutional federal laws that could not now realistically be repealed on the national level. Although only a relatively small number of states have so far nullified unconstitutional federal laws in the areas of gun control, ObamaCare, NSA surveillance, indefinite detention of civilians, etc., a string of state nullification victories would not only create a bandwagon effect encouraging other states to join the nullification movement, but also contribute to the overall national awakening — shortening the time it otherwise would take to create a constitutionalist U.S. Congress. A string of nullification victories would also cause Washington to tread more carefully than otherwise in how it might respond to the nullification efforts. But enacting a string of nullification bills in states across the nation — particularly bills possessing teeth that will be enforced by state officials — will not happen without creating the necessary understanding and activism to get state legislators on board. And improving Congress to the point where most congressmen begin abiding by their oaths of office will not happen without a national awakening — or at least an awakening in most congressional districts. But when this national understanding is created, watch out! Congress will begin terminating and phasing out all unconstitutional programs, and the resulting drop in spending will bring the budget into balance without any balanced budget amendment. In the meantime, a growing number of states will be holding the line against the federal juggernaut at their borders. The solution outlined above is not a "quick fix." But the price of liberty is eternal vigilance, not quick fixes. Let's therefore join together to create the understanding that will force elected officials to enforce the Constitution. And let's avoid the more dangerous route of trying to restore constitutional government by "revising" the Constitution.

Works for NSA—movement now

Mellon, 14 (Donald, "State Nullification Has an Undeserved Bad Reputation", Tea Party 911, http://www.teaparty911.com/blog/state-nullification-has-an-undeserved-bad-reputation/)//BW
State nullification can be defined as an act by a state legislature that prevents a federal law from effectively being implemented in that state. Can this be done legally and constitutionally against any federal law? Clearly if a federal law is unconstitutional it can be nullified by a state but what about laws that may be constitutional but unpopular in a state? There is a nullification process that is being used effectively across the nation to nullify federal laws that have not been declared unconstitutional. It is called "non-compliance". It is based on the Supreme Court approved "anti-commandeering doctrine" which explains that the federal government may not force or commandeer state officials or state resources to aid in the implementation of any federal laws. Any federal law, meaning laws both constitutional and unconstitutional, they just have to be sufficiently unpopular in the state to allow state legislators to pass non-compliance laws. Under non-compliance, state legislatures pass laws preventing state agents, resources, and perhaps companies licensed in the state from taking any action to implement or aid the implementation of a particular federal law. Without state compliance most federal laws can not be implemented because of the lack of necessary federal resources. Imagine how few guns would be registered if a federal agent had to be present to register a gun every time one is sold at a store or at a gun show. Bills using the process of non-compliance to preserve the second amendment have been introduced in 19 states, passed in 3 and will be introduced in several more states in the next session, including in Texas. Action is being taken in 18 states to protect the 4th amendment by limiting the use of NSA surveillance data against their citizens. Similar numbers exist for actions concerning nullifying Obamacare, common core, NDAA, drones and marijuana laws. All of these actions are legal and effective and if passed into law will not likely be overturned by the Supreme Court even if the law being nullified is constitutional.

Immigration

Immigration nullification solves—sanctuary jurisdictions prove.

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For a few decades now, several localities have conspicuously positioned themselves as "sanctuary" cities. 65 This is a broad term intended to describe jurisdic-tions that have placed limits on the efforts of local law enforcement officials to discover and investigate immigration status and the amount of assistance they will provide to federal enforcement authorities to enforce immigration laws, though they cannot limit Immigration and Customs Enforcement itself from operating in these localities.66One of the primary goals of sanctuary, or noncooperation, policies is to enhance community policing efforts and improve relationships between local law enforcement and immigrant communities who would otherwise be reluctant to contact the police for fear of their immigration status.67 While sanctuary jurisdictions have been present for some time, more recent federal enforcement efforts have spurred newer forms of noncooperation and enforcement-resistance policies in the past few years. While these attempts to remove immigration enforcement functions from local law enforcement have gained support from various quarters, including a range of associations of law enforcement officers, 68they have also encountered resistance in some states and from the federal government. States such as Arizona and Alabama have passed laws forbidding localities from implementing sanctuary ordinances. 69 Perhaps more significantly, the federal government recently completed rollout of its Secure Communities Program, effectively co-opting local law enforcement authorities into providing federal immigration authorities with information regarding undocumented people. 70Initiated by the U.S. Department of Homeland Security in 2008 and then tested and implemented nationwide over the past six years, S-Comm is an information-leveraging program that forwards information about every arrestee in a local jurisdiction to a federal database that checks for lawful status. 71 When local law enforcement authorities enter information about an arrestee into the Federal Bureau of Investigation's national crime database to check for outstanding warrants or past criminal history, that criminal background check will also result in an immigration status check. Thus, even if local officers, pursuant to a sanctuary policy, endeavor not to investigate or discover the immigration status of an individual they take into custody, the federal immigration authorities will still receive information about that individual's immigration status. At that point, federal officials may decide to further investigate or prosecute the individual in question, often beginning their process by issuing a "hold request" or "immigration detainer" requesting that the local agency hold the individual in custody until federal enforcement officials can interview or otherwise take custody of the individual. Understanding Immigration Federalism in the United States Although the federal government has declared the program mandatory, 73 some states and localities have resisted aspects of S-Comm. Specifically, a detainer-resistance movement, or anti-cooperation trend, has been developing across several jurisdictions in the past two years. Santa Clara County in California, for example, has passed resolutions that effectively decline to honor immigration detainer requests from ICE. 74 These jurisdictions offer varied policy reasons for resisting ICE hold requests, including the high costs of detention, the desire to focus on more pressing public safety priorities, and

the risk to law enforcement's relationship with immigrant communities, who might be less willing to come forward and contact the police if they fear they could be put into removal proceedings for doing so.75

Drones

The counterplan solves for drone control best

10th Amendment Center, 14 ("State of the Nullification Movement 2014", 10th Amendment Center, http://tenthamendment.wpengine.netdna-cdn.com/wp-content/uploads/2014/06/state-of-the-nullification-movement-2014.pdf)//BW

Currently, the federal government serves as the primary financial engine behind the expansion of drone surveillance carried out by states and local communities. The Department of Homeland Security issues large grants to local governments so they can purchase drones. Those grants, in and of themselves, represent an unconstitutional expansion of power. Digging deeper, we find that the feds are essentially funding a network of drones around the country and placing the operational burden on the states. Once they create a web over the whole country, DHS steps in with requests for 'information sharing' as provided for by ISE. The FBI could theoretically use the same process to couple its new facial recognition database, which is expected to become "smarter" by leaps and bounds in coming years, with state and local drone networks. That's why the most effective way to prevent mass-surveillance by drones is to prohibit or restrict how they're used in the states. Without the states and local communities operating the drones today, it will be far more difficult for any future national program to ever get off the ground. Since early 2013, ten states have passed bills into law that take important first steps to prohibit state and local governments from using drones without a warrant signed by a judge. They include Florida, Idaho, Illinois, Indiana, Oregon, Tennessee, Texas, Utah, Virginia, and Wisconsin. A bill in California is moving forward towards the governor's desk at the time of this writing. And while it is expected to pass the state legislature, previous actions from Gov. Brown indicate he is likely to veto any bills restricting police surveillance powers. Each of these state laws create significant hurdles for warrantless drone surveillances by governments on the state and local level. More complex follow-up legislation should be introduced and supported, taking into account more challenging issues such as the status of information collected incidentally to lawful drone use, how long law enforcement can hold on to drone-collected data, and how to handle government access to information collected by third-party drones.

2NC Court Strike Down

Court will uphold the counterplan
10th amendment Center 14

NDAA: Indefinite Detention
http://tracking.tenthamendmentcenter.com/issues/ndaa/

The federal government, under the 2012 National Defense Authorization Act (NDAA) and the 2001 Authorization to Use Military Force (AUMF), claims the power to arrest and detain people within the US and deny them access to courts, attorneys and more. In short, this is little more than government-sanctioned kidnapping. To learn more about the 2012 NDAA and indefinite detention, use the links in the sidebar of this page. The Liberty Preservation Act – and local ordinance – bans participation with or assistance in any way with any federal act which purports to authorize the indefinite detention of a person within the United States. Passage of the Liberty Preservation Act in your state, county, city and town will create obstacles to implementation that will help thwart the unconstitutional indefinite detention efforts of the federal government. State laws and local ordinances and resolutions are all important pieces of the puzzle to resist and nullify NDAA "indefinite detention." (model legislation here) MADISON'S BLUEPRINT James Madison, known as the Father of the Constitution, gave us a **blueprint for stopping federal overreach**. In Federalist 46, he argued that a "refusal to comply with officers of the Union" along with other actions at the state and local level would create a situation where the federal government would have an **almost impossible time enforcing their acts**. When several states join together and do the same, Madison said **it would "present obstructions which the federal government would hardly be willing to encounter.**" In the Virginia Resolutions of 1798, Madison wrote that "in case of a deliberate, palpable, and dangerous exercise" of power by the federal government, states "have the right, and are in duty bound, to interpose for arresting the progress of the evil." Thomas Jefferson, in the Kentucky Resolutions of 1798, wrote that "where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy" "that every State has a natural right in cases not within the compact to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them" **Indefinite Detention** represents just the kind of dangerous, palpable evil Madison was talking about, and the assumptions of power that Jefferson was talking about. Our model legislation is based on the principles and advice of James Madison and Thomas Jefferson. It's not going to be easy, and there's no guarantee of success. But, if we sit back and wait for the federal government to stop its own indefinite detention programs, we'll wait forever. So, as those founders advised, we're taking action without the feds, and taking every step possible to create "obstructions," and a "refusal to comply with officers of the Union," as Madison advised. The goal is to get enough states and localities on board so that **indefinite detention** is rendered null and void, as Jefferson advised. INDEFINITE DETENTION REPEALED? While some believe that the 2013 NDAA eliminated indefinite detention, it did not. Dianne Feinstein introduced a very weak amendment to 2013 – and it failed anyway. 2012 indefinite detention provisions remain intact – and the Obama administration is aggressively defending them in court today. Last year, Federal Judge Katherine Forrest struck down these indefinite detention powers as unconstitutional and issued a temporary court order blocking their use. That order was revoked by an appeals court and indefinite detention powers remain while the case is currently on appeal but not decided. Additionally, when Judge Forrest asked Obama administration attorneys if the federal government was using indefinite detention in violation of her temporary order blocking it, they refused to confirm, leaving the door open for potential use of these powers in secret, even in outright defiance of an order from the federal courts. All attempts to stop indefinite detention on a federal level – in **courts and the congress** – have so far failed. It remains the so-called "law of the land" and deserves to be nullified. SUPREMACY CLAUSE Some opponents of these efforts claim that the U.S. Constitution's "supremacy clause" prevents your local community from taking action. But this is a complete misunderstanding, not only of the supremacy clause, but of the local legislation as well. There is absolutely **ZERO serious dispute** about the fact that the federal government cannot "commandeer" the states (or their political subdivisions, local governments) to carry out its laws. None. Even **the Supreme Court has affirmed this multiple times.** In the 1842 case, Prigg v. Pennsylvania, the Supreme Court ruled that States couldn't be required to help the feds carry out programs to capture and return runaway slaves. In the 1992 case, New York v. United States, the Supreme Court ruled that Congress couldn't require states to enact specified waste disposal regulations. In the 1997 case, Printz v. United States, the Supreme Court ruled that the federal government could not command state law enforcement authorities to conduct background checks on prospective handgun purchasers. In the 2012 case, National Federation of Independent Business v. Sebelius, the Supreme Court ruled that a significant expansion of Medicaid was not a valid exercise of Congress's spending power, as it would coerce states to either accept the expansion or risk losing existing Medicaid funding. In each case, the Supreme Court made it quite clear that, in their opinion, the federal government cannot require the

states to act, or even coerce them to act through a threat to cut funding. Their opinion is correct. If the feds pass a law, they can sure try to enforce it if they want. But the states, and your local communities, absolutely do not have to help them in any way.

Nullification is legal

Haworth 13, (Peter, Ph.D. in Government from Georgetown University, "Real Federalism Includes Taking Interposition and Nullification Seriously", Nomocracy in Politics, http://nomocracyinpolitics.com/2013/09/25/real-federalism-includes-taking-interposition-and-nullification-seriously/)//BW

It is also important to note that Calhoun did not view nullification as an act that would make a law unconstitutional throughout the union; rather, the judgment by each State People would only apply within the boundaries of its own State. Furthermore, the judgment of each State People could be reversed via the other States passing a constitutional amendment that was contrary to the decision of the State People in question. If this occurred, a nullifying State People would have to either (1) abide by the new amendment; or (2) secede from the union.[5] Readers can further consider Calhoun's theory in my article on his Confederation thesis in the 2010 Political Science Reviewer. With respect to the constitutional appropriateness of the compact theory and its concomitant principles of interposition, nullification, and secession, it is appropriate to elaborate on how these were part of the original constitutional tradition, rather than something merely concocted by Calhoun in response to the tariff crisis. First, there is important evidence suggesting that interposition was employed by the States in response to perceived unconstitutional enactments by the Confederation Congress (e.g., its acceptance of the Treaty of Paris of 1783).[6] Second, interposition and secession (and de facto nullification) were understood and endorsed during the ratification debate about the proposed Constitution. [7] Federalists, such as Madison and Hamilton for example, were noted voices for interposition as a means of checking hypothetical federal usurpations. Secession was considered and endorsed as being constitutional by many during the ratification period, and a State's right to secession ultimately became a de facto part of the Constitution via Congress's acceptance of the ratifications of New York, Virginia, and Rhode Island, that were all qualified with secession statements. As I have argued elsewhere, such qualifications to the original compact legally inserted recognition of secession as a State reserved power into the Constitution's terms. Although Calhoun's elaborate development of nullification doctrine was not explicitly recognized during the Founding, an almost de facto version of it was intended by Virginia's ratifying convention.[8] Moreover, as Reinsch shows in his above-mentioned first essay, Madison "pen[ed a letter] to Thomas Jefferson in the fall of 1787 that the state governments will stand ready in the case of violations of their reserved powers under the Constitution to retake said powers."

Nullification is legal and successful—vital to preserving federalism

Wolverton, 14 (Joe II J.D., correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state, "Nullification vs. Constitutional Convention: How to Save Our Republic", The New American, http://www.thenewamerican.com/usnews/constitution/item/17892-nullification-vs-constitutional-convention-how-to-save-our-republic)//BW

The constitutional convention approach surveyed above is based on changing the Constitution. It is risky because the changes could end up being as radical as altering the fundamental structure of our government — and could even entail an entirely new Constitution. It is not as risky as seceding from the union and starting anew, but it is risky nonetheless. On the other hand, nullification is based not on altering the Constitution but on enforcing it. States that nullify congressional acts or presidential decrees that violate the Constitution would not only be stopping the federal juggernaut at their state borders, they would also be signaling that the Constitution is so vitally important that it must be enforced. In the Kentucky Resolution of 1799, Thomas Jefferson called

nullification the "rightful remedy" for any and all unconstitutional acts of the federal government. The federal government may exercise only those powers that were delegated to it. This is made clear by the 10th 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." Simply stated, nullification recognizes each state's reserved power to nullify, or invalidate, any federal measure that a state deems unconstitutional. Nullification is founded on the fact that the sovereign states formed the union, and as creators of the contract, they retain ultimate authority to enforce the constitutional limits of the power of the federal government. There are several benefits for applying this understanding via nullification: It is a far safer approach for remedying problems caused by violating the Constitution than a constitutional convention; it is based on upholding the Constitution and the founding principles of the Republic; and it can be implemented by individual states, without having to first get two-thirds of the states on board. Despite the benefits, there are those who insist that nullification is unconstitutional. They argue that the so-called Supremacy Clause of Article VI of the Constitution puts federal laws above state laws and that the Supreme Court has the final say on the constitutionality of federal laws. Both of these claims can be easily dismissed. Regarding the first claim, the Supremacy Clause does not declare that all laws passed by the federal government are the supreme law of the land, period. A closer reading reveals that it declares the "laws of the United States made in pursuance" of the Constitution are the supreme law of the land. In pursuance thereof, not in violation thereof. None of the provisions of ObamaCare, for example, is permissible under any enumerated power given to Congress in the Constitution. They were not passed in pursuance of the Constitution, therefore they are not the supreme law of the land, and they may be declared null and void by the states. Alexander Hamilton provided the rationale for this interpretation of this part of Article VI when he wrote in The Federalist, No. 33: If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger society which are not pursuant to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.] But how about the claim that the Supreme Court has the final say regarding the constitutionality of federal laws or edicts? Thomas Jefferson had something to say about the matter. In 1804, he wrote that giving the Supreme Court power to declare unconstitutional acts of the legislature or executive "would make the judiciary a despotic branch." He noted that "nothing in the Constitution" gives the Supreme Court that right. Even Abraham Lincoln, who as president unconstitutionally used his executive power to deny habeas corpus, recognized the lack of constitutional authority for the Supreme Court's assumption of the role of ultimate arbiter of an act's conformity with the Constitution. Lincoln said that if the Supreme Court were afforded the power to declare whether an act of the federal government was constitutional, "the people will have ceased to be their own masters, having to that extent resigned their government into the hands of that eminent tribunal." Consider also the opinion of eminent constitutional scholar Von Holtz: "Violations of the Constitution may happen and the injured cannot, whether states or individuals, obtain justice through the court. Where the wrongs suffered are political in origin the remedies must be sought in a political way." He continues, regarding this "aristocracy of the robe": "That our national government, in any branch of it, is beyond the reach of the people; or has any sort of 'supremacy' except a limited measure of power granted by the supreme people is an error." How can anyone read these statements, or the 10th Amendment for that matter, and honestly conclude that any branch of the federal government is intended to be the surveyor of the boundaries of its own power? Every department of the federal government was created by the Constitution — therefore, by the states — and has no natural sovereignty. No branch can define its own authority. Such a thought is ridiculous and contrary to any theory of popular sovereignty ever enunciated. If the courts, Congress, or the president possessed such power, it would make them judge, jury, and executioner in every case in which their own act of exceeding constitutional authority is at bar. Look at it this way: If the federal government was "the decider," what purpose would the 10th Amendment serve? If he's being honest, even the most sanguine political observer would have to admit that the federal government will continue to expand its powers so long as it is allowed to decide the scope of those powers. It will even declare its usurpations constitutional, as was the case with the Supreme Court decision on ObamaCare. Think about it; if forcing Americans to buy a particular product — health insurance — is constitutional, what areas of human endeavor could possibly fall outside the scope of the Constitution?

AT: Supremacy Clause

Supremacy clause doesn't negate nullification—only mandates states follow actions explicitly laid out in the constitution for the federal government

McClanahan 10 (Brion McClanahan; Mar. 29th 2010; Ph.D. in American History from the University of South Carolina and a faculty member at Tom Woods' Liberty Classroom. Co-author of four books, The Founding Fathers Guide to the Constitution, Forgotten Conservatives in American History (with Clyde Wilson), The Politically Incorrect Guide to the Founding Fathers, and The Politically Incorrect Guide to Real American Heroes; "Who's Supreme? The Supremacy Clause Smackdown"; 10th Amendment Center; http://tenthamendmentcenter.com/2010/03/29/whos-supreme-the-supremacy-clause-smackdown/) jskullz

The so-called "supremacy clause" of the Constitution, found in Article 6, states, "This Constitution, and the Laws of the United States which shall be made *in Pursuance thereof*; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding [emphasis added]."

The key, of course, is the italicized phrase. All laws made in pursuance of the Constitution, or those clearly enumerated in the document, were supreme, State laws notwithstanding. In other words, the federal government was supreme in all items clearly listed in the document.

A quick reading of the Constitution illustrates that national healthcare is not one of the enumerated powers of the federal government, so obviously Engstrom's blanket and simplistic statement is blatantly incorrect, but his distortion of the supremacy clause goes further.

The inclusion of such a clause in the Constitution was first debated at the Constitutional Convention on 31 May 1787. In Edmund Randolph's initial proposal, called the Virginia Plan, the "national" legislature had the ability to "legislate in all cases to which the separate states are incompetent" and "to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union." John Rutledge, Pierce Butler, and Charles Pinckney of South Carolina challenged the word "incompetent" and demanded that Randolph define the term. Butler thought that the delegates "were running into an extreme, in taking away the powers of the states" through such language.

Randolph replied that he "disclaimed any intention to give indefinite powers to the national legislature, declaring that he was entirely opposed to such an inroad on the state jurisdictions, and that he did not think any considerations whatever could ever change his determination [emphasis added]." James Madison, the author of the Virginia Plan, was not as forthcoming as to his sentiment. Ultimately, Madison preferred a negative over State law and wished the national legislature to be supreme in call cases. But he was not in the majority.

The Convention again broached a federal negative on State law on 8 June 1787. Charles Pinckney, who presented a draft of a constitution shortly after Randolph offered the Virginia Plan, believed a national negative necessary to the security of the Union, and Madison, using imagery from the solar system and equating the sun to the national government, argued that without a national negative, the States "will continually fly out of their proper orbits, and destroy the order and harmony of the political system." Such symbolism made for a beautiful picture, but it belied reality.

To most of the assembled delegates, the national government was not the center of the political universe and the States retained their sovereignty. Hugh Williamson of North Carolina emphatically stated he "was against giving a power that might restrain the states from regulating their internal police."

Elbridge Gerry of Massachusetts was against an unlimited negative, and Gunning Bedford of Delaware believed a national negative was simply intended "to strip the small states of their equal right of suffrage." He asked, "Will not these large states crush the small ones, whenever they stand in the way of their ambitious or interested views?"

When the negative power was put to a vote, seven States voted against it and three for it, with Delaware divided (and Virginia only in the affirmative by one vote). Roger Sherman of Connecticut summarized the sentiment of the majority when he stated he "thought the cases in which the negative ought to be exercised might be defined." Since the negative did not pass, such a definition was unnecessary.

Thus, the federal government was supreme only in its enumerated powers and it did not have a negative over State law. Supremacy had limits.

By the time the Constitution was debated in the several State ratifying conventions in 1787 and 1788, the "supremacy clause" galvanized opponents of the document. The Constitution, they said, would destroy the States and render them impotent in their internal affairs. The

response from proponents of ratification illuminates the true intent of the clause. William Davie, a delegate to the Constitutional Convention from North Carolina and proponent of the Constitution, responded to attacks levied on the "supremacy clause" by stating that:

This Constitution, as to the powers therein granted, is constantly to be the supreme law of the land. Every power ceded by it must be executed without being counteracted by the laws or constitutions of the individual states. Gentlemen should distinguish that it is not the supreme law in the exercise of power not granted. It can be supreme only in cases consistent with the powers specially granted, and not in usurpations [emphasis added].

Davie wasn't alone in this opinion. Future Supreme Court justice James Iredell of North Carolina argued that, "This clause [the supremacy clause] is supposed to give too much power, when, in fact, it only provides for the execution of those powers which are already given in the foregoing articles.If Congress, under pretence of executing one power, should, in fact, usurp another, they will violate the Constitution [emphasis added]."

Furthermore, in a foreshadowing of nullification, Iredell argued that, "It appears to me merely a general clause, the amount of which is that, when they [Congress] pass an act, if it be in the execution of a power given by the Constitution, it shall be binding on the people, otherwise not [emphasis added]. Other ratifying conventions had similar debates, and proponents of the Constitution continually reassured wavering supporters that the Constitution would only be supreme within its delegated authority.

Most bought their assurances, though to staunch opponents, the Constitution still vested too much power in the central authority. The States would lose their sovereignty, they argued, and as a result, these men demanded an amendment to the Constitution that expressly maintained the sovereignty of the States and placed limits on federal power. Even several moderate supporters of the Constitution embraced this idea.

Ultimately, the three most powerful States in the Union, New York, Massachusetts, and Virginia, demanded that a bill of rights be immediately added to the Constitution; near the top of those recommended amendments on every list, a State sovereignty resolution. These ultimately became the Tenth Amendment to the Constitution, which reads, "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."

Clearly the intent of this amendment was to mitigate any design the federal government had on enlarging its powers through the "supremacy clause." If the power was not enumerated in the Constitution and the States were not prohibited by the Constitution from exercising said power, then that power was reserved to the States.

Several other constitutional "scholars" have weighed in on the debate in the last week, and each has invoked the "supremacy clause" to defend their opposition to State action against healthcare. Duke Law Professor Neil Siegel went so far as to suggest that the States are not reading the Tenth Amendment correctly. In perhaps the most outlandish statement of the debate, he also said, "Any talk of nullification bothers me because it's talk of lawlessness."

I guess Mr. Siegel has failed to consider that Idaho bill HO391 was passed by a legitimate legislative body elected by the people of the State. That would make it lawful.

Of course, this debate ultimately boils down to loose interpretation verses strict construction. Thomas Jefferson had the best line on this issue. When asked to read between the lines to "find" implied powers, Jefferson responded that he had done that, and he "found only blank space."

The original intent of both the "supremacy clause" and the Tenth Amendment indicate that Idaho and the other States challenging Obamacare are justified and correct and that the legal profession is either in the tank for the federal government or has not read either the debates of the Constitutional Convention and/or the State ratifying debates. This should make people like Engstrom and Siegel, rather than legitimate State law directed at unconstitutional authority, irrelevant.

AT: Cooper v. Aaron

Unconstitutional laws do not receive the same protections

Rufino 13 (Diane Rufino; Aug. 27th 2013; molecular biologist-turned constitutional attorney.She heads the Eastern NC Tea Party (Pitt County area), is the legislative chair for the Republican Women of Pitt County, and volunteers with the Beaufort County chapter of the National Center for Constitutional Studies; "The Supremacy Clause and Proper Constitutional Bounds"; Tenth Amendment Center; http://blog.tenthamendmentcenter.com/2013/08/the-supremacy-clause-and-proper-constitutional-bounds/) jskullz

Critics are quick to point out that the doctrine of nullification has never been legally upheld. In fact, the Supreme Court expressly rejected it – in Ableman v. Booth, 1959, and Cooper v. Aaron, 1958.¶ They say that the courts have spoken on the subject, and under the Supremacy Clause, federal law is superior to state law. Further, they argue that under Article III of the Constitution, the federal judiciary has the final power to interpret the Constitution. Therefore, the critics conclude, that the power to make final decisions about the constitutionality of federal laws lies with the federal courts, not the states, and the states do not have the power to nullify federal laws but rather, are duty-bound to obey them.¶ The fatal flaw in their arguments, however, is that they believe that the judiciary, a branch of the same federal government that tends to overstep their constitutional bounds, is somehow above the law and not subject to the remedy of nullification as the other branches are.¶ Another fatal flaw in their argument is that somehow, the Supremacy Clause is a rubber stamp that labels every federal law, every federal court decision, and every federal action "supreme." They, and especially the justices of the Supreme Court, refer to the Supremacy Clause as if it were the Midas Touch – a magical power that turns EVERYTHING the federal government does, including by all three branches, to gold. Nothing is farther than the truth. The Supremacy Clause states simply: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; …shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby…"¶ There is no debate that the Constitution, as originally drafted and defended, and as intended and ratified, designed a government of limited powers. Therefore it follows that only laws passed to legislate for the limited functions listed in the Constitution are supreme. Regarding objects and designs not expressly listed in the Constitution, the Ninth and Tenth Amendment remind us that they are reserved to the People or the States, respectively, and the federal government can claim no such supremacy. The Supremacy Clause states a preemptive doctrine that asserts sovereignty just as equally as the Ninth and Tenth Amendments assert sovereignty.

NSA=Unconstitutional

NSA is unconstitutional—violates existing precedents

Donohue 13 (Laura K. Donohue; June 21st 2013; professor at Georgetown University Law Center and director of Georgetown's Center on National Security and the Law; "NSA surveillance may be legal — but it's unconstitutional"; The Washington Post; http://www.washingtonpost.com/opinions/nsa-surveillance-may-be-legal--but-its-unconstitutional/2013/06/21/b9ddec20-d44d-11e2-a73e-826d299ff459_story.html) jskullz

The National Security Agency's recently revealed surveillance programs undermine the purpose of the Foreign Intelligence Surveillance Act, which was established to prevent this kind of overreach. They violate the Fourth Amendment's guarantee against unreasonable search and seizure. And they underscore the dangers of growing executive power.¶ The intelligence community has a history of overreaching in the name of national security. In the mid-1970s, it came to light that, since the 1940s, the NSA had been collecting international telegraphic traffic from companies, in the process obtaining millions of Americans' telegrams that were unrelated to foreign targets. From 1940 to 1973, the CIA and the FBI engaged in covert mail-opening programs that violated laws prohibiting the interception or opening of mail. The agencies also conducted warrantless "surreptitious entries," breaking into targets' offices and homes to photocopy or steal business records and personal documents. The Army Security Agency intercepted domestic radio communications. And the Army's CONUS program placed more than 100,000 people under surveillance, including lawmakers and civil rights leaders.¶ After an extensive investigation of the agencies' actions, Congress passed the 1978 Foreign Intelligence Surveillance Act (FISA) to limit sweeping collection of intelligence and create rigorous oversight. But 35 years later, the NSA is using this law and its subsequent amendments as legal grounds to run even more invasive programs than those that gave rise to the statute.¶ We've learned that in April, the Foreign Intelligence Surveillance Court (FISC) ordered Verizon to provide information on calls made by each subscriber over a three-month period. Over the past seven years, similar orders have been served continuously on AT&T, Sprint and other telecommunications providers.¶ Another program, PRISM, disclosed by the Guardian and The Washington Post, allows the NSA and the FBI to obtain online data including e-mails, photographs, documents and connection logs. The information that can be assembledabout any one person — much less organizations, social networks and entire communities — is staggering: What we do, think and believe.¶ The government defends the programs' legality, saying they comply with FISA and its amendments. It may be right, but only because FISA has ceased to provide a meaningful constraint.¶ Under the traditional FISA, if the government wants to conduct electronic surveillance, it must make a classified application to a special court, identitying or describing the target. It must demonstrate probable cause that the target is a foreign power or an agent thereof, and that the facilities to be monitored will be used by the target.¶ In 2008, Congress added section 702 to the statute, allowing the government to use electronic surveillance to collect foreign intelligence on non-U.S. persons it reasonably believes are abroad, without a court order for each target. A U.S. citizen may not intentionally be targeted.¶ To the extent that the FISC sanctioned PRISM, it may be consistent with the law. But it is disingenuous to suggest that millions of Americans' e-mails, photographs and documents are "incidental" to an investigation targeting foreigners overseas.¶ The telephony metadata program raises similar concerns. FISA did not originally envision the government accessing records. Following the 1995 Oklahoma City bombing, Congress allowed applications for obtaining records from certain kinds of businesses. In 2001, lawmakers further expanded FISA to give the government access to any business or personal records. Under section 215 of the Patriot Act, the government no longer has to prove that the target is a foreign power. It need only state that the records are sought as part of an investigation to protect against terrorism or clandestine intelligence.¶ This means that FISA can now be used to gather records concerning individuals who are neither the target of any investigation nor an agent of a foreign power. Entire databases — such as telephony metadata — can be obtained, as long as an authorized investigation exists.¶ Congress didn't pass Section 215 to allow for the wholesale collection of information. As Rep. F. James Sensenbrenner Jr. (R-Wis.), who helped draft the statute, wrote in the Guardian: "Congress intended to allow the intelligence communities to access targeted information for specific investigations. How can every call that every American makes or receives be relevant to a specific investigation?"¶ As a constitutional matter, the Supreme Court has long held that, where an individual has a reasonable expectation of privacy, search and seizure may occur only once the government has obtained a warrant, supported by probable cause and issued by a judge. The warrant must specify the places to be searched and items to be seized.

2NC Congressional Restrictions Key

The CP captures their congressional authorization arguments-it restores congressional authority over war powers

Bulman-Pozen-Attorney-Adviser, Office of Legal Counsel, **Department of Justice-12**
http://columbialawreview.org/federalism-as-a-safeguard-of-the-separation-of-powers/
Federalism as a Safeguard of the Separation of Powers

States frequently administer federal law, yet scholars have largely overlooked how the practice of cooperative federalism affects the balance of power across the branches of the federal government. This Article explains how **states check the federal ––executive in an era of expansive executive power** and how they **do so as champions of Congress**, both relying on congressionally conferred authority and casting themselves as Congress's faithful agents. By inviting the states to carry out federal law, Congress, whether purposefully or incidentally, counteracts the tendency of statutory ambiguity and broad delegations of authority to enhance federal executive power. **When states disagree with the federal executive** about how to administer the law, **they force attention back to the underlying statute**: Contending that their view is consistent with Congress's purposes, **states compel the federal executive to respond in kind.** States may also reinvigorate horizontal checks by calling on the courts or Congress as allies. Cooperative federalism schemes are a more practical means of checking federal executive power than many existing proposals because such schemes do not fight problems commentators emphasize— a vast administrative state, broad delegations, and polarized political parties—but rather harness these realities to serve separation of powers objectives.

The states can bolster congressional authority in relation to executive

Bulman-Pozen-Attorney-Adviser, Office of Legal Counsel, **Department of Justice-12**
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Federalism as a Safeguard of the Separation of Powers

As these examples suggest, one reason we may overlook how federalism affects the separation of powers is that our dominant understanding of federalism obscures key features of state challenges. Judicial opinions and legal scholarship tend to envision the states as separate sovereigns, resisting federal action from a position entirely outside the federal government. But a prevalent mode of federalism is cooperative federalism, in which states are charged by Congress with administering federal law. 8 [*462] When we turn our attention to cooperative federalism, we can see the distinctive way states may safeguard the separation of powers. Cohabiting a statutory scheme with the federal executive, **states frequently challenge not the raw exercise of federal power**, as traditional accounts of federalism would have it, but rather the faithfulness of the executive to the statutory scheme. And, in so doing, they rely on authority granted to them by Congress. States need not actually be Congress's faithful agents for them to claim this mantle and to force the federal executive to respond in kind. By assigning states a role in executing federal law, Congress has - often unwittingly - empowered them to provide the sort of **check on executive power that it is often unable, or unwilling, to provide directly.**

2NC Judicial Restrictions Key

Nullification comparatively stronger check on executive than Court-the plan is the fox guarding the hen house

Woods-10

Nullification : how to resist Federal tyranny in the 21st century Google Books
Thomas E. "Tom" Woods, Jr. is an American historian, political analyst, and author. Woods is a New York Times best-selling author and has published eleven books

It is not clear what the alternative to Jefferson's remedy of nullification might be. Unconstitutional laws have indeed been passed, in very great abundance, so the question he poses about what to do in such a situation **is not merely academic**. Should people gather petitions, asking those who drafted the objection- able law to change their minds? Good luck with that They could instead appeal to the courts. Although it would be nice if the courts were to grant us relief, what if they do not? The federal courts have, for all intents and purposes, ceased to police the federal government. We cannot be expected to believe that the matter is settled, and an odious law to be complied with merely because a handful of politically well-connected lawyers whom we are urged to treat with superstitious awe have solemnly informed us that all is well. It is not difficult to find support in history for the general principle that an unconstitutional law is void. Alexander Hlamilton contended in Federalist #78 that "there is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid, lb deny this, would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men, acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid." This principle should be beyond debate. The controversy arises when we consider how and by whom an unconstitutional law should be declared void (and thus not enforced). It was Hamilton's view that the courts would put things right. But what if they didn't? And since the federal courts are themselves a branch of the federal government, how can the people be expected to consider them impartial arbiters? The Supreme Court itself, after all, although usually pointed to as the monopolistic and infallible judge of the constitutionality of the federal government's actions, is itself a branch of the federal government **So in a dispute between the states and the federal government, the resolution is to come from...the federal government**? Jefferson refused to accept that answer. Under that arrangement, the states would inexorably be eclipsed by the federal government. It was impossible for Jefferson to believe that the states would have agreed to a system that assured their unjust subordination. Spencer Roane, a Virginia judge who would have been appointed Chief Justice of the United States by Thomas Jeffer- son had John Adams not chosen John Marshall in the waning hours of his presidency, noted that if the federal judiciary were to arbitrate such a dispute between itself and the states, it would be presiding over its own case, a clear absurdity: It lias, however, been supposed by some that... the right of the State governments to protest against, or to resist encroachments on their authority is taken away, and transferred to the Federal judiciary, whose power extends to all cases arising under the Constitution; that the Supreme Court is the umpire to decide between the States on the one side, and the United States on the other, in all questions touching the constitutionality of laws, or **acts of the Executive**. There are many cases which can never be brought before that tribunal, and I do humbly conceive that the States never could have committed an act of such egregious lolly as to agree thai their umpire should he altogether appointed and paid by the other party. The Supreme Court may be a perfectly impartial tribunal to decide between two States, but cannot be considered in that point of view when the contest lies between the United States and one of its members—The Supreme Court is but a department of the general government. A department is not competent to do that to which the whole government is inadequate____They cannot do it unless we tread underfoot the principle which forbids a party to decide Ins own cause. Joseph Desha, governor of Kentucky, identified the very same problem in 182>: When the general government encroaches upon the rights of the State, is it a safe principle to admit that a portion of the encroaching power shall have the right to determine finally whether an encroachment has been made or not? in fact, most of the encroachments made by the general gov- ernment flow through the Supreme Court itself, the very tri- bunal which claims to be the final arbiter of all such disputes. What chance for justice have the States when the usurpers of their rights are made their judges? Just as much as individuals when judged by their oppressors. Desha concluded that it is "believed to be the right, as it may hereafter become the duty of the State governments, to protect themselves from encroachments, and their citizens from oppres- sion, by refusing obedience" to "unconstitutional mandates/ Once we accept the underlying premise that an unconstitu- tional law is ipso facto void, it is not a long way to Jefferson's commonsense conclusion that someone ought to protect the people from the enforcement of such a law, and that the state governments, each one speaking only for itself, arc the logical choice to do so.9

Net Benefits

Politics

2NC Politics Net Benefit

The Counterplan causes norm cascading that changes federal policy-it also avoids politics by building constituencies for the plan

Robinson-JD Yale-7 40 Akron L. Rev. 647

ARTICLE: Citizens Not Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy

4. Laws and actions that influence the nation's foreign policy Localities' actions often attempt to influence national foreign policy. Some of these actions merely help reinforce and support preexisting federal foreign policy. The most prominent example of this is localities' support of the U.S. military in their operations abroad. 305 However, localities' actions may also be in protest to U.S. foreign policy or designed to change it. The Central American sanctuary movement grew out of dissatisfaction with the U.S.'s policy towards Central America in the 1980's and the belief that refugees from El Salvador and Guatemala were politically persecuted despite U.S. support for these regimes. In all, "more than 20 cities and two states declared themselves sanctuaries for Central American refugees." 306 During this same period, 87 cities created sister city type relationships with communities in Nicaragua, in part to show solidarity against U.S. policy there. 307 U.S. sanctions on Cuba have similarly been a target of state and local action both on political and economic grounds. The Illinois and Texas state legislatures have passed resolutions in support of normal relations between the U.S. and Cuba. 308 Some cities in the United States have established "Sister City" type relations with Cuban cities to express their support for more normal relations between the United States and Cuba. 309 After lobbying by agricultural interests, Illinois Governor Ryan [*708] led a mission to Cuba in 1999 to promote trade and deliver aid. 310 During the trip he met with Cuban President Fidel Castro. 311 Shortly after returning he stated, "My hope is there will be other state delegations that go, and hopefully we'll lift this embargo." 312 In 2002, Havana hosted governors and other representatives from seven states at a Food and Agribusiness Exhibition. 313 Over one hundred cities passed resolutions calling for the end of the Iraq War. 314 In early 2005 during the annual town hall day in Vermont, 49 cities and towns passed a resolution that asked the state legislature to investigate what the impact of National Guard deployments to Iraq are having on the state. 315 Several cities across the country have passed resolutions calling on their states to withdraw their National Guard troops from Iraq. 316 Dozens of local ballot initiatives in communities across the country called on the federal government to bring the troops home from Iraq in the November 2006 elections. 317 State governors have also been openly critical of the U.S.'s involvement in the conflict in Iraq. 318 In March 2007, several towns in Vermont passed resolutions calling for the impeachment of President Bush and Vice President Cheney. In April 2007, the Vermont State Senate in a non-binding resolution called on members of the U.S. House of Representatives to begin impeachment proceedings against the President and Vice President because of their actions in the United States and abroad, including Iraq. These calls for [*709] impeachment, which highlight a deep internal divide within the United States over its policy in Iraq, were reported upon by media around the world. 319 States and localities have pushed to change U.S. foreign policy more broadly as well. For example, after the failure of SALT II during the Carter administration, the unwillingness of Reagan to support a nuclear test ban treaty, and the development of the Strategic Defense Initiative, citizens banded together to promote a freeze on the production of nuclear weapons in the 1980s. Through town meetings, local referenda, resolutions, or other initiatives, more than 900 local governments acted on the freeze issue. 320 After the end of the Cold War, at least 70 mayors in the United States as well as hundreds of mayors from over 100 countries have signed a statement in support of a nuclear free world. 321 State assemblies have similarly passed resolutions calling for the end of nuclear weapons. 322 Some states have taken a different approach towards this national defense issue with at least 10 states having passed resolutions calling upon the national government to deploy a missile defense system since 1997. 323 States have also urged the United States to sign and ratify international agreements. For example, several state governments have passed resolutions in support of the Convention on the Elimination of Discrimination Against Women (CEDAW). 324 Often state and local action arises out of dissatisfaction with the perceived inadequacy or incorrectness of a federal policy towards a foreign policy issue. Catherine Powell calls the impact of state and local [*710] laws on national foreign policy "dialogic federalism." 325 She argues that **enough local ordinances can create a norm cascade that affects federal policy**. 326 The U.S. federal sanctions against South Africa passed by Congress over President Reagan's veto in 1986 were arguably in part a result of just such a norm cascade created by anti-apartheid resolutions and laws at the state and local level. 327 In many ways, it is the mobilization of citizens around, more than the passage of a resolution or act on a foreign policy issue that leads to a norm cascade which changes federal policy. The effort required to convince legislators and their fellow citizens to support a locality's official action gives citizens a tangible and reachable local goal to focus their efforts on. This helps organize constituencies locally that can develop into a national coalition. For example, someone who has worked continuously to garner support for a local divestment initiative on Sudan is also more likely to call their Congressperson to urge them to pass the Darfur Accountability Act. Norm cascades created by localities' actions do not only impact the policy they are directed at, but have a wider impact as well. For instance, the South Africa or Sudan divestment campaigns can be seen as national human rights moments. These are moments in which a segment of the American public becomes unusually organized to promote a human rights-based foreign policy goal. Most voters remain generally unaware of how U.S. foreign policy implicates human rights in

other countries. Further, most voters do not base their vote on foreign policy human rights issues. **The signal given** by these human rights moments, however, creates an environment in which sympathetic legislators and policymakers can prioritize human rights concerns in other areas of foreign policy, knowing there is a **constituency that generally supports this type of action.**

The CP doesn't require congress to fight with the President over the legislation-our follow on arguments are after the DA

Not legislation which is the key internal link-Legislation like the plan crowds out the agenda

Mark Seidenfeld, Associate Professor, Florida State University College of Law, 1994 (80 Iowa L. Rev. 1)

The **cumbersome process of enacting legislation** interferes with the President's ability to get his legislative agenda through Congress much as it hinders direct congressional control of agency policy-setting. n196 A President has a limited amount of political capital he can use to press for a legislative agenda, and **precious little time to get his agenda enacted**. n197 These constraints prevent the President from marshalling through Congress all but a handful of statutory provisions reflecting his policy [*39] vision. Although such provisions, if carefully crafted, can significantly alter the perspectives with which agencies and courts view regulation, such judicial and administrative reaction is not likely to occur quickly. Even after such reaction occurs, a substantial legacy of existing regulatory policy will still be intact.In addition, the propensity of congressional committees to engage in special-interest-oriented oversight might seriously undercut presidential efforts to implement regulatory reform through legislation. n198 On any proposed regulatory measure, the President could face opposition from powerful committee members whose ability to modify and kill legislation is well-documented. n199 This is not meant to deny that the President has significant power that he can use to bring aspects of his legislative agenda to fruition. The President's ability to focus media attention on an issue, his power to bestow benefits on the constituents of members of Congress who support his agenda, and his potential to deliver votes in congressional elections increase the likelihood of legislative success for particular programs. n200 Repeated use of such tactics, however, will impose economic costs on society and concomitantly consume the President's political capital. n201 At some point the price to the President for pushing legislation through Congress exceeds the benefit he derives from doing so. Thus, a President would be unwise to rely too heavily on legislative changes to implement his policy vision.

Legislation is the link—has to pass too many hurdles which drag down the agenda

Paul Light, Founder of the Brookings Institution Center for Public Service, 1999 (The President's Agenda, p53-4)

Congressional Limits. Presidents face several structural limits on agenda size, but the congressional calendar involves the greatest institutional restrictions. Though Congress can act quickly during a crisis, most **legislation must pass through a series of decision points en route to enactment**. According to John Kennedy, the process contains **a number of hurdles**: It is very easy to defeat a bill in the Congress. It is much more difficult to pass one. To go through a subcommittee… and get a majority vote, the full committee and get a majority vote, go to the Rules Committee and get a rule, go to the Floor of the House and get a majority, start all over in the Senate, subcommittee and full committee, and in the Senate there is **unlimited debate**, so you can never bring a matter to a vote if there is enough determination on the part of the opponents, even if they are a minority, to go through the Senate with the bill. And then unanimously get a conference between the House and Senate to adjust the bill, or if one member objects, to have it go back through the Rules Committee, back through the Congress, and have this done on a controversial piece of legislation where powerful groups are opposing it, that is an extremely difficult task (transcript of television interview, in *Public Papers of The Presidents, 1963*, pp 892, 894) Kennedy's complaint came long before the rise of subcommittee government and the increased complexity within the legislative process. Past Presidents and their staffs generally have been sensitive to the demands of the congressional process. "The liaison office always walks a tight line," one Nixon officer suggested. "If you press too hard, you're likely to anger the committees. They have a heavy work load and won't take too much White House pressure. But if you don't press hard enough , the Congress will put your agenda on the back burner."

State action avoids Washington partisan gridlock

Etizen and Sage, 09- *Professor Emeritus of Sociology at Colorado State University and **Professor Emeritus of Sociology and Kinesiology at the University of Northern Colorado (D. Stanley Etizen and George H. Sage, Solutions to social problems: lessons from state and local governments, p.2-4)

These social problems have solutions, but the federal government rarely acts decisively to ameliorate them. Often there is gridlock in Washington, DC, as ideologues from the right and left refuse to work out compromise legislation ("partisanship-on-crack") (Grunwald, 2007). The role of government is at the heart of this ideological divide. Conservatives are hostile to the New Deal legacy of what they call "big government." They value individualism, freedom, and the market economy, believing fundamentally that government action interferes with each. Conservatives see social problems as the consequence of bad people making bad decisions. Most significantly, conservatives seek to reduce taxes, which consequently reduces government. Progressives counter these ideas by arguing that a laissez-faire approach guarantees exaggerated inequality. Moreover, they aver that it is not bad people but social structural

impediments that doom some to fail. Thus, progressive government policies such as a reliable safety net, reducing extreme income/wealth disparities, education for preschool and school children from high-risk situations, and stiffer laws and penalties for reducing the use of hydrocarbons are needed to attack social problems (Eitzen & Sage, 2007, pp. 219223). But these government programs are expensive, possibly requiring higher taxes to implement and sustain them. Added to the ideological gridlock is the power of interest groups and their extraordinary lobbying efforts to influence legislation. The United States, for example, does not have universal health insurance because of the power of the pharmaceutical and health insurance industries to prevent legislation that would undermine their enormous advantages under the current system. A final source of federal inaction against social problems is caution by many members of Congress and presidents to attempt new and bold plans. If bold initiatives fail, the public knows who to blame, and their wrath will be felt in the next election. Thus, inaction is often preferred over action and the status quo is preserved. With Washington often immobilized, some states and local governments are filling the social policy vacuum with bold initiatives. As Forbes, the conservative business magazine, editorialized: *Raise the minimum wage. Attack global warming. Negotiate lower prescription drug prices. Extend health coverage to the uninsured. Protect consumers from identity theft. A to-do list for Democrats taking over Congress? Nope, a sample of what states are up to. (Forbes, 2006, p.54)* These state actions are in contrast to federal inaction caused by the reasons noted, as well as other developments. First, the George W. Bush two-term presidency, three-fourths of which was with a Republican-dominated Congress, opted consistently for a conservative agenda-lower taxes, less government regulation of business, and the like. This agenda enhanced social problems. Second, the huge federal debt increased mightily with the Iraq War, and major tax cuts made policymakers shy about adding new and expensive programs. Third, the conservative agenda largely in force since the 1980s trumpeted a renewed federalism, handing off some federal powers to the states, giving away power over everything from welfare to Medicaid. According to political analyst Ezra Klein: "States can't deficit spend, so handing them once-federal responsibilities under the rubric of restored federalism promised to shrink the expansiveness, generosity, and responsiveness of government services" (2007, p. 24). However, governors, whether Republican or Democrat, find that it is not easy being a service-slashing ideologue on the state level, where they are closer than politicians in Washington to the people. Klein continued: "Governors can see the consequences of federal cutbacks and unfunded federal mandates. They see the consequences of letting cities deteriorate. They have to pay for the Medicaid patients. They have to pay for the consequences of housing cuts" (p. 24). Those states hit especially hard have even more incentive to take action to solve social problems. For example, states dependent on manufacturing, such as Michigan and Ohio, have been crushed by the dramatic loss of manufacturing jobs. Ohio, for instance, lost one-fifth of its manufacturing jobs from 2000 to 2006, resulting in a declining economy, many downwardly mobile families, and droves of young people leaving the state. Faced with this disaster the Ohio governor and legislature targeted investment in new industries (e.g., investing $250 million a year in the renewable energy industry) and funded an adult education system to retrain workers (Klein, 2007). What appears to be happening in some states and cities (certainly not all) is that Republicans and Democrats, unlike at the federal level, sometimes join in common cause to legislate for the common good. With Washington in gridlock, mayors and governors and their policymaking bodies are shedding rigid partisanship and taking on such social problems as undemocratic practices, inadequate health care, poverty, lack of affordable housing, inadequate schools, carbon emissions, global warming, excessive prescription drug costs, decaying infrastructure, and the lack of a living wage. This book explores local and state initiatives that demonstrate possible solutions to social problems, with the hope that the successful ones will "bubble up" to the federal level.

Federalism

IL-Nullification

Nullification promotes effective model of federalism-is a middle ground between centralization and secessionism

Warbiany-contributor liberty papers-10

http://www.thelibertypapers.org/2010/08/17/point-nullification-is-the-civil-disobedience-of-federalism/

Point: Nullification Is The Civil Disobedience of Federalism

In federal politics, states are party to an uneasy compact with other states under the guise of a superior government. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. As such, they cede many powers to that national government, but one must think that they do not cede all of their own powers. Something must be held in reserve. The question is what? After all, this "Supremacy Clause" Constitution only grants supremacy to those laws made in pursuance of the Constitution itself — anything not permitted by the Constitution must not be considered to be Supreme. The real question, then, is who decides what is Constitutional? Since 1803 and John Marshall, half of that question has been decided. The US Supreme Court is the arbiter of what is, and what is not, Constitutional. Further, a critical tool of state protection against the overreaches of the national government, the state appointment of Senators, was stricken in 1913 by the Seventeenth Amendment. Thus, the only legal method of appeal to Constitutionality available to the States is appeal to the Supreme Court, a body that hasn't found many overreaches of national government since the New Deal.

Nullification, the doctrine that states can disregard federal laws, declaring them unconstitutional, is a provocation somewhere between fighting a battle at the Supreme Court level and secession. Appeal to the Supreme Court is basic and need not be addressed here. Secession is a far more drastic measure, far more controversial, and an area where I believe Doug and I disagree, so it does require some treatment. Secession is often equated with violence, and treated as "violent revolution", but I would say that most instances of violence were continued by the government trying to retain their subjects, not by those trying to withdraw. In the American Revolution, nothing that I've seen suggests that had the British peacefully withdrawn their troops, the colonists would have had any cause for continuation of violence. Even in the US Civil War, it is unlikely that, had the North allowed the South to secede, that the South would have ridden on Washington to impose slavery back upon the North. Secession is not overthrow of the government, it is withdrawal therefrom. Of course, Doug and I agree that, whether they had the right or not, the South's secession was for morally unconscionable reasons — the continuance of the despicable practice of slavery. But the South's secession was no different than the American Revolution in that they were NOT attempts to overthrow a government outside of the territories that wanted their freedom, they could have been peaceful separations. The breakup of the Soviet Union is a good example. While it was only peaceful because the Russians didn't have the power to hold it together, it was a peaceful secession nonetheless. So at this point we've sketched out two responses to potentially unconstitutional overreaches by a national government. The first is the relatively weak appeal to the Supreme Court — asking the government to self-regulate. This is a difficult option. A Senate prior to the Seventeenth Amendment might take seriously their "Advice and Consent" role in judicial nominations to only nominate those who would respect state sovereignty and Constitutional limits, but that ship has sailed. In its wake, it's left a court with an expansive view of national government authority. Secession, on the other hand, is all-or-nothing. And while it may not be a violent act, history has shown that it often will be. As Doug pointed out in all three posts I read of his referencing secession, Jefferson in the Declaration of Independence said that taking to arms should not be done "for light and transient causes". Leaving only these two options is a fool's game. Secession will only be legitimate in the face of absolutely unconscionably abuse, and appeal to the judiciary is impotent and unlikely to succeed [and further, the structure of the direct election of Senate and the Supreme Court nomination process makes it unlikely this will change]. If one wants to give the national government limitless power, asking only that it police itself, having only these two options is the roadmap… …**which is why we need nullification**. **Nullification is the civil disobedience of Federalism**. Is it legal? No. After all, the Supremacy Clause and judicial review see to that. But it wasn't legal for Rosa Parks to sit at the front of the bus, or for black students to sit at a "Whites-only" counter at Woolworth's. Sometimes, the law is a ass. Sometimes, you need to disobey to make a point. I'll give an example. Here in California, we have legalized marijuana for medical purposes. This is in DIRECT contradiction to the Controlled Substances Act, an act that empowered the regulation to be written that declares marijuana a Schedule I drug — with no medical use whatsoever. This is nullification in action. This is civil disobedience. California is not denying the Federal government's power to enforce the drug laws — but it is denying its compliance with those laws and its assistance to the Feds in such power. What will the result of this action be? Well, this (and potentially the follow-on Proposition 19) forces the people of California address the question of marijuana. Several states have followed on with their own medical marijuana laws. We now have a body of medical marijuana users which can be called upon to testify that marijuana does have medical use. We have families who have watched their loved ones, battling horrible diseases which sap their appetite, who have been able to eat enough to keep their strength. Hopefully the result of this action will be the government backing down and taking marijuana off Schedule I. Viewed this way, nullification is less about disobedience as it **is about changing policy**. Nullification is a tactic in a wider strategy. It is a way to register unhappiness with federal dictates without necessarily going full-bore and

threatening secession. Further, it is a way to demonstrate, by direct example, that changes in policy are preferable to the way Washington demands.

Only nullification solves federalism—gives certain power to the states and avoid federal overreach

Martin 12 (Scott Martin; Nov. 23rd 2012; State Chapter Coordinator for the South Carolina Tenth Amendment Center; "Nullification: The means to reestablish federalism"; Tenth Amendment Center; http://blog.tenthamendmentcenter.com/2012/11/nullification-the-means-to-reestablish-federalism/) jskullz

Judging by the size and power of the central government, the reach of the laws it passes, and the accelerating rate of increase in all of the above, expecting the Congress and president to voluntarily stop doing what they've been doing for the past 100 years, or so, is [impractical] insanity. It doesn't matter which party wrests control of the system, the federal government continues to grow. Don't expect the Supreme Court to side with Liberty, either.¶ Yes, the states must assert federalism.¶ The means to do so is Nullification.¶ Any single state, on any issue not delegated to the central government by all the states, retains the obligation to stave off intrusion into its jurisdiction. It does this with legislation, at the state level. The law may not use the word, 'nullification.' It may state that said federal law shall not have effect, shall be ignored, is illegal, is unconstitutional, or, yes, is null and void in that state.

History proves—Nullification key to states rights

Haworth 13, (Peter, Ph.D. in Government from Georgetown University, "Real Federalism Includes Taking Interposition and Nullification Seriously", Nomocracy in Politics, http://nomocracyinpolitics.com/2013/09/25/real-federalism-includes-taking-interposition-and-nullification-seriously/)//BW

The Civil War and Postbellum periods, however, severely damaged the viability of nullification, and this coincided with cases where States became weaker political entities as a result of majority-faction crises. When the Northern States developed an anti-slavery majority faction (i.e., the Republican Party) against the Southern States and were able to begin dominating the Federal Government, the Southern States sensed that their liberty within the union would become increasingly compromised; thus, many elected to protect their liberty by seceding. Such Southern-State resistance through secession had severe consequences for this sectional minority in terms of its States' viability as independent political entities. In fact, the Southern States were reduced to economically impoverished (and, for a time, politically powerless and dependent) entities once the final conflict, due to their resistance, had passed. Another notable instance of a Postbellum majority-faction crisis that weakened the States occurred when the liberal progressive majority became dominant and both imposed crippling (and unconstitutional) regulations on businesses and significantly encroached upon constitutional State-powers via the New Deal. Here, again, **nullification was not an option for dissenting States**, and here again States ultimately became weaker, less independent entities as a result. This weakening of the States, however, was not just limited to a sectional minority like it had been for the South after the Civil War; it plagued all of the States. In these Postbellum cases, federal supremacy was used to enforce federal laws that were a boon to the majority faction coalition and a bane to the minorities who suffered under such legislation.[16] Moreover, such examples entailed questionable expansions of federal powers beyond their delegated limits for the sake of advancing the interests of the majority de jour. Finally, these examples illustrate the history of States becoming vulnerable to national majorities during a time in which they ultimately lost their vibrant autonomous status and, hence, had to begin acting as federal clients. Aside from the constitutional argument for nullification, acceptance of

Calhoun's theory—especially his notion of concurrent majorities—would have greatly aided the ability of minorities to protect themselves against the factional policy of the various ruling coalitions. South Carolina's nullification of the protective tariff had already prompted Congress to enact legislation in order to reduce the tariff from levels that had threatened Southern economic interests. Nullification could have continued this function within the federal union if its acceptability had persisted into the late nineteenth and, then, twentieth centuries. Think, for example, how it might have been used to protect the States where the Grange movement had gained prominence. Think about how States could have challenged questionable Court doctrines like the personal status of corporations. On the other hand, imagine how the prudent States could have used nullification to challenge FDR's New Deal regulations upon industries operating within their borders.

Nullification key to check federal power

Haworth 13, (Peter, Ph.D. in Government from Georgetown University, "Real Federalism Includes Taking Interposition and Nullification Seriously", Nomocracy in Politics, http://nomocracyinpolitics.com/2013/09/25/real-federalism-includes-taking-interposition-and-nullification-seriously/)//BW

In our America where vast portions of federal policy is technically illegal because it involves the Federal Government exceeding its constitutionally delegated powers, State interposition and nullification may be the only way to arrest such federal usurpation. Without these States' rights doctrines, Americans and their States will be virtually powerless as establishment elites continue to invent new creative case law and false constitutional theories that justify the amassing of even more power at the federal level. Without such doctrines of resistance, the current electoral status quo will persist; citizens will continue having to choose between two political parties that are both aimed at maintaining a Congress and President who often support (and definitely do not seriously seek to roll-back) central-level aggrandizement. These considerations (and conclusions from the above analysis) are why real federalism demands taking interposition and nullification seriously. The most plausible path for returning to true constitutional federalism, or even just preserving our current status quo, is through the States defending their reserved powers and the constitutional rights of their citizens by voiding unconstitutional federal laws within their borders. If such a practice became widespread and accepted, the Federal Government would quickly scale back its reach for new powers, if not even begin to return its current power-holdings back to those parties with rightful legal claims to them.

Modern day "Cartel Federalism" harms state agency only constitutional federalism can solve

Reinsch, 13 (Richard, the editor of the Library of Law and Liberty, "A Fistful of Federalism, Part I", Library of Law and Liberty, http://www.libertylawsite.org/2013/09/16/a-fistful-of-federalism-part-i/)//BW

Greve's competitive federalism also telegraphs why many states are refusing Obamacare funds. While the states were empowered to do so by the Medicaid portion of the Supreme Court's Obamacare decision, many of the states also sense that they'll be left holding the fiscal bag in a few years when the Feds no longer foot the bill. So we might say that certain states already know that our current federalism can't continue much longer. The point, however, is will the village be destroyed before we can save it? Greve's federalism also observes that contrary to mountains of spilled conservative ink, the states aren't the little lambs who must be protected from a voracious nationalist government bent on bringing them low. They've wanted to be brought low or rather to be repeat players in a game that treats federal tax revenues as an open commons that all can exploit. Greve calls this cartel federalism, we might also call it musical chairs federalism, before the music has stopped make sure you've grabbed

your state's share of the federal till. Convincingly, as Greve also notes, the major suits against New Deal expansionist government weren't brought by the states. In fact, I'm unaware of any of the states challenging this revolution under a vertical federalism theory. But let me state where I think Greve's federalism, if not wrong, leads us away from a proper approach to American federalism. In the interest of taking up the important question of "What Kind of Federalism?" let me argue that we cannot merely see the states as just revenue maximizing authorities or view federalism as only worthwhile if it leads to chastened fiscal policies and market-based regulatory programs in the states. These are certainly good things and we certainly need more states who follow this course of action. But, to get federalism right, we have to get politics right. So while the competition/cartel federalism dichotomy Greve provides gives us an abundance of insights regarding the depraved state of our federalism, it also elides over what we might call the truth about American Federalism.

Nullification key to state sovereignty

Haworth 13, (Peter, Ph.D. in Government from Georgetown University, "Real Federalism Includes Taking Interposition and Nullification Seriously", Nomocracy in Politics, http://nomocracyinpolitics.com/2013/09/25/real-federalism-includes-taking-interposition-and-nullification-seriously/)//BW

Crucially missing in this debate is recognition of the importance of States checking federal authority so as to protect their constitutional autonomy and generally maintain themselves as vibrant political entities rather than mere federal lackeys (i.e., self-interested seekers of the Federal Government's largesse). Both authors miss these points. Greve's call for "national scale" makes this obvious, but he even explicitly denounces nullification in a separate essay on that topic. Moreover, Reinsch's refusal to advocate interposition and nullification is also telling. In the sections that follow, I will elucidate the following: (1) why Calhoun's doctrine of nullification is a constitutional means of preserving the States' local liberty; (2) how the lack of nullification and interposition has damaged the States viability as independent political entities that do not need federal largesse; and (3) some final thoughts about the importance of interposition and nullification as well as the need to dismiss ad hominem arguments against these doctrines.[1] Professor Adam Tate has argued that John C. Calhoun's advocacy of nullification was crucially focused on maintaining the American union in a manner that preserved the liberty of the States. Liberty here is a State's political autonomy to self-govern its internal affairs within the framework of reserved powers that it retains via the 1789 Constitution. Calhoun desired union, but he opposed its pursuit via unconstitutional conceptions of federal supremacy that inevitably tended toward the Federal Government usurping powers reserved by the States. He implied his vision for both union and local liberty (and his opposition to federal dominance within the union) in his famous toast at the Jefferson Day Dinner in 1830: "The Union, next to our liberty, most dear." Nullification, then, is not aimed at disunion; rather, it seeks to maintain a union of States that protects the liberty (i.e., the constitutional political autonomy) of each State via allowing a State to defend itself against federal encroachments. With respect to Calhoun's constitutional theory, it is important to realize that he viewed the people of each State as a sovereign entity (even after they had ratified the 1789 Constitution) and, hence, capable of (at a minimum) revoking the delegation of powers granted to the Federal Government.[2] Sovereignty includes having supreme, ultimate, and unified power and authority over the internal affairs of people within established territorial boundaries. This is the first and primary issue with respect to federalism, for it elucidates where ultimate authority resides when a dispute arises between a State and the Federal Government. If the people of each State retain sovereignty within its borders, despite delegating powers to the Federal Government via ratifying the Constitution (i.e., a State's sovereignty is something separate from the sovereign powers it delegates), then a State People can decide to revoke its delegation of powers (to the Federal Government) via

secession. With respect to nullification, which is a specific and strong mode of interposition, Calhoun believed that the same State sovereignty issues applied, but nullification is aimed at maintaining union in a manner that appropriately recognizes a State to be the unit-of-sovereignty that has justifiable unilateral authority to determine whether a federal law is unconstitutional (unless and until a State's nullification is overruled through the Article V amendment process). Calhoun believed that each State People had this ultimate legal authority through their role as original parties to the Constitutional Compact.[3] It was the State People who gave the Constitution life via their ratification; as many of the Framers' maintained, the Philadelphia Convention merely proposed a new system of union, but it was the States who had the authority to make it fundamental law. Moreover, with respect to the Constitution and its amendments as a constitutional compact, since the State Peoples were original contracting parties (or equivalent in sovereign status to the State Peoples who were the historical contracting parties) and since no higher authority existed to determine whether the Constitution was being appropriately followed by the Federal Government (i.e., whether the Federal Government stays within the scope of its delegated powers), final judgment about whether or not a federal law was constitutional was left to each State People and not a department within the Federal Government (e.g. the federal judiciary) whose very life and authority is a creature-level product granted by creator-level State Peoples.[4]

A2: Alt Cause Federalism/Uniqueness

The CP is a massive boost to decentralized federalism---Nullification re-invigorates states as "vibrant political entities" by asserting authority to challenge the constitutionality of federal laws-that's Haworth-it overcomes their uniqueness and alt cause arguments

Nullification sets the precedent for a new decentralized federalism

Warbiany-contributor liberty papers-10

http://www.thelibertypapers.org/2010/08/17/point-nullification-is-the-civil-disobedience-of-federalism/

Point: Nullification Is The Civil Disobedience of Federalism

In federal politics, states are party to an uneasy compact with other states under the guise of a superior government. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. As such, they cede many powers to that national government, but one must think that they do not cede all of their own powers. Something must be held in reserve. The question is what? After all, this "Supremacy Clause" Constitution only grants supremacy to those laws made in pursuance of the Constitution itself — anything not permitted by the Constitution must not be considered to be Supreme. The real question, then, is who decides what is Constitutional? Since 1803 and John Marshall, half of that question has been decided. The US Supreme Court is the arbiter of what is, and what is not, Constitutional. Further, a critical tool of state protection against the overreaches of the national government, the state appointment of Senators, was stricken in 1913 by the Seventeenth Amendment. Thus, the only legal method of appeal to Constitutionality available to the States is appeal to the Supreme Court, a body that hasn't found many overreaches of national government since the New Deal.

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enough to keep their strength. Hopefully the result of this action will be the government backing down and taking marijuana off Schedule I. Viewed this way, nullification is less about disobedience as it **is about changing policy**. Nullification is a tactic in a wider strategy. It is a way to register unhappiness with federal dictates without necessarily going full-bore and threatening secession. Further, it is a way to demonstrate, by direct example, that changes in policy are preferable to the way Washington demands.

Yes Modeled

The CP will be modeled-constitutional arrangements key

Calabresi 95 –Associate Professor at Northwestern University School of Law- (Steven, "Symposium: Reflections On United States V. Lopez: "A Government Of Limited And Enumerated Powers": In Defense Of United States V. Lopez," Michigan Law Review, December 1995, Lexis)

> At the same time, U.S.-style constitutional federalism has become the order of the day in an extraordinarily large number of [*760] very important countries, some of which once might have been thought of as pure nation-states. Thus, the Federal Republic of Germany, the Republic of Austria, the Russian Federation, Spain, India, and Nigeria all have decentralized power by adopting constitutions that are significantly more federalist than the ones they replaced. Many other nations that had been influenced long ago by American federalism have chosen to retain and formalize their federal structures. Thus, the federalist constitutions of Australia, Canada, Brazil, Argentina, and Mexico, for example, all are basically alive and well today. As one surveys the world in 1995, American-style federalism of some kind or another is everywhere triumphant, while the forces of nationalism, although still dangerous, seem to be contained or in retreat. The few remaining highly centralized democratic nation-states like Great Britain, France, and Italy all face serious secessionist or devolutionary crises. Other highly centralized nation-states, like China, also seem ripe for a federalist, as well as a democratic, change. Even many existing federal and confederal entities seem to face serious pressure to devolve power further than they have done so far: thus, Russia, Spain, Canada, and Belgium all have very serious devolutionary or secessionist movements of some kind. Indeed, secessionist pressure has been so great that some federal structures recently have collapsed under its weight, as has happened in Czechoslovakia, Yugoslavia, and the former Soviet Union.

The U.S. is a global federalist model

Mallat '03

(Chilibi, PhD – U London, Case Western Reserve Journal of International Law, Winter, p. 21

Laurence Tribe, in *Constitutional Choices*, summarized what he calls the underlying political ideas of the American system into a list of six categories: representative republicanism, federalism, separation of powers, equality before the law, individual autonomy and procedural fairness. America has shared many of these traits with other democracies for a long time, but two constitutional features stand out on a world level as typically American -- federalism and the Supreme Court. The American people deserve credit for both inventions which brought new dimensions to democracy and the rule of law for the rest of the planet. Perhaps America does not know it, but the world has been a consistently better place wherever her two home-grown intellectual products have found anchor.

2NC Impact Overview

We control the case impacts---federalism is a structural constraint on international conflict

Calabresi 95 – Associate Professor at Northwestern University School of Law
(Steven G., "'A Government Of Limited And Enumerated Powers': In Defense Of United States V. Lopez," Michigan Law Review, Dec, 94 Mich. L. Rev. 752, pg lexis)

Small state federalism is a big part of what keeps the peace in countries like the United States and Switzerland. It is a big part of the reason why we do not have a Bosnia or a Northern Ireland or a Basque country or a Chechnya or a Corsica or a Quebec problem. 51 American federalism in the end is not a trivial matter or a quaint historical anachronism. American-style federalism is a thriving and vital institutional arrangement - partly planned by the Framers, partly the accident of history - and it prevents violence and war. It prevents religious warfare, it prevents secessionist warfare, and it prevents racial warfare. It is part of the reason why democratic majoritarianism in the United States has not produced violence or secession for 130 years, unlike the situation for example, in England, France, Germany, Russia, Czechoslovakia, Yugoslavia, Cyprus, or Spain. There is nothing in the U.S. Constitution that is more important or that has done more to promote peace, prosperity, and freedom than the federal structure of that great document. There is nothing in the U.S. Constitution that should absorb more completely the attention of the U.S. Supreme Court. So far, I have focused on the advantages of American-style small-state federalism in defusing centrifugal devolutionary tendencies, alleviating majority tyranny, and accentuating crosscutting social cleavages. But what about the advantages of international federalism; what are the ad- [*771] vantages of consolidating states into larger federal entities, as happened in North America in 1787 or in Europe in 1957? A first and obvious advantage is that consolidation reduces the threat of war. Because war usually occurs when two or more states compete for land or other resources, a reduction in the number of states also will reduce the likelihood of war. This result is especially true if the reduction in the number of states eliminates land boundaries between states that are hard to police, generate friction and border disputes, and that may require large standing armies to defend. In a brilliant article, Professor Akhil Amar has noted the importance of this point to both to the Framers of our Constitution and to President Abraham Lincoln. 52 Professor Amar shows that they believed a Union of States was essential in North America because otherwise the existence of land boundaries would lead here - as it had in Europe - to the creation of standing armies and ultimately to war. 53 The Framers accepted the old British notion that it was Britain's island situation that had kept her free of war and, importantly, free of a standing army that could be used to oppress the liberties of the people in a way that the British navy never could. These old geostrategic arguments for federalist consolidation obviously hold true today and played a role in the forming of the European Union, the United Nations, and almost every other multinational federation or alliance that has been created since 1945. Sometimes the geostrategic argument is expanded to become an argument for a multinational defensive alliance, like NATO, against a destabilizing power, like the former Soviet Union. In this variation, international federalism is partly a means of providing for the common defense and partly a means of reducing the likelihood of intra-alliance warfare in order to produce a united front against the prime military threat. Providing for the common defense, though, is itself a second and independent reason for forming international federations. It was a motivation for the formation of the U.S. federation in 1787 and, more recently, the European Union. A third related advantage is that international federations can undertake a host of governmental activities in which there are significant economies of scale. This is one reason why federations can provide better for the common defense than can their constituent parts. Intercontinental ballistic missiles, nuclear-powered aircraft [*772] carriers and submarines, and B-2 stealth bombers tend to be expensive. Economies of scale make it cheaper for fifty states to produce one set of these items than it would be for fifty states to try to produce fifty sets. This is true even without factoring in the North American regional tensions that would be created if this continent had to endure the presence of fifty nuclear minipowers, assuming that each small state could afford to own at least one Hiroshima-sized nuclear bomb. Important governmental economies of scale obtain in other areas, as well, however, going well beyond national defense. For example, there are important economies of scale to the governmental provision of space programs, scientific and biomedical research programs, the creation of transportation infrastructure, and even the running of some kinds of income and wealth redistribution programs. A fourth and vital advantage to international federations is that they can promote the free movement of goods and labor both among the components of the federation by reducing internal transaction costs and internationally by providing a unified front that reduces the costs of collective action when bargaining with other federations and nations. This reduces the barriers to an enormous range of utility-maximizing transactions thereby producing an enormous increase in social wealth.

Many federations have been formed in part for this reason, including the United States, the European Union, and the British Commonwealth, as well as all the trade-specific "federations" like the GATT and NAFTA. A fifth advantage to international federations is that they can help regulate externalities that may be generated by the policies and laws of one member state upon other member states. As I explain in more detail below, these externalities can be both negative and positive, 54 and, in both situations, some type of federal or international action may sometimes be appropriate. A well-known example of a problematic negative externality that could call for federal or international intervention occurs when one state pollutes the air or water of another and refuses to stop because all the costs of its otherwise beneficial action accrue to its neighbor. 55 [*773] Sixth and finally, 56 an advantage to international federation is that it may facilitate the protection of individual human rights. For reasons Madison explained in the Federalist Ten, 57 large governmental structures may be more sensitive than smaller governmental structures to the problems of abuse of individual and minority rights. 58 Remote federal legislatures or courts, like the U.S. Congress and Supreme Court, sometimes can protect important individual rights when national or local entities might be unable to do so. 59 As I have explained elsewhere, this argument remains a persuasive part of the case for augmented federal powers. 60 Some of the best arguments for centripetal international federalism, then, resemble some of the best arguments for centrifugal devolutionary federalism: in both cases - and for differing reasons - federalism helps prevent bloodshed and war. It is no wonder, then, that we live in an age of federalism at both the international and subnational level. Under the right circumstances, federalism can help to promote peace, prosperity, and happiness. It can alleviate the threat of majority tyranny - which is the central flaw of democracy. In some situations, it can reduce the visibility of dangerous social fault lines, thereby preventing bloodshed and violence. This necessarily brief comparative, historical, and empirical survey of the world's experience with federalism amply demonstrates the benefits at least of American-style small-state federalism. 61 In light of this evidence, the United States would be foolish indeed to abandon its federal system. [*774]

Prefer our impact-Best studies conclude federalism is key to prevent ethnic conflicts around the globe-that's Lawoti- –And, Secession escalates to global nuclear war.

Kamal **Shehadi,** Research Associate at the **International Institute for Strategic Studies,** 19**93**, Ethnic Self-Determination and the Break-Up of States, p. 81-82_

This paper has argued that self-determination conflicts have direct adverse consequences on international security. As they begin to tear nuclear states apart, the likelihood of nuclear weapons falling into the hands of individuals or groups willing to use them, or to trade them to others, will reach frightening levels. This likelihood increases if a conflict over self-determination escalates into a war between two nuclear states. The Russian Federation and Ukraine may fight over the Crimea and the Donbass area; and India and Pakistan may fight over Kashmir. Ethnic conflicts may also spread both within a state and from one state to the next.

2NC Climate

States solve warming—better track record and political will

Kincaid 8 – John, Robert B. & Helen S. Meyner Professor of Government and Public Service and Director of the Meyner Center for the Study of State and Local Government, Lafayette College, "CONTEMPORARY U.S. FEDERALISM: COERCIVE CHANGE WITH COOPERATIVE CONTINUITY"

In turn, liberal activists responding to conservative Supreme Court¶ rulings and to deregulation since the Reagan era have also stimulat-¶ ed considerable state policy-activism. For example, several multi-¶ state lawsuits have been initiated against the U.S. Environmental¶ Protection Agency alleging lax enforcement or lack of enforcement¶ of federal environmental standards. State officials have pursued liti-¶ gation and regulation in many policy areas, especially environmental¶ and consumer protection. Connecticut's attorney general, Richard¶ Blumenthal, expressed a leading justification for such activism: "Our¶ action is the result of federal inaction" (Quoted in Masters 2005). Also,¶ in an effort to compete with the conservative American Legislative¶ Exchange Council (ALEC), several hundred state legislators launched¶ the Progressive Legislative Action Network (PLAN) in 2005. According¶ to the policy dir¶ ector of the liberal Center for Policy Alter¶ natives, "states¶ are now the vanguard of the progressive movement" (Quoted in¶ Cauchon 2003).¶ State action on environmental protection captured considerable¶ media attention in 2006-07, especially when California's governor,¶ Arnold Schwarzenegger, joined Prime Minister Tony Blair of the United¶ Kingdom to sign an accor¶ d on global warming in August 2006. In¶ September¶ , Schwarzenegger signed a bill to reduce California's green-¶ house gas emissions by 25 per¶ cent by 2020. In 2004, Califor¶ nia imple¶ -¶ mented r¶ ules on vehicular gr¶ eenhouse gases that ar¶ e stricter than¶ the federal standards. Ten other states have adopted California's rules,¶ which limit the amount of carbon dioxide and other gases that auto-¶ mobiles can expel into the atmospher¶ e. In addition, California, New¶ York, and eight other states sued the U.S. Environmental Protection¶ Agency for failing to r¶ egulate carbon dioxide emissions fr¶ om power¶ plants. Some 23 states have set standar¶ ds requiring utilities to gener-¶ ate up to 33 per¶ cent of their energy from renewable sources by 2020.¶ In short, using their still considerable powers retained within the¶ U.S. constitutional system, the states ar¶ e major actors in domestic¶ policy-making and, occasionally, minor actors in foreign policy-mak-¶ ing, such as economic sanctions against various countries (Kincaid¶ 1999). As such, it should be noted that many U.S. states are huge¶ polities individually. California, for example, with 37.7 million resi-¶ dents, has a larger population than Canada and all but 34 countries¶ in the world. Accor¶ ding to the U.S. Central Intelligence Agency,¶ Califor¶ nia'¶ s economy ranked tenth in the world in 2005 (with Spain's¶ John Kincaid¶ 30¶ REAF, núm. 6, abril 2008, p. 10-36¶ economy being fourteenth), though the California Legislative Analyst's¶ Office contended that the Golden State's economy ranked eighth in¶ the world in 2005 (with Spain's economy being ninth). In January 2008,¶ Governor Schwarzenegger proposed to the legislature an austere $141¶ billion (¶ E¶ 94.8 billion) 2008-09 state operating budget that includes a¶ 10 percent reduction in state spending in order to cope with an ex-¶ pected $14.5 billion (¶ E¶ 9.7 billion) deficit. Indeed, most U.S. states have¶ larger economies, revenues, and government budgets than the ma-¶ jority of the world's nation-states.

Warming causes extinction. Action now is our last hope—prioritize this impact—by the time symptoms start showing it will already be too late—we have the shortest timeframe for action.

Kirsch No Date (Steve Kirsch; Last Accessed: July 6, 2015; Entrepreneur and holds a BA and MS in Electrical Engineering and Computer Science, citing the IPCC consensus report, "Global and regional drivers of accelerating CO2 emissions" by Michael R. Raupach, Gregg Marland, Philippe Ciais, Corinne Le Quéré, Josep G. Canadell, Gernot Klepper, and Christopher B. Field, and "6 Degrees" by Mark Lynas; "How it will End"; http://www.skirsch.com/politics/globalwarming/Extinction.htm) jskullz

Ostensibly, **we will die due to the effects of global warming**. By 2100, according to the IPCC consensus report (see Table SPM.3 on page 13 and footnote 5 on page 2 which explains the ranges in the table), there is a 5% chance that the average temperature of the planet will rise by more than 6.4ºC. That's in the report, clear as day, but nobody talks about it because only a few people understand exactly what that means to our planet. But one guy from the UK (who has hardly gotten any press in the US) Mark Lynas, has done the research on what this means. Lynas spent 3 years of his life poring over 10,000 scientific papers and found that, although it doesn't sound like a lot, a 6ºC temperature rise will pretty much wipe out just about every life form on the planet, us included. Although IPCC scientists had

previously projected that there was only a 5% chance of more than a 6.4ºC warming by 2100, the assumptions on which those projections are based have already been exceeded, which is pointed out in this paper in the Proceedings of the National Academy of Sciences. The paper points out that the assumptions in all 6 emission scenarios considered by the IPCC have already been exceeded. So that's why I am using the numbers from the A1FI scenario, which gave a 5% chance of exceeding 6.4ºC by 2100. If it doesn't happen by 2100, it will not be long after. I wrote a short web page "Why global warming should be every candidate's #1 priority" describing this in detail.¶ The bottom line is this: unless we change our ways, there is more than a 5% chance of a mass human extinction in less than 100 years. I'm just telling you what the overwhelming scientific consensus is. Whether or not you choose to believe it is, of course, up to you. If you do disagree, what is the scientific basis for your disagreement? Do you know something the scientists don't?¶ For some it will come much sooner. Australia will likely be mostly uninhabitable in 50 years from now (see Sydney 50 years to live Features The First Post).¶ So what really will kill us? Greed, fear, short sightedness, and an inability to create a government that serves the public interest.¶ Much as we may hate to admit it, our own government, which we empower to make decisions for us, is essentially no smarter than the frog in Gore's movie. Special interests, driven by short-term greed, control government decisions in America. Politicians, fearing they will be not be re-elected, pay attention to the people who are willing to spend big money to get their way. And despite all the awareness about global warming that has been generated to date, the public is still shortsighted and doesn't demand change. That lack of public outrage is why top staffers in the House complain that they can't pass even the simplest of measures to combat climate change, such as a bill to increase mileage standards for cars.¶ It's likely that we are not outraged because we will not feel the full impact of the ecological catastrophe we are creating today for another 30 to 50 years due to the thermal inertia of the ocean. The climate changes we are seeing today are just the tip of the iceberg; they are from our emissions from more than 30 years ago. Our emissions today are much higher than 30 years ago. But most people don't know that. They look out the window and things look fine. It seems just too impossible to believe that we could all be dead in less than 100 years. So we choose to ignore what the scientists tell us. The most unequivocal and important scientific consensus in our lifetime, and we choose to ignore it. How smart is that?¶ **We are also too easily distracted by other seemingly more immediate issues such as terrorism, Iraq, healthcare and immigration** to worry about things such as the survival of humanity. We think we can worry about that later. But we can't. **By the time global warming has caused mass devastation, it will be way to late to do anything about it**. The public can complain all they want...but it will be too late to make changes because the same "time delay" that has protected us for decades (the thermal inertia of the oceans) works the other way to make it impossible to reverse things quickly, even if we stopped all greenhouse gas emissions completely. Our climate is like a battleship: it's direction can not change quickly. Today, we are like mariners in a fog heading straight for disaster. By the time we can clearly see the iceberg ahead, it will be too late to turn the battleship to avoid hitting it.¶ Think I'm kidding? This is starting to happen already in Australia. Australia is experiencing the worst drought on record with a lot of areas that haven't had decent rain for 7 years forcing them to have to import food to survive. Australian Prime Minister John Howard doesn't believe in global warming. Howard refused to meet with Gore when Gore came to Australia and he continues to believe that destroying the jobs of coal miners would be bad for the Australian economy. So what is his plan? He tells Australians to "pray for rain." I wish I were joking about this. I'm not. This brilliant political leadership of denying the science and not ratifying the Kyoto protocol is costing Australians $3.8B in lost investment opportunities alone. 76% of Australians think climate change is a major problem and they booted Howard out in recent elections.¶ We're seeing the effect in America too. We are seeing a record-breaking drought in Georgia. Los Angeles normally gets 15 inches of rain per year, but there has only been 3.2 inches since July, making this the driest year on record. Florida is also experiencing the worst drought in its history, with Lake Okeechobee water levels shrinking to near-record lows, and the entire watershed of the Everglades drying out fast. In other parts of the US, extreme downpours are up 24 percent, according to an independent analysis by Environment America. The Pew Center on Global Climate Change has just issued a report Regional Impacts of climate change, four case studies including heatwaves in the midwest and wildfires in the west.

XT Federalism Solves Climate

Federalism solves climate change comparatively better—more innovation and resistance to lobbying

Deans No Date (Bob Deans; Last Accessed: July 3, 2015; author of Reckless: the Political Assault on the American Environment (2012) and The River Where America Began: A Journey Along the James (2007). He also coauthored In Deep Water: The Anatomy of a Disaster, the Fate of the Gulf, and How to End Our Oil Addiction (2010) and Clean Energy Common Sense: An American Call to Action on Global Climate Change (2009). The Richmond, Virginia, native spent 25 years as a correspondent for the Atlanta Journal-Constitution and other Cox newspapers. He is a former president of the White House Correspondents' Association; "NRDC VOICES: The New Climate Federalism"; onEarth; http://www.onearth.org/magazine/nrdc-voices-new-climate-federalism) jskullz

"We know humanity is facing an existential threat," Bill de Blasio said in his September 23 remarks. "The cause is how we heat our homes, how we transport ourselves, the reckless way in which we live. This is an issue we all face. No one is spared."¶ Our nation's mayors aren't waiting to follow the lead of others—not Washington, not the U.N. In 2005, the U.S. Conference of Mayors drafted a forward-leaning Climate Protection Agreement calling for sharp reductions in carbon dioxide emissions. The accord focuses on a sound and assertive mix of energy efficiency, renewable power, public transit options, and the use of methane released from landfills to generate electricity. The agreement has been signed by 1,060 mayors from every corner of the country, from Atlanta, Anchorage, Boston, and San Diego to Cleveland, Charlotte, and Des Moines. ¶ Prairie Village, Kansas, is in. So are Dallas, Salt Lake City, and Baton Rouge.¶ It's troubling that the U.S. Congress has been unwilling to take similar action, but there's never been any real doubt as to why. Between 2009 and 2013, the oil, gas, coal, and electric utility industries spent $1.6 billion lobbying in Washington. They've spent millions more in campaign contributions.¶ The leaders who run our cities, though, answer more directly to the public they serve than to industries that want to mire our future in the dirty fuels of the past. "At the local level, this is not seen as a partisan issue," former Miami mayor Manny Diaz explained to a roomful of NRDC staffers in Washington last spring. "Mayors said, 'We're not going to sit back and wait for those idiots in Washington to figure this out'—you can quote me on that. 'We're going to do it ourselves.' "¶ This is a good thing. Because apart from the vision our city leaders have shown, national efforts to cut carbon pollution ultimately depend on local actions. Here's why: In June, President Obama laid out the single most important step we've ever taken to shrink our carbon footprint. In the States, the power plants that generate our electricity kick out 38.1 percent of the dangerous carbon pollution that is driving climate change. Astonishingly, there are no limits as to how much of this pollution these plants may cough into our atmosphere. The Clean Air Act gives the president the authority, and the responsibility, to change this, and that's what he's doing. Under his proposal, the United States will cut power-plant carbon pollution 26 percent by 2020—compared with 2005 levels—and 30 percent by 2030. In fact, we can do better than that, and we should. Still, by placing the first-ever limits on power-plant carbon pollution, the president's plan moves us in the right direction. And it does so in a way that puts states in the driver's seat: The reduction targets of individual states will reflect their specific energy mix. States will then work with their local power companies to identify the most cost-effective way to hit the target.¶ The cheapest and quickest way to reduce carbon pollution, for example, is to increase energy efficiency so that we do more with less waste. That's exactly what hundreds of mayors have been doing in their cities for years, and these local efforts add up. Nationally, we've cut energy consumption in half—as a portion of our economic output—over just the past 35 years. We can do even better in the years to come. That's how technology works. Success builds on itself.¶ Mayors and governors in more than 30 states have backed policies to promote renewable energy. As a result, wind turbines and solar facilities accounted for 44 percent of all the new electricity-generating capacity installed in our country during 2012 and 2013. During the first seven months of this year, that figure rose to 51 percent. And, as of mid-2014, we're getting 5.5 percent of our electricity from the wind and sun. That's a pretty good start.¶ Cutting carbon pollution is a national goal, but achieving it requires local action. Our mayors and governors have shown they have the wisdom—and the will—to get the job done. All of us, including the president, are counting on them to keep leading us forward.

2NC Iraq

Continued federalism key to modeling—empirically true

Calabresi 95 –Associate Professor at Northwestern University School of Law- (Steven, "Symposium: Reflections On United States V. Lopez: "A Government Of Limited And Enumerated Powers": In Defense Of United States V. Lopez," Michigan Law Review, December 1995, Lexis)

The fifty years since then have seen the birth of the United Na- tions, the North Atlantic Treaty Organization (NATO), the Euro- pean Union, the European Convention on Human Rights, the British Commonwealth, the Confederation of Independent States (CIS), the GATT, the NAFTA, and countless other transnational "federal" entities of varying degrees of importance.24 Many of these were openly inspired by the success story of American feder- alism, which, for example, led many Europeans to want to build a Common Market that could become a "United States of Europe." While many of these new democratic transnational entities are very weak, they nonetheless have developed important powers: they have helped to keep the peace, and in some instances, as with the European Union, they show real potential for some day attaining essentially all the attributes of sovereignty commonly associated with a federal nation-state, like the United States. The growth and success of transnational confederal forms since 1945 is truly aston- ishing and rightly is viewed by many - either with alarm or with hope - as holding out the eventual prospect of a future global fed- eral government or at least the prospect of several continental-sized federal governments. At the same time, U.S.-style constitutional federalism has be- come the order of the day in an extraordinarily large number of very important countries, some of which once might have been thought of as pure nation-states. Thus, the Federal Republic of Germany, the Republic of Austria, the Russian Federation, Spain, India, and Nigeria all have decentralized power by adopting consti- tutions that are significantly more federalist than the ones they re- placed.25 Many other nations that had been influenced long ago by American federalism have chosen to retain and formalize their fed- eral structures. Thus, the federalist constitutions of Australia, Can- ada, Brazil, Argentina, and Mexico, for example, all are basically alive and well today.

That federalism is key to Iraqi stability—solves ISIL

Biden 8/22/**14** – Joe, "Iraqis must rise above their differences to rout terrorists" http://www.washingtonpost.com/opinions/vice-president-biden-iraqis-can-rout-isil-by-rising-above-differences/2014/08/22/0dcfdc06-2a12-11e4-958c-268a320a60ce_story.html

For Iraq, success will require genuine compromise from all sides and a new government in Baghdad capable of responding to the needs of all of Iraq's communities. We cannot want that more than Iraqis do. Unless Iraq can do this, no amount of outside intervention will matter — nor will it continue indefinitely.¶ That's why government formation is so critical. As prime minister-designate, Abadi is working to put forward a new lineup of cabinet ministers and a road map that will set the agenda for Iraq's new government. We are encouraging Iraqi leaders to complete this process as soon as possible. We are hopeful that the road map Iraq's parliament endorses will sketch a vision for harnessing the resources of the state to benefit all communities and take the fight to ISIL.¶ We are also encouraging Iraq's neighbors to refrain from fueling sectarian divisions, which only plays into ISIL's hands, and instead to treat this shared challenge as an opportunity to begin a new chapter in their relations with Iraq and with each other.¶ Iraq's security efforts, like its politics, must harness the energy and cooperation of all communities. This new spirit of cooperation was evident this week in northern Iraq, where Iraqi and Kurdish forces worked together to retake the Mosul dam from ISIL. Notwithstanding U.S. support, this operation could not have succeeded without cooperation between the Kurdish pesh merga and Iraqi security forces. This was the first joint operation of its kind, and we believe it is a model to build upon.¶ Another approach that is emerging is a "functioning federalism" under the Iraqi constitution, which would ensure equitable revenue-sharing for all provinces and establish locally rooted security structures, such as a national guard, to protect the population in cities and towns and deny space for ISIL while protecting

Iraq's territorial integrity. The United States would be prepared to offer training and other forms of assistance under our Strategic Framework Agreement to help such a model succeed.

ISIS causes catastrophic grid blackout—Kills millions

Bedard 9/3/**14** – Paul, columnist at the Washington Examiner, "New ISIS threat: America's electric grid; blackout could kill 9 of 10" http://washingtonexaminer.com/new-isis-threat-americas-electric-grid-blackout-could-kill-9-of-10/article/2552766

"By one estimate, should the power go out and stay out for over a year, nine out of 10 Americans would likely perish," said Frank Gaffney, founder and president of the Center for Security Policy in Washington.¶ ¶ At the afternoon press conference, Gaffney dubbed the potential crisis the "grid jihad."¶ ¶ A lack of electricity would shut off water systems, impact city transportation services and shutdown hospitals and other big facilities. Fresh and frozen foods also would be impacted as would banks, financial institutions and utilities.¶ ¶ Pry provided details of recent attacks on electricity systems and said that ISIS could easily team with Mexican drug cartels to ravage America.¶ ¶ He told Secrets, for example, that the Knights Templar drug gang blacked out the electric grid of the Mexican state of Michoacan in 2013 to provide cover for killing those fighting the drug trade.¶ ¶ "The Knights Templars and other criminal gangs in Mexico will do anything for money, and ISIS, the richest terrorist organization in history, has hundreds of millions of dollars at its disposal," said Pry.¶ ¶ "ISIS could hire one of the Mexican cartels, or one of their criminal gangs already in the U.S., or activate jihadist terror cells already in the U.S., and inflict a multi-state blackout immediately, within days or weeks. Perhaps even a nationwide blackout," Pry explained to Secrets.

XT Iraqi Federalism Key

Non-Federal approach causes radicalization and Kurdish failure—massive regional instability

Khalilzad 7/13/**14** – Zalmay, Counselor at CSIS, served as US Ambassador to Iraq, Afghanistan, and the United Nations, "Get Ready for Kurdish Independence"
http://www.nytimes.com/2014/07/14/opinion/iraqs-urgent-need-for-unity.html?_r=0
In the wake of ISIS advances, Kurdistan now shares a 600-mile border with a terrorist entity that proclaims itself the new Islamic Caliphate. In order to defend itself, the Kurds must be able to acquire their own arms and maintain security relations with other nations. Baghdad has suspended budget payments to Kurdistan. To pay its bills, Kurdistan must therefore sell its oil.¶ For years, Iraq's Shiite-led government has failed to treat Sunnis or Kurds as equal partners. Many Sunnis now so profoundly oppose the government that they have aligned themselves with a terrorist organization that even Al Qaeda considers extremist. The Sunnis demand federalization and autonomy for their provinces, an end to de-Ba'athification, and the delegation of local security to local forces.¶ For their part, the Kurds were incorporated into Iraq against their will, and endured much of the 20th century under repressive, often murderous, rule. In recent weeks, Kurdish leaders have launched a major diplomatic initiative, both regionally and internationally, to promote their dual-track approach to independence.¶ As Washington adapts to the new reality on the ground, it would do well to adopt a similar two-pronged strategy: continue to help Iraq's leaders forge a unity government, but prepare for the failure of those efforts.¶ Prime Minister Nuri Kamal al-Maliki, whose parliamentary bloc emerged victorious in the April 30 election, has no intention of giving up power. The major obstacle to the formation of a unity government is the vehement opposition of Sunni Arabs, Kurds, and some Shiite parties to prolonging Mr. Maliki's rule. Iraq's senior Shiite cleric, Grand Ayatollah Ali al-Sistani, has also signaled his preference for change.¶ As the American ambassador to Iraq, I worked directly with Mr. Maliki, and I know that he will stubbornly resist attempts to replace him. If he ultimately agrees to step down, he will likely demand a guarantee that his successor be chosen from among a small, trusted circle; he may also insist on a position elsewhere in the government.¶ Absent the formation of a unity government, Iraq's civil war will continue unabated. Sectarian conflict, and chaos in the Sunnis areas, will grow — and so will ISIS. Shiites will become more reliant on sectarian militias, and on Iran.¶ This trajectory threatens America's security. The United States must continue to work for a unity government in Iraq, and extend limited assistance in the fight against ISIS. But it should also step up relations with Kurdistan by deploying a team to assess Kurdistan's needs and coordinate security strategies to protect the region against ISIS. To help Kurdistan pay it bills, Washington should soften its opposition to direct Kurdish oil sales while increasing humanitarian assistance for refugees and displaced persons there.¶ The coming weeks will be decisive. The best-case scenario would be the establishment of a decentralized Iraq with a federal system in the Arab-majority areas, operating in confederation with Kurdistan. **The alternative is civil war** between Shiites and Sunnis, and the emergence of an independent Kurdistan.¶ Although Washington shouldn't abandon its efforts to help Iraq form a unity government yet, it must think seriously about realistic alternatives if Iraq falls apart.

2NC Econ

Only federalism can cause long-term economic recovery

Bruce **Katz 12**, VP at Brookings and Mark Muro, senior fellow and policy director at Brookings Metropolitan Policy Program, "Remaking Federalism | Renewing the Economy", November, www.brookings.edu/~/media/research/files/papers/2012/11/13%20federalism/13%20federalism%20budget%20economy.pdf

Where will the impetus for progress come from? In a different era, the federal government might have launched decisive ¶ initiatives on its own to restructure the economy, address the budget, and renew governance. Today, however, gridlock in ¶ Washington precludes such intervention.¶ And yet, there is hope in another quarter. As befits a federal republic, cities, metropolitan areas, and their states are stepping ¶ up to develop new solutions and point the way to renewal. Increasingly, metropolitan areas and their states are acting like ¶ the engines of prosperity and change they are and—through their own initiative—leading. Together with their states, metro ¶ areas are stepping up as never before and pursuing game-changing initiatives to create jobs in the near term and restructure ¶ their economies for the long haul.¶ Attuned to the localism of the economy, these centers of economic dynamism are working hard to develop a new growth ¶ model focused on advancing innovation and advanced industries, providing crucial infrastructure, and improving education ¶ and skills training. ¶ In so doing they are suggesting a needed direction for Washington and for the agenda of the second ¶ o¶ bama administration.¶ All of which suggests why President ¶ o¶ bama should look beyond Washington as he shapes his governing agenda and adopt a ¶ set of focused, astute initiatives that would at once lead the nation toward economic renewal while supporting regional and ¶ state empowerment.

Current geo-political climate creates multiple scenarios for global conflict Duncan 12

Richard Duncan, former World Bank specialist and chief economist in Blackhorse Asset Management, in 2012 (Richard, chief economist at Singapore-based Blackhorse Asset Management, former financial sector specialist at the World Bank and global head of investment strategy at ABN AMRO Asset Management, studied literature and economics at Vanderbilt University (1983) and international finance at Babson College (1986), "The New Depression: The Breakdown of the Paper Money Economy", http://www.amazon.com/The-New-Depression-Breakdown-ebook/dp/B007GZOYI6, 2/24/12)

The consequences of a New Great Depression would extend far beyond the realm of economics. Hungry people will **fight to survive**. Governments will use force to maintain internal order at home. This section considers the geopolitical repercussion of economic collapse, beginning with the United States. First, the U.S. government's tax revenues would **collapse** with the depression. Second, because global trade would **shrivel up**, other countries would no longer help finance the U.S. budget deficit by buying government bonds because they would no longer have the money to do so. At present, the rest of the world has a $500 billion annual trade surplus with the United States. The central banks of the United States' trading partners accumulate that surplus as foreign exchange reserves and invest most of those reserves into U.S. government bonds. An economic collapse would cause global trade to plummet and drastically reduce (if not eliminate altogether) the U.S. trade deficit. Therefore, this source of foreign funding for the U.S. budget deficit would dry up. Consequently, the government would have to sharply curtail its spending, both at home and abroad. Domestically, social programs for the old, the sick, and the unemployed would have to be slashed. Government spending on education and infrastructure would also have to be curtailed. Much less government spending would result in a dramatic increase in poverty and, consequently, in crime. This would combine to produce a crisis of the current two-party political system. Astonishment, frustration, and anger at the economic breakdown would **radicalize politics**. New parties would form at both extremes of the political spectrum. Given the great and growing income inequality going into the crisis, the hungry have-nots would substantially outnumber the remaining wealthy. On the one hand, a hard swing to the left would be the outcome most likely to result from democratic elections. In that case, the tax rates on the top income brackets could be raised to 80 percent or more, a level last seen in 1963. On the other hand, the possibility of a right-wing putsch could not be ruled out. During the Great Depression, the U.S. military was tiny in comparison with what it became during World War II and during the decades of hot, cold, and terrorist wars that followed. In this New Great Depression, it might be the **military** that ultimately determines how the country would be governed. The political battle over America's future would be bitter, and quite possibly bloody. **It cannot be guaranteed that the U.S. Constitution would survive**. Foreign affairs would also confront the

United States with enormous challenges. During the Great Depression, the United States did not have a global empire. Now it does. The United States maintains hundreds of military bases across dozens of countries around the world. Added to this is a fleet of 11 aircraft carriers and 18 nuclear-armed submarines. The country spends more than $650 billion a year on its military. **If the U.S. economy collapses** into a New Great Depression, the United States could not afford to maintain its worldwide military presence or to continue in its role as global peacekeeper. Or, at least, it **could not finance its military in the same way it does at present**. Therefore, either the United States would have to find an alternative funding method for its global military presence or else it would have to radically scale it back. Historically, empires were financed with plunder and territorial expropriation. The estates of the vanquished ruling classes were given to the conquering generals, while the rest of the population was forced to pay imperial taxes. The U.S. model of empire has been unique. It has financed its global military presence by issuing government debt, thereby taxing future generations of Americans to pay for this generation's global supremacy. **That would no longer be possible if the economy collapsed.** Cost–benefit analysis would quickly reveal that much of America's global presence was simply no longer affordable. Many—or even most—of the outposts that did not pay for themselves would have to be **abandoned**. Priority would be given to those places that were of vital economic interests to the United States. The Middle East oil fields would be at the top of that list. The United States would have to maintain control over them whatever the price. In this global depression scenario, the price of oil could collapse to **$3 per barrel**. Oil consumption would fall by half and there would be no speculators left to manipulate prices higher. Oil at that level would impoverish the oil-producing nations, **with extremely destabilizing political consequences.** Maintaining control over the Middle East oil fields would become much more difficult for the United States. It would require a much larger military presence than it does now. On the one hand, it might become necessary for the United States to **reinstate the draft** (which would possibly meet with violent resistance from draftees, as it did during the Vietnam War). On the other hand, America's all-volunteer army might find it had more than enough volunteers with the national unemployment rate in excess of 20 percent. The army might have to be employed to keep order at home, given that mass unemployment would inevitably lead to a sharp spike in crime. Only after the Middle East oil was secured would the country know how much more of its global military presence it could afford to maintain. If international trade had broken down, would there be any reason for the United States to keep a military presence in Asia when there was no obvious way to finance that presence? In a global depression, the United States' allies in Asia would most likely be unwilling or unable to finance America's military bases there or to pay for the upkeep of the U.S. Pacific fleet. Nor would the United States have the strength to force them to pay for U.S. protection. Retreat from Asia might become unavoidable. And Europe? What would a cost–benefit analysis conclude about the wisdom of the United States maintaining military bases there? What valued added does Europe provide to the United States? Necessity may mean Europe will have to defend itself. Should a New Great Depression put an end to the Pax Americana, **the world would become a much more dangerous place**. When the Great Depression began, Japan was the rising industrial power in Asia. It invaded Manchuria in 1931 and conquered much of the rest of Asia in the early 1940s. Would China, Asia's new rising power, behave the same way in the event of a new global economic collapse? Possibly. China is the only nuclear power in Asia east of India (other than North Korea, which is largely a Chinese satellite state). However, in this disaster scenario, it is not certain that China would survive in its current configuration. Its economy would be in **ruins**. Most of its factories and banks would be closed. Unemployment could exceed 30 percent. There would most likely be starvation both in the cities and in the countryside. The Communist Party could lose its grip on power, in which case the country could **break apart**, as it has numerous times in the past. It was less than 100 years ago that China's provinces, ruled by warlords, were at war with one another. United or divided, China's nuclear arsenal would make it Asia's undisputed superpower if the United States were to withdraw from the region. From Korea and Japan in the North to New Zealand in the South to Burma in the West, all of Asia would be at China's mercy. And hunger among China's population of 1.3 billion people could necessitate territorial expansion into Southeast Asia. In fact, the central government might not be able to prevent mass migration southward, even if it wanted to. In Europe, severe economic hardship would revive the centuries-old struggle between the left and the right. During the 1930s, the Fascists movement arose and imposed a police state on most of Western Europe. In the East, the Soviet Union had become a communist police state even earlier. The far right and the far left of the political spectrum converge in totalitarianism. It is difficult to judge whether Europe's democratic institutions would hold up better this time that they did last time. England had an empire during the Great Depression. Now it only has banks. In a severe worldwide depression, the country— or, at least London—could become ungovernable. Frustration over poverty and a lack of jobs would erupt into anti-immigration riots not only in the United Kingdom but also across most of Europe. The extent to which Russia would menace its European neighbors is unclear. On the one hand, Russia would be impoverished by the collapse in oil prices and might be too preoccupied with internal unrest to threaten anyone. On the other hand, it could provoke a **war** with the goal of maintaining internal order through emergency wartime powers. Germany is very nearly demilitarized today when compared with the late 1930s. Lacking a nuclear deterrent of its own, it could be subject to Russian intimidation. While Germany could appeal for protection from England and France, who do have nuclear capabilities, it is uncertain that would buy Germany enough time to remilitarize before it became a victim of Eastern aggression. As for the rest of the world, its prospects in this disaster scenario can be summed up in only a couple of sentences. Global economic output could fall by as much as half, from $60 trillion to $30 trillion. Not all of the world's seven billion people would survive in a $30 trillion global economy. Starvation would be widespread. Food riots would provoke political upheaval and myriad big and small conflicts around the world. It would be a humanitarian catastrophe so extreme as to be unimaginable for the current generation, who, at least in the industrialized world, has known only prosperity. Nor would there be reason to hope that the New Great Depression would end quickly. The Great Depression was only ended by an even more calamitous global war that killed approximately 60 million people.

2NC Heg

Federalism allows for a division of labour that solves for hegemony—prevents governmental overload

Pietro S. **Nivola**, 200**7**; Vice President and Director of Governance Studies at The Brookings Institution. Issues in Governance Studies, July 2007, Rediscovering Federalism, http://mavdisk.mnsu.edu/parsnk/2011-12/Pol680-fall11/POL%20680%20readings/federalism-wk%202/07governance_nivola.pdf

This paper stipulates that federalism can offer ¶ government a helpful division of labor. The essay ¶ argues that the central government in the United ¶ States has grown inordinately ¶ preoccupied with concerns ¶ better left to local authorities. The result is an ¶ overextended government, too often distracted from ¶ higher priorities. To restore ¶ some semblance of so-called ¶ "subsidiarity"—that is, a more¶ suitable delineation of ¶ competences among levels of government—the essay ¶ takes up basic principles that ought to guide that quest. ¶ Finally, the paper advances several suggestions for how ¶ particular policy pursuits might be devolved.¶ Whatever else it is supposed to do, a federal system ¶ of government should offer policy-makers a division of ¶ labor.¶ 1¶ Perhaps the first to fully apprec¶ iate that benefit was Alexis de ¶ Tocqueville. He admired the federated re¶ gime of the United States because, ¶ among other virtues, it enabled its ce¶ ntral government to focus on primary ¶ public obligations ("a small number of¶ objects," he stressed, "sufficiently ¶ prominent to attract its attention"), leaving what he called society's countless "secondary affairs" to lowe¶ r levels of administration.¶ 2¶ Such a system, in other ¶ words, could help officials in Washingt¶ on keep their priorities straight. ¶ It is this potential advantage, above all others, that warrants renewed ¶ emphasis today. America's national government has its hands full coping with ¶ its continental, indeed global, security responsibilities, and cannot keep ¶ expanding a domestic policy agenda that¶ injudiciously dabbles in too many ¶ duties best consigned to local authorities. ¶ Indeed, in the habit of attempting to do ¶ a little of everything, rather than a few ¶ important things well, our overstretched ¶ government suffers a kind of attention de¶ ficit disorder. Although this state of ¶ overload and distraction obviously is not a ¶ cause¶ of catastrophes such as the ¶ successful surprise attacks of September 11, 2001, the ferocity of the insurgency ¶ in Iraq, or the submersion of a historic American city ¶ inundated by a hurricane in ¶ 2005, it may render such tragedies ¶ harder to prevent or mitigate.

Great power war

Zhang et al., Carnegie Endowment researcher, 2011

(Yuhan, "America's decline: A harbinger of conflict and rivalry", 1-22, http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/, ldg)

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world's largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, many actors have bandwagoned with US hegemony and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, creating a status quo that has tended to mute great power conflicts. However, as the hegemony that drew these powers together withers, so will the pulling power behind the US alliance. The result will be an international order where power is more diffuse, American interests and influence can be more readily challenged, and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation. For example, in the late 19th century America's emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain 'rules the waves.' Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere's security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics:

enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America's influence declines? Given that America's authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that a post-hegemonic world would return to the problems of the 1930s: regional blocs, trade conflicts and strategic rivalry. Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington's withering leadership to pursue their own visions of regional political and economic orders. Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy. Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). **A world without American hegemony is one where great power wars re-emerge**, the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

2NC Terror

Only federalism can develop necessary local solutions to counterterrorism—"one size fits all" approaches are inefficient and dangerous.

Mayer 12 (Matt Mayer; Mar. 26th 2012; Chief operating officer at the Liberty Foundation of America and writer at the Heritage foundation, as well as former director of homeland security for Lockheed Martin and Counselor to the Deputy Secretary for Homeland Security, former executive director of the office of state and local government preparedness; "Federalism Allows Law Enforcement to Determine Counterterrorism Policies That Work Best"; Heritage Foundation; http://www.heritage.org/research/reports/2012/03/federalism-and-its-vital-role-in-counterterrorism) jskullz

With an increase in the national response to terrorism, many people believe the principle of federalism has little utility today or that states do not have much to contribute in counterterrorism policy or activity. When it comes to domestic security, however, federalism is more relevant than ever, and the states have a vital role to play in counterterrorism. Local law enforcement agencies have the flexibility and authority to design counterterrorism programs that best fit their respective jurisdictions. With that flexibility and authority, our cities are more secure.

One-Size-Fits-All Usually Fits Few Well

The 10th Amendment of the U.S. Constitution simply states: "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." Those 28 words confirm that states possess the ability to tailor policies that best address the issues they confront. Because of the various demographic differences among the states, a one-size-fits-all policy may not work or may not work most effectively and efficiently in a particular state.

When the federal government nationalizes an inherently state or local issue, it ensures that whatever policy it produces will fail to solve the problems. We know from the welfare reforms in the 1990s that a policy solution in one state may not work well in another state, which demonstrated the importance of states maintaining the flexibility and authority to tackle issues as they see fit. A robust policy competition among the states will enable America to find out what works and what does not. Domestic counterterrorism policy is no different.

Each Community Presents Unique Challenges Requiring Unique Solutions

America, thankfully, does not have a national police force. The Federal Bureau of Investigation (FBI) has authority over federal crimes, including terrorism, and exercises its authority by investigating and arresting suspected terrorists. With only 15,000 agents for the entire United States, the FBI lacks the resources to protect every American city. Because of this inherent limitation, outside of constitutional and legislative protections, America's law enforcement community is not covered by a one-size-fits-all policy on how best to protect U.S. cities.

State and local law enforcement entities are not displaced by federal authorities (except in some very narrow areas of national control) and instead retain their inherent sovereign authority to design counterterrorism programs that are tailored to the needs of each community. These needs are typically defined by demographics, risk assessments, community norms, and other factors unique to each jurisdiction. The ideal outcome for Americans is one where there is strong cooperation and true partnering between the FBI and other federal law enforcement agencies and state and local law enforcement entities. We are getting closer to that ideal with each passing year.

Terrorism causes extinction---better response key

Nathan **Myhrvold '13**, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf

Several powerful trends have aligned to profoundly change the way that the world works. Technology ¶ now allows stateless groups to organize, recruit, and fund ¶ themselves in an unprecedented fashion. That, coupled ¶ with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be ¶ lead players on the world stage. They may act on their own, ¶ or they may act as proxies

for nation-states that wish to ¶ duck responsibility. Either way, stateless groups are forces ¶ to be reckoned with.¶ At the same time, a different set of technology trends ¶ means that small numbers of people can obtain incredibly ¶ lethal power. Now, for the first time in human history, a ¶ small group can be as lethal as the largest superpower. Such ¶ a group could execute an attack that could kill millions of ¶ people. It is technically feasible for such a group to kill billions of people, to end modern civilization—perhaps even ¶ to drive the human race to extinction. Our defense establishment was shaped over decades to ¶ address what was, for a long time, the only strategic threat ¶ our nation faced: Soviet or Chinese missiles. More recently, ¶ it has started retooling to address tactical terror attacks like ¶ those launched on the morning of 9/11, but the reform ¶ process is incomplete and inconsistent. A real defense will ¶ require rebuilding our **military and intelligence capabilities** from the ground up. Yet, so far, strategic terrorism has ¶ received relatively little attention in defense agencies, and ¶ the efforts that have been launched to combat this existential threat seem fragmented.¶ History suggests what will happen. The only thing that shakes America out of complacency is a direct threat from a determined adversary that confronts us with our shortcomings by **repeatedly attacking** us or hectoring **us for decades**.

2NC Tyranny

Federal overreach turns the aff—causes tyranny and destroys political power.

Maharrey 7/1 (Mike Maharrey; July 1, 2015; Communications Director for the Tenth Amendment Center. He is the author of the book, Our Last Hope: "Rediscovering the Lost Path to Liberty"; "If the Feds Rule the States, Who Rules the Feds?" ; Tenth Amendment Center; http://tenthamendmentcenter.com/2015/07/01/if-the-feds-rule-the-states-who-rules-the-feds/) jskullz

Under the constitutional system, federal authority remains constrained by specific enumerated powers. All other authority was left to the states and the people. While the founding generation recognized the fact that states could impose tyranny, it emphatically rejected federal control over state governments – for better or for worse.¶ The constitutional system was predicated on a very simple premise – **centralized, government power ultimately poses the greatest threat to liberty**, therefore we should guard against consolidation of government into one great body.¶ During the Massachusetts ratifying convention, Fisher Aims argued for the inclusion of an amendment that would later become the Tenth.¶ "A consolidation of the States would subvert the new Constitution, and against which this article is our best security. Too much provision cannot be made against consolidation. The State Governments represent the wishes and feelings, and the local interests of the people. They are the safeguard and ornament of the Constitution; they will protect the period of our liberties; they will afford a shelter against the abuse of power, and will be the natural avengers of our violated rights."¶ The states were always intended to serve as a bulwark against federal overreach. The founders never conceived of a federal government policing the states.¶ When I make this argument, I almost always run up against the following objection.¶ Wait…So, are you saying that it was intended that states can deprive their citizens of basic rights, and that when this happens there is no recourse for those being oppressed, because it's a state's rights issue? I mean, doesn't someone have to step in and protect the minority from mob rule?¶ This leaves me scratching my head. If the feds take on the role of protecting the minorities from state tyranny, who protects those same people from the feds? ¶ Yes. Of course states can deprive people of their rights. All governments can do that. And they do.¶ But that doesn't mean we want to empower the federal government to rule over 350 million people. You end up with absurdities like federal judges telling people in some small town in Iowa that they can't put up a nativity scene in their city park.¶ And just because we don't turn the federal government into a liberty enforcement squad doesn't leave the people in an oppressive state "without recourse." They can pressure their state legislature to change state laws. They can sue in state court. They can amend their state constitutions. And if all else fails, they have 49 states they can move to as an escape.¶ Aren't these the same actions federal supremacists suggest as recourse when the federal government fails to protect our rights?¶ But individuals can exercise more control over a state or local government than they can the federal government. This becomes manifestly evident in the response you get when you call a state representative as opposed to your Congressman or U.S. senator. The political class in D.C. only listens to people with money and/or influence. But a few dedicated individuals can actually impact the legislative process in a state legislature. I've seen it happen on numerous occasions.¶ "Doesn't someone have to step in and protect the minority from mob rule?"¶ Stop and seriously consider this objection. These people suggest we elevate the federal government to the top of the food chain to lord over the states. As a result, it ultimately has the power to deprive all 350 million people in America of their rights, and when this happens, by their own reasoning, the people have no recourse because the federal government stands supreme.¶ All the federal supremacists have done is move things one level higher and centralized power. Instead of 50 competing governments serving as a check on federal authority, we get a consolidated government governing through the judiciary.¶ Do you really want five politically-connected lawyers defining and protecting your rights?¶ This all leaves us with an important question: who protects us from the feds? If we follow this out to its logical conclusion, shouldn't we establish an international government to protect people the federal government violating their rights?

Federalism key to efficient and just governance

Reinsch, 13 (Richard, the editor of the Library of Law and Liberty, "A Fistful of Federalism, Part I", Library of Law and Liberty, http://www.libertylawsite.org/2013/09/16/a-fistful-of-federalism-part-i/)//BW

If the great truth of our political order is that the Constitution constrains the government and that the people are sovereign over the Constitution, then the federalism of our constitutional experiment means that the citizens are not alone before the might of the federal government, but are gathered in by their state governments who hold the crucial responsibility of ensuring that their reserved powers are not lost to either the lie of wholesale centralization or the lie of intergovernmental power sharing or cartel federalism. Fundamentally, Madison's arguments challenge the notion that state governments are inherently revenue maximizing authorities or beings with interests who occupy political office. While it is

true that they can function in this capacity, and as Greve has demonstrated, do function in such a capacity, it isn't the whole story. We might note that self-interested political actors might get it wrong, as much as they get it right. Competition among branches and governments could result in the warding off of dangerous encroachments from other governmental entities, but it could just as easily lead among repeat government players in collusion, revenue sharing, and a redistributionist politics. Maintaining free government requires more than self-interest; it requires courage, responsibility, generosity, sacrifice, love, qualities that are the opposite of self-interest. And I think that our American political history bears me out on this point

Centralized power is wildly tyrannical—courts only consolidate power further

Reinsch, 13 (Richard, the editor of the Library of Law and Liberty, "A Fistful of Federalism, Part II", Library of Law and Liberty, http://www.libertylawsite.org/2013/09/18/a-fistful-of-federalism-part-ii/)//BW

Here we must temper our very American tendencies, somewhat. We are now prone to think that our liberties must be protected from the tyranny of the majority, which has increasingly meant what 5 lawyers in robes say is majority tyranny and individual liberty. But is tyranny of the majority the final concern for American federalism and the liberty it is to protect? I would argue that the deeper challenge to our liberties consists not only in tyranny of the majority but in the democratic individualism that Alexis de Tocqueville equated with the slow bleeding away of authority from intermediate associations and local and state departments of government to a central government. In short, under democratic individualism, America regresses to the modern norm of centralized government and atomized individuals. Tocqueville's deeper point here is not power for power's sake exercised at levels that are closer to individual citizens, command is not the issue, but rather it is in the debating, the conferring, and decision-making on different courses of action in different layers of society that we actually can see ourselves in the society that we inhabit. We practice self government. So democracy without real federalism is wrong, not just because of debt and unaccountable government, but because it never connects with who we are as human persons who are defined by our relationships: familial, social, and civic that reveal us to one another. Self-governing citizens are citizens who freely determine themselves in any number of pursuits and projects. This freedom isn't that of the isolated individual, but freedoms of communities to be self determining apart from the totalizing standards of national superintendence that operates under egalitarian ideology. We might call this, diversity, properly understood. So if you fail at this basic level of understanding the personal worth of federalism as an opportunity for the positive development of the human spirit and a check on the leveling tendencies of democracy, then it stands to reason that all manner of untoward consequences will follow. For these, you must read The Upside-Down Constitution. Vincent Ostrom gave voice to this when he said Those who continue to assume that the national government, because of its "federal form," is competent to determine all matters that pertain to the governance of American society have fallen into two errors: that of neglecting the limited capabilities of those occupying positions of national authority; and that of considering citizens to be "more than kings and less than men," so that they are presumed to be competent to select their national rulers, but incompetent to govern their own local affairs. The "federal form" of the national government is no substitute for a federal system of governance.

2NC Immigration

Decentralized state federalism is key to produce de-facto liberal immigration reform

O'Neil 7/11/**14** – Shannon, Senior Fellow for Latin America Studies at the Council on Foreign Relations (CFR), an independent, nonpartisan membership organization, think tank, and publisher, "Immigration Reform is Happening"
http://www.foreignpolicy.com/articles/2014/07/11/immigration_reform_states_cities_undocumented_immigrants_mexico

With all the mudslinging and acrimony in Washington over unaccompanied minors and unauthorized immigrants, you might have missed it. **Immigration reform has already happened** -- in fact, hundreds of times. With the federal government incapacitated, **states, cities, and municipalities have stepped into the fray.** In 2013 alone, 45 of the 50 state legislatures passed over 400 laws and resolutions on everything from law enforcement and employment to education and public benefits. Among this flurry were a few in the Arizona SB 1070 style -- bills making life more miserable for undocumented immigrants. These laws ranged from blocking access to health care and schools to criminalizing common activities such as driving cars or buying homes. But the majority are actually designed to find ways to **integrate undocumented immigrants** -- funding English language and citizenship classes and providing access to medical care and other social services. Remember the 2008 presidential campaign debate angst over driver's licenses? Eight states passed laws opening up the DMV to undocumented immigrants. Four more gave unauthorized students the right to pay in-state tuition, bringing the number of states opening up their colleges and universities to all residents to 15. Several others established "trust laws," which ensure **police won't pass undocumented migrants along to immigration authorities unless charged with or convicted of the most serious crimes**. California -- granted, an outlier -- decided that undocumented immigrants can even practice law. Cities, too, have embraced migrants. New York's City Council just approved the creation of municipal identification cards that can be used to open bank accounts, use clinics, sign leases, or borrow books from public libraries. Affecting upwards of half a million New Yorkers, the Big Apple joins Los Angeles, San Francisco, and New Haven, Connecticut, among others, in providing IDs to its residents -- regardless of the color of their passport. And while the cameras have been trained on communities such as Murrieta, California, where residents have lined the streets to protest the arrival of migrant kids, more than 30 cities -- some in red states, some in blue, and home to 25 million Americans -- have joined the "Welcoming America" network, embracing rather than rejecting new entrants. In others, citizens and officials have taken matters into their own hands, including Dallas County's promise to shelter 2,000 of the undocumented children who have crossed the border so far this year. These shifts reflect many undercurrents, starting with basic values. As immigration policies increasingly kick out children and tear families apart, it sits uneasily with the Sunday school lessons urging compassion and hospitality. In fact some of the most active voices for comprehensive immigration reform have come from those of the cloth, including leading evangelical churches and the Conference of Catholic Bishops. Other seemingly unlikely supporters of local change have been cops. Over 100 prominent police chiefs, along with the Police Foundation -- a nonpartisan, nonprofit research organization -- have come out against what have become known as 287(g) programs that deputize local officials to enforce immigration laws. The added responsibilities, these police chiefs have found, both **stretch finite resources and are often counterproductive to their core public-safety mission**. Scared of drawing attention, unauthorized workers, parents, and siblings are reluctant to report crimes or serve as witnesses, breaking down the trust fundamental to community-policing models that have proved effective in keeping city streets safe. **And the economic repercussions of punishing anti-immigration laws have quieted some of their would-be champions**. Pronounced has been the fallout from omnibus anti-immigrant legislation -- laws, adopted by 11 states since 2010, that require officers to check immigration status and criminalize basic activities by undocumented immigrants, including working, signing contracts, or moving about without identification. In Arizona, for instance, the number of undocumented immigrants fell by an estimated third in the wake of passing SB 1070. Concurrent **B**ureau of **L**abor **S**tatistics data show that **agricultural employment, the rate of business creation, and housing prices all plummeted, both in absolute terms and more tellingly vis-à-vis neighboring states, which did not implement similar legislation**. One study by economists at the Center for Business and Economic Research at the University of Alabama, led by Samuel Addy, estimates Alabama's business **losses in the billions of dollars**. In nearly every state that adopted less-than-friendly migrant policies, businesses -- particularly those in agriculture, construction, hospitality, and food preparation -- **have struggled to find workers.** These outcomes complement what other academic analyses repeatedly show -- that **immigrants create jobs, boost tax revenues, and make**

communities safer. One study using U.S. census data and American Community Survey data finds that for every 1,000 immigrants in a county, **46 manufacturing jobs are created or preserved**. It also found that **local housing wealth increased by nearly $100,000 for each new immigrant**. This is in part because immigrants are much **more likely to file a patent or start a business than native-born Americans.**

liberal immigration laws reduce the U.S. carbon footprint and produce the impetus for structural reforms in the U.S.

McKibben 13 – Bill, founder of 350.org and a professor at Middlebury College, "Immigration reform -- for the climate" http://articles.latimes.com/2013/mar/14/opinion/la-oe-mckibben-immigration-environment-20130314

For environmentalists, population has long been a problem. Many of the things we do wouldn't cause so much trouble if there weren't so many of us. It's why I wrote a book some years ago called "Maybe One: An Argument for Smaller Families." Heck, it's why I had only one child. And many of us, I think, long viewed immigration through the lens of population; it was another part of the math problem. I've always thought we could afford historical levels of immigration, but I understood why some other environmentalists wanted tougher restrictions. More Americans would mean more people making use of the same piece of land, a piece that was already pretty hard-used. In recent years, though, **the math problem has come to look very different to me**. It's one reason I feel it's urgent that we get **real immigration reform**, allowing millions to step out of the shadows and on to a broad path toward citizenship. **It will help, not hurt, our environmental efforts, and potentially in deep and powerful ways.** One thing that's changed is the nature of the ecological problem. Now that global warming is arguably the **greatest danger we face**, it matters a lot less where people live. Carbon dioxide mixes easily in the atmosphere. It makes no difference whether it comes from Puerto Vallarta or Portland. It's true that the typical person from a developing nation would produce more carbon once she adopted an American lifestyle, but she also probably would have **fewer children**. A December report from the Pew Research Center report showed that birthrates in the U.S. were dropping faster among Mexican American women and women who immigrated from Mexico than among any other group. This is a trend reflected among all Latinas in the U.S. As an immigrant mother of two from the Dominican Republic told the New York Times: "Before, I probably would have been pressured to have more, [but] living in the **U**nited **S**tates, I don't have family members close by to help me, and it takes a village to raise a child. So the feeling is, keep what you have right now." Her two grandmothers had had a total of 27 children. The carbon math, in other words, may well be a wash. But there's a higher math here that matters much more. At this point, there's no chance we're going to deal with global warming one household at a time — scientists, policy wonks and economists have concluded it will also require structural change. We may need, for example, things such as a **serious tax on carbon**; that will require **mustering political will to stand up to the fossil fuel industry.** And that's precisely where white America has fallen short. Election after election, native-born and long-standing citizens pull the lever for **climate deniers**, for people who want to shut down the Environmental Protection Agency, for the politicians who take huge quantities of cash from the Koch brothers and other oil barons. By contrast, a 2012 report by the Sierra Club and the National Council of La Raza found that Latinos were **eager for environmental progress**. Seventy-seven percent of Latino voters think climate change is already happening, compared with just 52% of the general population; 92% of Latinos think we have "a moral responsibility to take care of God's creation here on Earth." These numbers reflect, in part, the reality of life for those closer to the bottom of our economy. Latinos are 30% more likely to end up in the hospital for asthma, in part because they often live closer to sources of pollution. But immigrants, by definition, are full of hope. They've come to a new place determined to make a new life, risking much for opportunity. They're confident that new kinds of prosperity are possible. The future beckons them, and so changes of the kind we'll need to deal with climate change are **easier to conceive.** Republicans think immigrants are a natural fit for their party, and I hope they're at least partly right — some force needs to help ease the Republicans out of their love affair with ideology and back into a relationship with reality. As commentator Bill O'Reilly put it as he watched Mitt Romney lose despite gaining a huge majority of white votes, "it's not a traditional America anymore." He's right. And for the environment, that's good news. **We need immigrants to this nation engaged in public life, as soon and as fully as possible. It's not just the moral thing to do, it's a key to our future.**

Failure to solve warming causes extinction – geological history proves

Bushnell, NASA Langley Research Center chief scientist, 2010 (Dennis M. has a MS in mechanical engineering, won the Lawrence A. Sperry Award, AIAA Fluid and Plasma Dynamics Award, the AIAA Dryden Lectureship, and is the recipient of many NASA Medals for outstanding Scientific Achievement and Leadership, "Conquering Climate Change," The Futurist 44. 3, May/Jun 2010, ProQuest)

Unless we act, the next century could see increases in species extinction, disease, and floods affecting one-third of human population. But the tools for preventing this scenario are in our hands. Carbon-dioxide levels are now greater than at any time in the past 650,000 years, according to data gathered from examining ice cores. These increases in CO2 correspond to estimates of man-made uses of fossil carbon fuels such as coal, petroleum, and natural gas. The global climate computations, as reported by the ongoing Intergovernmental Panel on Climate Change (IPCC) studies, indicate that such man-made CO2 sources could be responsible for observed climate changes such as temperature increases, loss of ice coverage, and ocean acidification. Admittedly, the less than satisfactory state of knowledge regarding the effects of aerosol and other issues make the global climate computations less than fully accurate, but we must take this issue very seriously. I believe we should act in accordance with the precautionary principle: When an activity raises threats of harm to human health or the environment, precautionary measures become obligatory, even if some cause-and-effect relationships are not fully established scientifically. As paleontologist Peter Ward discussed in his book Under a Green Sky, several "warming events" have radically altered the life on this planet throughout geologic history. **Among the most significant** of these **was the Permian extinction**, which took place some 250 million years ago. **This event resulted in a decimation of animal life**, **leading many scientists to refer to it as the Great Dying**. The Permian extinction is thought to have been caused by a sudden increase in CO2 from Siberian volcanoes. **The amount of CO2 we're releasing** into the atmosphere **today**, through human activity, **is 100 times greater than what came out of those volcanoes**. **During the Permian extinction**, a number of chain reaction events, or "**positive feedbacks**," **resulted in oxygen-depleted oceans**, **enabling overgrowth of** certain **bacteria**, **producing** copious amounts of **hydrogen sulfide, making the atmosphere toxic, and decimating the ozone layer**, **all producing species die-off**. The positive feedbacks not yet fully included in the IPCC projections include the release of the massive amounts of fossil methane, some 20 times worse than CO2 as an accelerator of warming, fossil CO2 from the tundra and oceans, reduced oceanic CO2 uptake due to higher temperatures, acidification and algae changes, changes in the earth's ability to reflect the sun's light back into space due to loss of glacier ice, changes in land use, and extensive water evaporation (a greenhouse gas) from temperature increases. The additional effects of **these feedbacks increase the projections** from a 4°C-6°C temperature rise by 2100 **to a 10°C**-12°C **rise**, according to some estimates. At those temperatures, beyond 2100, essentially all the ice would melt and the ocean would rise by as much as 75 meters, flooding the homes of one-third of the global population. Between now and then, ocean methane hydrate release could cause major tidal waves, and glacier melting could affect major rivers upon which a large percentage of the population depends. We'll see increases in flooding, storms, disease, droughts, species extinctions, ocean acidification, and a litany of other impacts, all as a consequence of man-made climate change. Arctic ice melting, CO2 increases, and ocean warming are all occurring much faster than previous IPCC forecasts, so, as dire as the forecasts sound, they're actually conservative.

A2: Immigration Turn

State decentralization on immigration now

Rodriguez 14 – Cristina M., Professor of Law @ Yale, "Negotiating Conflict Through Federalism: Institutional and Popular Perspectives" http://www.yalelawjournal.org/essay/negotiating-conflict-through-federalism-institutional-and-popular-perspectives#_ftnref11

Second, in this same work, I have sought to highlight how decentralized ferment **helps constitute our national debate on the subject of immigration**. I have de-centered the national from the federal to explore how "national" issues—those whose salience cuts across state lines and constituencies—are not always or necessarily best served by a federal monopoly,10 and how state and local debate and regulation **can serve national interests**. In more recent work on federalism generally, I highlight these same dynamics of decentralized ferment and inter-institutional negotiation in other contexts of highly charged social policy—same-sex marriage, drug policy, and gun regulation—and argue that among the most significant values of our federal system is its utility in **managing social conflict across policy domains**.11 In line with the overarching frame of this Feature, I show how decentralized decision-making can **promote national integration and national problem solving in a world of deep demographic and ideological diversity**. But I also emphasize that integration does not depend on the achievement of a clear national consensus, though decentralized debate can **certainly result in the consolidation of national norms or policies**. Instead, integration can emerge through the achievement of an equilibrium that contains within it the possibility of ongoing debate—a picture of federalism I hope to illuminate here.

1nc- offsets (policy)

1NC CP (policy) – The United States federal government should [do the plan] and substantially increase its domestic surveillance of terrorist organizations.

The plan decreases surveillance. The Counterplan increases surveillance. Any permutation would sever out of the part of the plan that requires a substantial curtailment. Severance destroys negative ground by undermining the ability of any counterplan to compete.

Curtail means to limit

MacMillan Dictionary, 15 ('curtail',
http://www.macmillandictionary.com/dictionary/american/curtail

curtail VERB [TRANSITIVE] FORMAL to reduce or limit something, especially something good *a government attempt to curtail debate*

A substantial curtailment must occur across the board

Anderson 5 – Brian Anderson, Becky Collins, Barbara Van Haren & Nissan Bar-Lev, Wisconsin Council of Administrators of Special Services (WCASS) Committee Members. 2005 WCASS Research / Special Projects Committee* Report on: A Conceptual Framework for Developing a 504 School District Policy
http://www.specialed.us/issues-504policy/504.htm#committee

The issue "Does it **substantially** limit the major life activity?" **was clarified by the US Supreme Court decision** on January 8th, 2002 , "**Toyota v. Williams**". In this labor related case, **the** Supreme **Court noted that to meet the "substantially limit" definition, the disability must occur across the board in multiple environments, not only in one environment or one setting.** The implications for school related 504 eligibility decisions are clear: The disability in question must be manifested in all facets of the student's life, not only in school.

New surveillance critical to quell terror threats

Sulmasy, 13 --- Professor of Law and Governmental Affairs Officer at Coast Guard Academy
(6/10/2013, Glenn, "Why we need government surveillance,"
http://www.cnn.com/2013/06/10/opinion/sulmasy-nsa-snowden/, JMP)

The current threat by al Qaeda and jihadists is one that requires aggressive intelligence collection and efforts. One has to look no further than the disruption of the New York City subway bombers (the one being touted by DNI Clapper) or the Boston Marathon bombers to know that the war on al Qaeda is coming home to us, to our citizens, to our students, to our streets and our subways. This 21st century war is different and requires new ways and methods of gathering information. As technology has increased, so has our ability to gather valuable, often actionable, intelligence. However, the move toward "home-grown" terror will necessarily require, by accident or purposefully, collections of U.S. citizens' conversations with potential overseas persons of interest. An open society, such as the United States, ironically needs to use this technology to protect itself. This truth is naturally uncomfortable for a country with a Constitution that prevents the federal government from conducting "unreasonable searches and seizures." American historical resistance towards such activities is a bedrock of our laws, policies and police procedures. But what might have been reasonable 10 years ago is not the same any

longer. The constant armed struggle against the jihadists has adjusted our beliefs on what we think our government can, and must, do in order to protect its citizens.

Terrorist attacks escalate – killing billions

Myhrvold 2014 (Nathan P [chief executive and founder of Intellectual Ventures and a former chief technology officer at Microsoft]; Strategic Terrorism: A Call to Action; cco.dodlive.mil/files/2014/04/Strategic_Terrorism_corrected_II.pdf; kdf)

Technology contains no inherent moral directive—it empowers people, whatever their intent, good or evil. This has always been true: when bronze implements supplanted those made of stone, the ancient world got scythes and awls, but also swords and battle-axes. The novelty of our present situation is that modern technology can provide small groups of people with much greater lethality than ever before. We now have to worry that private parties might gain access to weapons that are as destructive as—or possibly even more destructive than— those held by any nation-state. A handful of people, perhaps even a single individual, could have the ability to kill millions or even billions. Indeed, it is possible, from a technological standpoint, to kill every man, woman, and child on earth. The gravity of the situation is so extreme that getting the concept across without seeming silly or alarmist is challenging. Just thinking about the subject with any degree of seriousness numbs the mind. The goal of this essay is to present the case for making the needed changes before such a catastrophe occurs. The issues described here are too important to ignore. Failing nation-states—like North Korea—which possess nuclear weapons potentially pose a nuclear threat. Each new entrant to the nuclear club increases the possibility this will happen, but this problem is an old one, and one that existing diplomatic and military structures aim to manage. The newer and less understood danger arises from the increasing likelihood that stateless groups, bent on terrorism, will gain access to nuclear weapons, most likely by theft from a nation-state. Should this happen, the danger we now perceive to be coming from rogue states will pale in comparison. **The ultimate response to a nuclear attack is a nuclear counterattack**. Nation states have an address, and they know that we will retaliate in kind. Stateless groups are much more difficult to find which makes a nuclear counterattack virtually impossible. As a result, they can strike without fear of overwhelming retaliation, and thus they wield much more effective destructive power. Indeed, in many cases the fundamental equation of retaliation has become reversed. Terrorists often hope to provoke reprisal attacks on their own people, swaying popular opinion in their favor. The aftermath of 9/11 is a case in point. While it seems likely that Osama bin Laden and his henchmen hoped for a massive overreaction from the United States, it is unlikely his Taliban hosts anticipated the U.S. would go so far as to invade Afghanistan. Yes, al-Qaeda lost its host state and some personnel. The damage slowed the organization down but did not destroy it. Instead, the stateless al-Qaeda survived and adapted. The United States can claim some success against al-Qaeda in the years since 9/11, but it has hardly delivered a deathblow. Eventually, the world will recognize that stateless groups are more powerful than nation-states because terrorists can wield weapons and mount assaults that no nationstate would dare to attempt. So far, they have limited themselves to dramatic tactical terrorism: events such as 9/11, the butchering of Russian schoolchildren, decapitations broadcast over the internet, and bombings in major cities. Strategic objectives cannot be far behind.

1nc- offsets (kritikal)

Text: The United States federal government should [do the plan] and substantially increase its domestic surveillance of White supremacist terrorist organizaions.

The plan decreases surveillance. The Counterplan increases surveillance. Any permutation would sever out of the part of the plan that requires a substantial curtailment. Severance destroys negative ground by undermining the ability of any counterplan to compete.

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We need more surveillance to check white supremacist groups

Robinson 6/23 (Eugene Robinson - Pulitzer Prize winning journalist, June 23, 2015, The Courier Journal, 'We need to go beyond speeches and symbols', http://www.courier-journal.com/story/opinion/columnists/2015/06/23/robinson-need-go-beyond-speeches-symbols/29151157/) //JS

If American racism were a thing of the past, nine men and women who went to church last Wednesday evening would be alive. What happened in Charleston is not unfathomable or even ambiguous. It's a story much older than the nation, a story that began when the first Africans were brought to Jamestown in 1619: the brutalizing and killing of black people because of the color of their skin. The weekend displays of multiracial unity throughout the saddened city were inspiring, but they cannot be taken as a sign that the country has moved beyond its troubled racial past. The young man who so coldly killed those innocent worshipers at Emanuel African Methodist Episcopal Church did not exist in a vacuum. He inhaled deeply of the race hatred that constantly bubbles up like foul gas from a sewer. The alleged assassin, Dylann Roof, left behind a manifesto that said he drew inspiration from the website of the Council of Conservative Citizens, a prominent white supremacist group. The organization's proudly racist "statement of principles" declares that "the American people and government should remain European in their composition and character" and opposes "all efforts to mix the races of mankind." The Southern Poverty Law Center, which tracks hate groups, describes the council as a modern-day incarnation of the "White Citizens Councils" throughout the South that fought so tenaciously against desegregation during the civil rights era. The council's membership is thought to be small but its reach is vast, thanks to the Internet. Like hateful jihadists, white supremacists use cyberspace as a bulletin board and

a meeting place. Come on in, young Mr. Roof, and let us tell you how those black people and those brown people are responsible for everything that's going wrong in your life. Some conservatives have been quick to absolve society of blame by pointing out that the Charleston shooter was mentally disturbed. But of course he was mentally disturbed; normal, well-adjusted individuals do not commit mass murder. And the fact is that the Charleston killings were intended to advance a specific cause. To look past Roof's racism would be like ignoring the fact that the Tsarnaev brothers, who committed the Boston Marathon bombing, believed in a violent, twisted version of Islam. "You rape our women and you're taking over our country," Roof reportedly said to his victims before opening fire. This sick narrative comes straight from the Council of Conservative Citizens website, which inflates isolated incidents of black-on-white crime into some kind of race war and portrays the nation's "European heritage" as being in dire peril. President Obama chose an unusual forum -- a podcast with comedian Marc Maron -- to deliver his most candid remarks to date since the Charleston massacre. Race relations have clearly improved in our lifetimes, he said, but "we are not cured" of racism "and it's not just a matter of it not being polite to say 'nigger' in public." Slavery and Jim Crow discrimination cast "a long shadow and that's still part of our DNA that's passed on." Obama's election in 2008 undoubtedly marked a milestone, one I never dreamed I'd live to see. I wrote at the time that it felt like morning in America. What I didn't fully appreciate at the time was the extent to which the mere fact of a black family living in the White House would, at least in the short term, heighten racial anxieties and conflicts. I didn't see that the spectacle of African-Americans in power would apparently lead some whites to feel powerless, aggrieved and victimized. In the long run, I'm an optimist. But a post-racial future will not just appear. There is urgent work to do. By all means, South Carolina, get rid of the Confederate flag, which has become an emblem of the white supremacist movement. The flag first flew over the statehouse in Columbia in 1961, not 1861; it was essentially an act of defiance, a raised middle finger toward a federal government that was forcing the end of Jim Crow. But we need to go beyond speeches and symbols. Law enforcement should subject white racist organizations to the same surveillance and scrutiny as groups devoted to jihad. Governments at all levels should enforce fair housing and employment laws as vigorously as they enforce the Patriot Act. Police departments and court systems must be compelled to administer justice equally -- with African-Americans, too, considered innocent until proven guilty.

Right-wing terrorists are racist af (if the aff has a racism impact, retag this and don't read the last card)

Iyer 6/19/**2015** (Deepa; Charleston Shooting is domestic terrorism; america.aljazeera.com/opinions/2015/6/charleston-shooting-is-domestic-terrorism.html; kdf)

A gun rampage. A hate crime. An act of domestic terrorism. The shooting deaths of nine people in the historic Emanuel African Methodist Episcopal Church in downtown Charleston, South Carolina, on Wednesday night must be characterized as all three. While we await further information about the suspect, Dylann Roof, and as we mourn with the families of the victims, it is important that we categorize this tragedy accurately. Roof, apprehended by police on Thursday, is a 21-year-old white man. Before he opened fire on a group of adults and children who had gathered for Bible study, Roof apparently told the congregation, "You rape our women and you're taking over our country. And you have got to go." According to his roommate Dalton Tyler, he had planned something like this attack for six months. "He was big into segregation and other stuff," Tyler told ABC News. "He said he wanted to start a civil war. He said he was going to do something like that and then kill himself." **The Charleston shooting is a violent act of racial hatred, intended to terrorize and intimidate black people**. It exists on the alarming spectrum of other acts of hate in places of worship, including the bombing of the 16th Street Baptist Church in Birmingham, Alabama, in 1963; the spate of arsons against African-American churches in the late 1990s in the South; the anti-Semitic graffiti regularly sprawled on the walls of synagogues and murders at Jewish community centers; the burning of Korans and throwing of Molotov cocktails at mosques; the vandalism of Hindu temples; and the 2012 shooting of six Sikh worshippers at a gurdwara in Oak Creek, Wisconsin, by a white supremacist. Indeed, acts of violence are perpetrated regularly in this country, on the streets and in places of worship, and on the basis of racial bias, sexual orientation, religious bias, ethnicity, disability, gender bias and gender identity. Annual reports from the Federal Bureau of Investigation (FBI) and the Bureau of Justice Statistics (BJS) sketch a national landscape filled with hate crimes against people, including assaults and homicides, and property, including vandalism to places of worship or cross-burnings. The BJS reports that the percentage of hate crimes involving violence increased from 78 percent in 2004 to 90 percent in 2011 and 2012. Meanwhile, the Southern Poverty Law Center has been tracking the organized activities of anti-immigrant, anti-gay, anti-Muslim and anti-government "patriot" groups, many of which are forming in response to changing American racial demographics, immigration patterns and the election of a black president. They are motivated by the belief that the balance of power will shift away from white Americans — a sentiment apparently voiced by Roof when he said "you are taking over," before opening fire at the church. These domestic right-wing hate groups should not be taken lightly. Their ideologies of white

supremacy and white nationalism are seeping into mainstream political activity and rhetoric, and influencing “lone wolves” who are committing the majority of hate violence in the country.

Racism should be the impact filter for this debate

Barndt 91 (Joseph R. Barndt co-director of Ministry Working to Dismantle Racism "Dismantling Racism" p. 155)

To study racism is to study walls. We have looked at barriers and fences, restraints and limitations, ghettos and prisons. The prison of racism confines us all, people of color and white people alike. It shackles the victimizer as well as the victim. The walls forcibly keep people of color and white people separate from each other; in our separate prisons we are all prevented from achieving the human potential God intends for us. The limitations imposed on people of color by poverty, subservience, and powerlessness are cruel, inhuman, and unjust; the effects of uncontrolled power, privilege, and greed, which are the marks of our white prison, will inevitably destroy us as well. But we have also seen that the walls of racism can be dismantled. We are not condemned to an inexorable fate, but are offered the vision and the possibility of freedom. Brick by brick, stone by stone, the prison of individual, institutional, and cultural racism can be destroyed. You and I are urgently called to join the efforts of those who know it is time to teardown, once and for all, the walls of racism. The danger point of self-destruction seems to be drawing even more near. The results of centuries of national and worldwide conquest and colonialism, of military buildups and violent aggression, of overconsumption and environmental destruction may be reaching a point of no return. A small and predominantly white minority of the global population derives its power and privilege from the sufferings of vast majority of peoples of all color. For the sake of the world and ourselves, we dare not allow it to continue.

at: perm do the cp

Mutually exclusive with "curtail"- they need to be a net reduction in overall surveillance- prefer definitional support. Calling for a decrease in current levels of surveillance means there's something happening now that they have to decrease from. [would we insert definitions here, or in the 1nc?]

Proves the resolution is insufficient- arguing we should reduce surveillance in some areas, but not overall means they've failed to affirm the resolution and you should vote neg.

Perms have to be net-topical- perms against other CPs or Ks are extra topical- they prove resolutional action is good, but that we can do other good things at the same time- anti-topical perms are different because they prove we shouldn't increase government surveillance.

Substantial requires an expansion of current curtailment

Words & Phrases '64 (40 W&P 759)

The words outward, open, actual, visible, substantial, and exclusive, in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

Its means existing

Butler '8 (Annemarie-, April, Hume Studies, "Natural Instinct, Perceptual Relativity, and Belief in the External World in Hume's Enquiry", Vol. 34 # 1, Project Muse)

DTA concludes from perceptual relativity that the visual perception of the table is caused by and resembles an externally existing table. One might try to hold that the representational thesis is tacked on at the end, as one of the "obvious dictates of reason."24 But it seems clear that the possessive pronoun "its" in the description of the perception ("its image") is intended to refer to the externally existing table. So the phenomenon of perceptual relativity is somehow supposed to lead to the conclusion that there exist perceiver-independent objects over and above perceiver-dependent perceptions, where the latter are caused by and resemble the former.

Substantial means having importance.

Merriam-Webster Dictionary of Law, © **1996**

http://dictionary.reference.com/search?q=substantial

Main Entry: sub·stan·tial Pronunciation: s&b-'stan-ch&l Function: adjective 1 a : of or relating to substance b : not illusory : having merit <failed to raise a substantial constitutional claim> c : having importance or significance : MATERIAL <a substantial step had not been taken toward commission of the crime —W. Railroad LaFave and A. W. Scott, Junior> 2 : considerable in quantity : significantly great <would be a substantial abuse of the provisions of this chapter —U.S. Code> —compare DE MINIMIS — sub·stan·ti·al·i·ty /-"stan-chE-'a-l&-tE/ noun —sub·stan·tial·ly adverb

The permutation severs out of substantial by rendering it a meaningless term. A substantial curtailment has literally no meaning if the aff can advocate a decrease of any amount, a change, or an increase in surveillance

at: perm do the plan then cut other things

The perm's intrinsic- it adds the element of delay. Intrinsic perms are a voting issue- they make every CP or K competitive and allow the aff to isolate contrived net benefits to perms that the neg can never beat.

Delay DA- the threat from [insert whatever the internal net benefit it] is time sensitive- the risk increases every moment we don't ask.

Functionally the same as perm do both- distinctions are arbitrary and the perm still results in a net decrease- all our answers to perm do both apply.

at: perms don’t have to be topical

Our interpretation is that perms have to be net topical- perms against Ks or other CPs prove we should do things in addition to resolutional action, not that we should do the opposite of the resolution. It’s the aff’s burden to affirm that the resolution is a good idea- untopical perms do the opposite.

answers to answers

offsets edu good- surveillance specific

Surveillance policy is complicated- we need increases in some areas, and decreases in others

Newswise, 2013- quotes Neil M. Richards, a privacy law expert and professor of law at Wash U (12/19/13, "Spot-on NSA ruling rightfully questions effectiveness of phone surveillance, says privacy law expert," accessed: 6/26/15 in lexis, fg)

"It's exactly the sort of information that should require a warrant before the government obtains it." Richards was struck by Judge Leon's willingness to question whether this surveillance program was effective. "All too often over the past decade we've seen politicians, judges, and citizens take the government at its vague word that surveillance is useful without asking the hard questions about how useful particular kinds of surveillance are, and what we are losing in exchange," he says. "Asking hard questions may seem disrespectful or like it is getting in the way of officials doing their job, but it is essential. In a democracy, the people (and their elected and appointed representatives) have a duty to ask what the government is doing in their name, and what the costs of those actions are."The Snowden revelations started a conversation in this country and around the globe about what kinds of government surveillance are appropriate in a democracy, and I think this case (which will likely end up in the Supreme Court) will be an essential part of that conversation. Richards says that it is unfortunate that the spectre of terrorism has caused most people to be highly deferential to any question of national security at the same time that the digital revolution is permitting kinds of surveillance that would have been politically and technically impossible as recently as fifteen years ago. "It's also revealed -as Judge Leon noted- that many of our legal rules and precedents presuppose a non-digital, analog world," Richards says. "I'm hopeful that our conversation about these questions will produce not just lihe mtigation but legislation that is tailored to our new technologies. These new laws should allow government surveillance where it is appropriate, but place meaningful constraints on the government's ability to peer into the lives of ordinary people. These sorts of issues are exactly why we have laws - a set of rules that allow the government limited powers to do its job, but which protect the vital civil liberties our system of self-government is supposed to cherish."

Offsets tests the core controversy in the resolution- how much surveillance is too much, and how much isn't enough?

McManus, 2013- former editorial writer at the New York Post (Bob McManus, 6/12/13, "Terror & Surveillance Of balance - and trust," accessed: 6/26/15 in lexis, fg)

Today's enemies don't wear uniforms, an unremarkable observation except for what it implies: namely, that effective self-defense in these high-tech times necessarily brings fundamental American privacy principles into conflict with the need to protect against threats of a perhaps near-existential nature. **How much surveillance is too much, and how much is not enough?** Certainly, Edward Snowden's revelations have re-energized a debate that had been on low boil; for better or for worse, it will proceed at its own pace. For better, because such matters are always worth discussing. For worse, because too many participants long ago decided that prospective anti-terrorism policing may be acceptable in principle, but never in practice - and many of them find the relatively benign efforts of the NYPD to be particularly offensive. Some are slippery-slopeists - folks for whom surreptitious police work of any sort is the same as climbing into that handbasket to hell. Others just hate the police. They resent authority, or they believe cops are stupid and venal and not to be trusted. And still others object because Ray Kelly and his intelligence division - acting entirely within the law, and with specific approval from a federal judge - have been searching in the city's Islamic community for Islamist threats. Resentment of such attention is understandable, but is it reasonable? Where else are the cops to look? Or should they not be looking in the first place? Yet that track would essentially leave counterterrorism to the same national-

security apparatus that - despite multiple warnings from the Russians - was caught flat-footed in Boston on Patriots' Day. A reasonable wariness of the power of the state is wise, even necessary. And none of the prejudices listed above are totally unreasonable. But taken in their totality, they amount to pernicious nonsense - and a prescription for inactivity that most New Yorkers, steeped in 9/11, probably would find unacceptable if they fully understood the potential consequences. As it is, the national debate over Snowden, the National Security Agency and related issues is occurring in the context of an equally urgent examination of egregious privacy abuses within the Internal Revenue Service, and a growing public awareness of just how intrusive the Obama administration's health-care program is going to be.

"How much" is the central question of the resolution

Ball 13 (James Ball - leading data journalist and editor at the guardian, lecturer at City University of London, and published "WikiLeaks: news in the networked era", and "The Infographic History of the World", http://www.theguardian.com/guardian-us-press-office/james-ball-joins-guardian-us-office) //JS

In the case of phone records – who you call, when, for how long, but not the contents of the messages – that means collecting data on every customer of the networks, which then sits unexamined until there's a reason to look for a particular individual. For the intelligence agencies, this avoids a frustration: when the NSA want to know more about a person, they can get the appropriate authorisation (for a US citizen, a secret court order; for foreigners, far less) and obtain their history, their associates, and their location from the data. This prevents a previous frustration: by the time the NSA or intelligence bodies identified a suspect, their previous phone data (and more) had already been wiped. Mass surveillance and storage solves a real problem. So too, of course, would a camera in every home; a bug in every computer. The question becomes: how much is too much? When it comes to metadata, the defences are simple: the information collected is basic; your data almost certainly won't ever be looked at; and even if it is, unless you're a terrorist, it'll be completely innocuous. None are necessarily that satisfying. One example that's been cited for the significance of metadata runs like this. Location records obtained from phones show the following people have been at a certain address: Person A made a short visit, and then a few days later returned for four hours. Person B spends eight hours at the address, on a Saturday. Person C spends 10 hours at the address each day. Person D visits for a short period, weekly. In this hypothetical, the address is an abortion clinic. A has had a consultation followed by an abortion. B works at the clinic, C is a protester, and D is a trans person who needs to visit regularly for hormones. Even a single piece of basic location detail can reveal some of the most sensitive secrets a person may have. The affair of the former head of the CIA, General David Petraeus, was revealed through email metadata. Metadata is also the "signature" of signature strikes – enough information to authorise a fatal drone strike. Metadata matters. What might be found within yours? It might not take much for the NSA to seek an order to pull up your information: a misdialled call from an overseas terror suspect; a misfiring algorithm suggesting you're acting oddly; an acquaintance from 10 years ago who's now up to something shady. The intelligence services are working to get information to prevent potential atrocities. That's a serious task, and so collection is important. What could be in your records that help that? Phone calls with a pot dealer, evidence of file sharing, or more, are all things that generally intelligence agencies would ignore. But if you're caught in the dragnet, even wrongly, they could be applied as pressure to get your co-operation. Either could be enough to begin a process ending in a lengthy prison sentence. If you've got nothing to hide, you've got nothing to fear. But everyone has a few little secrets. Mass collection ensures that intelligence agencies have the skeletons in everyone's closets stored away in case they ever become useful. That's without even going into the free speech implications of large-scale surveillance. We talk differently when we're being watched: after all, who talks about their job in exactly the same way when their boss is in the room and listening? This is just what one small aspect of the NSA's activities revealed over the course of a week. In time, we may know more. But this is the debate the NSA whistleblower Edward Snowden wanted to start. What's being collected, what's allowed under the law, and how much is being done? Scrutiny so far has been limited: some question whether senators understand the full extent of what's permitted under anti-terror laws they have passed, given the technical knowledge needed to know what is possible. Others worry some congressmen fear to vote in any way which could have them painted as soft on security. Others point to generous campaign contributions from large security contractors – with no comparably generous donors in the privacy lobby. Snowden's hope is that debate gets wider, more details, more informed, and moves the public. Perhaps one of the most famous historical quotations on surveillance is attributed to the brutal French 17th-century clergyman and politician Cardinal Richelieu. "If one would give me six lines written by the hand of the most honest man," he wrote. "I would find something in them to have him hanged." The NSA, we now know thanks to Snowden's leak, collects more than 200bn pieces of intelligence from computer and phone networks every month. How many could Richelieu hang with that?

CP vital to surveillance discussions

Baker 98 (Garry Baker - former international relations and U.N correspondent for Herald and Weekly times, Technology editor at The Age (Melbourne), October 10, 1998, The Age, Every move you make, someone is watching you; Be careful: in the electronic information age, your personal life may not be your own, and the right to privacy may be the victim. Just ask Monica Lewinsky, Lexis, //js)

The wired-up world is beginning to look like a spyfest at the height of the Cold War - there are eyes and ears everywhere. And, in most cases, there is nowhere to hide. In the modern digital age, everyone leaves electronic footprints and fingerprints wherever they go - physically or in cyberspace. Monica Lewinsky discovered that when technicians easily retrieved from her Pentagon computer copies of e-mails she had sent to President Clinton. Never mind that she had hit the delete button on her mail browser; the messages remained on the hard disk and, indeed, at several points on the Internet where they had been stored, then retransmitted to the Oval Office. But surveillance doesn't stop with computers. Networks such as Telstra and Optus can track and record the position of mobile phones; data can be traced as it moves over local and wide-area networks; and any Internet service provider could, if they chose, keep track of every site visited by any of their subscribers. Many companies keep track of telephone numbers dialled by their employees. Stockbrokers, for instance, do it so that verbal deals cannot later be denied. Even the keystrokes you make on your computer keyboard and the movements you make with your mouse may be remotely tracked and recorded. One software surveillance system, by Omniquad, is available for just a few dollars as shareware on the Internet. If you use an automatic teller or an Eftpos machine, the transaction is recorded. If you use a swipe card to gain access to a part of the building where you work, that entry is recorded. Couple that with the usual surveillance video camera and you're a fly in a web. Faxes can be monitored remotely, so don't bother making a trip to the shredder. Someone else may already have a copy. Now legislators in Australia and elsewhere are asking how much of this surveillance is acceptable and whether new laws are needed to protect individual rights. The transducers that will be used to digitally pay tolls on the CityLink expressways and tunnels record a car's passage under the sensor rails. But they could, equally well, be used to track a vehicle anywhere with no more trouble than setting up a system of video-surveillance cameras similar to that used by VicRoads to keep an eye on the state's traffic lights and roads.

at: 2ac additions

1 - Stable aff advocacy key -- alternative kills strategy and makes it impossible to be negative
2 - No justification for changes -- don't privilege unprepared teams
3 - Infinitely regressive -- justifies subtractions in the 2NC -- turns their plan focus and breath over depth key args
4 - If you spot them this, they accept our interpretation of theory -- means reject them on aff conditionality, (severance and/or Intrinsicness)

at: aff right to select ground is destroyed

1. **Nope- they chose their ground, the status quo plus the plan.**
2. **The resolution determines ground- the core question on the topic is whether we should curtail domestic surveillance or not. Increasing or maintaining levels of surveillance is neg ground. The question in debate isn't whether the plan is good or bad, it's whether the resolution as a whole is good or bad. Plans just act as examples of why it's good.**
3. **The aff has no right to select ground- they can't determine what CPs are competitive or what Ks or DAs link.**

at: can't quantify overall level

1 - Net benefit proves this is untrue - CP demonstrates large increase in surveillance
2 - Double Bind - either the aff cannot prove they are substantial increase, and we win on T or the CP results in the same increase as they curtail
3 - Hold the CP to the same standard as the aff - no precise numerical values for Substantial increase -- rough measures are the best estimate

at: curtail =/= net curtailment

1. **Yes it does- the aff has to prove that a reduction in overall surveillance is more desirable than the status quo. Any risk we need to increase surveillance from status quo levels disproves thesis of the resolution and means you vote neg.**
2. **Their interpretation destroys neg ground- it makes affs that just change how surveillance works while maintaining existing levels topical, which takes out all core neg ground based on a reduction in surveillance.**
3. **Yes it does- extend the 1nc Anderson 5 evidence from the 1nc- the word curtail means a decrease across the board. That means the plan, or the perm, needs to result in a net decrease in curtailment.**

at: depth over breadth

1 - The CP increases depth - the core question is "how much" domestic surveillance
2 - Depth inevitable - every debate discusses some facet of the topic

3 - False depth - their form of debate results in discussions of minutia -- like how many senators backlash against the plan -- causes stale debate and kills discussions about actual surveillance policy
4 - Breath good -- key to argument innovation and better research skills
5 - If the affirmative cannot defend themselves against "Surveillance good" args -- like the CP -- then their education isn't superior

at: forces the aff to defend the status quo

1. **Obviously not- the aff has to defend the world post-plan.**
2. **If it's true, it's their fault- the impact of their plan is too small to prove that the resolution as a whole is a good idea. A bigger aff could leverage against offsets by proving that an overall reduction in surveillance is good.**
3. **No impact- we're defending an increase in surveillance- plenty of offense and defense against that.**
4. **Non-unique- the CP doesn't force them to defend the status quo, the nature of politics does. Obviously no policy changes every aspect in the status quo.**

at: forces us to debate ourselves

Fundamentally untrue- you beat offsets by beating the internal net benefit- you can win offense against it, proving that type of surveillance shouldn't be increased, or if you read defense and prove there's zero risk of the net benefit, the judge votes neg on presumption.

at: includes the aff

1 - Not true, excludes "curtail" -- if the plan doesn't curtail vote neg on T.
2 - No impact to this
- **Structural side biases, infinite prep, and large topic mean CPs which include the aff are core negative ground**
- **Clear affirmative offense - impact turning the net benefit, or defending the thesis of the resolution**

at: narrow logic

1 - This is untrue -- the question of how much surveillance should be curtailed is the center of this debate - just because resources are centered on the bigger picture doesn't make them insufficient
2 - Aff could curtail surveillance in different categories, results in expansion in topic areas being covered

at: not textually competitive

1 - The counterplan textually competes with the word “curtail” -- CP results in a net increase in surveillance

2 - Textual competition is a horrible standard --

- A - its infinitely regressive - no brightline -- changing the order of letters could compete - leading to artificial explosion of negative ground which makes debate impossible
- B - Doesn’t text exclusivity - things like Ban the Plan CP wouldn’t compete because the aff could put “not” into their perm block
- C - their interpretation encourages vague plan writing to avoid counterplan debates

3 - CP doesn’t lessen the amount of surveillance -- reject any permutation on T

4 - CP sets the best standard - their interpretation makes debate into a game of scrabble - kills topic specific education - prefer debates regarding nuanced approach to surveillance policy

at: offense = arbitrary/self-serving

1. **So are their arguments against the CP- obviously everyone’s specific points support their overall position.**
2. **Not true- our argument is based on the role the resolution plays in determining the topic of debate. Logically, the team affirming the resolution needs to prove that it represents a good idea by providing specific examples of how. Saying the opposite of the resolution is core neg ground.**

at: pics bad

PICs are good--

1. **Resolutional testing- the plan isn’t a policy in a vacuum, it’s an attempt to prove the resolution is true. The plan can be a good idea, but that doesn’t mean topical action as a whole is.**
2. **Real world policy-making- the question the CP asks would be part of a policy discussion about domestic surveillance. Excluding it because it does the aff would be arbitrary and ignores part of the topic.**
3. **Side-bias checks- they get the first and last speech and time to refine their 2ac blocks.**
4. **Competition determines legitimacy- if we win the CP is mutually exclusive with the plan any theoretical objections to it are contrived.**

at: resolution focus bad

1 - No difference -- plan focus is only a subset of the resolution
2 - CP is plan focused -- judge is questioning the desirability and topicality of the plan
3 - Duality is best -- Resolution focus results in better understanding of specific policy issues surround surveillance, no loss in the advantages of plan focus

[AT: Counterwarrants]
2 - CP doesn't justify Counterwarrants -- purpose of the CP is to say that the plan doesn't prove the resolution true.

[AT: Hypotesting]
3 - Hypotesting isn't unique to resolution focus -- plan focused debate demonstrates conditional advocacies

at: too many possibilities

1 - Isn't true - default to specific Net Benefit - the CP focuses on core aspects of surveillance
2 - Reciprocal -- "infinite" number of programs the affirmative could curtail
3 - Lit checks -- only a limited number of things the neg could increase that have substantial lit basis
4 - They should be prepared anyway -- they can read any number of DAs to increasing surveillance, which the aff should be prepared to debate given their burden to be topical

net benefit

new surveillance good

Note

Use the impact from the terror DA/Core files

1nc -- terror (vs. policy)

New surveillance critical to quell terror threats

Sulmasy, 13 --- Professor of Law and Governmental Affairs Officer at Coast Guard Academy (6/10/2013, Glenn, "Why we need government surveillance," http://www.cnn.com/2013/06/10/opinion/sulmasy-nsa-snowden/, JMP)

The current threat by al Qaeda and jihadists is one that requires aggressive intelligence collection and efforts. One has to look no further than the disruption of the New York City subway bombers (the one being touted by DNI Clapper) or the Boston Marathon bombers to know that the war on al Qaeda is coming home to us, to our citizens, to our students, to our streets and our subways. This 21st century war is different and requires new ways and methods of gathering information. As technology has increased, so has our ability to gather valuable, often actionable, intelligence. However, the move toward "home-grown" terror will necessarily require, by accident or purposefully, collections of U.S. citizens' conversations with potential overseas persons of interest. An open society, such as the United States, ironically needs to use this technology to protect itself. This truth

is naturally uncomfortable for a country with a Constitution that prevents the federal government from conducting "unreasonable searches and seizures." American historical resistance towards such activities is a bedrock of our laws, policies and police procedures. But what might have been reasonable 10 years ago is not the same any longer. The constant armed struggle against the jihadists has adjusted our beliefs on what we think our government can, and must, do in order to protect its citizens.

2nc - surveillance good

The threat from terrorist groups is only growing- increased domestic surveillance is the only way to prevent an attack

Inserra, 6/8/15- research associate in The Heritage Foundation's Allison Center for Foreign and National Security Policy (David Inserra, 6/8/15, "69th Islamist Terrorist Plot: Ongoing Spike in Terrorism Should Force Congress to Finally Confront the Terrorist Threat," http://www.heritage.org/research/reports/2015/06/69th-islamist-terrorist-plot-ongoing-spike-in-terrorism-should-force-congress-to-finally-confront-the-terrorist-threat, accessed: 6/29/15, fg)

On June 2 in Boston, Usaamah Abdullah Rahim drew a knife and attacked police officers and FBI agents, who then shot and killed him. Rahim was being watched by Boston's Joint Terrorism Task Force as he had been plotting to behead police officers as part of violent jihad. A conspirator, David Wright or Dawud Sharif Abdul Khaliq, was arrested shortly thereafter for helping Rahim to plan this attack. This plot marks the 69th publicly known Islamist terrorist plot or attack against the U.S. homeland since 9/11, and is part of a recent spike in terrorist activity**. The U.S. must redouble its efforts to stop terrorists before they strike, through the use of properly applied intelligence tools.** The Plot According to the criminal complaint filed against Wright, Rahim had originally planned to behead an individual outside the state of Massachusetts,[1] which, according to news reports citing anonymous government officials, was Pamela Geller, the organizer of the "draw Mohammed" cartoon contest in Garland, Texas.[2] To this end, Rahim had purchased multiple knives, each over 1 foot long, from Amazon.com. The FBI was listening in on the calls between Rahim and Wright and recorded multiple conversations regarding how these weapons would be used to behead someone. Rahim then changed his plan early on the morning of June 2. He planned to go "on vacation right here in Massachusetts…. I'm just going to, ah, go after them, those boys in blue. Cause, ah, it's the easiest target."[3] Rahim and Wright had used the phrase "going on vacation" repeatedly in their conversations as a euphemism for violent jihad. During this conversation, Rahim told Wright that he planned to attack a police officer on June 2 or June 3. Wright then offered advice on preparing a will and destroying any incriminating evidence. Based on this threat, Boston police officers and FBI agents approached Rahim to question him, which prompted him to pull out one of his knives. After being told to drop his weapon, Rahim responded with "you drop yours" and moved toward the officers, who then shot and killed him. While Rahim's brother, Ibrahim, initially claimed that Rahim was shot in the back, video surveillance was shown to community leaders and civil rights groups, who have confirmed that Rahim was not shot in the back.[4] Terrorism Not Going Away This 69th Islamist plot is also the seventh in this calendar year. Details on how exactly Rahim was radicalized are still forthcoming, but according to anonymous officials, online propaganda from ISIS and other radical Islamist groups are the source.[5] That would make this attack the 58th homegrown terrorist plot and continue the recent trend of ISIS playing an important role in radicalizing individuals in the United States. It is also the sixth plot or attack targeting law enforcement in the U.S., with a recent uptick in plots aimed at police. **While the debate** over the PATRIOT Act and the USA FREEDOM Act **is taking a break, the terrorists are not.** The result of the debate has been the reduction of U.S. intelligence and counterterrorism capabilities, meaning that the U.S. has to do even more with less

when it comes to connecting the dots on terrorist plots.[6] Other legitimate intelligence tools and capabilities must be leaned on now even more. Protecting the Homeland To keep the U.S. safe, Congress must take a hard look at the U.S. counterterrorism enterprise and determine other measures that are needed to improve it. Congress should: Emphasize community outreach. Federal grant funds should be used to create robust community-outreach capabilities in higher-risk urban areas. These funds must not be used for political pork, or so broadly that they no longer target those communities at greatest risk. Such capabilities are key to building trust within these communities, and if the United States is to thwart lone-wolf terrorist attacks, it must place effective community outreach operations at the tip of the spear. Prioritize local cyber capabilities. Building cyber-investigation capabilities in the higher-risk urban areas must become a primary focus of Department of Homeland Security grants. With so much terrorism-related activity occurring on the Internet, local law enforcement must have the constitutional ability to monitor and track violent extremist activity on the Web when reasonable suspicion exists to do so. Push the FBI toward being more effectively driven by intelligence. While the FBI has made high-level changes to its mission and organizational structure, the bureau is still working on integrating intelligence and law enforcement activities. Full integration will require overcoming inter-agency cultural barriers and providing FBI intelligence personnel with resources, opportunities, and the stature they need to become a more effective and integral part of the FBI. Maintain essential counterterrorism tools.Support for important investigative tools is essential to maintaining the security of the U.S. and combating terrorist threats. **Legitimate government surveillance programs are** also **a vital component of U.S. national security and should be allowed to continue.** The need for effective counterterrorism operations does not relieve the government of its obligation to follow the law and respect individual privacy and liberty. In the American system, the government must do both equally well. Clear-Eyed Vigilance The recent spike in terrorist plots and attacks should finally awaken policymakers—all Americans, for that matter—to the seriousness of the terrorist threat. Neither fearmongering nor willful blindness serves the United States. Congress must recognize and acknowledge the nature and the scope of the Islamist terrorist threat, and take the appropriate action to confront it.

New surveillance critical to quell terror threats

Sulmasy, 13 --- Professor of Law and Governmental Affairs Officer at Coast Guard Academy (6/10/2013, Glenn, “Why we need government surveillance,” http://www.cnn.com/2013/06/10/opinion/sulmasy-nsa-snowden/, JMP)

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2nc- isis

Only expanding surveillance solves ISIS threat

Perez and Prokupecz May 30 (Evan and Shimon; FBI struggling with surge in homegrown terror cases; www.cnn.com/2015/05/28/politics/fbi-isis-local-law-enforcement/; kdf)

The New York Police Department and other law enforcement agencies around the nation are increasing their surveillance of ISIS supporters in the U.S., in part to aid the FBI which is struggling to keep up with a surge in the number of possible terror suspects, according to law enforcement officials. The change is part of the fallout from the terrorist attack in Garland, Texas earlier this month. The FBI says two ISIS supporters attempted a gun attack on a Prophet Mohammad cartoon contest but were killed by police. One of the attackers, Elton Simpson, was already under investigation by the FBI but managed to elude surveillance to attempt the foiled attack. FBI Director James Comey told a group of police officials around the country in a secure conference call this month that the FBI needs help to keep tabs on hundreds of suspects. As a result, some police agencies are adding surveillance teams to help the FBI monitor suspects. Teams of NYPD officers trained in surveillance are now helping the FBI's surveillance teams to better keep track of suspects, law enforcement officials say. Why ISIS is winning, and how to stop it NYPD Commissioner William Bratton has said he wants to add 450 officers to the force's counterterrorism unit, partly to counter the increasing domestic threat posed by ISIS sympathizers. The same is happening with other police departments around the country. The Los Angeles Police Department's counterterrorism unit is also beefing up its surveillance squads at the request of the FBI, law enforcement officials say. Comey said at an unrelated news conference Wednesday that he has less confidence now that the FBI can keep up with the task. "It's an extraordinarily difficult challenge task to find -- that's the first challenge -- and then assess those who may be on a journey from talking to doing and to find and assess in an environment where increasingly, as the attorney general said, their communications are unavailable to us even with court orders," Comey said. "They're on encrypted platforms, so it is an incredibly difficult task that we are enlisting all of our state, local and federal partners in and we're working on it every single day, but I can't stand here with any high confidence when I confront the world that is increasingly dark to me and tell you that I've got it all covered," he said. "We are working very, very hard on it but it is an enormous task." On Saturday, an FBI spokesman said the bureau doesn't have a shortage of resources and the Garland attack wasn't the result of lack of surveillance personnel. If agents had any indication that Simpson was moving toward an attack, they would have done everything to stop it, the spokesman said. The appeal for local help isn't intended to seek more surveillance, but more broadly to encourage local law enforcement to increase vigilance given the heightened threat, the FBI said. The Garland attack prompted a reassessment for FBI officials. Simpson's social media and other communications with known ISIS recruiters drew the FBI's interest earlier this year. The Americans linked to ISIS FBI agents in Phoenix began regular surveillance of Simpson, though it was not round-the-clock monitoring, according to a U.S. official. The agents watching Simpson noticed he disappeared for a few days. Investigators looked into his communications and found social media postings making reference to the Garland cartoon contest. That discovery is what prompted the FBI to send a bulletin to the joint terrorism task force that was monitoring the Garland event. The bulletin arrived about three hours before the attack. Comey told reporters this month the FBI had no idea Simpson planned to attack the event or even that he had traveled from his home in Phoenix to Texas.

at: can still surveil terrorists

Surveillance of known terrorists doesn't solve- unknown terrorists inflict the greatest harm

Lewis, 2014- Director and Senior Fellow of the Strategic Technologies Program at CSIS with a PhD from the University of Chicago (James Andrew Lewis, December 2014, "Underestimating Risk in the Surveillance Debate," http://csis.org/files/publication/141209_Lewis_UnderestimatingRisk_Web.pdf, accessed: 6/29/15, fg)

The echoes of September 11 have faded and the fear of attack has diminished. We are reluctant to accept terrorism as a facet of our daily lives, but major attacks—roughly one a year in the last five years—are regularly planned against U.S. targets, particularly passenger aircraft and cities. America's failures in the Middle East have spawned new, aggressive terrorist groups. These groups include radicalized recruits from the West—one estimate puts the number at over 3,000—who will return home embittered and hardened by combat. Particularly in Europe, the next few years will see an influx of jihadis joining the existing population of homegrown radicals, but the United States itself remains a target. America's size and population make it is easy to disappear into the seams of this sprawling society. Government surveillance is, with one exception and contrary to cinematic fantasy, limited and disconnected. That exception is communications surveillance, which provides the best and perhaps the only national-level solution to find and prevent attacks against Americans and their allies. Some of the **suggestions for alternative approaches to surveillance**, such as the recommendation that NSA only track "known or suspected terrorists," **reflect** both **deep ignorance and wishful thinking. It is the unknown terrorist who will inflict the greatest harm.**

1nc -- terror (vs. k)

We need more surveillance to check white supremacist groups

Robinson 6/23 (Eugene Robinson - Pulitzer Prize winning journalist, June 23, 2015, The Courier Journal, 'We need to go beyond speeches and symbols', http://www.courier-journal.com/story/opinion/columnists/2015/06/23/robinson-need-go-beyond-speeches-symbols/29151157/) //JS

If American racism were a thing of the past, nine men and women who went to church last Wednesday evening would be alive. What happened in Charleston is not unfathomable or even ambiguous. It's a story much older than the nation, a story that began when the first Africans were brought to Jamestown in 1619: the brutalizing and killing of black people because of the color of their skin. The weekend displays of multiracial unity throughout the saddened city were inspiring, but they cannot be taken as a sign that the country has moved beyond its troubled racial past. The young man who so coldly killed those innocent worshipers at Emanuel African Methodist Episcopal Church did not exist in a vacuum. He inhaled deeply of the race hatred that constantly bubbles up like foul gas from a sewer. The alleged assassin, Dylann Roof, left behind a manifesto that said he drew inspiration from the website of the Council of Conservative Citizens, a prominent white supremacist group. The organization's proudly racist "statement of principles" declares that "the American people and government should remain European in their composition and character" and opposes "all efforts to mix the races of mankind." The Southern Poverty Law Center, which tracks hate groups, describes the council as a modern-day incarnation of the "White Citizens Councils" throughout the South that fought so tenaciously against desegregation during the civil rights era. The council's membership is thought to be small but its reach is vast, thanks to the Internet. Like hateful jihadists, white supremacists use cyberspace as a bulletin board and a meeting place. Come on in, young Mr. Roof, and let us tell you how those black people and those brown people are responsible for everything that's going wrong in your life. Some conservatives have been quick to absolve society of blame by pointing out that the Charleston shooter was mentally disturbed. But of course he was mentally disturbed; normal, well-adjusted individuals do not commit mass murder. And the fact is that the Charleston killings were intended to advance a specific cause. To look past Roof's racism would be like ignoring the fact that the Tsarnaev brothers, who committed the Boston Marathon bombing, believed in a violent, twisted version of Islam. "You rape our women and you're taking over our country," Roof reportedly said to his victims before opening fire. This sick narrative comes straight from the Council of Conservative Citizens website, which inflates isolated incidents of black-on-white crime into some kind of race war and portrays the nation's "European heritage" as being in dire peril. President Obama chose an unusual forum -- a podcast with comedian Marc Maron -- to deliver his most candid remarks to date since the Charleston massacre. Race relations have clearly improved in our lifetimes, he said, but "we are not cured" of racism "and it's not just a matter of it not being polite to say 'nigger' in public." Slavery and Jim Crow discrimination cast "a long shadow and that's still part of our DNA that's passed on." Obama's election in 2008 undoubtedly marked a milestone, one I never dreamed I'd live to see. I wrote at the time that it felt like morning in America. What I didn't fully appreciate at the time was the extent to which the mere fact of a black family living in the White House would, at least in the short term, heighten racial anxieties and conflicts. I didn't see that the spectacle of African-Americans in power would apparently lead some whites to feel powerless, aggrieved and victimized. In the long run, I'm an

optimist. But a post-racial future will not just appear. There is urgent work to do. By all means, South Carolina, get rid of the Confederate flag, which has become an emblem of the white supremacist movement. The flag first flew over the statehouse in Columbia in 1961, not 1861; it was essentially an act of defiance, a raised middle finger toward a federal government that was forcing the end of Jim Crow. But we need to go beyond speeches and symbols. Law enforcement should subject white racist organizations to the same surveillance and scrutiny as groups devoted to jihad. Governments at all levels should enforce fair housing and employment laws as vigorously as they enforce the Patriot Act. Police departments and court systems must be compelled to administer justice equally -- with African-Americans, too, considered innocent until proven guilty.

2nc - white supremacist

White supremacists are the largest threat -- need more surveillance

Kruzman and Schanzer June 16, **2015** (Charles and David; The Growing Right-Wing Terror Threat; www.nytimes.com/2015/06/16/opinion/the-other-terror-threat.html?_r=0

THIS month, the headlines were about a Muslim man in Boston who was accused of threatening police officers with a knife. Last month, two Muslims attacked an anti-Islamic conference in Garland, Tex. The month before, a Muslim man was charged with plotting to drive a truck bomb onto a military installation in Kansas. If you keep up with the news, you know that a small but steady stream of American Muslims, radicalized by overseas extremists, are engaging in violence here in the United States. But headlines can mislead. **The main terrorist threat in the United States is** not from violent Muslim extremists, but **from right-wing extremists**. Just ask the police. In a survey we conducted with the Police Executive Research Forum last year of 382 law enforcement agencies, 74 percent reported anti-government extremism as one of the top three terrorist threats in their jurisdiction; 39 percent listed extremism connected with Al Qaeda or like-minded terrorist organizations. And only 3 percent identified the threat from Muslim extremists as severe, compared with 7 percent for anti-government and other forms of extremism. The self-proclaimed Islamic State's efforts to radicalize American Muslims, which began just after the survey ended, may have increased threat perceptions somewhat, but not by much, as we found in follow-up interviews over the past year with counterterrorism specialists at 19 law enforcement agencies. These officers, selected from urban and rural areas around the country, said that radicalization from the Middle East was a concern, but not as dangerous as radicalization among right-wing extremists. An officer from a large metropolitan area said that "militias, neo-Nazis and sovereign citizens" are the biggest threat we face in regard to extremism. One officer explained that he ranked the right-wing threat higher because "it is an emerging threat that we don't have as good of a grip on, even with our intelligence unit, as we do with the Al Shabab/Al Qaeda issue, which we have been dealing with for some time." An officer on the West Coast explained that the "sovereign citizen" anti-government threat has "really taken off," whereas terrorism by American Muslim is something "we just haven't experienced yet." Last year, for example, a man who identified with the sovereign citizen movement — which claims not to recognize the authority of federal or local government — attacked a courthouse in Forsyth County, Ga., firing an assault rifle at police officers and trying to cover his approach with tear gas and smoke grenades. The suspect was killed by the police, who returned fire. In Nevada, anti-government militants reportedly walked up to and shot two police officers at a restaurant, then placed a "Don't tread on me" flag on their bodies. An anti-government extremist in Pennsylvania was arrested on suspicion of shooting two state troopers, killing one of them, before leading authorities on a 48-day manhunt. A right-wing militant in Texas declared a "revolution" and was arrested on suspicion of attempting to rob an armored car in order to buy weapons and explosives and attack law enforcement. These individuals on the fringes of right-wing politics increasingly worry law enforcement officials. Law enforcement agencies around the country are training their officers to recognize signs of anti-government extremism and to exercise caution during routine traffic stops, criminal investigations and other interactions with potential extremists. "**The threat is real,**" says the handout from one training program sponsored by the Department of Justice. Since 2000, the handout notes, 25 law enforcement officers have been killed by right-wing extremists, who share a "fear that government will confiscate firearms" and a "belief in the approaching collapse of government and the economy." Despite public anxiety about extremists inspired by Al Qaeda and the Islamic State, the number of violent plots by such individuals has remained very low. Since 9/11,

an average of nine American Muslims per year have been involved in an average of six terrorism-related plots against targets in the United States. Most were disrupted, but the 20 plots that were carried out accounted for 50 fatalities over the past 13 and a half years. In contrast, right-wing extremists averaged **337 attacks per year** in the decade after 9/11, causing a total of 254 fatalities, according to a study by Arie Perliger, a professor at the United States Military Academy's Combating Terrorism Center. The toll has increased since the study was released in 2012. Other data sets, using different definitions of political violence, tell comparable stories. The Global Terrorism Database maintained by the Start Center at the University of Maryland includes 65 attacks in the United States associated with right-wing ideologies and 24 by Muslim extremists since 9/11. The International Security Program at the New America Foundation identifies 39 fatalities from "non-jihadist" homegrown extremists and 26 fatalities from "jihadist" extremists. Meanwhile, terrorism of all forms has accounted for a tiny proportion of violence in America. There have been more than 215,000 murders in the United States since 9/11. For every person killed by Muslim extremists, there have been 4,300 homicides from other threats. Public debates on terrorism focus intensely on Muslims. But this focus does not square with the low number of plots in the United States by Muslims, and it does a disservice to a minority group that suffers from increasingly hostile public opinion. As state and local police agencies remind us, right-wing, anti-government extremism is the leading source of ideological violence in America.

Surveillance prevents Charleston like situations - senator Graham

Krayewski 6/19 (Ed Krayewski - M.S. in journalism from Columbia and former editor for Fox News and Fox Business, June 19, 2015, Lindsey Graham: 'Being Able to Track People, Put Them Into Systems' One Way to Prevent Mass Shootings, Jun. 19, 2015, Reason, http://reason.com/blog/2015/06/19/lindsey-graham-being-able-to-track-peopl) //JS

The mass shooting at an AME church in Charleston, S.C., Wednesday night perpetrated by a white man who confessed he was trying to start a race war has led to the predictable emotional appeals to old party lines, from gun control to more salvation and less government, especially in a 24 hour news cycle. South Carolina Sen. Lindsey Graham (R), who's running for president, says his niece attended school with Dylann Roof, and that he seemed like an "Adam Lanza" type. While Graham didn't refer to other seemingly obvious motivations, like trying to start a race war, he did offer a solution that matches the response to radical Islamist terrorism more closely policy-wise, if not rhetorically. Graham's comments, via CBS News: "I bet there were some indicators early on that this guy was not quite there. Just being able to track people - put them into systems where they can be deterred or stopped. But it's very complicated in a nation of 300 million people where you have freedom of movement and freedom of thought. 300 million of us and unfortunately every now and then, something like this happens. And we'll see." The perceived treatment of white suspects as mentally ill "lone wolves" by the media where non-white suspects are treated as terrorists and thugs is a common complaint in the wake of mass shootings by white men. Lindsey Graham goes both ways here, using the lone wolf rhetoric, offering a counter-terrorism solution—tracking people in systems, and then almost dismissing it as the price of free society. Were Dylann Roof interested in joining ISIS, Lindsey Graham would be ready to blow him up just for thinking the thought. For a government looking to get people to trade more liberty for the promise of more security and looking to expand its domestic policing and surveillance apparatuses, it's easy to acquiesce to demands Roof and the threat of white supremacist terrorism be treated more like the threat of radical Islamist terrorism. And such demands make it harder to realize that the threat posed by free people, white or non-white, Christian, Muslim, whatever, is exaggerated and exploited toward the end of more surveillance, more policing, at home and abroad, and more control.

NEG Secrecy CP

1nc secrecy cp

Text:

The United States federal government should:

publicly announce that it will << plan >>

not << plan >>

and apply enhanced Insider Threat Program and Continuous Evaluation protections to << area of the plan >>.

Solves their perception internals – sufficient to prevent their impacts

Eoyang, National Security Director @ Third Way, 14 (Mieke Eoyang, director of the National Security Program at Third Way, previously served on the staff of the House Intelligence and Armed Services Committees, as Defense Policy Advisor to Senator Edward M. Kennedy, and subcommittee staff director on the House Permanent Select Committee on Intelligence, "A Modest Proposal: FAA Exclusivity for Collection Involving U.S. Technology Companies," Lawfare, http://www.lawfareblog.com/modest-proposal-faa-exclusivity-collection-involving-us-technology-companies)//ET

Others may argue that FAA provides inadequate civil liberties protections. This proposal says nothing about the adequacy of that statute. What it says is that for data held by an American company about a target that is not a US person, the checks within FAA are stronger than those under 12333 acting alone. I'm also **not** suggesting that this **reform** will **shut down** all **surveillance activities** – something I'd personally oppose---nor will it address the full range of civil liberties concerns. It's **not intended to**. It simply aims to **restore the belief** that when American companies are acting overseas, they bring with them American values, including those of **privacy protections**.

BUT, re-establishing secrecy over surveillance programs is essential to bolster counter-intelligence capability and threat detection

Van Cleave, former U.S. counter-intel czar, 13 (Michelle Van Cleave, served as the head of US counterintelligence under President George W. Bush, now a principal with the Jack Kemp Foundation, "What It Takes: In Defense of the NSA," World Affairs, November/December 2013, http://www.worldaffairsjournal.org/article/what-it-takes-defense-nsa)

Freedom must be won anew by every generation." I was reminded of the truth behind these words of my old boss, Jack Kemp, in considering the current debate over Edward Snowden and the collection programs of the National Security Agency. The wars that have been fought in freedom's defense—the deep sacrifices of lives and treasure by generations of Americans, including those serving today—are one measure of that truth. But it does not stop there. It also means that America's democracy is a great experiment in governance. Our obligation as citizens is to conserve what is good and enduring while changing and improving what we must. Those choices are not always easy, especially when they involve making decisions about things that must by their nature be secret in order to help keep us free.

Contrast this with the seemingly boundless instant commentary about Snowden, who used his access as a nondescript contractor at an NSA facility in Hawaii to propel himself into the number one news story overnight. All it took were a few well-placed leaks to the Guardian and the Washington Post and a quick getaway to China, thumb drive in hand. Early polls showed that sixty percent of people in their twenties believed that Snowden's disclosures were in the public interest. Perhaps they have forgotten why we have these collection programs in the first place. Highest on the list of "lessons learned" from the September 11th terrorist attack was the need for a retooled intelligence enterprise that could "connect the dots" and keep us safe. The intelligence apparatus in place on September 10th was not built for that purpose. The imperatives of the Cold War were to deter conflict and maintain the peace; the overarching challenge, which US intelligence met so brilliantly, was to collect ever more refined insights about a known antagonist. Today, the collection targets are unknown (what are the indicators of terrorist activities that we should be watching?), and our principal objective is to take action to defeat and dismantle threats in order to keep us safe. The urgent post-9/11 intelligence directive became: "Do more, do better, do it differently, and do it now." In the wake of the Boston Marathon bombing—a scant two months before Snowden's first leaks—the FBI was accused of not doing enough to track suspected terrorist sympathizers (even though those suspicions had come from the Russian intelligence service formerly known as the KGB). Two events, two contradictory reactions by the American public: one demanding that the government take action to identify and defeat terrorist threats, the other wary and untrusting of that same government. Don't intrude but keep me safe. How to square such a circle? Today, when a personal video can "go viral" in an instant, five hundred million people have a follow-me-right-this-second Twitter account, and some two billion people have access to the Internet, the digital records of US citizens are comingled with the rest of the world in a maze of activity that is **a fount of intelligence information**. I confess, when the Snowden leaks first appeared my reaction was, "Of course NSA is acquiring metadata of US telephony. Haven't these people been paying attention?" Recall the public debates in 2005 when details about the early Terrorist Surveillance Program were leaked to the New York Times, or again the next year when Congress extended the Patriot Act, including its provisions authorizing metadata collection (Section 215). Simply put, if you want to know who the terrorists are talking to, you've got to check the phone logs. Dot-connecting 101. Here is how the law works. The telephone companies store vast databases of transactional information for billing, customer service, and other business purposes. The government may "query" those business records only when there is a "reasonable suspicion, based on specific and articulated facts," that specific foreign terrorist organizations are involved. (In practice, that amounts to fewer than three hundred queries a year.) In order to follow up on any leads—in other words, to get the locations or names of individual subscribers in the United States—the FBI has to go back to the court and get a warrant. Is our privacy being violated when computers churn through billions of strings of digital data looking for signals of terrorist activity? Or is that something that we need the government to do to keep us safe? Consider the related case of potential **cyber attacks** against **critical US infrastructure** systems, such as telecommunications, transportation, **power generation and distribution**, banking, and so forth. Part of a national cyber defense would need to include **automated access** to those computer pathways to **detect** and **warn** of anomalous activity in the **split second** needed to take action. If these privately owned and operated networks **must be monitored to enable their protection**, is that an intrusion into their customers' autonomy, or an inherent duty of government to provide for the common defense? To my mind, far from being "Stasi-like," as some overheated critics have charged, such automated systems analyzing digits (not people) are non-intrusive public safety responsibilities of the US government, subject to careful internal checks as well as both judicial and congressional oversight to ensure they do not go beyond those clear boundaries. I find the loss of privacy in today's digital world very troubling—but not because of the US government. It's the cookies that enable some Web merchant to track what I buy online and send me tailored ads to buy more. It's the manner in which the Apple cloud insists on scooping up all of my personal calendar and contact information—and I can't opt out if I want my cell phone to work. It's the ever-vigilant, ever-ready Chinese microchip in my laptop computer, including the little extra that takes over the video camera and watches the room. Where is the public outrage about all of that? To call Snowden a "whistleblower" demeans the dignity of the term. As for the public's right to know about these collection activities, we already knew. As for the decisions of our democracy whether these activities were right and proper and necessary, those decisions had been and continue to be made by the executive, the Congress, and the courts acting in accordance with their constitutional responsibilities and the authorities we the people have entrusted to them. As for the worth of the collection activities themselves, we subsequently learned of their indispensable role in tracking or disrupting more than a dozen terrorist operations in the US and another forty abroad. But now their worth has been severely degraded. Even though what NSA does for a living is known to the world, some **significant part** of its **success** depends on a simple **lack of awareness**, or the bad guys just **letting their guard down**, which is one reason why the huge publicity given to these collection activities has been so harmful. Across the globe, al-Qaeda networks and virtually every other terrorist group have changed their communications practices in response to Snowden's leaks. To make matters worse, the more that sophisticated adversaries understand about how NSA works, the better they will

be able to hide. You can't connect invisible dots. For my old business of US counterintelligence, the Snowden case is something of an unraveling nightmare. At this stage, there is no telling whether or not he acted alone, or what he compromised. Four months isn't much time on-site, yet he used his access to identify and download highly classified information that would be of particular use to him. How did he decide what was of value to snatch? Where did he find it? How did he take it without getting caught? He admitted that he took the NSA contractor job in March of this year in order to gain access to this material, so his preparations had been under way for quite a while. The deeper question is at what point along the way he started to get outside help and direction, and from whom. At a minimum, the press leaks were very well scripted to provide cover for the rest of the operation, which has received far less attention. Snowden passed documents allegedly showing US and UK surveillance of Russian and Turkish representatives at a Group of 20 meeting. He passed ostensible records of US signals intelligence operations in Hong Kong and elsewhere, as well as Britain's signals intelligence arm, GCHQ. He passed information about top-secret plans to counter Chinese cyber-attack capabilities, and about joint intelligence undertakings among Western allies, including US and German cooperation. That's just what has been reported publicly. Then of course there is whatever else he stole. Whether or not there are audit trails for IT administrators like Snowden we can only guess. If not, there may be no way of bounding the potential damage. And since we don't know what secrets may have been lost, we won't know what or who may now be at risk. That uncertainty alone is an intelligence bonanza for our adversaries. Whatever else Snowden may be, he has been a voice of disinformation. For example, here's an excerpt from his Guardian interview: "Any analyst at any time can target anyone, any selector, anywhere. . . I sitting at my desk certainly had the authorities to wiretap anyone from you or your accountant to a federal judge to even the president if I had a personal e-mail." If that were true, it would be an outrageous abuse of authority. But it is not true, not a whit. Now maybe Snowden is just delusional. Or maybe someone is coaching him a little, the better to inflame public opinion. But who would know, when there is an immediate rush to judgment to pronounce the man a "hero" or a "conscientious objector" or "deeply idealistic" or whatever other bouquets of virtue were thrown his way. By such means, some of the West's best and brightest (looking less bright all the time) become part of the disinformation campaign directed against America's moral standing in the world. That campaign has a long history. Two inherent qualities make US intelligence unique among the world's intelligence services. The first is its accountability and unparalleled openness to public scrutiny and the rigorous oversight of the political process. The fact that we measure these things against civil liberties, and bring them under the careful checks and balances of our Constitution, is the bedrock of their strength. Even more fundamentally, US intelligence is part of the great experiment in governance that is our democratic republic. Beginning with George Washington's first State of the Union Address, in which he requested a secret fund for clandestine activities, intelligence has been an instrument to achieve the broad goals of the American people and the policies advanced by their duly elected representatives. That is why any rupture between public confidence and the US intelligence enterprise is so destructive. It is also why America's adversaries have long sought to provoke one. During the Cold War, the KGB expended a great deal of energy and treasure in undermining the credibility and effectiveness of US intelligence in general and the CIA in particular. Soviet disinformation campaigns included some breathtaking lies, deceptions, and fantastic tales (e.g., forged documents, planted news reports, and grotesque accusations that the CIA was responsible for trafficking in baby parts, assassinating President Kennedy, and inventing AIDS). It took decades for the CIA to recover from the Church Committee investigations of the 1970s—years that the Soviets used to advantage in undermining pro-Western governments, supporting insurgencies, and implanting spies. And here we go again. Whatever Snowden may have had in mind when he decided to break his oath, the secrets he disclosed have been used to **discredit US intelligence** among the very democratic populations that depend most on the American defense umbrella. Across Europe, there have been **lawsuits to stop NSA operations**. Round two of Snowden's leaks included purported US collection activities directed against members of the European Union, so the EU, the French, the Germans, and others lodged diplomatic complaints and suspended trade and other talks and loudly proclaimed their indignation. (This is more than a little hypocritical, given their own intelligence activities against one another—not to mention the value they derive from ours.) To make matters worse, a whole series of damaging leaks in recent years, ranging from WikiLeaks to include some from the highest levels of the US government, have **called into question America's reliability as an intelligence partner**. For friendly intelligence services, trusting the Americans to keep secrets secret has become a far riskier proposition. In fact, our **stock as an intelligence partner** has **never been lower**, which is exceedingly worrisome in an era when we **rely** so **heavily** on **liaison services** for **essential intelligence** about terrorist targets. For American intelligence personnel, doing their jobs has become that much more difficult and that much more thankless. You can be sure that the Russians, the Chinese, and others, knowing about the demoralizing effects of the Snowden leaks, are working overtime pursuing new recruitment prospects within US intelligence ranks. They know from long experience that low morale is a key factor in persuading Americans to spy on their own country. Today, there are more **Russian**

intelligence personnel **operating in the U**nited **S**tates than there were at the height of the Cold War, and they are far from alone. By some counts, **China** is here in even greater numbers, and even more active against us through cyber means. Add to that the **Cubans**, the **Iranians**, and **most of the rest** of the world's governments—plus some **thirty-five** suspected **terrorist organizations**—all here, taking advantage of the freedom of movement, access, and anonymity afforded by American society. And then there is the phenomenon of the hacker culture and virtual anarchists like "Anonymous," which is hard at work to set the conditions for what it calls a "global secrets meltdown." Their ostensible plan is to recruit individuals to infiltrate governments to steal classified information or enable Anonymous hackers to steal it. Then, when the message "do it now" goes out, they will simultaneously reveal all of the world's secrets (but of course mostly concentrated in the West because that's where the access is). It may sound ridiculous until you realize just how many disaffected, cynical youth like Snowden are drawn to these circles to find some sense of belonging and self-importance. The United States has built a global intelligence apparatus because it has global interests and global responsibilities. We have taken seriously the duties of leader of the free world, as two world wars, Korea, Vietnam, Afghanistan, Iraq, and freedom fighters in many parts of the world can attest. None of these duties in the last sixty years could have been met without the exceptional resources of NSA. Successive **presidents** and **Congresses**, entrusted with preserving and defending our freedom, have judged these investments to be vital to our nation's security. They **have protected the core secrets that enable collection programs to succeed**, as have those in US business and **industry** who have been integral to their success. The unquestioned qualitative edge of US intelligence has been as essential to defending this country and preserving our freedom as have the forces we have built to arm and equip our military. But time has not stood still. China is attacking computer systems throughout the world, stealing information and implanting features to enable future control. China's prominence in IT commercial markets means that they are in the supply chain, and their market share is growing as part of a purposeful, state-run program for strategic position. A long roll call of spies from Russia, China, Cuba, and other nations have targeted the essential secrets of US intelligence capabilities in order to be able to defeat them. And now they have the Snowdens and the WikiLeakers of the world helping them out. **Interconnected global networks of digital data** have become the **single most important source** of **intelligence warning of threats**, **enabling our defense** at home and the advancement of freedom abroad. To say "**hands off**," as some shortsighted privacy advocates have been doing, will not preserve our liberties, it will **endanger** them. It should be possible for an enlightened citizenry to empower government action in that sphere without forfeiting the very rights that our government exists to secure. That challenge is, at the very least, a part of the continuing experiment that is our democracy.

Effective technical intelligence collection prevents a variety of existential threats AND filters the probability and magnitude of all impacts

Johnson, Poli Sci Prof @ Georgia, 9 (Loch Johnson, Regents Professor of Political Science, University of Georgia, former special assistant to the chair of the Senate Select Committee House Subcommittee on Intelligence Oversight, former staff director of the House Subcommittee on Intelligence Oversight, former visiting scholar at Yale University, won the Josiah Meigs Prize, the highest teaching honor at the University of Georgia in addition to the Owens Award, its highest honor for research, editor of Intelligence and National Security, Ph.D. political science, University of California at Riverside, "Evaluating "Humint": The Role of Foreign Agents in U.S. Security", Peer reviewed conference paper. 2/15/9. http://citation.allacademic.com//meta/p_mla_apa_research_citation/3/1/0/6/6/pages310665/p310665-14.php)//ET

Abstract Intelligence is considered the **first line of defense** in U.S. security against foreign and domestic threats. A **key intelligence mission** is the **collection** of information that can be handed on to analysts, who in turn assess its value in determining global threats and opportunities. Among the most important methods of information collection is human intelligence, known by the abbreviation "humint." Surveys inside the American intelligence community, as well as interviews with leading intelligence professionals and the top consumers of humint, indicate that this approach to intelligence gathering contributes significantly to the government's understanding of world affairs. Introduction The world is a dangerous place, plagued by the presence of **terrorist** cells; **failed** or failing **states**; competition for **scarce resources**, such as **oil**, **water**,

uranium, and **food**; chemical, **biological**, and **nuclear weapons**, not to mention bristling arsenals of conventional **armaments**; and deep-seated animosities between rival nations and factions. For self-protection, if for no other reason, government officials leaders seek information about the capabilities and—an especially elusive topic—the intentions of those overseas (or subversives at home) who can inflict harm upon the nation. That is the core purpose of espionage: to gather information about threats, whether external or internal, and to warn leaders about perils facing the homeland. Further, the secret services hope to provide leaders with data that can help advance the national interest—the opportunity side of the security equation. Through the practice of espionage—spying or clandestine human intelligence: whichever is one's favorite term—the central task, stated baldly, is to steal secrets from adversaries as a means for achieving a more thorough understanding of threats and opportunities in the world. National governments study information that is available in the public domain (Chinese newspapers, for example), but knowledge gaps are bound to arise. A favorite metaphor for intelligence is the jigsaw puzzle. Many of the pieces to the puzzle are available in the stacks of the Library of Congress or on the Internet; nevertheless, there will continue to be several missing pieces—perhaps the most important ones. They may be hidden away in Kremlin vaults or in caves where members of Al Qaeda hunker down in Pakistan's western frontier. The public pieces of the puzzle can be acquired through careful research; but often discovery of the missing secret pieces has to **rely on** spying, if they can be found at all. Some things— "mysteries" in the argot of intelligence professionals—are unknowable in any definitive way, such as who is likely to replace the current leader of North Korea. Secrets, in contrast, may be uncovered with a combination of luck and skill—say, the number of Chinese nuclear-armed submarines, which are vulnerable to satellite and sonar tracking. Espionage can be pursued by way of human agents or with machines, respectively known inside America's secret agencies as human intelligence ("humint," in the acronym) and technical intelligence ("techint"). Humint consists of spy rings that rely on foreign agents or "assets" in the field, recruited by intelligence professionals (known as case officers during the Cold War or, in more current jargon, operations officers). i Techint includes mechanical devises large and small, including **satellites** the size of Greyhound buses, equipped with fancy cameras and listening devices that can see and hear acutely from orbits deep in space; reconnaissance **aircraft**, most famously the U-2; unmanned aerial vehicles (UAVs) or **drones**, such as the Predator—often armed with Hellfire missiles, allowing the option to kill what its handlers have just spotted through the lens of an onboard camera); enormous **ground-based listening** antennae, aimed at enemy territory; **listening devices** clamped surreptitiously on fiber-optic communications **cables** that carry **telephone** conversations; and miniature listening "bugs" concealed within sparkling cut-glass chandeliers in **foreign embassies** or palaces. Techint attracts the most funding in Washington, D.C. (machines are costly, especially heavy satellites that must be launched into space), by a ratio of some nine-to-one over humint in America's widely estimated $50 billion annual intelligence budget. Human spies, though, continue to be recruited by the United States in most every region of the globe. Some critics contend that these spies contribute little to the knowledge of Washington officials about the state of international affairs; other authorities maintain, though, that only human agents can provide insights into that most vital of all national security questions: the intentions of one's rivals—especially those adversaries who are well armed and hostile. The purpose of this essay is to examine the value of humint, based on a review of the **research lit**erature on intelligence, **survey data**, and the author's **interviews** with individuals in the espionage trade. The essay is organized in the following manner: it opens with a primer on the purpose, structure, and methods of humint; then examines some **empirical data** on its value; surveys more broadly the pros and cons of this approach to spying; and concludes with an overall judgment about the value of agents for a nation's security.

--a2 perm

Counterplan is mutually exclusive – bans the plan – means any permutation is severance – that's a voter – makes leveraging any stable offense impossible

AND, banning the plan is key to avoid the link to the net benefit – only counterplan keeps status quo legal authorities in place and ensures the free flow of intelligence

--a2 theory

CP bans the plan – gold standard for competition and structurally guarantees them easy offense – no warrant for abuse

It's predictable and clearly grounded in the status quo's approach to surveillance policy – resolves ground and clash concerns

Setty 15 (Sudha Setty, Professor of Law and Associate Dean for Faculty Development & Intellectual Life, Western New England University School of Law, J.D., Columbia Law School, A.B., Stanford University, "Surveillance, Secrecy, and the Search for Meaningful Accountability," Stanford Journal of International Law, 51 STAN. J. INT'L L 16 (2015), http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol)

One of the most intractable problems in the debate around maintaining the rule of law while combating the threat of terrorism is the question of secrecy and transparency. In peacetime, important tenets to the rule of law include transparency of the law, limits on government power, and consistency of the law as applied to individuals in the polity. Yet the post-9/11 decisionmaking by the Bush and Obama administrations has been characterized by excessive secrecy that stymies most efforts to hold the government accountable for its abuses. Executive branch policy with regard to detention, interrogation, targeted killing, and surveillance are kept secret, and that secrecy has been largely validated by a compliant judiciary that has dismissed almost all suits challenging human and civil rights abuses resulting from counterterrorism programs. Efforts by Congress to engage in meaningful oversight have met with mixed results; in the area of government surveillance, such efforts have been fruitless without the benefit of leaked information on warrantless surveillance by government insiders. The executive branch has generally refused to make public vital aspects of its surveillance programs in ways that could give oversight efforts more muscle. At the same time, the executive branch has consistently defended the legality and efficacy of these surveillance programs.

Central to topic literature and education – secrecy is a key surveillance policy question that directly implicates debates over executive authority

ACLU 8 (American Civil Liberties Union, "ACLU COMMENDS SENATOR FEINGOLD FOR HEARING ON SECRET LAW," 4-30-2008, https://www.aclu.org/news/aclu-commends-senator-feingold-hearing-secret-law?redirect=national-security/aclu-commends-senator-feingold-hearing-secret-law)

The ACLU noted that the Bush administration's track record on government secrecy has been dismal at best. Memos from the Office of Legal Counsel (OLC) outlining legal opinions on torture and wiretapping remain classified despite several congressional calls for disclosure. The administration has also frequently issued executive orders only to amend those policies without publicly acknowledging the changes, removed public documents from the National Archives and created an unusual system of retroactive secrecy by reclassifying previously public information. One of the most public debates on executive power and secrecy has been rooted in the executive's ability to conduct surveillance. Since the revelation of the president's warrantless

wiretapping program by the New York Times in December of 2005, that debate has been held publicly in Congress. However a missing piece of that debate is a still-secret OLC memo.

Debating this counterplan is particularly key

Williams 13 (Juan Williams, Fox News political analyst, and Chris Wallace, host, Fox News Sunday, "Former Vice President Dick Cheney talks NSA surveillance program," 6-16-2013, http://www.foxnews.com/on-air/fox-news-sunday-chris-wallace/2013/06/16/former-vice-president-dick-cheney-talks-nsa-surveillance-program#p//v/2482865656001)

WALLACE: Yes. The Pentagon thing. WILLIAMS: You're hurting me, buddy. Yes. But I mean the Pentagon -- he was the one who orchestrated the release of the Pentagon papers to Neil Sheehan at "The New York Times." But, you know, the difference here is this was not about revealing corruption or lies by government or anything like that. He was revealing secrets that had to do with effective programs to battle terrorists. In this age of anti-terrorism. So, to me, I think this is a guy who took an oath when he said that he was going to work as a government contractor for NSA and he broke that oath. So, I don't think that's a martyr or a hero. I think that's more in the category of traitor. He should be extradited, and he should be prosecuted. If the point is that we need a debate -- yes, we need a debate about secrecy and the balance between civil liberties and national security. That's the debate, I think, should have taken place with far more energy back in 2002 when we passed the Patriot Act. And I think there was only one senator who voted against it, and I think that was Russ Feingold of Wisconsin. So, you imagine, to me, at that time, there was such emotion. Yeah, we need to fight terrorists. But we sacrifice some civil liberties. Now to go back and say, oh, you know what? We aren't sure. We didn't know about it. Baloney. We knew about this all along. We have known about it clearly since 2006. Everybody knows about it. And to pretend -- oh, gosh, we didn't know, this is a shock. I mean that's ridiculous.

--a2 lying bad

Governmental lies – particularly about surveillance – are inevitable, good, and the public forgives them

John **Blake 13**--- CNN journalist. John Blake has been honored by the Society of Professional Journalists, the Associated Press, and The American Academy of Religion. He is the author of "Children of the Movement." (Blake, "Of course presidents lie", CNN. 11/24/13. http://www.cnn.com/2013/11/24/politics/presidents-lie/)//ET

Well, guess what? That story about Washington and the cherry tree is a lie. Never happened. And the notion that a good president doesn't lie to the American people -- that's an illusion as well. Historians say many of our greatest presidents were the biggest liars -- and duplicity was part of their greatness. "**Every president** has **not only lied** at some time, but **needs to lie to be effective**," says Ed Uravic, a former Washington lobbyist, congressional chief of staff and author of "Lying Cheating Scum." Presidential lying is a hot topic because of a promise made by President Obama. While promoting Obamacare, Obama told Americans that they could keep their health insurance if they wanted to. That turned out to not be true for some, and Obama has been accused of lying. Some political pundits warn that Obama's "lie" will undo his second term. They say Americans won't forgive a president who violates their trust. It's a good sound-bite, but it's bad history. A great leader must "be a great pretender and dissembler," Machiavelli said in "The Prince." And so should a president, some historians say. You might say lying is the verbal lubricant that keeps the Oval Office engine running. Some of our most popular presidents told the biggest whoppers, say historians, including Benjamin Ginsberg, author of "The American Lie: Government by the People and other Political Fables." While preparing the country for World War II, Franklin Roosevelt told Americans in 1940 that "your boys are not going to be sent into any foreign wars." President John F. Kennedy declared in 1961 that "I have previously stated, and I repeat now, that the United States plans no military intervention in Cuba." All the while, he was planning an invasion of Cuba. Ronald Reagan told Americans in 1986, "We did not, I repeat, did not trade weapons or anything else [to Iran] for hostages, nor will we," four months

before admitting that the U.S. had actually done what he had denied. Even "Honest Abe," whose majestic "Gettysburg Address" the nation commemorated this week, was a skillful liar, says Meg Mott, a professor of political theory at Marlboro College in Vermont. Lincoln lied about whether he was negotiating with the South to end the war. That deception was given extended treatment in "Steven Spielberg" recent film "Lincoln." He also lied about where he stood on slavery. He told the American public and political allies that he didn't believe in political equality for slaves because he didn't want to get too far ahead of public opinion, Mott says. "He had to be devious with the electorate," Mott says. "He played slave-holders against abolitionists. He had to lie to get people to follow him. Lincoln is a great Machiavellian." 6 things presidents wish they hadn't said Forgivable vs. unforgivable lies Presidential lies fall into two categories: forgivable vs. unforgiveable. **Forgivable lies** are those meant to keep the nation from harm. Some consider the **N**ational **S**ecurity **A**gency's lies about the scope of domestic spying to be in this category because they protect us from terrorists, says Uravic, author of "Lying, Cheating Scum." Unforgivable lies fall into the Nixonian "I am not a crook" category, Uravic says. Those are lies meant to cover up crimes, incompetence or protect a president's political future. President Lyndon Johnson, for example, kept the full cost of spending on the Vietnam War from Congress and the public to preserve his political power, Uravic says. "The American people remain forgiving of their politicians, as long as those politicians put the people first and deliver tangible benefits for all of us," says Uravic, who also teaches at the Harrisburg University of Science and Technology in Pennsylvania. The ultimate test of whether the American public will accept a lie from a president is if the nation determines that the lie serves the national interests. That distinction is why Bill Clinton remains popular, and George W. Bush remains reviled for his "lie," says Allan Cooper, a political scientist and historian at Otterbein University in Ohio. In a nationally televised address in 2003, Bush said that invading Iraq was necessary "to eliminate weapons of mass destruction." "Intelligence gathered by this and other governments leaves no doubt that the Iraq regime continues to possess and conceal some of the most lethal weapons ever devised," Bush said. Clinton told the nation that he did "not have sexual relations with that woman." I did not have sexual relations with that woman. President Bill Clinton "Clinton's lies about a sexual affair were understandable given his interest to protect his marriage and to shield the nation's children from having to ask their parents to explain the phenomenon of oral sex," Cooper says. "Bush's lies led to the death and injuries of thousands of Americans." Obama's statement will be judged by the same standard: Did it help the country, or did he say it just to save his bacon? Obama apologized for saying people could keep their insurance if they like it. But some Americans who buy policies on the private market recently received cancellation notices because their plans don't meet Obamacare requirements for more comprehensive care. Americans may forgive Obama if Obamacare improves their lives, says Christopher J. Galdieri, who teaches a course on the U.S. presidency at Saint Anslem College in New Hampshire. "Ultimately, this is going to come down to whether the federal [health care] exchange improves, and whether people come to view that as a successful and viable option for buying insurance for themselves and their families," Galdieri says. Will George W. Bush's reputation ever recover from the accusation that he led the nation into war under false pretenses? It's hard to say from history. Several presidents were accused of deceiving the American public to sell military action, says David Contosta, a history professor at Chestnut Hill College in Pennsylvania. President James Polk lied to Congress in 1846 -- claiming Mexico had invaded the United States -- because he was determined to take the Southwest from Mexico. That lie led to the Mexican-American War, Contosta says. President William McKinley lied to the American public in 1898 when he insisted that Spain had blown up the USS Maine warship in Havana Harbor, Cuba, although he had no evidence. That lie led to the Spanish-American war. Every president has not only lied at some time, but needs to lie to be effective. Ed Uravic, former Washington lobbyist and author of "Lying Cheating Scum." One popular president got caught telling a lie about a failed military action but his popularity remains intact. "President Dwight Eisenhower denied that the United States was flying U-2 spy planes over the Soviet Union, until the Soviets shot down one of the planes, capturing the pilot, and he was forced to admit the truth," Contosta says. Some presidents were so deceitful that they even lied to their friends. Franklin Roosevelt was such a president. Roosevelt led the nation out of the Great Depression and through World War II. But even his allies couldn't bank on honesty. Roosevelt told three different men that he wanted them to be his next vice president during the Democratic national convention in 1944. Then he picked a fourth man, Harry Truman, for the office, says David Barrett, a political science professor at Villanova University in Pennsylvania. "He did it with such skill that all three men were completely convinced that Roosevelt was behind him." The lost art of the quotable speech Why we need a president who lies Roosevelt's deceitfulness hasn't stopped historians from widely picking him as one of nation's three greatest presidents, along with Lincoln and Washington. Perhaps they and ordinary Americans forgive presidents who lie because there's something in human nature that believes a leader needs to be cunning.

Any ethical objection is personal and isn't relevant to policy decisions – risk of the net benefit trumps

Goodin 95 – professor of government at the University of Essex, and professor of philosophy and social and political theory at Australian National University (Robert E., "Utilitarianism as a Public Philosophy," Cambridge University Press, Print)BC

As, an Account of the peculiar role responsibilities of public officials (and, by extension, of ordinary individuals in their public capacities as citizens) that **vice becomes a virtue**, though. Those agents, too, have to come from somewhere, bringing with them a whole raft of baggage of personal attachments, commitments, principles and prejudices. In their public capacities, however, we think it only right and proper that they should stow that baggage as best they can. Complete neutrality might be an impossible ideal. That is another matter." But it seems indisputable that that is an ideal which people in their public capacities should strive to realize as best they are able. That is part (indeed, a central part) of what it is to be a public official ,it all. It is the essence of public service as such that public servants should serve the public at large. Public servants must not play favorites. Or consider, again, criticisms revolving around the theme that utilitarianism is a coldly calculating doctrine.23 In personal affairs that is an unattractive feature. There, we would like to suppose that certain sorts of actions proceed immediately from the heart, without much reflection much less any real calculation of consequences. Among intimates it would be extremely hurtful to think of every kind gesture as being contrived to produce some particular effect. The case of public officials is, once again, precisely the opposite. There, it is the **height of irresponsibility to proceed careless of the consequences**. Public officials are, above all else, obliged to take care: not to go off half cocked, not to let their hearts rule their heads. In Hare's telling example, the very worst thing that might be said of the Suez misadventure was not that the British and French did some perfectly awful things (which is true, too) but that they did so utterly unthinkingly.24 Related to the critique of utilitarianism as a calculating doctrine is the critique of utilitarianism as a consequentialist doctrine. According to utilitarianism, the effects of an action are everything. There are no actions which are, in and of themselves, morally right or wrong, good or bad. The only things that are good or bad are the effects that actions produce.25 That proposition runs counter to certain ethical intuitions which, at least in certain quarters, are rooted deeply. Those who harbor a Ten Commandments view of the nature of morality see a moral code as being essentially a list of "thou shalts" and "thou shall nots" a list of things that are right or wrong in and of themselves, quite regardless of any consequences that might come from doing them.2" That may or may not be a good way to run one's private affairs.1Even those who think it is, however, tend to concede that it is no way to run public affairs. It is in the nature of public officials' role responsibilities that they are **morally obliged** to "dirty their hands" - make hard choices, **do things that are wrong** (or would ordinarily be wrong, or would be wrong for ordinary private individuals) in the service of some **greater public good**.2 It would be simply irresponsible of public officials (in any broadly secular society, at least) to adhere mindlessly to moral precepts read off some sacred list, literally "whatever the consequences."3 Doing right though the heavens may fall is not (nowadays, anyway) a particularly attractive posture for public officials to adopt.

--a2 secrecy bad

Zero uniqueness – other issues thump and secrecy is inherent in democracy

Posner 13 (Eric Posner, Law Professor @ University of Chicago, "Secrecy and Freedom," New York Times, 6-9-2013, http://www.nytimes.com/roomfordebate/2013/06/09/is-the-nsa-surveillance-threat-real-or-imagined)

The question raises a real paradox. If government can keep secrets, then the public cannot hold it to account for its actions. But if government cannot keep secrets, then many programs — including highly desirable ones — are impossible. Many commentators seem to think that the answer is to keep secrecy to an absolute minimum, but this

response is far too easy. One reason it is too easy is that it implies that secrecy can be exceptional. Government secrecy in fact is ubiquitous in a range of uncontroversial settings. To do its job and protect the public, the government must promise secrecy to a vast range of people — taxpayers, inventors, whistle-blowers, informers, hospital patients, foreign diplomats, entrepreneurs, contractors, data suppliers and many others. But that means that the basis of government action, which relies on information from these people, must be kept secret from the public. Economic policy is thought to be open, but we saw during the financial crisis that government officials needed to deceive the public about the health of the financial system to prevent self-fulfilling runs on banks. Then there are countless programs that are not secret but that are too complicated and numerous for the public to pay attention to — from E.P.A. regulation to quantitative easing. N.S.A. surveillance blends into this incessant, largely invisible background buzz of government activity; there is nothing exceptional about it. And this puts even more pressure on the first prong of the paradox. If much (most?) of government activity remains invisible to the public, how can democratic accountability work? The answer, I think, is that political accountability in modern, large-scale democracies rarely takes place through informed public monitoring of specific government programs and policies. A few discrete issues (abortion, same-sex marriage) aside, and not counting political scandals, the public largely votes on the basis of its pocketbook and its feeling of security. The political consequences of war, terrorist attacks and economic distress — all of which are publicly observable — keep officeholders in line, but they retain vast discretion to choose among means. Because some government officials are ill-motivated and others are incompetent, government abuse is inevitable, but it is the price we pay for a government large and powerful enough to regulate 300 million people. Think of the N.S.A. program as the security equivalent of the Affordable Care Act (which will unavoidably involve government monitoring of people's medical care on the basis of bureaucratic procedures that no one understands): in both cases, we must prepare ourselves for the inevitable abuses that accompany a large, unwieldy, hard-to-monitor program, in order to obtain the (promised) benefits. Objections to the secrecy of the N.S.A. program are thus really objections to our political system itself, and, for all its flaws, there are no obviously superior alternatives.

No internal link – the counterplan's limited secrecy doesn't implicate democracy

Jaffer 13 (Jameer Jaffer, fellow, Open Society Foundations, "Secrecy and Freedom," New York Times, 6-9-2013, http://www.nytimes.com/roomfordebate/2013/06/09/is-the-nsa-surveillance-threat-real-or-imagined)

Your claim about the pervasiveness and banality of government secrecy elides the fact that there are many kinds of secrecy. Not all of them present the same threat to democracy. I don't think our democracy is made weaker by the government's withholding of information about the technical means it uses to effect surveillance. I don't think our democracy is made weaker by the government's withholding of information about the specific targets of its surveillance — so long as the surveillance is in fact limited to specific targets and so long as there is some mechanism that permits the public to evaluate the government's conduct after the investigation is complete.

No reason to believe their rejection of secrecy – AND bureaucracy is resilient to criticism anyway

Shafer 13 (Jack Shafer, Reuters, "Daniel Patrick Moynihan's 1998 lesson on the price of secrets," 12-27-2013, http://blogs.reuters.com/jackshafer/2013/12/27/daniel-patrick-moynihans-1998-lesson-on-the-price-of-secrets/)

Moynihan's critique of the century-long expansion of institutional secrecy didn't convince the bureaucracy that secrecy has failed to make the United States secure, or that it would continue to fail. The book, and Moynihan's investigation, attracted positive reviews and approving editorials in the Washington Post and the New York Times, plus feature coverage in the

Los Angeles Times, as Judge Robert A. Katzmann noted in his book Daniel Patrick Moynihan: The Intellectual in Public Life. But for all Moynihan's pungent anecdotes, his thesis that secrecy makes us less secure isn't very testable. Too much information remains classified for us to judge the effectiveness of secrecy; too little material has been declassified for any counterfactual histories built from them to be persuasive. His book plots no strategy for the repeal of the secrecy state, and he didn't rally civil libertarians, journalists, academics, and politicians to advance the reforms his commission proposed. He was like a doctor who diagnosed a malady, suggested a round of medication, and then moved on to the next patient. Secrecy barely changed the policy debate and did no lasting damage to the secrecy culture. The book hasn't been forgotten, just dismissed, with its most visible proponent in recent months being columnist George F. Will, who has referred to it twice. Any residual optimism Moynihan's book may have created expired on the morning of September 11, 2001. Since that catastrophe, the intelligence bureaucracy has acquired greater powers and bigger budgets to chase foreign and domestic enemies, and gained a whole new set of secrets and secrecy tools. As Moynihan repeatedly points out, war and the threat of domestic disorder, is the health of the secrecy state. "We make policy by crisis, and we particularly make secrecy policy by crisis," scholar Mary Graham told the New York Times in early 2003, predicting that the temporary emergency powers then being approved would last at least for 20 years, "just as we lived with the Cold War restrictions for years after it was over." To read Secrecy now is to despair. As long as threats exist against America and opportunistic legislators hold office, there appears no practical way to roll back the secrecy bureaucracy. In the summer of 2013, when emotions against the NSA intrusions were highest, a bill to limit the agency's powers to collect electronic information was voted down in the House of Representatives. Maybe I'm impatient, but if Snowden's revelations aren't enough to convince Congress to sand a corner off the secrecy establishment, I doubt if anything on his computer drives could.

--a2 leaks

No leaks – our 1NC Van Cleave evidence says empirics prove Congress, the Executive, and industry will all act to prevent leaks out of self-interest – PLUS counterplan applies enhanced security measures AND they're effective – multiple warrants:

First, deterrence – chilling effect is too strong – swamps any whistleblower incentives

Higham 14 (Scott Higham, Washington reporter for The Washington Post, "Intelligence security initiatives have chilling effect on federal whistleblowers, critics say," 7-23-2014, https://www.washingtonpost.com/world/national-security/intelligence-security-initiatives-have-chilling-effect-on-federal-whistleblowers-critics-say/2014/07/23/c9dfd794-0ea0-11e4-8341-b8072b1e7348_story.html)JB

The Insider Threat Program and a continuous monitoring initiative under consideration in the intelligence community were begun by the Obama administration after the leaks of classified information by former NSA contractor Edward Snowden and Army Pvt. Chelsea Manning, and the Navy Yard shootings by Aaron Alexis, who used his security clearance to gain access to the base. The programs are designed to prevent leaks of classified information by monitoring government computers and employees' behavior. Grassley said the episode with the FBI illustrates how federal agencies are setting up internal security programs without giving careful consideration to whether they could **dissuade whistleblowers** from coming forward. "The **I**nsider **T**hreat **P**rogram has the potential for **taking the legs out from underneath all** of the whistleblower protections we have," Grassley said in a recent interview. Greg Klein, the head of the FBI's Insider Threat Program, and McDonough, the congressional affairs agent, did not return calls seeking comment. An FBI spokesman said the bureau does not plan to register whistleblowers. He said there was a misunderstanding about the nature of the briefing with staff members for Grassley, Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) and a law enforcement official who is assigned to the Senate panel. The spokesman noted that the FBI has a whistleblower training program for employees and a whistleblower protection office. "We recognize the importance of protecting the rights of whistleblowers," FBI spokesman Paul Bresson said. Grassley is part of a growing chorus of lawmakers on Capitol Hill and attorneys for whistleblowers who warn that the **I**nsider **T**hreat **P**rogram and the potential intelligence community initiative threaten to undermine federal workers' ability to report wrongdoing without retaliation. Together, the programs cover millions of federal workers and contractors **at every government agency**. In February, Director of National Intelligence James R. Clapper Jr. testified before the Senate Armed Services Committee that a system was being considered to continuously monitor the behavior of employees with security clearances "on the job

as well as off the job." A senior intelligence official said a continuous monitoring program, mandated under the Intelligence Authorization Act and signed into law by President Obama on July 7, is being set up and initially will include federal employees who hold top-secret security clearances. The official said there are no plans to monitor employees after hours while they are using non-government computer systems. "I think **it's time to put up the caution light here,"** said Sen. Ron Wyden (D-Ore.), a member of the Senate Intelligence Committee. While Wyden included a provision in the most recent Intelligence Authorization Act that would prohibit retaliation against whistleblowers, he said he remains concerned about the impact of the threat programs. "This really has the potential for abuse, and I think it **could have a chilling effect on the public's right to know and effective oversight of our government**," Wyden said. Dan Meyer, the head of the Intelligence Community Whistleblowing & Source Protection program, created last year as part of the Office of Intelligence Community Inspector General, said he is working to ensure that employees who want to report wrongdoing can do so anonymously and without reprisal. "The critical thing is to maintain confidentiality," Meyer said. He said he is preparing training materials for intelligence officers and spreading the word that employees can come to him anonymously through third parties. If an employee has verifiable information about wrongdoing, a presidential directive takes effect, providing employees with protection against retaliation. "We are in the process of making a systematic, cultural change and getting everyone on board," Meyer said. After Manning's disclosures to WikiLeaks four years ago, Obama signedExecutive Order 13587, directing government agencies to assess how they handle classified information. On Nov. 28, 2010, the Office of the National Counterintelligence Executive issued a memo to senior government agency officials, advising them to identify insider threats. The memo suggested using psychiatrists and sociologists to assess changes in employees' behavior. "What metrics do you use to measure 'trustworthiness' without alienating employees?" the counterintelligence office asked the agency chiefs. "Do you use a psychiatrist or sociologist to measure: relative happiness as a means to gauge trustworthiness? Despondence and grumpiness as a means to gauge waning trustworthiness?" "It will only increase hostility between the government and really serious federal employees who are trying to improve the system," said Lynne Bernabei, a partner at Bernabei & Wachtel in Washington who has been representing whistleblowers for nearly 30 years. "Turning the security apparatus against its own people is not going to work." Whistleblower lawyers said they understand the need to protect classified information but think some of the new programs go too far. "There are legitimate reasons for employers to be on the lookout for people who might be leaking classified information, but **this will obviously have a chilling effect on employees who might want to blow the whistle**," said Jason Zuckerman, who served as the senior legal adviser to the U.S. Office of Special Counsel, the federal agency charged with protecting whistleblowers, and now represents whistleblowers nationwide. Michael German, a former undercover FBI agent and whistleblower, called the Insider Threat Program a "dangerous" initiative.

Second, interception – constant monitoring using humans and machines means nothing gets out

MacKenzie 14 (Drew MacKenzie, Newsmax, "Report: US May Take Years to Prevent Another Snowden," 8-18-2014, http://www.newsmax.com/Newsfront/security-Edward-Snowden-NSA-surveillance/2014/08/18/id/589383/)

A pilot program called "**Continuous Evaluation**" has been created to **keep tabs** of social media and message board postings by people who have access to classified documents. The aim is to **curb insider threats**, such as the Snowden **leaks**, the embarrassing WikiLeaks cables disclosure, and the deadly shooting at a Navy Yard by contractor Aaron Alexis, the Beast said. The intelligence community has taken measures to prevent more Snowden-type cases, including an order that **two staffers must be present** when sensitive files are accessed in some agencies, and to encourage employees to **report suspicious activity** by their colleagues. Special: The National Counterintelligence Executive has also drawn up new guidelines for its **Insider Threat Policy**. As part of the changes, the Office of the Director of National Intelligence next year plans to start checking the names of 1.5 million employees with top-secret clearances against public and government databases, such as those that show recent arrests, credit scores, and cash transactions of $10,000 or more, according to the Beast. The agency will eventually **monitor the online activity** of **all 5 million people** cleared to see secret U.S. government documents. "To a large extent, it's not only smart, it's long overdue," said Steven Aftergood, who directs the Federation of American Scientists' Project on Government Secrecy. "The way the existing process works, they look at you every 5 to 10 years ... and then they forget about you until the next review is due years later." But Aftergood noted there could be some backlash over government officials monitoring online activity outside work, saying, "It needs to be demonstrated in practice that the triggers won't lead to ... a paranoid workplace. They can't push it too far or it will backfire." Republican Sen. Chuck Grassley of Iowa and Democratic Sen. Ron Wyden of Oregon have pointed out the monitoring could result in a negative effect on the confidentiality of whistleblowers to Congress or inspectors general. In a letter to Director of National Intelligence James Clapper in June, they wrote, "If **whistleblower communications** with Inspectors General or with Congress **are routinely monitored** and conveyed to agency leadership, it would **defeat the ability to make protected disclosures confidentially**."

Third, automation – replacing sys-admins with computers means there's no people to leak

RT '13--- Russian news source with outlets all over the globe. (RT, "NSA head: Replace would-be Snowdens with computers to stop future leaks", RT. 7/9/13. http://www.rt.com/usa/nsa-snowden-former-job-future-257/)//ET

The director of the NSA announced that the secretive intelligence agency plans to prevent future security breaches by replacing the position once held by whistleblower and former NSA contractor Edward Snowden with computers. The National Security Agency plans to drastically cut back on the number of people employed as systems administrators, Gen. Keith Alexander said during a cyber security conference in New York City on Thursday. Snowden, a former employee of government-contracted consulting firm Booz Allen Hamilton, worked for the NSA for more than a year before his role changed to systems administrator. It was while holding this position that he leaked classified details about previously undisclosed surveillance programs to the media. "What we're in the process of doing – not fast enough – is **reducing our systems administrators by about 90 per cent,**" Alexander said. The NSA currently employs approximately 1,000 systems administrators. "We've put people in the loop of transferring data, securing networks and doing things that machines are probably better at doing," he said, going on to describe how technology will make NSA secrets "**more defensible and more secure."** While Snowden has been referred to as a systems administrator, he told the Guardian that his job was actually to work as an "infrastructure analyst," spending his days searching for new methods to infiltrate internet and telephone networks. Alexander also defended the NSA's conduct, claiming the agency's actions have been "grossly mischaracterized" by the media. "No one has willfully or knowingly disobeyed the law or tried to invade your civil liberties or privacies. There were no mistakes like that at all," he said. The NSA director said the plan to nearly eliminate the systems administrator position was in place before Snowden made his disclosures but that the leak and ensuing media firestorm has advanced the process. "We trust people with data. At the end of the day it's about people and trust," Alexander said. "And people who have access to data as part of their missions, if they misuse that trust they can cause huge damage." After fleeing to Hong Kong, Snowden told the South China Morning Post that he was happy to take a pay cut from $200,000 to $122,000 when he took the Booz Allen Hamilton position, due to the opportunity it afforded him. "My position with Booz Allen Hamilton granted me access to lists of machines all over the world the NSA hacked," he said in June. "That's why I accepted that position about three months ago." Alexander told the Senate Intelligence Committee in June that the NSA was implementing a "two-person" system to **halt any future leaks of classified information**. The so-called two-person rule is similar to what the Army instituted after Bradley Manning leaked more than 700,000 diplomatic cables, battlefield reports, and helicopter video footage in 2010. The rule requires anyone copying classified data onto a portable device from a secure network to do so with a second person, thereby **ensuring against the possibility of a single whistleblower**. "I think what he's doing is reasonable. There are all kinds of things in life that have two-man rules," former chief intelligence officer for the director of national intelligence, Dale Meyerrose, told The New York Times. "We've had a two-man rule ever since we had nuclear weapons. And when somebody repairs an airplane, an engineer has to check it."

AND, even if there are leaks, there's no impact:

First, slow-drip context conditions an apathetic response

Dykes 15 (Melissa Dykes, writer, researcher, and analyst for The Daily Sheeple, co-creator of Truthstream Media, "Another Snowden Leak, but Be Honest America, Do You Even Care Anymore???" The Daily Sheeple, 6-5-2015, http://www.thedailysheeple.com/another-snowden-leak-but-be-honest-america-do-you-even-care-anymore_062015)

More government overreach, more trampling on the Constitution, more walking all over our freedoms without a warrant, more 1984 in your face… The government surveillance apparatus has been turned against the people. The entire system is more about us than some nebulous foreign boogeymen which were used to justify its creation in the first place. But let's be honest with ourselves for a moment. I put Snowden's name in the title of this article, so it's frankly surprising anyone is even reading it. Why is that, do you think? Because Snowden's **slow-drip leaks** are expertly timed to do exactly what they were always designed to as the psyop against the American people that they are:

get you **slowly accustomed** to the government overreach piecemeal while providing a steam valve for your anger against a tyrannical system that is here to stay. We are being socially engineered, here. Slowly **conditioned to accept** our own big brother enslavement. In that way, Snowden is doing his job. Jon Rappoport explained this perfectly (his emphasis, followed by mine): It's all about keeping the NSA story alive, in order that people know they're being spied on 24/7. That's the social engineering aspect. That's the game. And in that regard, the slow-drip method of releasing Snowden files is quite useful. It appears to be a smart journalistic strategy, to "keep the issue before the public so that a true debate about government secrecy and spying can take place." But **the debate isn't effective**. The **NSA isn't being curbed**. If one of its channels of snooping is cut back, another one will emerge. No, the actual op is: keep reminding people they're being spied on; that will make them more cautious; that will make make them conform in action, speech, and thought. Meanwhile, they're continuing to drag this out longer than the credits for a Pirates of the Caribbean movie, the bottom line is **nothing. Ever. Changes**. By design. You have to admit… if Snowden's leaks are so detrimental to the public debate on government spying, why not release it all at once? It has been over two years now. Can this really all be chalked up to sensationalism and journalistic strategy this many years on when the very thing we're still "debating" is our rights and freedoms against government snooping? Against the death of our Fourth Amendment? Remember how outraged people were in the beginning, the summer of 2013, when the first leaks came out? And has much changed in that time? Yes, but not in the way of our freedom… Look at how **desensitized** the country is to it now, two years later. Now when a Snowden **leak comes out**, they don't even bother to put the word "shocking" in the article title… Now you can put Snowden's name in an article title and rest assured people will see it, yawn, stretch, maybe scan the info, but **ultimately and quietly accept this is just how things are now**. Again… by design.

Second, people will believe the lie, NOT the leak – overwhelming empirics

Lewandowsky 12 (Stephan Lewandowsky, Ullrich K.H. Ecker, Collen M. Seifert, Norbert Schwarz, and Jock Cook of the University of Western Australia, University of Michigan, and University of Queensland APS Association for Psychological Science, Psychological Science in the Public Interest "Misinformation and Its Correction: Continued Influence and Successful Debiasing" 2012, Page 109)

https://dornsife.usc.edu/assets/sites/780/docs/12_pspi_lewandowsky_et_al_misinformation.pdf

In the lead-up to the U.S.-led invasion of Iraq in 2003, U.S. government officials proclaimed there was no doubt that Saddam Hussein had weapons of mass destruction (WMDs) and was ready to use them against his enemies. The Bush administration also juxtaposed Iraq and the 9/11 terrorist attacks, identifying Iraq as the frontline in the "War on Terror" (Reese & Lewis, 2009) and implying that it had intelligence linking Iraq to al-Qaida. Although no WMDs were ever found in Iraq and its link to al-Qaida turned out to be unsubstantiated, large segments of the U.S. public continued to believe the administration's earlier claims, with some 20% to 30% of Americans believing that WMDs had actually been discovered in Iraq years after the invasion (Kull, Ramsay, & Lewis, 2003; Kull et al., 2006) and around half of the public endorsing links between Iraq and al-Qaida (Kull et al., 2006). These mistaken beliefs persisted even though all tentative media reports about possible WMD sightings during the invasion were followed by published corrections, and even though the nonexistence of WMDs in Iraq and the absence of links between Iraq and alQaida was eventually widely reported and became the official bipartisan U.S. position through the Duelfer report. Politicians were also a primary source of misinformation during the U.S. health care debate in 2009. Misinformation about the Obama health plan peaked when Sarah Palin posted a comment about "death panels" on her Facebook page. Within 5 weeks, 86% of Americans had heard the death-panel claim. Of those who heard the myth, fully half either believed it or were not sure of its veracity. Time magazine reported that the single phrase "death panels" nearly derailed Obama's health care plan (Nyhan, 2010). Although Sarah Palin's turn of phrase may have been spontaneous and its consequences unplanned, analyses have revealed seemingly systematic efforts to misinform the public—for example, about climate change

(McCright & Dunlap, 2010). During the administration of President George W. Bush, political appointees demonstrably interfered with scientific assessments of climate change (e.g., Mooney, 2007), and NASA's inspector general found in 2008 that in previous years, the agency's "Office of Public Affairs managed the topic of climate change in a manner that reduced, marginalized, or mischaracterized climate change science made available to the general public" (Winters, 2008, p. 1). The public seems to have some awareness of the presence of politically motivated misinformation in society, especially during election campaigns (Ramsay, Kull, Lewis, & Subias, 2010). However, when asked to identify specific instances of such misinformation, people are often unable to differentiate between information that is false and other information that is correct (Ramsay et al., 2010). Thus, public awareness of the problem is no barrier to widespread and lasting confusion.

--xt no leaks – monitoring

New NSA counter leaks programs implemented in 2013—two person rule

Andy **Greenberg** 20**13---** Writer for Forbes the author of the book This Machine Kills Secrets, a chronicle of the history and future of information leaks, from the Pentagon Papers to WikiLeaks and beyond. M.A in Journalism and Business from New York University. **(**Greenberg, "NSA Implementing 'Two-Person' Rule To Stop The Next Edward Snowden". Forbes. 6/18/13. http://www.forbes.com/sites/andygreenberg/2013/06/18/nsa-director-says-agency-implementing-two-person-rule-to-stop-the-next-edward-snowden/)//ET

On Tuesday, National Security Agency Director Keith Alexander told a congressional hearing of the Intelligence Committee that the agency is implementing a "**two-person" system** to prevent future leaks of classified information like the one pulled off by 29-year-old Booz Allen contractor Edward Snowden, who exfiltrated "thousands" of files according to the Guardian, to whom he has given several of the secret documents. "We have to learn from these mistakes when they occur," Representative Charlies Ruppersberger said to Alexander in the hearing. "What system are you or the director of national intelligence administration putting into place to make sure that if another person were to turn against his or her country we would have an alarm system that would not put us in this position?" "Working with the director of national intelligence what we're doing is working to come up with a two-person rule and oversight for those and ensure we have a way of blocking people from taking information out of our system." That "two-person rule," it would seem, will be something similar to the one implemented in some cases by the military after Army private Bradley Manning was able to write hundreds of thousands of secret files to CDs and leak them to WikiLeaks. The rule required that anyone copying data from a secure network onto portable storage media does so with a second person who ensures he or she isn't also collecting unauthorized data. It may come as a surprise that the NSA doesn't already have that rule in place, especially for young outside contractor employees like Snowden. But Alexander emphasized that Snowden was one of close to a thousand systems administrator–mostly outside contractors–who may have had the ability to set privileges and audit conditions on networks."This is a very difficult question when that person is a systems administrator," Alexander responded. "When one of those persons misuses their authority it's a huge problem." Alexander added that the system is still a work in progress, and that the NSA is working with the FBI to collect more facts from the Snowden case and to implement new security measures in other parts of the U.S. intelligence community. When asked how Snowden had gained such broad access to the NSA's networks despite only working for Booz Allen for three months, Alexander said that he had in fact held a position at the NSA for the twelve months prior to taking that private contractor job.

NSA "two-person" system will prevent future leaks

Greenberg 13 (Andy Greenberg, Technology, Privacy and Information security reporter, Author of This Machine Kills Secrets, Forbes "NSA Implementing 'Two-Person' Rule to Stop the Next Edward Snowden, 6/18/13, http://www.forbes.com/sites/andygreenberg/2013/06/18/nsa-director-says-agency-implementing-two-person-rule-to-stop-the-next-edward-snowden/)

The next Edward Snowden may need a partner on the inside. On Tuesday, National Security Agency Director Keith Alexander told a congressional hearing of the Intelligence Committee that the agency is implementing a "two-person" system to prevent future leaks of classified information like the one pulled off by 29-year-old Booz Allen contractor Edward Snowden, who exfiltrated "thousands" of files according to the Guardian, to whom he has given several of the secret documents. "We have to learn from these mistakes when they occur," Representative Charlies Ruppersberger said to Alexander in the hearing. "What system are you or the director of national intelligence administration putting into place to make sure that if another person were to turn against his or her country we would have an alarm system that would not put us in this position?" "Working with the director of national intelligence what we're doing is working to come up with a two-person rule and oversight for those and ensure we have a way of blocking people from taking information out of our system." That "two-person rule," it would seem, will be something similar to the one implemented in some cases by the military after Army private Bradley Manning was able to write hundreds of thousands of secret files to CDs and leak them to WikiLeaks. The rule required that anyone copying data from a secure network onto portable storage media does so with a second person who ensures he or she isn't also collecting unauthorized data. It may come as a surprise that the NSA doesn't already have that rule in place, especially for young outside contractor employees like Snowden. But Alexander emphasized that Snowden was one of close to a thousand systems administrator–mostly outside contractors–who may have had the ability to set privileges and audit conditions on networks."This is a very difficult question when that person is a systems administrator," Alexander responded. "When one of those persons misuses their authority it's a huge problem." Alexander added that the system is still a work in progress, and that the NSA is working with the FBI to collect more facts from the Snowden case and to implement new security measures in other parts of the U.S. intelligence community. When asked how Snowden had gained such broad access to the NSA's networks despite only working for Booz Allen for three months, Alexander said that he had in fact held a position at the NSA for the twelve months prior to taking that private contractor job. The questions about the NSA's lack of leak protections came in the midst of a conversation that largely focused on the NSA's justification for the broad surveillance those leaks revealed. In the hearing, Alexander claimed that more than 50 attacks have been foiled with some help from the NSA's surveillance programs such the collection of millions of Americans' cell phone records and the collection of foreigners' Google-, Facebook-, Microsoft- and Apple-held data known as "PRISM," both disclosed in Snowden's documents. One newly-revealed bombing plot targeted the New York Stock Exchange, and another involved an American donating money to a Somalian terrorist group. Of those more than 50 total cases, ten of those plots involved domestic collection of phone records, according to Alexander. But when Representative Jim Himes questioned in how many cases that collection was "essential," his question went unanswered. Alexander also fended off criticisms that the Foreign Intelligence Surveillance Act court system, which oversees the NSA's requests to use data it's collected–often from Americans–is a "rubber stamp process" that approves nearly all of the NSA's actions. That court reported in April that it had received 1,789 applications for electronic surveillance in an annual report to Congress. One request was withdrawn, and forty were approved with some changes. The other 1,748 others were approved without changes. "I believe the federal judges on that court are superb," Alexander told Congress. "There is, from my perspective, no rubber stamp." But a significant portion of the hearing also focused on the NSA's security vulnerabilities highlighted by Snowden's leaks, rather than its surveillance. Representative Michelle Bachmann emphasized that the NSA should answer "how a traitor could do something like this to the American people," and how to "prevent this from ever happening again." She asked Alexander how damaging the leaks were to the NSA's mission, and he responded that they were "significant and irreversible." Snowden has taken refuge in Hong Kong, where he conducted a live Q&A on the*Guardian's* website Monday. In that conversation, he wrote that "the consent of governed is not consent if it is not informed," and that "truth is coming, and it cannot be stopped."

--xt no leaks – data tagging

Security measures were fast tracked--- new system for tagging data

Lori **Grisham '14---**Grisham is a multimedia journalist with USA TODAY Network's Nation Now team. (Grisham, "4 things that changed since Snowden leaks". USA Today. 6/5/14.

http://www.usatoday.com/story/news/nation-now/2014/06/05/changes-since-snowden-leaks/9978561/)//ET

One year ago, former National Security Agency contractor Edward Snowden turned the world on its head after classified documents he provided to media organizations revealed a widespread surveillance program. USA TODAY Network looks at four notable changes that have come about in the year since Snowden's bombshells. An encrypted future Google released code Tuesday for a new "end-to-end" encryption tool for its users. Demand has been high for e-mail that's coded to allow only authorized parties to read it from popular providers like Google and Microsoft, and increased after Snowden spoke at SXSW in March. End-to-end encryption means that each e-mail is encrypted from the time it leaves the owner's Web browser until the receiver gets the e-mail and decodes it. An e-mail sent with this technology cannot be intercepted in transit or gathered from an Internet provider with a court order. A third party would have to hack into the individual's computer to access the communication. End-to-end encrypted e-mail has existed for some time, but only from lesser-known companies. At SXSW, Snowden said end-to-end encryption should be available to every user and considered a "basic protection," not something that's just understood and used by the tech-savvy. It's not only software that's being developed. Silent Circle, a company that specializes in encrypted communications, received a $30 million investment in May to develop an encrypted smartphone called "Blackphone." Changing the debate Love him or hate him, there is no doubt that Snowden's leaks changed the public debate. The ongoing discussion over privacy, how far the government should be able to go in the name of security and how changing technology factors into all this is, in large part, a direct result of the firestorm set off by Snowden. And it's a debate that's likely not going away anytime soon, as the 2014 midterm elections heat up and, soon after, the 2016 presidential campaign begins to take shape. What's more, this issue does not always fall along clear partisan lines. For example, Vermont Sen. Bernie Sanders, an independent and self-described Democratic Socialist, and Kentucky Sen. Rand Paul, a Tea Party-aligned Republican, have both argued for some form of leniency in sentencing for Snowden. Strained relations One of the most damaging revelations to the Obama administration that emerged from the Snowden leaks was news that the NSA had spied on world leaders, including many close American allies, such as German Chancellor Angela Merkel. Reports surfaced that the United States had sought to monitor Merkel's phone calls as far back as 2002. It was reported that President Obama had been unaware that the program of surveillance against world leaders included allies. The disclosure by Snowden caused an uproar in many allied nations and prompted the White House to take steps to limit eavesdropping on allied leaders. Renewed focus on NSA's internal security The NSA increased its own internal security to prevent future leaks. The organization has implemented a **new system of "tagging" data** to ensure only authorized personnel are able to access it, NPR reported in an interview with Lonny Anderson, the NSA's chief information officer, in September 2013. The changes had been in the works for a long time, according to Anderson, but were **put into action quickly** following the leaks.

--xt no leaks – automation

NSA plans to replace 90% of its workforce with computers to avoid leaks

Hollister 13 (Sean Hollister, staff writer for The Verge, The Verge "How the NSA plans to avoid future leaks: replace employees with machines" 8/8/13, http://www.theverge.com/2013/8/8/4604048/nsa-chief-wants-to-replace-employees-with-machines)

NSA director Gen. Keith Alexander might have had a difficult time recruiting hackers at the Def Con and Black Hat security conferences, but he might not need to recruit again anytime soon. Speaking at a cybersecurity conference in New York City — where he sat down with the heads of the FBI and CIA — he told an audience that he'd like to replace the vast majority of his employees and contractors with machines. No joke. "What we're in the process of doing - not fast enough - is reducing our system administrators by about 90 percent," he said, according to a Reuters report. "What we've done is put people in the loop of transferring data, securing networks and doing things that machines are probably better at doing," he added. *The Huffington Post,* also in attendance, reports that Alexander said he could replace employees with a "thin virtual cloud structure." Alexander previously testified that the NSA has 1,000 system administrators. "WHAT WE'VE DONE IS PUT PEOPLE IN THE LOOP" While the publication said that Alexander didn't mention whistleblower Edward Snowden by name — one such NSA system administrator,

and the man who revealed the extent of the US government's surveillance efforts — it seems likely the comments were directed at keeping future would-be whistleblowers from walking away with sensitive data, which certainly makes sense. "We trust people with data. At the end of the day it's all about trust. And people who have access to data as part of their missions, if they misuse that trust they can cause huge damage," Alexander reportedly said. But as society continues to discuss in the context of weaponized drones and self-driving cars, should we trust machines instead?

--xt no impact

Over a short amount of time we believe fictional components of TV programs such as broadcasts- means the vast majority of the population would believe NSA has truly reformed

Jacobs 2011 (Tom Jacobs, writer for Alternet and previous Journalist for Los Angales Daily News, Santa Barbara News-Press, LA Times, Chicago Tribune, and Ventura Country Star, Alternet "How Television Can Make You Believe Things That Aren't True" 10/12/11 http://www.alternet.org/story/152710/how_television_can_make_you_believe_things_that_aren't_true)

Newly published research suggests nuggets of misinformation embedded in a fictional television program can seep into our brains and lodge there as perceived facts. What's more, this troubling dynamic seems to occur even when our initial response is skepticism. That's the conclusion of a study published in the journal *Human Communication Research.* It asserts that, immediately after watching a show containing a questionable piece of information, we're aware of where the assertion came from, and take it with an appropriate grain of salt. But this all-important skepticism diminishes over time, as our memory of where we heard the fact or falsehood in question dims.

A research team led by the University of Utah's Jakob Jensen conducted an experiment in which 147 students watched a specific episode of the David E. Kelley drama *Boston Legal.* Immediately afterward, they completed a survey in which they revealed how strongly they related to the characters, how closely they felt the show reflected reality, and the degree to which they felt transported into the narrative of the show. Half also completed a separate set of questions, including their opinion on the effectiveness of EpiPens — devices that deliver a measured dose of ephinephrine to counter the effects of a severe allergic reaction. In the episode, use of the device failed to stop such a reaction, resulting in a child's sudden death — a highly unlikely scenario that outraged an advocacy group. The study participants were emailed a follow-up survey two weeks after watching the show. Those who did not receive the second set of questions, including the one on the effectiveness of EpiPens, filled it out at that time. The results: "Individuals queried two weeks after exposure to the television program were more likely to endorse the false belief than those queried immediately after exposure." These findings are consistent with those of a 2007 study, which similarly found the persuasive effects of fictional narratives increase over time. In that case the misinformation was embedded in a written story. "Two studies have now shown that fiction (written and televised) can produce a delayed message effect," Jensen and his colleagues write. This is troubling, they add, noting, "People are bombarded by mass media every day all over the world, and a sizeable (and growing) body of mass communication research has demonstrated that much of this content is distorted in a multitude of ways." Indeed, ABC — the same network that ran *Boston Legal* — was widely criticized in 2008 when an episode of another legal drama, *Eli Stone*,suggested a link between autism and a vaccine. While this link has been definitively debunked, this research points to one reason it and other falsehoods continue to circulate. The "sleeper effect" — the notion we can hold onto a piece of information while gradually forgetting it came from an unreliable source — was first proposed in the late 1940s, and a meta-analysis in 2004 confirmed its validity. Importantly, Jenkins notes that in both his study (featuring misinformation conveyed in a fictional television program) and the 2007 paper (where a falsehood was presented as part of a written work of fiction), the size of this effect was greater than that found in the 2004 meta-analysis. This suggests to him that delayed-message effects "may be larger and meaningfully different" in cases where the misinformation is presented in fictional form. In other words, we may be particularly susceptible to believing falsehoods originally conveyed to us through fiction, perhaps because the context — the TV episode or short story in question — is more likely to fall from our minds.

We believe what we hear on TV or read - it's easier than questioning it

Davis 12 (Adam Davis, LifeHacker "Why You Believe Most Everything You Read of Watch on TV" 10/22/12, http://lifehacker.com/5953837/why-you-believe-most-everything-you-read-or-watch-on-tv)

The saying goes "don't believe everything you read" (or read on the internet or watch on TV) because we often do and we generally shouldn't. How are we so easily duped when we supposedly know better? Psychologist Dr. Douglas LaBier points to a study that posits our brains are just that lazy: So, what happens within our minds and emotions that make us receptive to lies, and then resistant to information that exposes the truth? A study led by Stephan Lewandowsky of the University of Western Australia explains part of what may happen. The researchers found that "Weighing the plausibility and the source of a message is cognitively more difficult than simply accepting that the message is true — it requires additional motivational and cognitive resources." Basically, when presented with the option of fact-checking every statement made by a politician or newscaster, our brains just make a snap decision because it's easier. If the argument seems convincing, our brains like to believe it. Of course, we have our biases, and that plays into the problem as well. We like to be right and hear things that affirm our existing beliefs—another fun problem known as confirmation bias. David McRaney, author of the book and blog You Are Not So Smart, explains: You know those moments when you get an idea, or make a decision, and everything you see seems to… Confirmation bias is seeing the world through a filter, thinking selectively. The real trouble begins when confirmation bias distorts your active pursuit of facts. Punditry is a whole industry built on confirmation bias. Rush Limbaugh and Keith Olbermann, Glenn Beck and Arianna Huffington, Rachel Maddow and Ann Coulter – these people provide fuel for beliefs, they pre-filter the world to match existing world-views. If their filter is like your filter, you love them. If it isn't, you hate them. So how do you make your brain actually care about taking the truth? That's not good news, either, as it involves making you brain work—something it clearly hates to do. The easiest method, however, is to consider a person's perspective in addition to their opinion or advice. This way you can at least consider a bias. Additionally, it helps to hear multiple sides of the argument so you have many perspectives. Of course, if you want to fact-check any controversial statements, we've got a guide to help you out. None of these options are easy, but if you want the truth you have to force your brain to work a little harder.

--xt doesn't turn perception

Foreign customers only started to become weary of the US tech industry only after the Snowden leaks- Proves NSA secrecy was the better option

Smith 14 (Gerry Smith, staff writer for Huffington Post, Huffington post "'Snowden effect' Threatens U.S. Tech industry's Global ambitions" 01/24/15 http://www.huffingtonpost.com/2014/01/24/edward-snowden-tech-industry_n_4596162.html)

Election officials in India canceled a deal with Google to improve voter registration. In China, sales of Cisco routers dropped 10 percent in a recent quarter. European regulators threatened to block AT&T's purchase of the wireless provider Vodafone. The technology industry is being roiled by the so-called Snowden Effect, as disclosures by former National Security Agency contractor Edward Snowden about the extent of American spying worldwide prompt companies to avoid doing business with U.S. firms. The recent setbacks for Google, Cisco and AT&T overseas have been attributed, in part, to the international outcry over the companies' role in the NSA scandal. Fred Cate, a law professor at Indiana University, said criticism over Silicon Valley's involvement in the government surveillance program was initially limited to European politicians "taking advantage of this moment to beat up

on the U.S." "But the reports from the industry are showing that it is more than that," he added. "This is more than just a flash in the pan. This is really starting to hurt." The impact of the Snowden leaks could threaten the future architecture of the modern Internet. In recent years, computing power has shifted from individual PCs to the so-called cloud -- massive servers that allow people to access their files from anywhere. The Snowden revelations undermined trust in U.S.-based cloud services by revealing how some of the largest American tech companies using cloud computing -- including Google and Yahoo -- had their data accessed by the NSA. About 10 percent of non-U.S. companies have canceled contracts with American cloud providers since the NSA spying program was disclosed, according to a survey by the Cloud Security Alliance, an industry group. U.S. cloud providers could lose as much as $35 billion over the next three years as fears over U.S. government surveillance prompt foreign customers to transfer their data to cloud companies in other countries, according to a study by the Information Technology and Innovation Foundation, a nonpartisan think tank based in Washington, D.C. "If European cloud customers cannot trust the United States government, then maybe they won't trust U.S. cloud providers either," Neelie Kroes, European commissioner for digital affairs, said last summer after the NSA revelations were made public. "If I am right, there are multibillion-euro consequences for American companies. If I were an American cloud provider, I would be quite frustrated with my government right now." European officials and companies have been especially troubled by the Snowden leaks because European privacy laws are more stringent than those in the United States. After documents from Snowden revealed that the NSA had tapped German Chancellor Angela Merkel's phone calls, she said Europeans should promote domestic Internet companies over American ones in order to avoid U.S. surveillance. German Interior Minister Hans-Peter Friedrich has suggested that people who are worried about government spying should stop using Google and Facebook altogether. "Whoever fears their communication is being intercepted in any way should use services that don't go through American servers," Friedrich said after Snowden leaked the NSA documents.

Chris Lamoureux, the executive vice president of the company Veriday, told The WorldPost that some of his customers have requested that the company avoid storing their information in U.S.-based data centers, hoping to make it more difficult for the NSA to gain access. "They've said, 'We don't want you to put our data in the U.S. because we're worried about what we're seeing and hearing over there right now,'" said Lamoureux, whose Ottawa-based company develops web applications for banks, governments and retailers. Some argue that President Barack Obama has added to the tech industry's troubles abroad by emphasizing how the NSA surveillance program focused on people outside the United States, where most of Silicon Valley's customers are located. "Those customers, as well as foreign regulatory agencies like those in the European Union, were being led to believe that using US-based services meant giving their data directly to the NSA," journalist Steven Levy wrote in a recent article in Wired magazine. Hoping to reassure overseas customers, major tech companies (including AOL, which owns The Huffington Post Media Group) have asked the Obama administration for permission to be more open about how they responded to past requests for data from the U.S. government. They argue the government snooped on their networks without their knowledge. Recent reports based on documents provided by Snowden revealed that the NSA spied on Google and Yahoo customers, unbeknownst to the companies, by secretly tapping cables that connect data centers around the world. "The impression is that the tech industry is in league with the U.S. government," Cate said. "But the industry would like to give the impression that they're victims of the U.S. government, too." On Wednesday, Microsoft said it would offer customers who are wary about NSA surveillance the ability to store their data outside the United States. Meanwhile, some foreign tech companies are trying to capitalize on the distrust between U.S. tech firms and their customers around the world. Swisscom, a cloud provider in Switzerland, is developing a service that would attract customers looking to store data under the country's strict privacy laws and away "from the prying eyes of foreign intelligence services," Reuters reported. Germany's three largest email providers have also created a new service, called "Email Made in Germany," designed to thwart the NSA by encrypting messages through servers located within the country, The Wall Street Journal reported. But Cate said that any businesses that try to avoid surveillance by boycotting U.S. tech companies are not really protecting their data from the NSA. After all, intelligence agencies in France and Spain also spied on their own citizens, and passed on that information to the NSA, according to documents from Snowden. "It doesn't make a difference what you do with your data -- the NSA is going break into it," Cate said. "But that doesn't mean U.S. industry isn't going to get hurt along the way."

2nc nb – terror / intel

Public knowledge about NSA's activities hurts counter-terror measures- Snowden proves

Cooper 15 (Aaron Cooper, Producer at Turner and at CNN, CNN politics "NSA: Snowden leaks hurt ability to track terrorists" 2/23/25, http://www.cnn.com/2015/02/23/politics/nsa-surveillance-north-korea/)

The head of the National Security Agency expressed deep concerns about terrorists' ability to avoid NSA surveillance, explaining that Edward Snowden's revelations of surveillance techniques and capabilities have had a "material impact" on NSA ability to prevent and detect terror plots. "I would say that it has had a material impact in our ability to generate insights as to what counterterrorism, what terrorist groups around the world are doing," Adm. Michael Rogers told a group gathered in Washington for a cybersecurity summit hosted by the New America think tank. "Do you have new blind spots that you didn't have prior to the revelation," moderator and CNN National Security correspondent Jim Sciutto asked. "Have I lost capability that we had prior to the revelations? Yes," Rogers responded. "Anyone who thinks this has not had an impact I would say doesn't know what they're talking about." Snowden himself remains free in Russia. A film about him won an Academy Award on Sunday evening. Rogers says he knew U.S. infrastructure would likely come under cyber-attack on his watch, but the target of Sony Pictures was a surprise. "I fully expected, sadly in some ways, that in my time as the commander of United States Cyber Command the Department of Defense would be tasked with attempting to defend the nation against those kind of attacks," he said. "I didn't realize that it would be against a motion picture company, to be honest." North Korea is widely believed to be behind the hack in response to Sony's production of the film "The Interview," which depicts a comedic plot to kill leader Kim Jong-un Rogers declined to respond to a question if the United States was behind a retaliatory online attack that took down North Korea's Internet access. When asked which nations had the ability to strike U.S. cyber interests Rogers declined to provide assessments of most countries. "It's a matter of record, we've talked about China and our concerns about what they have been doing in cyber. Clearly the Russians and others have capabilities, we are mindful of that," he said. One major topic of discussion was encryption and if developers should build a "golden key" or other ability for governments, including the United States, to access data that otherwise would be security. Rogers was challenged by vocal NSA critic and current Yahoo! chief information security officer Alex Stamos, who asked if Internet companies were required to allow "back door" access to the U.S. government, should similar access be given to other governments around the world. "Do you believe we should build back doors for other countries?" Stamos asked. "It needs to be done within a framework. I'm the first to acknowledge that," Rogers said. "You don't want the FBI and you don't want the NSA unilaterally deciding, 'so, what are we going to access and what are we not going to access?' That shouldn't be for us." Rogers said it would be a process, though. "We'll have to work our way through it. And I'm the first to acknowledge there are international implications," he said. "I think we can work our way through this." "I'm sure the Chinese and Russians are going to have the same opinion," Stamos responded.

2nc nb – pres power

Executive power is a net benefit – secrecy

Friedersdorf 13 (Conor Friedersdorf, The Atlantic, "Secrecy Undermines the Ability of Congress to Function as the Framers Intended," 6-7-2013, http://www.theatlantic.com/politics/archive/2013/06/secrecy-undermines-the-ability-of-congress-to-function-as-the-framers-intended/276641/)

This gave me a thought. Congress **cannot** act as a **check** on the **executive** branch in the way the Framers intended when hugely consequential policies it is overseeing are treated as **state secrets**. The Senate, intended as a deliberative body, cannot deliberate when **only the folks on the right committees are fully briefed**, and the

Ron Wyden types among them think what's happening is horribly wrong, but can't tell anyone why because **it's illegal just to air the basic facts**. Our senators have literally been reduced to giving dark hints. And the House of Representatives? Members are up for reelection every two years because the body is supposed to respond to the will of the people. But by some accounts, the people are only now finding out about surveillance that some House members signed off on three or four election cycles in the past. Not that we know all the details even now. It's one thing to keep the identities of CIA agents and the location of our nuclear arsenal classified. But this is something different. The national-security state, as currently constituted, is removing many of the most important moral and strategic policy questions we face from the realm of democratic debate and accountability. In a real sense, our current approach is preventing our system of government from functioning in very basic ways that the Framers intended.

Presidential lies over the NSA are key to preserve strong pres powers

John **Blake 13**--- CNN journalist. John Blake has been honored by the Society of Professional Journalists, the Associated Press, and The American Academy of Religion. He is the author of "Children of the Movement." (Blake, "Of course presidents lie", CNN. 11/24/13. http://www.cnn.com/2013/11/24/politics/presidents-lie/)//ET

Well, guess what? That story about Washington and the cherry tree is a lie. Never happened. And the notion that a good president doesn't lie to the American people -- that's an illusion as well. Historians say many of our greatest presidents were the biggest liars -- and duplicity was part of their greatness. "Every president has not only lied at some time, but needs to lie to be effective," says Ed Uravic, a former Washington lobbyist, congressional chief of staff and author of "Lying Cheating Scum." Presidential lying is a hot topic because of a promise made by President Obama. While promoting Obamacare, Obama told Americans that they could keep their health insurance if they wanted to. That turned out to not be true for some, and Obama has been accused of lying. Some political pundits warn that Obama's "lie" will undo his second term. They say Americans won't forgive a president who violates their trust. It's a good sound-bite, but it's bad history. A great leader must "be a great pretender and dissembler," Machiavelli said in "The Prince." And so should a president, some historians say. You might say **lying is the verbal lubricant that keeps the Oval Office** engine **running**. Some of our most popular presidents told the biggest whoppers, say historians, including Benjamin Ginsberg, author of "The American Lie: Government by the People and other Political Fables." While preparing the country for World War II, Franklin Roosevelt told Americans in 1940 that "your boys are not going to be sent into any foreign wars." President John F. Kennedy declared in 1961 that "I have previously stated, and I repeat now, that the United States plans no military intervention in Cuba." All the while, he was planning an invasion of Cuba. Ronald Reagan told Americans in 1986, "We did not, I repeat, did not trade weapons or anything else [to Iran] for hostages, nor will we," four months before admitting that the U.S. had actually done what he had denied. Even "Honest Abe," whose majestic "Gettysburg Address" the nation commemorated this week, was a skillful liar, says Meg Mott, a professor of political theory at Marlboro College in Vermont. Lincoln lied about whether he was negotiating with the South to end the war. That deception was given extended treatment in "Steven Spielberg" recent film "Lincoln." He also lied about where he stood on slavery. He told the American public and political allies that he didn't believe in political equality for slaves because he didn't want to get too far ahead of public opinion, Mott says. "He had to be devious with the electorate," Mott says. "He played slave-holders against abolitionists. He had to lie to get people to follow him. Lincoln is a great Machiavellian." 6 things presidents wish they hadn't said Forgivable vs. unforgivable lies Presidential lies fall into two categories: forgivable vs. unforgiveable. Forgivable lies are those meant to keep the nation from harm. Some consider the National Security Agency's lies about the scope of domestic spying to be in this category because they protect us from terrorists, says Uravic, author of "Lying, Cheating Scum." Unforgivable lies fall into the Nixonian "I am not a crook" category, Uravic says. Those are lies meant to cover up crimes, incompetence or protect a president's political future. President Lyndon Johnson, for example, kept the full cost of spending on the Vietnam War from Congress and the public to preserve his political power, Uravic says. "The American people remain forgiving of their politicians, as long as those politicians put the people first and deliver tangible benefits for all of us," says Uravic, who also teaches at the Harrisburg University of Science and Technology in Pennsylvania. The ultimate test of whether the American public will accept a lie from a president is if the nation determines that the lie serves

the national interests. That distinction is why Bill Clinton remains popular, and George W. Bush remains reviled for his "lie," says Allan Cooper, a political scientist and historian at Otterbein University in Ohio. In a nationally televised address in 2003, Bush said that invading Iraq was necessary "to eliminate weapons of mass destruction." "Intelligence gathered by this and other governments leaves no doubt that the Iraq regime continues to possess and conceal some of the most lethal weapons ever devised," Bush said. Clinton told the nation that he did "not have sexual relations with that woman." I did not have sexual relations with that woman. President Bill Clinton "Clinton's lies about a sexual affair were understandable given his interest to protect his marriage and to shield the nation's children from having to ask their parents to explain the phenomenon of oral sex," Cooper says. "Bush's lies led to the death and injuries of thousands of Americans." Obama's statement will be judged by the same standard: Did it help the country, or did he say it just to save his bacon? Obama apologized for saying people could keep their insurance if they like it. But some Americans who buy policies on the private market recently received cancellation notices because their plans don't meet Obamacare requirements for more comprehensive care. Americans may forgive Obama if Obamacare improves their lives, says Christopher J. Galdieri, who teaches a course on the U.S. presidency at Saint Anslem College in New Hampshire. "Ultimately, this is going to come down to whether the federal [health care] exchange improves, and whether people come to view that as a successful and viable option for buying insurance for themselves and their families," Galdieri says. Will George W. Bush's reputation ever recover from the accusation that he led the nation into war under false pretenses? It's hard to say from history. Several presidents were accused of deceiving the American public to sell military action, says David Contosta, a history professor at Chestnut Hill College in Pennsylvania. President James Polk lied to Congress in 1846 -- claiming Mexico had invaded the United States -- because he was determined to take the Southwest from Mexico. That lie led to the Mexican-American War, Contosta says. President William McKinley lied to the American public in 1898 when he insisted that Spain had blown up the USS Maine warship in Havana Harbor, Cuba, although he had no evidence. That lie led to the Spanish-American war. Every president has not only lied at some time, but needs to lie to be effective. Ed Uravic, former Washington lobbyist and author of "Lying Cheating Scum." One popular president got caught telling a lie about a failed military action but his popularity remains intact. "President Dwight Eisenhower denied that the United States was flying U-2 spy planes over the Soviet Union, until the Soviets shot down one of the planes, capturing the pilot, and he was forced to admit the truth," Contosta says. Some presidents were so deceitful that they even lied to their friends. Franklin Roosevelt was such a president. Roosevelt led the nation out of the Great Depression and through World War II. But even his allies couldn't bank on honesty. Roosevelt told three different men that he wanted them to be his next vice president during the Democratic national convention in 1944. Then he picked a fourth man, Harry Truman, for the office, says David Barrett, a political science professor at Villanova University in Pennsylvania. "He did it with such skill that all three men were completely convinced that Roosevelt was behind him." The lost art of the quotable speech Why **we need a president who lies** Roosevelt's deceitfulness hasn't stopped historians from widely picking him as one of nation's three greatest presidents, along with Lincoln and Washington. Perhaps they and ordinary Americans forgive presidents who lie because there's something in human nature that believes a leader needs to be cunning.

DDI Executive Self Restraint CP

CP+DA 1NC

Text: The United States executive branch should substantially curtail the United States federal government's surveillance of data stored in the United States including requiring surveillance agencies to provide proof of reasonable suspicion against an individual target.

Executive self-restreaint solves surveillance – post hoc review can solve credibility

Bellia '11 (Patricia L, Notre Dame Law School, Arizona State Law Journal, Vol. 43, No. 293, 2011, Notre Dame Legal Studies Paper No. 12-58, 2011, "Designing Surveillance Law," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033217)

1. Executive Rule-Selection I begin with disputes focusing on executive rule selection—that is, where the executive branch adopts a surveillance practice **in the absence of any legislative action or outside the contours of existing statutes.** In other words, Congress has not specifically spoken with respect to the particular practice at issue (or so the executive claims). Rather, it is left to the executive in the first instance to decide whether the practice is **sufficiently privacy-invasive to require judicial authorization** (and, if so, what kind of authorization to seek) **or whether it can risk proceeding without judicial involvement.** When the executive seeks judicial authorization under a too-weak standard, it runs the risk that the authorizing court will reject the request or that a target will successfully challenge the standard after the fact. When the executive does not seek such authorization, it runs the risk that a target will challenge the practice and claim that prior judicial authorization was necessary. Instances of executive rule-selection that ultimately triggered judicial decisions on the constitutionality of executive conduct include the following: certain wiretapping and eavesdropping activities until the Court's decisions in Katz (and Berger v. New York48 in the immediately preceding term); 49 **warrantless national security surveillance** of purely domestic targets in the era prior to the Keith decision; the use of pen registers and similar devices before the Supreme Court's decision in Smith v. Maryland; 50 the use of **covert video surveillance tactics** in the absence of specific legislative authorization; 51 and the implementation of the NSA's **terrorist surveillance program** outside of FISA's requirements. 52

Limiting the President's intelligence capabilities though aggressive oversight kill presidential powers

Deats '10 (Caleb, J.D. Candidate, Columbia Law School, 7/2/10, "Obliging The Executive Branch To Control Itself," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633922)

2. Restraining the Executive's Interpretive Power Weakens the Government's Ability to Respond to Crises. --- Second, one might argue that restraining the executive's interpretive power might devastatingly weaken the country's ability to confront emergencies, particularly threats to national security. As Professor Goldsmith notes, "sharp disagreement over the requirements of national security law and the meaning of the imponderable phrases of the U.S. Constitution" exists even within the executive branch: "Whether and how aggressively to check the terrorist threat, and whether and how far to push the law in so doing, are rarely obvious, especially during blizzards of frightening reports, when one is blinded by ignorance and desperately worried about not doing enough."51 Disagreement in Congress over these issues would presumably prove more intractable than that within the executive branch. Moreover, airing these issues in courts would likely require disclosure of classified information. Thus, requiring the executive to defer to other branches when parsing these "imponderable phrases" prevents the swift resolution of controversy that results from consolidating authority in the President. As Hamilton writes, "A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution . . . ."52 However, while the this paper's proposal may prescribe procedures that cannot adequately resolve emergencies, designing procedures with emergencies in mind seems **more likely to pervert normal politics** than it does to adequately resolve such extraordinary situations. No set of procedures can provide for every eventuality. Moreover, as Justice Jackson wrote, dissenting in Korematsu, "if we cannot confine military expedients by the Constitution, neither would I distort the Constitution to approve all that the military may deem expedient."53 Once we incorporate emergency exceptions into the Constitution, such exceptions will increase in number until they cease to be exceptional.54 Professor Goldsmith adverts to the danger of confusing the exception with the norm when he describes the terrorist threat as a "permanent emergency."55 Thus, if we must in emergencies rely on "leaders who will be beholden to constitutional values," we should do so completely, i.e. **without creating procedural justifications** for doing so. A different approach might substitute "leaders" for procedures simply by making the two indistinguishable.

Prespowers solves multiple scenarios for war

South China Morning Post 2K ("Position of Weakness" 12-11-00, p. L/N)

A weak president with an unclear mandate is **bad news for the rest of the world**. For better or worse, the person who rules the United States influences events far beyond the shores of his own country. Both the global economy and international politics will feel the effect of political instability in the US. The first impact will be on American financial markets, which will have a ripple effect on markets and growth across the world. A weakened US presidency will also be felt in **global hotspots across the world**. The **Middle East**, the conflict between **India and Pakistan**, peace on the **Korean peninsula**, and even the way relations between **China and Taiwan** play out, will be influenced by the authority the next US president brings to his job. There are those who would welcome a weakening of US global influence. Many Palestinians, for example, feel they would benefit from a less interventionist American policy in the Middle East. Even within the Western alliance, there are those who would probably see opportunities in a weakened US presidency. France, for example, might feel that a less assertive US might force the European Union to be more outward looking. But the dangers of having a weak, insecure US presidency **outweigh any benefits** that it might bring. US global economic and military power cannot be wished away. A president with a shaky mandate will still command great power and influence, only he will be constrained by his domestic weakness and less certain about how to use his authority. This brings with it the **risks of miscalculation** and the use of US power in a way that **heightens conflict**. There are very few conflicts in the world today which can be solved without US influence. The rest of the world needs the United States to use its power deftly and decisively.

*****Solvency*****

2NC Solvency – A2: No Precedent/Future Admins

Political barriers check future rollback – new, stronger constituencies

Branum 2 [Tara L, Associate, Fulbright & Jaworski L.L.P, "President or King? The Use and Abuse of Executive Orders in Modern Day America" Journal of Legislation]

> Congressmen and private citizens besiege the President with demands [*58] that action be taken on various issues. [n273] To make matters worse, once a president has signed an executive order, he often makes it **impossible for a subsequent administration to undo his action** without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. [n274] Many were controversial and the need for the policies he instituted was debatable. [n275] Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. [n276] A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

Yes precedent – constitutional obligation

Atkinson '13 (L Rush, Center on the Administration of Criminal Law, U.S. Department of Justice, National Security Division, law clerk to the Honorable Julia Smith Gibbons, U.S. Court of Appeals for the Sixth Circuit, J.D., New York University; M.Phil., University of Cambridge, A.B., The University of Chicago, fellow at the Center for the Administration of Criminal Law at New York University School of Law, 10/1/13 forthcoming, Vanderbilt Law Review, "The Fourth Amendment's National Security Exception: Its History and Limits," https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2226404)

> C. The Constitutional Gloss of Early Executive Practice The history examined here primarily involves executive conduct, which can carry **precedential weight**, even in matters of constitutional law.42 In Youngstown Sheet & Tube Co. v. Sawyer, Justice Frankfurter explained how executive practice informs our constitutional understanding: [A] systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution, making as it were such exercise of power part of the structure of our government, may be treated as a gloss on "executive Power" vested in the President

by §1 of Art. II.43 Subsequent Supreme Court decisions embrace the probative value of executive practice.44 Historical conduct is particularly important in the **national security** context. "National security law and foreign affairs law," Julian Mortenson explains, has a "pronounced concern for post-enactment history as a source of constitutional meaning."45 Neil Katyal and Richard Caplan note that "[i]n the crucible of legal questions surrounding war and peace, few judicial precedents will provide concrete answers," **making executive practice one of the few constitutional guides**.46 When identifying constitutional parameters for the executive, it is particularly instructive to look at historical moments when the executive is restrained. When congressional prohibition draws executive power to its "ebb," for example, one can identify the executive's core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases **where the executive branch limits its own conduct**. Specifically, the **executive's self-restraint is precedential when it stems from a sense of constitutional obligation**.48 Such fealty towards the Constitution might be **unprompted by judicial command or legislative action**, and there may be no record as obvious as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris has shaped executive action, such legal opinion should be considered both for its persuasive power and a historical understanding about what protections the Constitution establishes.49

Executive has powerful incentives to tie its hands

Sales '12 (Nathan Alexander, Assistant Professor of Law at George Mason University where he teaches national security law, administrative law, and criminal law, J.D. magna cum laude, Duke University, A.B., Miami University, former Deputy Assistant Secretary for Policy Development at the U.S. Department of Homeland Security, served at the Office of Legal Policy at the U.S. Department of Justice, recipient of the Attorney General's Award for Exceptional Service for his role in drafting the USA PATRIOT Act, formerly clerked for the Honorable David B. Sentelle of the U.S. Court of Appeals for the D.C. Circuit, practiced at the Washington, DC law firm Wiley Rein LLP, John M. Olin Fellow at the Georgetown University Law Center, Journal of National Security Law & Policy, Vol. 6, No. 1, 8/24/12, pp. 227-289, "Self-Restraint and National Security," http://jnslp.com/wp-content/uploads/2012/08/08__Sales_Master_6-28-12-NS.pdf)

Why does the government sometimes tie its own hands in national security operations? Much of the case law and scholarship concerning national security rests on the assumption that the executive branch is institutionally prone to overreach – that, left to its own devices, it will inch ever closer to the line that separates illegal from legal, and sometimes enthusiastically leap across it. The obvious conclusion is that external, principally judicial, checks are needed to keep the Executive in line.2 In many cases the Executive does indeed push the envelope. But not always.3 The government often has **powerful incentives to stay its own hand** – to forbear from military and intelligence operations that it believes are perfectly legal. Officials may conclude that a proposed mission – a decapitation strike on al Qaeda's leadership, say, or the use of mildly coercive interrogation techniques on a captured terrorist – is entirely permissible under domestic and international law. Yet they nevertheless might rule it out. In other words, the government sometimes adopts self-restraints that limit its ability to conduct operations it regards as legally justified; it "**fight[s] with one hand behind its back,**" to borrow Aharon

Barak's memorable phrase.4 This article tries to explain these restraints by consulting public choice theory – in particular, the notion that government officials are rationally self interested actors who seek to maximize their respective welfare. Part I develops an analytical framework. Part II identifies four examples of selfrestraint. Parts III and IV offer hypotheses for why the government adopts them. One example of self-restraint is Executive Order 13,491, which **limits counterterrorism interrogations**, including those conducted by the CIA, to the techniques listed in the Army Field Manual. The AFM prohibits or severely restricts a number of fairly mild interrogation methods such as low-grade threats, the "good cop, bad cop" routine, and other staples of garden-variety law enforcement investigations. A second example, sketched above, is the White House's onetime **reluctance to use targeted killings** against Osama bin Laden, despite its belief that doing so would be consistent with domestic and international laws against assassination.

2NC Solvency – A2: Doesn't Solve Credibility

Obama sould take the lead – key to cred

Wu '06 (Edieth,- Associate Dean and Professor, Thurgood Marshall School of Law "DOMESTIC SPYING AND WHY AMERICA SHOULD AVOID THE SLIPPERY SLOPE")

The recent revelations regarding domestic spying have led to much criticism, skepticism and suspicion, forcing President Bush to defend his decision.101 Bush insists that he has not broken any laws in authorizing the surveillance of Americans suspected of having ties to terrorism.102 Further, the president said he would continue to approve the program, despite concern that it eroded civil liberties.103 But as the president attempts to maneuver through the criticism to better position himself, he subjects himself to further attack. For example, the president has recently come under severe bipartisan attack for "using scores of 'signing statements' to reserve the right to ignore or reinterpret provisions of measures that he has signed into law."104 In effect, the president is attempting to "cherry-pick the provisions he likes and exclude the ones he doesn't like."105 Due to "the scope and aggression of Bush's [defense] that he can bypass laws," many fear that the president's actions "represent a concerted effort to expand his power at the expense of Congress, upsetting the balance between the branches of government."106 Consequently, the U.S. government must establish itself, **with the president taking the lead**, as a supporter of the rule of law in order to retain the country's support. Failure to do so may have devastating ramifications for the country as a whole.

A2: Congress Key

Executive solves better – efficiency and precedent

McGinnis '93 (John O, George C. Dix Professor in Constitutional Law at Northwestern Law School, JD magna cum laude from Harvard Law School where he was an editor of the Harvard Law Review, BA magna cum laude from Harvard College, MA degree from Balliol College, Oxford, in philosophy and theology, former clerk on U.S. Court of Appeals for the District of Columbia, past winner of Paul Bator Award given by the Federalist Society to an outstanding academic under 40, Law and Contemporary Problems Vol. 56, No. 4, August 1993, "Constitutional Review By The Executive In Foreign Affairs And War Powers: A Consequence Of Rational

Choice In The Separation Of Powers," http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4213&context=lcp)

> Additionally, the structure of the presidency as a single office possessed by one person also gives the executive unique capabilities of **acting with "secrecy and dispatch** giving him a **comparative advantage** in carrying out these functions. Thus, because of the president's constitutional powers and because of expectations that have developed about his responsibilities in the area of foreign affairs and war powers, the president generally places a **very high value on control of the rights of governance in foreign affairs**.62 On the other hand, Congress's structure is **so much more diffuse** than the executive that it **impedes the rapid decisionmaking necessary in the fluctuating world of foreign affairs**.63 Thus, because of its **comparative disadvantage** as an institution, operational control of foreign affairs may actually be at odds with its interests because **such control threatens Congress with responsibilities it is not well-equipped to handle.** In determining how much interest Congress has in exercising this power as compared to the executive, one must compare this interest to other rights of governance. Spending on constituents, for example, is more highly prized by Congress since it can directly help individual members of Congress retain office.' Of course, even if Congress rationally shuns operational control of war and foreign policy matters, it may be interested in **increasing its mechanisms to criticize the executive's performance after the fact,** so that it can act in effect as the ululating Greek chorus that comments on the executive's tragic choices.'

Congressional checks on national security powers fail – inefficient, politically unfeasible, and reactionary

Kelly '93 (Michael, Major, Judge Advocate General's Corps, US Army, 1993, "Fixing the War Powers", Military Law Review, from Lexis Nexis, 141 Mil. L. Rev. 83)

> The Constitution arms Congress with several powerful checks. Within the **war powers arena**, these checks have proven to be **unwieldy**, **time consuming** to use, and **dependent on normally nonexisting bipartisan support**. These checks have lacked consistent effectiveness. Congress, when using its checks, has not always exercised sound discretion and self-restraint. Congress typically uses its checks in a **reactionary mode**. For example, in the latter stages of the Vietnam War, after the United States' main withdrawal, Congress aggressively used its checks and "legislated peace in Indochina." Congress was reacting to what it perceived as presidential abuse of the war powers. Congress's acts unduly interfered with the President's war powers and may have contributed to the **unsatisfactory outcome** by restricting the use of funds to support the war.

A2: Rollback Ext.

Most exos aren't overturned

Murray '99 (Frank, "Clinton's Executive Orders are Still Packing a Punch: Other Presidents Issued More, but His are Still Sweeping" Washington Times http://www.englishfirst.org/13166/13166wtgeneral.html)

> Clearly, Mr. Clinton knew what some detractors do not: Presidential successors of the opposite party **do not lightly wipe the slate clean of every order**, or even most of them. Still on the books 54 years after his death are 80 executive orders issued by Franklin D. Roosevelt. No less than 187 of Mr. Truman's orders remain, including one to end military racial segregation, which former Joint Chiefs of Staff Chairman Colin Powell praised for starting the "Second Reconstruction." "President Truman gave us the order to march with Executive Order 9981," Mr. Powell said at a July 26, 1998 ceremony marking its 50th anniversary. Mr. Truman's final order, issued one day before he left office in 1953, created a national security medal of honor for the nation's top spies, which is still highly coveted and often revealed only in the obituary of its recipient.

0.2% risk of an overturn

Krause and Cohen 2K (George and David, Professors of Political Science @ South Carolina, "Opportunity, Constraints, and the Development of the Institutional Presidency: The Issuance of Executive Orders" The Journal of Politics, Vol. 62, No. 1, February 2000, JSTOR)

> We use the annual number of executive orders issued by presidents from 1939 to 1996 to test our hypotheses. Executive orders possess a number of properties that make them appropriate for our purposes. First, the series of executive orders is long, and we can cover the entirety of the institutionalizing and institutional-ized eras to date.6 Second, unlike research on presidential vetoes (Shields and Huang 1997) and public activities (Hager and Sullivan 1994), which have found support for presidency-centered variables but not president-centered factors, ex-ecutive orders offer a stronger possibility that the latter set of factors will be more prominent in explaining their use. One, they are more highly discretionary than vetoes.7 More critically, presidents take action first and unilaterally. In addition, Congress has **tended to allow executive orders to stand** due to its own **collective action problems** and the **cumbersomeness of using the legislative process** to reverse or stop such presidential actions. Moe and Howell (1998) report that between 1973 and 1997, Congress challenged **only 36 of more than 1,000 executive orders issued**. And **only two of these 36 challenges led to overturning** the president's executive order. Therefore, presidents are likely to be **very successful** in implementing their own agendas through such actions. In fact, the nature of executive orders leads one to surmise that idiopathic factors will be relatively more important than presidency-centered variables in explaining this form of presidential action. Finally, executive orders have rarely been studied quantitatively (see Gleiber and Shull 1992; Gomez and Shull 1995; Krause and Cohen 1997)8, so a description of the factors motivating their use is worth-while.9 Such a description will allow us to determine the relative efficacy of these competing perspectives on presidential behavior.10

Congress won't roll back decisions

Howell '3 (William G, Assistant Professor of Gov't @ Harvard, Powers without Persuasion: The Politics of Direct Presidential Action pg. 112)

> The real world, obviously, is much more complicated than the unilateral politics model supposes. Uncertainties abound, and presidents frequently set policies without any assurance of congressional acquiescence. It is worth considering then, how presidents fare on those occasions when Congress does respond to a presidential directive. Do presidents tend to win most of the time? Or does Congress consistently crack the legislative whip, effectively enervating imperialistic presidents? Our theoretical expectation are relatively clear. Because the president has access to more (and better) information about goings-on in the executive branch, members of Congress will try to **change only a small fraction of all status quo policies** in any legislative session, and we should anticipate that members will **leave alone the majority of unilateral directives** that the president issues. While the president may occasionally overreach on a particularly salient issue, provoking a congressional response, in most instances Congress either will **do nothing at all or will endorse the president's actions.**

2NC A2: Perm

Congressional silence key to presidential power

Bellia 2 [Patricia, Professor of Law @ Notre Dame, "Executive Power in Youngstown's Shadows" Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

> To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the

executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. The combination of congressional silence and judicial inaction has the practical effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, the implied presidential power given effect by virtue of congressional silence and judicial inaction can solidify into a broader claim. When the Executive exercises an "initiating" or "concurrent" power, it will tie that power to a textual provision or to a claim about the structure of the Constitution. Congress's silence as a practical matter tends to validate the executive rationale, and the Executive Branch may then claim a power not only to exercise the disputed authority in the face of congressional silence, but also to exercise the disputed authority in the face of congressional opposition. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a [*151] ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

No cooperation or balancing – the perm means congress' power always wins out

Lisa M. **Ivey,** 20**03**, Cumberland Law Review, 33 Cumb. L. Rev. 107

The third "zone" of presidential power occurs when the President's actions are "incompatible with the [express] or implied will of Congress." In the Youngstown Sheet & Tube Co. case itself, Jackson found President Truman's actions in seizing steel mills was incompatible with Congressional will because Congress had not been silent on the subject of seizure of private property. Thus, there was no "open field" in which the President could operate. Similarly, in enacting the Executive Order establishing military tribunals, the President is probably operating in the third "zone." Congress has specifically indicated its intention to exercise its constitutional powers and enact anti-terrorist legislation. Where Congress has indicated an intention to occupy the field of legislation and exercise its full power, none is left over for the President. In the case of the Executive Order, **Congress has already covered the playing field, and the President's power is at its lowest ebb.**

Only unilateral executive action solves the DA.
Moe and Howell, Fellow for the Hoover Institution and Harvard Professor, 99

Terry M. Moe and William G. Howell, senior fellow for the Hoover Institution and Associate Professor for the Government Department at Harvard University, "Unilateral Action and Presidential Power: A theory", LexisNexus.com 12-99

> If the president had the power to act unilaterally in this same situation, as depicted in Figure 1B, things would turn out much more favorably. He would not have to accept Congress's shift in policy from [SQ.sub.2] to [SQ.sub.2*] and could take action on his own to move the status quo from [SQ.sub.2*] to V--using his veto to prevent any movement away from this point. V would be the equilibrium outcome (as it was in the earlier case of unilateral action). And although the president would still lose some ground as policy moves from the original [SQ.sub.2] to V, unilateral action allows him to keep policy much closer to his ideal point--and farther from Congress's ideal point--than would otherwise have been the case. He clearly has more power over outcomes when he can act unilaterally.

Doesn't solve presidential power – simultaneous legislative and executive action creates a mixed precedent, undermining presidential authority

Bellia 2 [Patricia, Professor of Law @ Notre Dame, "Executive Power in Youngstown's Shadows" Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

> Second, courts' failure to resolve the contours of the President's constitutional powers creates uncertainty about whether some forms of constitutionally based executive action have the same legal force as a federal statute. Returning to Dames & Moore, the fact that the Court rested the President's authority on grounds of congressional approval rather than implied constitutional authority avoided the difficult question of how the President could by his sole authority displace the application of the federal statutes that had provided the basis for Dames & Moore's original cause of action against the Iranian enterprises. 291 Similar questions arise with respect to the displacement of state law by operation of sole executive agreements. The result is confusion about whether sole executive agreements are the "supreme Law of the Land," 292 with the available precedents suggesting that they are 293 and the weight of recent commentary suggesting that they are not.

1NC Off Case Shell

Text: The United States federal government should propose <the plan> to the Privacy and Civil Liberties Oversight Board for review. The board should solicit input from all relevant stakeholders. The board should recommend that the United States federal government <do plan>.

The board works, doesn't link to politics, and builds momentum for effective curtailment of NSA activities.

Setty, Professor of Law and Associate Dean for Faculty Development & Intellectual Life, Western New England University School of Law, 2015 Sudha, SYMPOSIUM: Surveillance, Secrecy, and the Search for Meaningful Accountability, 51 Stan. J Int'l L. 69

One promising move **with regard to oversight and transparency** has been the establishment and staffing of the **Privacy and Civil Liberties Oversight Board** (PCLOB). 186 This board, tasked with assessing many aspects of the government's national security apparatus both for efficacy and for **potentially unnecessary incursions into civil liberties, has a broad mandate and**, compared with many national security decision makers, **significant independence from the executive branch**. 187 Retrospectively, the PCLOB has, among other things, issued the highly critical report of the NSA Metadata Program in January 2014 **that led to further public pressure on the Obama administration to curtail this program; it is promising that the PCLOB's** prospective agenda includes further analysis of various surveillance programs. 188 However, the PCLOB's potential influence in protecting civil rights may be limited by its position: The PCLOB is an advisory body that analyzes existing and proposed programs and possibly recommends changes, but it cannot mandate that those changes be implemented. The ability to have a **high level of access to information surrounding counterterrorism surveillance programs** and to **recommend changes** in such programs **is important** and should be lauded, but over-reliance on the PCLOB's non-binding advice to the intelligence community to somehow solve the accountability and transparency gap with regard to these programs would be a mistake. For example, on prospective matters, it is likely that intelligence agencies would consult the PCLOB only if the agency itself considers the issue being faced new or novel, as the NSA metadata program was labeled prior to its inception. In such cases, **decision makers within an agency generally ask whether the contemplated program is useful or necessary, technologically feasible, and legal**. If all three questions are answered affirmatively, the program **can be implemented.** Now that the PCLOB is fully operational, it seems likely that if a contemplated program is considered new or novel, an intelligence agency would consult the PCLOB at some stage of this process for its guidance on implementing the program. **This nonpartisan external input may improve self-policing** within the [*102] intelligence community and help intelligence agencies **avoid implementing controversial programs or, even if implemented, set better parameters around new programs. 189** If the PCLOB is able to exert some degree of soft power in influencing national security decision-making, then the judiciary represents hard power that could be used to force the protection of civil liberties where it might not otherwise occur. The FISC should be reformed to include a public advocate lobbying on behalf of privacy concerns, making the process genuinely adversarial and strengthening the FISC against charges that it merely rubber stamps applications from the intelligence community. 190 Article III courts need to follow the lead of Judge Leon in Klayman in conceptualizing privacy as broad and defensible, even in a world where electronics-based communication is dominant and relatively easy for the government to collect. If the judicial defense of privacy were combined with the possibility of liability for violations of that privacy, it is likely that this would incentivize increased self-policing among the members of the intelligence community. The creation of an active PCLOB and a more adversarial process before the FISC will not provide a perfect solution to the dilemmas posed by the government's legitimate need for secrecy and the protection of the public against potential abuse. Yet **because these changes are institutional and structural, they are well-placed to improve the dynamic between the intelligence community, oversight mechanisms, and the public.**

Solvency

Overview – 2NC

This isn't your run of the mill commissions' cp but rather a nuanced and highly specific version which the 2AC hasn't responded effectively to. The counterplan has the fed request the Privacy and Liberties Oversight Board, which is an independent bipartisan group to review the plan and to recommend it to congress. The counterplan does NOT fiat that congress will implement the plan but rather due the board's recommendation will build enough momentum in congress to create effective institutionalized reform. – That's Setty.

Have a high threshold for a solvency deficit – any reason why congressional action won't be enough applies to the aff too.

Evaluate solvency via a lens of sufficiency. Even if the counterplan isn't as optimal as the aff it's sufficient to solve their advantages.

Say Yes – 2NC – Big Stick Aff

The counterplan causes the plan to be adopted by congress – recent momentum proves – PCLOB reports garner massive public attention which allows for effective lobbying by the board and parties to get the plan done – That's Setty. Prefer our evidence it's the most recent which is the golden standard in determining how this congress will respond to our counterplan.

Recommendations will pass:

a) The board will specifically be effective at causing the NSA to curtail surveillance – unique knowledge over policies, capital, and recent leaks are a game changer for increasing their influence over congress.

Levy, 2013 Pema, International Business Times Correspondent, "NSA Spying Controversy: The New Agency That Could Change Government Surveillance" http://www.ibtimes.com/nsa-spying-controversy-new-agency-could-change-government-surveillance-1342409

You've probably never heard of it, but there is a new agency in Washington that is **working to make sure the government's anti-terrorism efforts do not ride roughshod over Americans' civil liberties.** These days, when a sharply divided Congress struggles to get nearly anything accomplished, there is little evidence that such an agency, armed only with the mandate to offer advice, can influence lawmakers. **But the Privacy and Civil Liberties Oversight Board may have a better chance at reforming the national security apparatus than many assume**. In fact, the board is in a **unique position to shape the legislative debate over the government's spying abilities -- and has powerful allies to make sure Congress takes up its recommendations.** Referred to as the PCLOB (sounds like 'pee-klawb'), the new agency has the job of advising the president, federal agencies and Congress on how to balance the government's national security efforts with civil liberties concerns. **Board members have top-secret clearances, and agency heads are expected to turn over any documents the board requests**. If the board needs information from the private sector, **the attorney general can issue a subpoena on its behalf.** Created in 2004 at the recommendation of the 9/11 Commission, the PCLOB did not get off to an auspicious start. It was originally located within the Executive Office of the President, and its first report to Congress was edited by the Bush White House, prompting one Democratic member to resign. In response, in 2007 the new Democratic Congress made the board an independent agency within the executive branch. Then-President George W. Bush clashed with Senate Democrats over board nominees, and ultimately none were confirmed. President Barack Obama dragged his feet in choosing nominees and when they finally did come, Republicans refused to approve them. Four part-time members were finally approved in the last nine months. The board's chairman, David Medine, was not formally installed on until May 29, 2013. One week later, the Guardian newspaper published its first scoop, based on leaked National Security Agency documents, showing the government collected and stored metadata on the phone calls of millions of Americans. Over the next few days, the documents leaked by Edward Snowden revealed that the government went further, collecting and storing metadata on the phone calls of virtually all Americans. The government was also scooping up an untold amount of Americans' electronic communications as part of its foreign surveillance operations. These revelations thrust the board **into the middle of the most important debate over privacy and civil liberties in years.** Sen. Tom Udall, D-N.M., sent a letter to the board asking it to "**make it an urgent priority to investigate the programs"** and provide an unclassified report on their legality and whether they take the "necessary precautions to protect the privacy and civil liberties of American citizens under the Constitution." Twelve additional senators, including two Republicans, signed Udall's letter. On June 21, **the board met with Obama**. All this before its office space was even ready or emails set up. The full board's first public appearance came Tuesday at a workshop in Washington, D.C., where the five members -- three Democrats and two Republicans -- queried three separate panels of experts on how the surveillance programs might be brought more in line with civil liberties concerns. Civil liberties advocates appear cautiously **optimistic about the new board, whose opinion could help determine whether Congress decides to take on the massive**

surveillance programs. Advocates are also aware of the board's ability to actually move their cause backward and entrench these programs. "If it blesses these programs, they are likely to continue," privacy rights advocate Greg Nojeim, who participated in one of Tuesday's panels, said in an interview Wednesday. Whether the board deems the phone metadata collection is unlawful or not will be "one of the most significant tests of PCLOB," said Nojeim, a lawyer at the Center for Democracy and Technology. But whatever its recommendations ultimately are, the PCLOB is armed by circumstance with the **power to shape the laws governing the surveillance state**, particularly Section 215 of the USA Patriot Act, also known as the "business records" provision, under which the government claims the authority to collect Americans' call data. During Tuesday's workshop, panelist Michael Davidson, former legal counsel to the Senate Intelligence Committee, hinted at the board's potential for influence. "Can I suggest a focus for the board, and that is the Congress will turn to the many important questions that have been discussed through the day when it has to," Davidson said. "And it will have to when, initially, when the sunset for business records [provision] is reached in the middle of 2015." In other words, the government's authority to carry out the phone metadata collection will expire on June 1, 2015, absent congressional action – a situation the board can use to shape the debate and even push its recommendations. On June 1, 2017, the portion of the Foreign Intelligence Surveillance Act under which the NSA conducts electronic foreign intelligence sweeps that also snag domestic communications will expire without reauthorization, as well. Privacy advocates don't want the board or Congress to wait years to address the surveillance programs they believe are illegal. But at the end of the day, the sunset dates guarantee that a debate over these programs will take place -- and when it does, **the PCLOB can have its reports and recommendations ready to shape that conversation**. Moreover, because the issues in are so complex from a legal, practical and technological point of view, **lawmakers who want to put forward serious reforms may not have the ability to craft adequate proposals before the sunset deadline. The board can help in that practical function to make sure that lawmakers have reforms ready to be implemented when the debate begins.** Nojeim also **sees this as an "advantage" unique to the PCLOB**. "The board has a **guaranteed congressional audience that other boards don't have because it's making recommendations** on statutes that will expire unless acted on," he said Wednesday. Despite the leverage the PCLOB has in 2015 and 2017, the civil liberties community believes it has a popular mandate to move reforms -- at least more basic changes like releasing more classified materials -- **while the public is engaged on the issue**. The NSA leaks are **"a game-changer**," said Michelle Richardson, a legislative counsel at the American Civil Liberties Union, noting that members of Congress on both sides of the aisle have indicated that the NSA's programs need to be reined in. "This certainly seems like our best opportunity yet." Whether or not Congress takes up a range of proposals put forward in the last month to reform the intelligence system, the board has **allies in Congress who will have the power to make sure its recommendations are debated**, even if it takes until 2015 for that to happen. "There are senators and representatives, including [Vermont Democratic Sen. Patrick] Leahy, who chairs the Senate Judiciary Committee, who **struggled and pushed and cajoled until the PCLOB members were nominated and approved**," Nojeim said Wednesday. "**They are not going to ignore the recommendations of the board they fought for."**

b) The counterplan uniquely positions the PCLOB to be effective in drafting national policy issues.

Dalal, J.D. Yale Law, 2014 Anjali, ARTICLE: SHADOW ADMINISTRATIVE CONSTITUTIONALISM AND THE CREATION OF SURVEILLANCE CULTURE, 2014 Mich. St. L. Rev. 59

Despite these congressional efforts to force internal interagency oversight on intelligence issues, from 2007 until 2012, no members were ever appointed to the PCLOB. 284 In mid-2013, after significant pressure from both within and outside the Administration, the full board was nominated and confirmed. 285 Time will ultimately tell how effective the PCLOB will be as a **source of productive tension** within **the national security arena**. Working against it is the fact that "[f]our of the board members technically must be part time under the law; only [David] Medine, the fifth, can work on a full-time basis as chairman. The oversight body also lacks much of a workforce: At the moment it's mostly staff members on loan from other agencies." 286 Assuming PCLOB is capable of taking on such a huge responsibility, [*123] **its success will be contingent on its members being included in national security related decision making and its ability to effectively wield power and influence on these issues.**

c) Consensus building

Glassman and Straus 13—*analyst at the Congressional Research Service AND **analyst at the Congressional Research Service *Matthew Eric AND **Jacob R., "Congressional Commissions: Overview, Structure, and Legislative Considerations," Congressional Research Service, 1/22, http://fas.org/sgp/crs/misc/R40076.pdf

Legislators seeking policy changes may be confronted by an array of political interests, some in favor of proposed changes and some against. When these interests clash, the resulting legislation may encounter gridlock in the highly structured political institution of the modern Congress.**28 By creating a commission, Congress can place policy debates in a potentially more flexible environment, where congressional and public attention can be developed over time**.29

This is empirically proven on the third rail of politics which beats every aff warrant

Fiscal Times 10 [Edmund Andrews, February 18, 2010, "Deficit Panel Faces Obstacles in Poisonous Political Atmosphere" http://www.thefiscaltimes.com/Issues/Budget-Impact/2010/02/18/Fiscal-Commission-Faces-Big-Obstacles.aspx]

Supporters of a bipartisan deficit commission note that at least two previous presidential commissions succeeded at breaking through **intractable political problems when Congress was paralyzed**. The 1983 Greenspan commission, headed by Alan Greenspan, who later became chairman of the Federal Reserve, reached an historic agreement to gradually **raise Social Security taxes** and gradually increase the minimum age at which workers qualify for Social Security retirement benefits. **Those recommendations passed** both **the House and Senate**, and averted a potentially catastrophic financial crisis with Social Security.

d) Political cover: Since the commission's recommendation is final, no one in Congress has to take the blame

The Telegraph 10 "Deficit-cutting panel a missed opportunity," The Telegraph, 2/14, http://www.nashuatelegraph.com/opinion/editorials/612140-263/deficit-cutting-panel-a-missed-opportunity.html

At one time, closing a military base in this country seemed as unlikely as meaningful efforts toward deficit reduction. Any proposal by the Pentagon for base closure was met by congressional resistance, **until the creation of the Base Realignment and Closure Commission gave Congress political cover**. The commission and its staff conducted extensive research, held public hearings and managed to get three rounds of base closures through Congress. Hundreds of out-of-date military installations of all sorts were closed, many of which had long since lost their strategic value and were little more than local jobs programs. **The base closure process was a great success, largely because Congress did not have the power to nitpick its recommendations.** The entire list had to be accepted or rejected. This model may now be **the only practical way for our government to tackle any issue** with negative political fallout.

Say Yes – 2NC – Sarbanes-Oxley

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Recommendations will pass:

a) The commission will be able to do necessary reviews to get congress to promptly repeal.

Addington, 2011 David, Group Vice President at the Heritage Foundation, "Congress Should Repeal or Fix Section 404 of the Sarbanes–Oxley Act to Help Create Jobs" http://www.heritage.org/research/reports/2011/09/congress-should-repeal-or-fix-section-404-of-the-sarbanes-oxley-act-to-help-create-jobs

Congress waited patiently from 2007 to 2010 for the SEC and the Public Company Accounting Oversight Board (PCAOB), whose rules the SEC approves, to change rules in a way that would solve the problem of unwarranted costs imposed on the private sector by the rules implementing section 404 of the Sarbanes–Oxley Act.[7] While the SEC tinkered with the rules, it did not solve the problem to the satisfaction of Congress.[8] Congress took action in 2010 to address part of the problem, granting by statute to companies whose stock is publicly traded and whose aggregate worldwide value is $75 million or more an exemption from the requirement in section 404(b) for the company to have the registered public accounting firm that does the company's audit attest to, and report on, management's assessment of the company's internal control structure and procedures.[9] While Congress took a **laudable first step** in exempting the smaller companies from section 404(b), **Congress should complete promptly the job of reviewing the full impact of section 404, including on medium-sized and large-sized companies, and repealing section 404** or fixing it to eliminate unwarranted costs. Companies could use freed funds, no longer absorbed by section 404 implementation, to invest in their lines of business, creating much-needed jobs. Congress Should Re-examine Whether Section 404 Is Needed and, If So, How to Cut Its Costly Burden on Businesses Congress should reconsider carefully the requirements in section 404 for company management to assess the effectiveness of its internal control structure and procedures and then for the company's registered public accounting firm to attest to that management assessment. Given the traditional role of each state in regulating the corporate governance of corporations incorporated in that state,[10] **Congress should first examine anew whether federal law should address those subjects**, or whether they should be left to state law. In a society based on limited government and free enterprise, and in light of the traditional role of the states in our federal system, **Congress should start its examination with a presumption in favor of repealing section 404 and leaving the subjects addressed by section 404 to the states**.

b) Empirically proven boards can be effective at altering Sarbanes-Oxley

Norris, 2009 Floyd, NYTimes "Goodbye to Reforms of 2002" http://www.nytimes.com/2009/11/06/business/06norris.html?_r=0

But this Congress has made clear that independence for the accounting rule writers can go too far — particularly if the rules force banks to reveal the horrid mistakes they previously made. This year, a **subcommittee of the House Financial Services Committee** held a hearing at which legislators sought no facts but instead **threatened dire action** if the chairman of the financial accounting board did not promptly make it easier for banks to ignore market values of the toxic securities they owned. **The board caved in, which may be one reason why banks are reporting fewer losses these days.**

c) Commissions are already used to make modifications to Sarbanes-Oxley, and can be used to cause repeal.

Schoenthaler, 2011 Vanessa, Qashu and Schoenthaler law co-founder, "How will the Dodd-Frank Wall Street Reform and Consumer Protection Act Impact Non-Financial Institutions?" Note: No Actual Date given but last cites legislation passed in 2011, http://www.qsllp.com/InsightIdeas/ArticleDetails/tabid/85/ArticleId/4/-strong-How-will-the-Dodd-Frank-Wall-Street-Reform-and-Consumer-Protection-Act-Impact-Non-Financial.aspx

Section 413 also **requires that the Commission undertake an initial review** of the definition of accredited investor, as it applies to natural persons**,** to determine whether adjustments or modifications, excluding adjustments or modifications to the revised net worth standard, are appropriate. Thereafter, the Commission is required, at least once every four years, to review of the definition of accredited investor, as it applies to natural persons, in its entirety, to determine whether further adjustments or modifications are appropriate.

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Say Yes – 2NR

Empirics prove – commissions have created effective reform in times of tight Congressional gridlock.

Andrews 10—economics reporter for The New York Times Edmund, "Deficit Panel Faces Obstacles in Poisonous Political Atmosphere," The Fiscal Times, 2/18, http://www.thefiscaltimes.com/Articles/2010/02/18/Fiscal-Commission-Faces-Big-Obstacles?page=0%2C1

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Commission solves – creates compromise by shielding both parties from taking the blame.

Brookings Fiscal Seminar 09—a group of scholars who meet on a regular basis, under the auspices of The Brookings Institution and The Heritage Foundation, to discuss federal budget and fiscal policy issues Brookings Fiscal Seminar, "THE POTENTIAL ROLE OF ENTITLEMENT OR BUDGET COMMISSIONS IN ADDRESSING LONG-TERM BUDGET PROBLEMS," June 2009, http://www.brookings.edu/~/media/research/files/papers/2009/6/commissions%20sawhill/06_commissions_sawhill

In contrast, the Greenspan Commission provided a forum for developing a political compromise on a set of politically unsavory changes. In this case, the political parties shared a deep concern about the impending insolvency of the Social Security system but feared the exposure of promoting their own solutions. **The commission created political cover for the serious background negotiations that resulted in the ultimate compromise**. The structure of the commission reflected these concerns and was composed of fifteen members, with the President, the Senate Majority Leader, and the Speaker of the House each appointing five members to the panel.

Perceived immediacy and magnitude of the aff means that the recommendation will pass.

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The success of the Greenspan Commission seems to have been due to three things: 1) the problem that the commission had been set up to deal with, the insolvency of Social Security, **was real, imminent and well-defined**; 2) the costs of failing to resolve the problem would have been too great for either party; and 3) the membership of the commission included trusted representatives of the leaders of the two political parties as well as enough pragmatic panelists **to offer a high likelihood of eventual compromise**. But despite this consensus amongst the panel members about the imminence and seriousness of the problem, the panel came close to reporting without recommendations. It was only because of the work of a subgroup of the commissioners working with high-ranking officials in the Administration that a set of recommendations finally emerged.4

Commission recommendations get passed by Congress – reduce partisanship

Glassman and Straus 13—*analyst at the Congressional Research Service AND **analyst at the Congressional Research Service *Matthew Eric AND **Jacob R., "Congressional Commissions: Overview, Structure, and Legislative Considerations," Congressional Research Service, 1/22, http://fas.org/sgp/crs/misc/R40076.pdf

Solutions to policy problems produced within the normal legislative process may also suffer politically from charges of partisanship.30 Similar charges may be made against investigations conducted by Congress.31 **The non-partisan or bipartisan character of most congressional commissions may make their findings and recommendations less susceptible to such charges and more politically acceptable to a diverse viewpoints**. The bipartisan or nonpartisan arrangement can potentially give their recommendations strong credibility, both in Congress and among the public, even when dealing with divisive issues of public policy.32 Commissions may also give political factions space to negotiate compromises in good faith, bypassing the short-term tactical political maneuvers that accompany public negotiations.33 Similarly, **because commission members are not elected, they may be better suited to suggesting unpopular, but necessary, policy solutions.34**

It's Effective – 2NC

The board's unique makeup and stature ensures it can operate effectively without external pressures

Mishkin, J.D. New York University, 2013 Benjamin, NOTE: FILLING THE OVERSIGHT GAP: THE CASE FOR LOCAL INTELLIGENCE OVERSIGHT x88 N.Y.U.L. Rev. 1414

2. The Privacy and Civil Liberties Oversight Board (PCLOB) The PCLOB, on the other hand, is a truly **independent overseer**. Congress created the PCLOB in 2004 to "ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism." 128 Nearly three years later, in the face of concerns about the independence and [*1437] effectiveness of the PCLOB, Congress made modifications to the Board's authority and its position within the executive branch. 129 As presently structured, the PCLOB enjoys independent agency status and, in accordance with its enabling statute, "shall be composed of a full-time chairman and 4 additional members, who shall ... be selected solely on the basis of their professional qualifications, achievements, public stature, expertise in civil liberties and privacy, and relevant experience." 130 The President appoints and the Senate confirms the PCLOB's members. 131 Broadly speaking, the PCLOB is tasked with **providing advice and counsel on policy development and implementation, continually reviewing terrorism-related policies and practices, building relationships with privacy and civil liberties officers, and testifying before Congress "upon request**." 132 The Board must also submit periodic reports at least twice a year **to the relevant congressional committees** and the President regarding its activities, findings, conclusions, and **recommendations**. 133 And, to the greatest extent possible, the PCLOB should make its reports available to the public. 134 To accomplish its mission, the PCLOB is authorized to have access "from any department, agency, or element of the executive branch ... to all relevant records, reports, audits, reviews, documents, papers, recommendations, or other relevant material, **including classified information** consistent with applicable law." 135 The Board's power to subpoena persons to produce these materials bolsters its access. 136 The Attorney General may modify or deny a PCLOB subpoena request, but, in doing so, she must notify the House and Senate Judiciary Committees. 137 This statutory framework equips the PCLOB with the potential to achieve key intelligence oversight goals. And, in theory, the [*1438] PCLOB's narrow mission, independence, and duty to report all promote robust, proactive intelligence oversight with regard to privacy and civil liberties issues. Unlike members of the congressional intelligence committees who juggle many responsibilities, members of the PCLOB have a singular oversight task. Moreover, because of the confirmation process, PCLOB members are more likely to possess and develop the requisite level of expertise. **They are less susceptible to political pressures and electoral concerns, as they are appointed for six-year terms, and they must regularly provide updates regarding their activities and findings**. In other words, the PCLOB appears to not be prone to some of the challenges that hinder congressional oversight of the federal intelligence community. These factors, along with the fact that members of the PCLOB are compensated for their work, 138 also make the PCLOB better **positioned than the PIAB to effectively oversee the federal intelligence community.**

And any reason why the board's recommendation will be watered down and ineffective applies to the aff too and means you vote neg on presumption.

AT: Section

AT: PCLOB Says No

1. It won't agree with the NSA – the board will prioritize liberties – empirically proven.

Schlanger, Henry M. Butzel Professor of Law, University of Michigan, 2015 Margo, ARTICLE: Intelligence Legalism and the National Security Agency's Civil Liberties Gap, 6 Harv. Nat'l Sec. J. 112

Of the oversight institutions thus far described, only NSA's brandnew Civil Liberties and Privacy Office engages in policy-type weighing of civil liberties interests against the security benefits offered by particular surveillance methods. The one office that remains to be discussed is the Privacy and Civil Liberties Oversight Board (PCLOB), **an independent bipartisan agency nominally within the executive branch**. 240 As will be seen, and as one would expect from what is essentially a blue-ribbon-commission type organization with no enforcement or other executive function, the PCLOB seems so far to **be functioning at least partially free of the role constraints of an executive agency.** In its first incarnation, as part of the Executive Office of the President, 241 the PCLOB was an unimportant player in NSA's operations. In [*167] its second, **independent, incarnation**, 242 it started operations only recently. President Obama was slow to name the Board's members, and the Senate was even slower to confirm them 243 Its budget is tiny; it has only a handful of full-time staff members (one on a detail from the Department of Justice), in addition to its full-time chair and part-time members. 244 But after David Medine's long-awaited confirmation as chair in May 2013, 245 the Snowden disclosures, one week later, **prompted the Board to undertake a review of FISA, the first part of which it completed in January 2014. 246 The board's statute commits it firmly to a policy**, not compliance, function, **requiring it to:** (1) analyze and review actions the executive branch **takes to protect the Nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties**; and (2) **ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism**. 247 Nonetheless, in its review of the telephony metadata program, the board began with the language of law. Three of its five members--the three Democrats--found that Section 215 "does not provide an adequate legal basis to support the program," and that the program also violates the Electronic Communications Privacy Act. 248 The Board acknowledged that the FISA Court had approved the program many times, but explained that it found that approval unpersuasive: "Having independently examined this statutory question, the Board disagrees with the conclusions of the government and the FISA court." 249 Pointing out that the program long predated its authorization by the FISA Court under Section 215, the Board concluded, after forty-five pages of statutory analysis: "It may have been a laudable goal for the executive branch to bring this program under the [*168] supervision of the FISA court. Ultimately, however, that effort represents an unsustainable attempt to shoehorn a preexisting surveillance program into the text of a statute with which it is not compatible." 250 Accordingly, **it wrote, the program should be halted**. 251 The Board also analyzed the constitutional law issues raised by the telephony metadata program. It explained that under the Supreme Court's existing doctrine, a Fourth Amendment challenge would fail. "It is possible that the third--party doctrine or its scope will be judicially revised," the Board wrote--making clear its own view that this revision would be very welcome. "To date, however, the Supreme Court has not modified the third-party doctrine or overruled its conclusion that the Fourth Amendment does not protect telephone dialing records. Most courts continue to follow those precedents, and government lawyers are entitled to rely on them, including in their formulation and defense of the Section 215 program." 252 On First Amendment associational rights, the Board noted that standing doctrine had so far obstructed full court testing of the rights, but that the challenge was far from trivial. 253 It should be evident, then, that the PCLOB's perspective on "the law" **was quite different from that of any federal agency staff.** In its first report, its members, among them a retired federal court of appeals judge, assumed much more the stance of court of appeals judges. Holdings by courts that are not the Supreme Court were treated as potentially persuasive, but not binding. And even Supreme Court holdings were deemed potentially undermined by subsequent changes of circumstances or surrounding doctrine. The PCLOB members obviously **felt far freer than agency counsel do with respect to legal analysis and interpretation; the analysis is not only of precedent** but also, **in more typically judicial mode, of the policy pros and cons. The result was that the board took advantage of the authority of the law/compliance frame, without many of the constraints that frame usually imposes on executive branch officials**. Its pronouncement that the telephony metadata program is illegal, beyond the statutory authority of the administration, is what got by far the most attention. 254

2. Err neg – their evidence was written before congress voted to change the PCLOB's structure to make it fully independent and is written in the context of the Bush administration which clearly doesn't apply anymore

Dalal, J.D. Yale Law, 2014 Anjali, ARTICLE: SHADOW ADMINISTRATIVE CONSTITUTIONALISM AND THE CREATION OF SURVEILLANCE CULTURE, 2014 Mich. St. L. Rev. 59

[*122] Congress **responded** quickly **by passing legislation** in August **2007 to significantly restructure the PCLOB**. 280 Under the new statute, the PCLOB **is an independent agency** to be composed of five members, **four of whom are part time from outside the government and the fifth, the chairperson, is the full time member**. 281 All five members are appointed by the President and confirmed by the Senate **for a term of six years to prevent wholesale capture by a given Administration**. 282 Its authorizing statute mandates **that no more than three members can be from one political party** with the other two chosen **by the White House under consultation with Senate and House minority leadership**. 283

3. Recent debates prove – the board is more likely to engage in dissent due to public outrage than otherwise.

AT: Delay

1. No impact to delay – none of the affs impacts are short term and even if they are the aff can't solve quick enough either then.

2. Err neg – all of their delay evidence is in the context of the process of setting up the PCLOB which is already done and isn't about their ability to review.

The Grant County Beat, 2013 Online News Service, "Udall Backs Bill to Protect Constitutional Rights, Reform Surveillance Program" http://www.grantcountybeat.com/news/non-local-news-releases/12473-udall-backs-bill-to-protect-constitutional-rights-reform-surveillance-program

Earlier this year, at a hearing before the Senate Appropriations Committee, Udall challenged the director of the NSA to become more transparent about the surveillance programs. Udall also led a bipartisan push to ask for an independent investigation of these programs by the Privacy and Civil Liberties Oversight Board (PCLOB), **which was fully constituted in May with the Senate confirmation of the board's chairman.** As chairman of the Appropriations subcommittee with jurisdiction over the PCLOB, Udall included $4.1 million in the fiscal year 2014 legislation for the board. These resources, $3.2 million above the fiscal year 2013 enacted level, **will enable the PCLOB to hire staff and pursue its mission without delay.**

3. Recent debates prove – the board quickly gathered information on the NSA after the Snowden leaks and released a report.

4. No delay or inefficiency

Campbell, 2002 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. 20

There are a number of ways in which Congress performs its policymaking functions. Ad hoc commissions are one device at its disposal. Despite criticisms that these entities are inefficient and frequently evade the issues, commissions provide a flexible option, the variation in their composition and organization reflecting the specific mandates that establish them.79 Commissions can provide expert advice in matters of public policy within a definite time frame. By virtue of their ad hoc status, they can bypass normal bureaucratic channels. Commissions are a public relations device designed to draw attention to certain issues, to elicit public support, and to achieve consensus in a fragmented Congress. Commissions also allow for the direct representation of functional consistencies in the advisory process by seeking the advice of holders of diverse points of view.80 It is this list of advantages that has encouraged the recent use of commissions and led to their becoming a stable feature of public policies.

AT: NSA Secrecy

1. This is a solvency take out to the aff and not the cp – the PCLOB has unique access to information which allows for better policies which congress alone doesn't.

2. Not true – your evidence is in the context of abstract congressional committees and not the PCLOB which has been given unique access to NSA information. That's Setty.

3. Even if the NSA won't give them the information they can draft a subpoena for it – which they will b/c the cp text fiats that they solicit all relevant information

Levy, 2013 Pema, International Business Times Correspondent, "NSA Spying Controversy: The New Agency That Could Change Government Surveillance" http://www.ibtimes.com/nsa-spying-controversy-new-agency-could-change-government-surveillance-1342409

Referred to as the PCLOB (sounds like 'pee-klawb'), the new agency has the job of advising the president, federal agencies and Congress on how to balance the government's national security efforts with civil liberties concerns. **Board members have top-secret clearances, and agency heads are expected to turn over any documents the board requests**. If the board needs information from the private sector, **the attorney general can issue a subpoena on its behalf.**

4. The board has the most independence and access to info out of all the agencies

Schlanger, Henry M. Butzel Professor of Law, University of Michigan, 2015 Margo, ARTICLE: Intelligence Legalism and the National Security Agency's Civil Liberties Gap, 6 Harv. Nat'l Sec. J. 112

Of the oversight institutions thus far described, only NSA's brandnew Civil Liberties and Privacy Office engages in policy-type weighing of civil liberties interests against the security benefits offered by particular surveillance methods. The one office that remains to be discussed is the Privacy and Civil Liberties Oversight Board (PCLOB), **an independent bipartisan agency nominally within the executive branch**. 240 As will be seen, and as one would expect from what is essentially a blue-ribbon-commission type organization with no enforcement or other executive function, the PCLOB seems so far to **be functioning at least partially free of the role constraints of an executive agency.** In its first incarnation, as part of the Executive Office of the President, 241 the PCLOB was an unimportant player in NSA's operations. In [*167] its second, **independent, incarnation**, 242 it started operations only recently. President Obama was slow to name the Board's members, and the Senate was even slower to confirm them 243 Its budget is tiny; it has only a handful of full-time staff members (one on a detail from the Department of Justice), in addition to its full-time chair and part-time members. 244 But after David Medine's long-awaited confirmation as chair in May 2013, 245 the Snowden disclosures, one week later, **prompted the Board to undertake a review of FISA, the first part of which it completed in January 2014. 246 The board's statute commits it firmly to a policy**, not compliance, function, **requiring it to:** (1) analyze and review actions the executive branch **takes to protect the Nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties**; and (2) **ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism**. 247 Nonetheless, in its review of the telephony metadata program, the board began with the language of law. Three of its five members--the three Democrats--found that Section 215 "does not provide an adequate legal basis to support the program," and that the program also violates the Electronic Communications Privacy Act. 248 The Board acknowledged that the FISA Court had approved the program many times, but explained that it found that approval unpersuasive: "Having independently examined this statutory question, the Board disagrees with the conclusions of the government and the FISA court." 249 Pointing out that the program long predated its authorization by the FISA Court under Section 215, the Board concluded, after forty-five pages of statutory analysis: "It may have been a laudable goal for the executive branch to bring this program under the [*168] supervision of the FISA court. Ultimately, however, that effort represents an unsustainable attempt to shoehorn a preexisting surveillance program into the text of a statute with which it is not compatible." 250 Accordingly, **it wrote, the program should be halted**. 251 The Board also analyzed the constitutional law issues raised by the telephony metadata program. It explained that under the Supreme Court's existing doctrine, a Fourth Amendment challenge would fail. "It is possible that the third--party doctrine or its scope will be judicially revised," the Board wrote--making clear its own view that this revision would be very welcome. "To date, however, the Supreme Court has not modified the third-party doctrine or overruled its conclusion that the Fourth Amendment does not protect telephone dialing records. Most courts continue to follow those precedents, and government lawyers are entitled to rely on them, including in their formulation and defense of the Section 215 program." 252 On First Amendment associational rights, the Board noted that standing doctrine had so

far obstructed full court testing of the rights, but that the challenge was far from trivial. 253 It should be evident, then, that the PCLOB's perspective on "the law" **was quite different from that of any federal agency staff.** In its first report, its members, among them a retired federal court of appeals judge, assumed much more the stance of court of appeals judges. Holdings by courts that are not the Supreme Court were treated as potentially persuasive, but not binding. And even Supreme Court holdings were deemed potentially undermined by subsequent changes of circumstances or surrounding doctrine. The PCLOB members obviously **felt far freer than agency counsel do with respect to legal analysis and interpretation; the analysis is not only of precedent** but also, **in more typically judicial mode, of the policy pros and cons. The result was that the board took advantage of the authority of the law/compliance frame, without many of the constraints that frame usually imposes on executive branch officials**. Its pronouncement that the telephony metadata program is illegal, beyond the statutory authority of the administration, is what got by far the most attention. 254

Theory

CP's Legitimate – 2NC

Our counterplan is uniquely legitimate –

Literature - our evidence proves that it is grounded making it predictable and a valuable discussion for curtailing NSA surveillance programs.

Net Benefits check abuse and provide a germane policy warrant for voting negative

Doesn't undermine affirmative offense-There is ample solvency ground based around the possibility the commission recommendation doesn't become law and other defenses of certain curtailment.

Reject the argument not the team – the punishment does not fit the crime—making the debate hard for the AFF is the NEGs job—have a high threshold to avoid substance crowd out.

Policy Making--Commissions are a well established alternative to traditional policymaking—proves the CP is predicable and germane

Campbell 2 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. 129

Ad hoc commissions as instruments of government **have a long history**. They are used by almost all units and levels of government for almost **every conceivable task**. Ironically, the use which Congress makes of commissions— preparing the groundwork for legislation, bringing public issues into the spotlight, whipping legislation into shape, and giving priority to the consideration of complex, technical, and critical developments—receives relatively little attention from political scientists. As noted in earlier chapters, following the logic of rational choice theory, individual decisions to delegate are occasioned by imperfect information; legislators who want to develop effective policies, but who lack the necessary expertise, often delegate fact-finding and policy development. Others contend that some commissions are set up to shift blame in order to maximize benefits and minimize losses.

Perm Do Both – 2NC

Doing both links to politics and doesn't solve---

a) Congressional debates---the CP means Congress won't debate the merits of the plan---they give an up-or-down vote to a commission report. The perm forces debate on the substance of the plan now---electoral pressure and fights over the plan trigger the link---that's all our politics net-benefit ev.

b) Secrecy---the commission's deliberations aren't public, but the plan forces the issue onto Congress's radar immediately---ensures backlash

Campbell 2 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. 13-14

Life on Capitol Hill has frequently become acrimonious because of **escalating partisanship** between parties.48 Increasing polarization in Congress49 has led to gridlock50 and stimulated the use of message politics,51 thereby limiting both the flexibility and the creativity of congressional action through normal legislative channels. The logic of commissions is that leaders of both parties, or their designated representatives, can meet to negotiate a deal **without the media**, the public, **or interest groups present**. When **deliberations are private**, parties can make offers **without being denounced** either **by their opponents** or by affected constituency groups; there is less chance to use an offer from the other side to curry favor with constituents. Agreement to bipartisan commissions and adherence to their logic are consequential because they **represent a tacit promise not to attack the opponent**. On some issues, for instance, the promise might imply **letting the commission pick the solution** and relying on party discipline to encourage lawmakers to go along even if their districts are disadvantaged by the solution; on others it might involve nothing more than a bipartisan admission that a commission is the next step Congress should take, without any understanding that all the players are bound ex ante by the commission's resolution.52 Commissions also mean **eschewing partisan attacks** and suggest a strong preference for reaching an agreement.53

Doing both links to politics---only giving the commission time generates political support---the perm's not a genuine recommendation and doesn't allow any time for negotiation

Biggs 9 [Andrew Biggs is a Social Security analyst and assistant director of the Cato Institute's Project on Social Security Privatization, "Rumors Of Obama Social Security Reform Commission," Feb 17 http://www.frumforum.com/rumors-of-obama-social-security-reform-commission]

One problem with President Bush's 2001 Commission was that it didn't represent the reasonable spectrum of beliefs on Social Security reform. This didn't make it a dishonest commission; like President Roosevelt's Committee on Economic Security, it was designed to put flesh on the bones laid out by the President. In this case, the Commission was tasked with designing a reform plan that included personal accounts and excluded tax increases. That said, **a commission only builds political capital toward** enacting **reform if it's seen as building a consensus through a process in which all views have been heard**. In both the 2001 Commission and the later 2005 reform drive, Democrats didn't feel they were part of the process. They clearly will be a central part of the process this time, but the goal will now be to include Republicans. Just as Republicans shouldn't reflexively oppose any Obama administration reform plans for political reasons, so Democrats shouldn't seek to exclude Republicans

from the process. Second, a reform task force should include a variety of different players, including members of government, both legislative and executive, representatives of outside interest groups, and experts who can provide technical advice and help ensure the integrity of the reforms decided upon. The 2001 Bush Commission didn't include any sitting Members of Congress and only a small fraction of commissioners had the technical expertise needed to make the plans the best they could be. A broader group would be helpful. Third, any task force or commission needs time. The 2001 Commission ran roughly from May through December of that year and had to conduct a number of public hearings. This was simply **too much** to do **in too little time**, and as a result the plans were fairly **bare bones**. There is plenty else on the policy agenda at the moment, so there's no reason not to give a working group a year or more to put things together.

Only the CP gets perceived as considering options from both sides before recommending one action---the perm looks like the commission favoring one side from the beginning---triggers politics and turns the case

Hoyer 10 [Steny, Senator, "Building Momentum for Fiscal Responsibility," 3/1 http://www.brookings.edu/events/2010/0301_fiscal_responsibility.aspx]

I hope congressional Republicans will take the work as sincerely and seriously as the chairmen take it—that they will come to the table without preconditions, ready to contribute their ideas and not just their criticism from the sideline. The commission has a bipartisan pedigree, and it won the votes of 16 Republicans in the Senate. But I was disappointed to see that seven Republican supporters of the commission bill, including Minority Leader McConnell, decided they were against it as soon as President Obama said he was for it.

President Reagan and Speaker O'Neill's work on Social Security reform in the '80s, and the Republican reaction to the Medicare changes in the health care bill, both teach the same lesson: the real work of cutting deficits is so easy to demagogue that it **rarely succeeds without support from both sides**. That's one of the reasons why the fiscal commission must not take any option off of the table, from raising revenues to cutting entitlement spending. And that's why both parties have a duty to appoint members who are willing to compromise and make tough decisions.

It's also clear to me that **if the commission takes a one-handed approach**, it will fail, **both politically and substantively.** Congressman Ryan's thoughtful budget proposal shows what an approach looks like when it relies entirely on cutting spending. He should be commended for putting together a serious and detailed plan to tackle the deficit. It doesn't raise a single tax. But as a consequence, it significantly changes Medicare.

Presumption stays neg---the CP's less change than the plan because it's indefinite---tie goes to the runner, and use an offense/defense frame because if the CP solves the case there's no offensive reason to risk the DA.

Perm Do the Plan Through The Process of the CP – 2NC

The perm's illegitimate:

a) Intrinsic---adds an element of delay that's not in the counterplan--- the CP only fiats the asking of the recommendation over the plan – Intrinsicness is illegitimate because it makes the affirmative a moving target

b) Severance---if the commission process is genuine and independent then the plan isn't certain to be done until the end of the process---severs 'should' which requires immediacy-severance is illegitimate because no counterplan would compete if the affirmative can pick and choose which parts of the plan to defend

Summers 94 - Justice, Supreme Court of Oklahoma, 11-8-1994, "Kelsey v. Dollarsaver Food Warehouse of Durant," online: http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14

Certain contexts mandate a construction of the term "should" as **more than merely indicating preference or desirability**. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an **obligation and to be more than advisory**); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is **under an obligation** to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony").

c) No offense---if the CP fiated that the plan happens in the future their perm would be legit---this excludes abusive delay and condition CPs. It's key to test the necessity of doing the plan---if only recommending it is better, then the aff should lose.

The perm doesn't solve politics---the commission process has to be independent---perm means Congress has its mind made up from the beginning, the decision to do the plan is made immediately even if it's not implemented until after the commission makes its recommendations.

The perception that the commission is a congressional proxy causes political battles

Brookings Fiscal Seminar 9 – The Brookings Institution Fiscal Seminar, group of scholars who meet on a regular basis, under the auspices of The Brookings Institution and The Heritage Foundation, to discuss federal budget and fiscal policy issues, June 2009, "The Potential Role of Entitlement or Budget Commissions in Addressing Long-Term Budget Problems," online: http://www.brookings.edu/~/media/Files/rc/papers/2009/06_commissions_sawhill/06_commissions_sawhill.pdf

The use of commissions or advisory councils has a long history in the United States. In the early 1900s, the National Monetary Commission examined the nation's distressed financial system and recommended establishing a central banking structure, a recommendation that was soon translated into

the Federal Reserve System. From 1937 to 1996, Social Security policy-making was heavily influenced by the findings and recommendations of periodic advisory councils, including the National Commission on Social Security Reform (the Greenspan Commission) which helped to rescue the program from insolvency in 1983. The 1960s saw the Warren Commission investigate the assassination of President Kennedy and the Kerner Commission examine the causes of civil disorders. The Base Closure and Realignment Commission (BRAC) provided an effective mechanism over the past two decades for **overcoming the political hurdles** inhibiting the restructuring of U.S. defense facilities across the country. And the recent National Commission on Terrorist Attacks upon the United States (the 9/11 Commission) delved into the numerous facets of the 2001 terrorist attacks and potential changes in homeland security.

Commissions can be used for a variety of purposes that suit the needs of the President or the Congress. The role of some commissions is to develop a knowledge base about certain policies or problems **free from the political machinations** that are an unavoidable part of the legislative process. They can also develop policy options that members of Congress and their staff have too little time or expertise to formulate. They can serve as **consensus-building vehicles** from which members of Congress may garner **political protection** while addressing contentious issues. At other times, commissions appear simply to serve as delaying measures that can be employed to defuse a political issue until a more opportune time for action develops.

Leaks trigger the link to politics:

a) Immigration reform legislation in 2010 included a proposal for a commission

Waslin 10 – Michele, Senior Policy Analyst at the Immigration Policy Center, May 24, 2010, "Hammering Out Future Immigration Flows: Immigration Commissions in Context," online: http://immigrationimpact.com/2010/05/24/hammering-out-future-immigration-flows-immigration-commissions-in-context/

Today the Washington Post reported that Senate Democrats are working on a plan to **create an immigration commission** to help determine future levels of employment-based immigration as part of a comprehensive immigration reform bill. While some disagree as to how future immigration flows should be regulated, immigration advocates agree that planning for future flows of legal immigration is among the most critical elements that comprehensive immigration reform must include.

b) That document leaked immediately and caused GOP backlash---proves likelihood of Congress leaking their decision to do the plan

Anderson 10 – Stuart Anderson, adjunct scholar at the Cato Institute and executive director, National Foundation for American Policy, May 2010, "A Look at the Senate Democratic Proposal for Immigration Reform: Is the Glass Half Empty, Half Full or Shattered on the Ground?," online: http://www.cato.org.offcampus.lib.washington.edu/pubs/irb/irb_may2010.pdf

While the new immigration law in Arizona has attracted most of the press attention, a 26-page "Conceptual Proposal for Immigration Reform" released in May by Democratic senators may be a more relevant policy development in the long run.1 The Democratic Senate document is important in two ways. First, it could be the legislative vehicle put forward in the U.S. Senate in 2010 and, as such, has a chance of becoming law. Second, even if the proposal does not become law this year it serves as an important benchmark for current and future thinking in the immigration policy debate. Senators Harry Reid (D-NV), Charles Schumer (D-NY) and Robert Menendez (DNJ) took ownership of the proposal and discussed the document at a Capitol Hill press conference in May. **Copies of the document were soon leaked to the press** and began being emailed around Washington, DC. One significant development is that Senator Lindsey Graham (R-SC) **criticized the proposal**, even though a month before he had co-authored an op-ed piece with Senator Schumer in the Washington Post that included a number of **the same elements** contained in the proposal. 2 Although there is no legislative language yet to accompany the summary, there is sufficient detail to analyze the current policy direction in some key areas.

Perm Do the CP – 2NC

a) The permutation is severance – the board is a commission that only inputs review when it is requested to do so making it not normal means.

Mishkin, J.D. New York University, 2013 Benjamin, NOTE: FILLING THE OVERSIGHT GAP: THE CASE FOR LOCAL INTELLIGENCE OVERSIGHT x88 N.Y.U.L. Rev. 1414

2. The Privacy and Civil Liberties Oversight Board (PCLOB) The PCLOB, on the other hand, is a truly independent overseer. Congress created the PCLOB in 2004 to "ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism." 128 Nearly three years later, in the face of concerns about the independence and [*1437] effectiveness of the PCLOB, Congress made modifications to the Board's authority and its position within the executive branch. 129 As presently structured, the PCLOB enjoys independent agency status and, in accordance with its enabling statute, "shall be composed of a full-time chairman and 4 additional members, who shall ... be selected solely on the basis of their professional qualifications, achievements, public stature, expertise in civil liberties and privacy, and relevant experience." 130 The President appoints and the Senate confirms the PCLOB's members. 131 Broadly speaking, the PCLOB is tasked with **providing advice and counsel on policy development and implementation, continually reviewing terrorism-related policies and practices, building relationships with privacy and civil liberties officers, and testifying before Congress "upon request**." 132 The Board must also submit periodic reports at least twice a year to the relevant congressional committees and the President regarding its activities, findings, conclusions, and recommendations. 133 And, to the greatest extent possible, the PCLOB should make its reports available to the public. 134 To accomplish its mission, the PCLOB is authorized to have access "from any department, agency, or element of the executive branch ... to all relevant records, reports, audits, reviews, documents, papers, recommendations, or other relevant material, including classified information consistent with applicable law." 135 The Board's power to subpoena persons to produce these materials bolsters its access. 136 The Attorney General may modify or deny a PCLOB subpoena request, but, in doing so, she must notify the House and Senate Judiciary Committees. 137 This statutory framework equips the PCLOB with the potential to achieve key intelligence oversight goals. And, in theory, the [*1438] PCLOB's narrow mission, independence, and duty to report all promote robust, proactive intelligence oversight with regard to privacy and civil liberties issues. Unlike members of the congressional intelligence committees who juggle many responsibilities, members of the PCLOB have a singular oversight task. Moreover, because of the confirmation process, PCLOB members are more likely to possess and develop the requisite level of expertise. They are less susceptible to political pressures and electoral concerns, as they are appointed for six-year terms, and they must regularly provide updates regarding their activities and findings. In other words, the PCLOB appears to not be prone to some of the challenges that hinder congressional oversight of the federal intelligence community. These factors, along with the fact that members of the PCLOB are compensated for their work, 138 also make the PCLOB better positioned than the PIAB to effectively oversee the federal intelligence community.

b) It severs the requirement that the plan should happen:

"Should" means immediate

Summers 94 - Justice, Supreme Court of Oklahoma, 11-8-1994, "Kelsey v. Dollarsaver Food Warehouse of Durant," online: http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14

The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling in praesenti.14 ***TO FOOTNOTES In praesenti means literally "**at the present time**." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). **In legal parlance** the phrase denotes that which in law is presently or **immediately effective**, as opposed to something that will or would become effective in the future [in futurol]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882). ***END FOOTNOTES The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record. Nisi prius orders should be so construed as to give effect to every words and every part of the text, with a view to carrying out the evident intent of the judge's direction.17 The order's language ought not to be considered abstractly. The actual meaning intended by the document's signatory should be derived from the context in which the phrase to be interpreted is used.18 When applied to the May 18 memorial, these told canons impel my conclusion that the judge doubtless intended his ruling as an in praesenti resolution of Dollarsaver's quest for judgment n.o.v. Approval of all counsel plainly appears on the face of the critical May 18 entry which is [885 P.2d 1358] signed by the judge.19 True minutes20 of a court neither call for nor bear the approval of the parties' counsel nor the judge's signature. To reject out of hand the view that in this context "should" is impliedly followed by the customary, "and the same hereby is", makes the court once again revert to medieval notions of ritualistic formalism now so thoroughly condemned in national jurisprudence and long abandoned by the statutory policy of this State.

c) It also means mandatory---introducing uncertainty severs

Summers 94 - Justice, Supreme Court of Oklahoma, 11-8-1994, "Kelsey v. Dollarsaver Food Warehouse of Durant," online: http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14

Certain contexts mandate a construction of the term "should" as **more than merely indicating preference or desirability**. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an **obligation and to be more than advisory**); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is **under an obligation** to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony").

c) This is true of the CP---it's a non-binding recommendation and The CP's fundamentally distinct from the normal legislative process---it's not USFG action

Campbell 2 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. xv

So why and when does Congress **formulate policy by commissions rather than by the normal legislative process?** Lawmakers have historically **delegated authority to others** who could **accomplish ends they could not**. Does this form of congressional delegation thus reflect the particularities of an issue area? Or does it mirror deeper structural reasons such as legislative organization, time, or manageability? In the end, what is the impact on representation versus the effectiveness of delegating discretionary authority to temporary entities composed largely of unelected officials, or are both attainable together?

Severance is illegitimate-no counterplan would compete if the affirmative can pick and choose which parts to defend

PCLOB Isn't Binding – 2NC

The Board can't make binding suggestions

Thompson, Previous Ranking Member of the Committee on Homeland Security, 2006

Bennie, previous representative from the Second District of Mississippi, ARTICLE: THE NATIONAL COUNTERTERRORISM CENTER: FOREIGN AND DOMESTIC INTELLIGENCE FUSION AND THE POTENTIAL THREAT TO PRIVACY, 6 PGH. J. Tech. L. & Pol'y 6

P24 Unlike the DHS Privacy Office, however, the PCLOB has no mandate to inform, educate, or lead privacy practice among those executive branch components involved in war on terror-related intelligence and law enforcement activities. It likewise **has no power to help develop consistent, comprehensive, and effective privacy guidelines within those components**. Instead, **the PCLOB can only "advise" the President and agency and department heads to ensure that privacy and civil liberties "are appropriately considered" and advise when adequate guidelines are lacking.** 70 Unlike the DHS Privacy Office, moreover, the PCLOB has practically no independence from the White House. For example, the PCLOB consists of five members (1) all of whom are appointed by the President, and only two of whom, the chairman and vice-chairman, require Senate approval; (2) all of whom serve "at the pleasure of the President"; (3) none of whom need be of different political parties; and (4) none of whom need have any expertise in civil liberties matters. 71 The PCLOB's oversight ability, moreover, is severely constrained because it lacks the subpoena power. 72

AT: Should=Desirable

This clearly doesn't apply---"should" only allows conditions when used in that context---i.e., "If the USFG had known, it should have acted differently"---the plan and topic use the word in a different sense---mandating unconditional obligation

AHID 2009 (American Heritage Dictionary, "should", http://dictionary.reference.com/browse/should)

Usage Note: Like the rules governing the use of shall and will on which they are based, the traditional rules governing the use of should and would are largely ignored in modern American practice. Either should or would can now be used in the first person to express conditional futurity: If I had known that, I would (or somewhat more formally, should) have answered differently. But in the second and third persons only would is used: If he had known that, he would (not should) have answered differently. Would cannot always be substituted for should, however. Should is used in all three persons in a conditional clause: if I (or you or he) should decide to go. Should is also used in all three persons to express duty or obligation (the equivalent of ought to): I (or you or he) should go. On the other hand, would is used to express volition or promise: I agreed that I would do it. Either would or should is possible as an auxiliary with like, be inclined, be glad, prefer, and related verbs: I would (or should) like to call your attention to an oversight. Here would was acceptable on all levels to a large majority of the Usage Panel in an earlier survey and is more common in American usage than should. · Should have is sometimes incorrectly written should of by writers who have mistaken the source of the spoken contraction should've. See Usage Notes at if, rather, shall.

Politics Net Benefit

Doesn't Link – 2NC

1. The counterplan doesn't link to politics –

a) The board is a third party organization and completely independent which allows for them to garner support and coalition for the plan in congress and shields controversy. But acting first is key to prevent bias.

b) The board's reports will create public support for the plan which alters representative's decision making calculus which quells opposition.

That's Setty.

c) The board will be used as a point to coalesce support around

Wyden, 2014 Ron, Senator for Oregon, "Wyden Statement on PCLOB Report on Bulk Collection"
http://www.wyden.senate.gov/news/press-releases/wyden-statement-on-pclob-report-on-bulk-collection

"The privacy board's findings closely mirror **many of the criticisms made by surveillance reform advocates.** The bulk collection program was built on a murky legal foundation that raises many constitutional questions and has been proven to be an ineffective tool for collecting unique intelligence information. Moreover, as the board wrote in its report, a program where the government collects the telephone records of millions of law-abiding Americans "fundamentally shifts the balance of power between the state and its citizens." The board goes on to say that with the government's "powers of compulsion and criminal prosecution," collection of data on its own citizens "poses unique threats to privacy," and is expected to have a "chilling effect on the free exercise of speech and association." The board's recommendations extend to reforms to the FISA court and the kind of increased transparency that is necessary for a democratic government to function. The reforms to the court do not go as far toward a true and independent civil liberties advocate as many pro-reformer would like. However, they would extend privacy protections beyond the legality of any particular program, into the kind of systemic protections of privacy that should have been available in the first place. The board made several arguments against the legality of the bulk collection program under Section 215 all of which deserve significant consideration. The board came to the same conclusion as myself and many other pro-reformers that surveillance precedent set by previous Supreme Court rulings – namely Smith v. Maryland – do not "fully answer whether the Section 215 telephone records is constitutionally sound" and do not reflect the effects of significant technological advances in telecommunications since that time. There have now been two in-depth studies of these programs by **unimpeachable government entities that have come to the same conclusion:** the bulk collection program should be effectively ended. As the President announced last week, the Administration and the Congress will decide the fate of this problematic program in the coming weeks and it is my belief that **reports such as those from the PCLOB** and the President's Review Group **should play a major role in any reform effort."**

d) The board can draw support from industry and civil society

Swire, 6/8/2015 Peter, Privacy perspectives correspondent, "The USA FREEDOM Act, the President's Review Group and the Biggest Intelligence Reform in 40 Years"

Passage of any legislation such as USA FREEDOM has innumerable parents, each of whose support turns out to be vital to eventual enactment. For this law, important support came from President Obama, the intelligence community and the Obama administration generally; the members of Congress who brought together a unique coalition in both the House and the Senate; the Privacy and Civil Liberties Oversight Board, whose detailed report on Section 215 raised numerous compelling concerns with the program, and **coalitions of outside supporters from the political left and right, including industry and civil society.**

That support is the key factor in getting NSA reforms passed and avoiding opposition – the industry will lobby

Blunden, 2/9/2015 Bill, Alternet correspondent, "Clear Proof Obama's Surveillance Oversight Board Is a Pathetic Sideshow"
http://www.alternet.org/news-amp-politics/clear-proof-obamas-surveillance-oversight-board-pathetic-sideshow

All told **there are over 1,300 billionaires in the United States and the politically minded members of this demographic**—both Democrats and Republicans—**have essentially succeeded in state capture. The two-party system of the United States is actually a one-party system: the corporate party**. And U.S. spies are the Praetorian Guard of these "deciders." So if it seems like nothing on the whole is being done to rein in mass interception, that

assessment would be accurate. The NSA's all-seeing Eye of Providence, and the even larger **corporate surveillance apparatus that supports it, are incredible tools of control**. The easiest way for leaders to manage public outcry is to put on an elaborate performance of mock reform. It appeases Main Street without offending the deep sources of wealth and power that tread the corridors of the Deep State.

e) Cross apply the say yes debate here – they all act as reasons why the cp will build support over the plan.

f) Even if the counterplan links, it links substantially less than the plan does by building support – that should be threshold for determining net benefits.

g) If it does link presumption still goes neg – the cp's less change than the aff bcause it doesn't make a binding decision.

h) Prefer our evidence over theirs – their Chapman evidence is from a news article which utilizes hyperbolic language to attract readers while ours is from a law professor who conducted multiple studies on commissions.

2. And the process of the CP resolves the link to the substance of the plan:

a) Commissions reduce partisanship – they are bipartisan and thus not attached to a specific political party.

Glassman and Straus 13—*analyst at the Congressional Research Service AND **analyst at the Congressional Research Service (*Matthew Eric AND **Jacob R., "Congressional Commissions: Overview, Structure, and Legislative Considerations," Congressional Research Service, 1/22, http://fas.org/sgp/crs/misc/R40076.pdf)

Solutions to policy problems produced within the normal legislative process may also suffer politically from charges of partisanship.30 Similar charges may be made against investigations conducted by Congress.31 **The non-partisan or bipartisan character of most congressional commissions may make their findings and recommendations less susceptible to such charges and more politically acceptable to a diverse viewpoints**. The bipartisan or nonpartisan arrangement can potentially give their recommendations strong credibility, both in Congress and among the public, even when dealing with divisive issues of public policy.32 Commissions may also give political factions space to negotiate compromises in good faith, bypassing the short-term tactical political maneuvers that accompany public negotiations.33 Similarly, **because commission members are not elected, they may be better suited to suggesting unpopular, but necessary, policy solutions.34**

b) Deliberations are private---prevents politics from getting in the way

Campbell 2 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. 13-14

Life on Capitol Hill has frequently become acrimonious because of **escalating partisanship** between parties.48 Increasing polarization in Congress49 has led to gridlock50 and stimulated the use of message politics,51 thereby limiting both the flexibility and the creativity of congressional action through normal legislative channels. The logic of commissions is that leaders of both parties, or their designated representatives, can meet to negotiate a deal **without the media**, the public, **or interest groups present**. When **deliberations are private**, parties can make offers **without being denounced** either **by their opponents** or by affected constituency groups;

there is less chance to use an offer from the other side to curry favor with constituents. Agreement to bipartisan commissions and adherence to their logic are consequential because they **represent a tacit promise not to attack the opponent**. On some issues, for instance, the promise might imply **letting the commission pick the solution** and relying on party discipline to encourage lawmakers to go along even if their districts are disadvantaged by the solution; on others it might involve nothing more than a bipartisan admission that a commission is the next step Congress should take, without any understanding that all the players are bound ex ante by the commission's resolution.52 Commissions also mean **eschewing partisan attacks** and suggest a strong preference for reaching an agreement.53

c) Congress can use the commission as a shield for backlash.

Brookings Fiscal Seminar 9 – The Brookings Institution Fiscal Seminar, group of scholars who meet on a regular basis, under the auspices of The Brookings Institution and The Heritage Foundation, June 2009, "The Potential Role of Entitlement or Budget Commissions in Addressing Long-Term Budget Problems," online: http://www.brookings.edu/~/media/Files/rc/papers/2009/06_commissions_sawhill/06_commissions_sawhill.pdf

¶ Commissions can be used for a variety of purposes that suit the needs of the President or ¶ the Congress. The role of some commissions is to develop a knowledge base about ¶ certain policies or problems free from the political machinations that are an unavoidable ¶ part of the legislative process. They can also develop policy options that members of ¶ Congress and their staff have too little time or expertise to formulate. They can serve as ¶ consensus-building vehicles from which members of Congress may garner political ¶ protection while addressing contentious issues. At other times, commissions appear ¶ simply to serve as delaying measures that can be employed to defuse a political issue ¶ until a more opportune time for action develops. The best structure for a commission – i.e. its membership, duties, duration, voting rules, ¶ etc. – will often vary depending on that commission's purpose, and therefore on the ¶ nature of the problem that the commission is addressing, the state of scientific or ¶ analytical development of the topic, and the political sensitivity of the subject matter. ¶ Those factors may also influence the nature and the standing of the commission's ¶ recommendations. ¶ ¶ For example, in 1988, Congress established the National Commission on Acquired ¶ Immune Deficiency Syndrome (AIDS) to determine the dimensions of a new and rapidly ¶ spreading communicable disease, assess the degree of understanding about the disease, ¶ and lay out steps toward ultimately controlling and treating the disease. The commission ¶ focused on the science and largely ignored the potential politics surrounding the issue.

d) Commissions arrange concessions and tradeoffs that solve the link

Campbell 2 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. 11

As participants in an incremental decision making process, ad hoc commissions perform three important functions: they formulate policy recommendations, they **garner support for policy proposals**, and they **offer concessions to appease the policy demands of various political interests**.35 Commissions, therefore, are instruments of policy incrementalism and vehicles for problem solving and conflict management, because they define problems, initiate new responses, and mobilize public opinion.36 They themselves become part of the governance process, playing an independent role in articulating constituents' concerns to the extent of forcing new issues on to the political agenda, a perspective borne out in the work of the Commission on Civil Rights and the National Commission on Disorders. The reports of the Civil Rights Commission transformed the civil rights debate from a concern about whether a pattern of voting discrimination actually existed to a consideration of the merits of various proposals to halt discriminatory practices. Similarly, the conclusions of the Commission on Disorders (the "Kerner Commission") about white racism shifted the focus of discourse about the causes of black unrest in America. In both instances, these changes in orientation generated new pressures for action and altered the evaluation context of subsequent policy deliberations.37

e) Debate won't even occur on the merits of the commission's recommendations---empirics prove

Brookings Fiscal Seminar 9 – The Brookings Institution Fiscal Seminar, group of scholars who meet on a regular basis, under the auspices of The Brookings Institution and The Heritage Foundation, to discuss federal budget and fiscal policy issues, June 2009, "The Potential Role of Entitlement or Budget Commissions in Addressing Long-Term Budget Problems," online: http://www.brookings.edu/~/media/Files/rc/papers/2009/06_commissions_sawhill/06_commissions_sawhill.pdf

Political. In some cases, reliance on the recommendations of commissions may have political ramifications as well. There are some instances where the recommendations of a commission have the effect of **limiting debate in the Congress**. (Indeed, that may be the intent.) For example, the Greenspan Commission's set of recommendations was approved in part because proponents made a persuasive argument that the package was of a **take-it-or-leave-it** form. That is, to change or substitute a different proposal for one of those recommended by the commission could lead to the collapse of a delicately balanced compromise. Similarly, because amending the package was considered dangerous to the passage of a legislative response to the looming Social Security insolvency, even the **debate on the merits** of the package and its components was **largely muted**. The use of commissions can also be seen as a means of **taking an issue outside of the political arena** where unelected nonpartisan experts can be free to produce recommendations or findings based upon sound and reasoned analysis **rather than partisan gains**. More technical issues increase the desirability that a panel be comprised of unelected experts rather than elected representatives.2

f) Legislators only backlash against the plan if they perceive they'll be held personally responsible---Commission delegation depersonalizes the process

Campbell 2 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. 29-30

Modern theories of legislative behavior begin with David R. Mayhew's book, Congress: The Electoral Connection, which suggests that congressional action has a **direct electoral connection**, in which legislators are **single-minded seekers of reelection**, motivated primarily by self-interest.1 Individuals may enter Congress with altruistic intentions, but their behavior in office is best explained by the "electoral connection": the need for reelection. As a consequence lawmakers consider the preferences of their voters, especially on issues of potentially **high salience**, that is, issues visible **to the public**.2 Congress is thus organized to promote the goal of reelection. Members follow conservative strategies to capitalize upon particularized benefits, to respond to organized groups, to claim as much credit as possible, and to mobilize only when they can claim credit.3 The incentive to delegate, therefore, must have some sort of electoral connection. Follow Mayhew's line of thought, others have developed what has come to be known as the distributive theory of legislative organization.4 According to this view, the decision to delegate is a function of the political costs and benefits for which elected officials will be held **electorally accountable**. Legislative action reflects a desire to maximize net benefits to districts in order to increase the chances for reelection. Delegation enables individual legislators to protect favored constituents5 or to **shift blame for political costs**6 onto other organizations, but makes them unable to claim full credit for any perceived benefits. Delegation is a function of this trade-off. Thus, congressional decisions to delegate occur when the decrease in attributable costs is greater than the decrease in attributable benefits. R. Douglas Arnold notes that legislators are ever mindful of the direct correlation between their individual performance and the voting booth. According to what he calls the "incumbent performance rule," voters tend to punish legislators for undesirable effects **only if there are both identifiable governmental actions and visible individual contributions**. Responsibility for unpleasant decisions is therefore **frequently delegated** to the president, bureaucrats, regulatory commissions, judges, state and local officials, or temporary **commissions** as a procedural strategy for **"masking" legislators' individual contributions**.7 Such delegation is especially prevalent when there is a desire to shed policymaking tasks that are too onerous or when dealing with issues that are likely to provoke disputes with voters. Challengers will take full advantage of reminding citizens about issues as traceable as legislative salaries, for example.

Prefer Our Ev – 2NC

Prefer our ev – political science data proves Congress appoints commissions to avoid political fallout

Campbell 2 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. xv

There is no easy answer to why Congress creates ad hoc commissions, because the circumstances of their creation are quite complex and vary widely. Many variables go into the decision to entrust those bodies to render nonpartisan recommendations: to pacify, to promote incremental decision making, to build support for proposals, **or to obtain consensus among different interests**. Commissions are often hybrids that result from a multitude of congressional incentives. While disputes over the desirable or proper extent of delegation are commonplace, our understanding of such congressional action is arguable. The literature contains several variations on the theme that policymaking is sometimes so costly—both in terms of expertise and **for political reasons**—**that it must be delegated to others**. A number of **political scientists and economists** share the assumption that people's motives in the political arena are essentially the same as their motives in the marketplace, **resting on rational calculations of self-interest**.8 The problem of delegation is frequently derived from economic models,9 portraying delegation as an advantageous way for lawmakers to favor constituents,10 to **minimize political losses**,11 or to **shift blame**.12 Also considered important are the relationships that are assumed to exist between means and ends, which enable the lawmaker to choose the most rational means to the specified end, as well as the relationships between the costs and benefits involved, in the interest of efficiency.

CP Captures Link Turns – 2NC

Commission action captures their link turns---anyone in Congress who supports the plan will claim credit from the commission---it just takes the negative politics out of base closures

Campbell 2 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. 123-124

Any congressional action which reduces and relocates functions and civilian personnel positions involves the most conspicuous long-run allocations of resources. Because it necessarily means clear winners and losers, the policymaking process is marked by **a high degree of visibility, conflict, and compromise** among a broad spectrum of political actors. Congress responds to this sort of redistributive dilemma by **masking legislators' individual contributions and delegating responsibility for making unpleasant decisions to a commission**. In this case delegating is a technique devised to transfer responsibility **but still make it possible for beneficial outcomes to be attributed to individual legislators**. Members avoid blame by saying the decision is out of their hands; they protect themselves from **going on record in favor of something negative** to their district. "Handing over federal authority to the **Base Closure and Realignment Commission** to **downsize the military infrastructure** was clearly **a way to take the politics out of the issue**," a Hill staffer commented. "**Base closing is a political hot potato**, and the last thing somebody wants to do is to vote to have a base closed in their district. By letting Congress deny the commission's recommendations, rather than support it, members can cover their backsides." Shifting the blame for any negative side effects disguises the pain to constituents. This method enables lawmakers to **vote for the general benefit** of the country **without ever having to support specific costs** to their constituents. In the strong words of Representative Don Young (R-Alaska), "Placing the national interest ahead of the wishes of a particular congressional district is socialism."44

AT: Obama Gets the Blame

You're wrong –

a) Your evidence assumes that the PCLOB is still under the authority of the executive which isn't the case anymore – that means that Obama won't be responsible.

Dalal, J.D. Yale Law, 2014 Anjali, ARTICLE: SHADOW ADMINISTRATIVE CONSTITUTIONALISM AND THE CREATION OF SURVEILLANCE CULTURE, 2014 Mich. St. L. Rev. 59

[*122] Congress **responded** quickly **by passing legislation** in August **2007 to significantly restructure the PCLOB**. 280 Under the new statute, the PCLOB **is an independent agency** to be composed of five members, **four of whom are part time from outside the government and the fifth, the chairperson, is the full time member**. 281 All five members are appointed by the President and confirmed by the Senate **for a term of six years to prevent wholesale capture by a given Administration**. 282 Its authorizing statute mandates **that no more than three members can be from one political party** with the other two chosen **by the White House under consultation with Senate and House minority leadership**. 283

b) And blame vs influence – even if congress blames Obama it doesn't link because he didn't have to lobby for votes and expend his capital which is what our disad is about.

Specter Proposal CP – HJPV

Negative

1nc

The United States Federal government should amend the FISA Amendments Act of 2008 to remove blanket immunity provisions for telecommunications companies. The United States federal government should oversight of the Planning Tool for Resource Integration, Synchronization, and Management (PRISM) program to the Terrorist Surveillance Program.

The CP allows for FISA effectiveness and Congressional oversight- solves all sqou NSA overstretch and the terror DA

HLR, 09 (Harvard Law Review, Student run publication with articles from professors, judges, practitioners, and students; February 2009; Harvard Law Review, Vol. 122, No. 4 (Feb., 2009), pp. 1271-1278; "Electronic Surveillance — Congress Grants Telecommunications Companies Retroactive¶ Immunity from Civil Suits for Complying with NSA Terrorist Surveillance Program. — Fisa¶ Amendments Act of 2008, Pub. L. No. 110-261, 122 Stat. 2436"; JSTOR)//JPM

¶Senator Specter subsequently proposed an amendment that would¶ "substitute the U.S. Government as a party defendant for the telephone¶ companies," thereby shielding them from liability while still allowing¶ courts to rule on the legality of the TSP and the constitutional¶ questions raised by the President's assertions of executive authority.25¶ Government substitution would be dependent upon a finding by the¶ FISA court that the telecommunications companies acted "in good¶ faith."26 The Senate rejected this amendment by a vote of sixty-eight¶ to thirty.27 Ultimately, the Senate passed the bill and sent it back to¶ the House with the blanket immunity provision intact.28¶ ¶ On June 19, 2008, Representative Silvestre Reyes introduced the¶ FISA Amendments Act of 2008[29] in the House.30 This bill was substantially¶ the same as the version passed by the Senate.31 On June 20,¶ the House voted to pass the bill.32 The Senate subsequently considered¶ the House bill and rejected three more amendments that would¶ have altered or eliminated the retroactive immunity provision.33 On¶ July 9, the Senate passed the House bill by a vote of sixty-nine to¶ twenty-eight.34 The President signed the bill into law the next day.35¶ The final version of the immunity provision states that courts¶ should dismiss any suit against an electronic service provider alleged¶ to have provided assistance "in connection with an intelligence activity¶ involving communications that was . . . designed to detect or prevent a¶ terrorist atack .. . against the United States"36 if the Attorney General¶ certifies that one of two conditions imet. Suits should be dismissed if¶ the Attorney General certifies either that the company was acting pursuant¶ to a "written request or directive" from the government indicating¶ that such activity was "(i) authorized by the President; and (ii) determined¶ to be lawful,"37 or else that the company "did not provide the¶ alleged assistance."38 The Act provides for a "substantial evidence"¶ standard for judicial review of the Attorney General's certifications.39¶ Additionally, the Act provides that courts may limit public disclosure¶ of any certificationr supplemental materials that would prove harmful¶ to national security.40¶ ¶ The blanket immunity provision retroactively validates presidential¶ directives to private parties that ordered them to conduct potentially¶ illegal actions.41 This result is problematic for several reasons. First,¶ it undermines the statutory framework that Congress originally established¶ in FISA. Second, it undermines the ability of Congress to play a¶ meaningful role in determining the proper procedures for gathering intelligence,¶ as it weakens the requirement that the Administration get¶ statutory approval before fundamentally changing surveillance policy.¶ Finally, it greatly reduces the chances that a court will be able to review¶ the legality of the TSP and the constitutionality of the President's¶ assertions of executive authority. Proponents of the blanket immunity¶ provision argued that it was necessary for a number of reasons, including¶ fairness and national security.42 However, **the amendment proposed by Senator Specter would have addressed most of these concerns**¶

while avoiding many of the problems of the blanket immunity provision.¶ Congress should have adopted this amendment instead.¶¶ When Congress enacted FISA, it attempted to establish a clear and¶ exclusive framework for all parties to follow when the government¶ seeks the aid of private companies in conducting electronic surveillance.[43]¶ Members of the Bush Administration appear to have acknowledged¶ that the TSP operated outside this statutory framework,[44]¶ but they argue that the TSP was nevertheless legally justified both by¶ the Authorization for Use of Military Force[45] (AUMF) passed by Congress¶ in 2001 and by the President's inherent authority under Article II¶ of the Constitution.[46] **The blanket immunity provision undermines¶ FISA by granting retroactive immunity to telecommunications companies¶ without requiring any showing that they reasonably believed that¶ assisting the intelligence agencies was legal;**[47] the Attorney General¶ merely has to certify that the company was told by the government¶ that its actions were legal.[48] Since the Administration appears to have¶ based its legal reasoning upon executive authority rather than compliance¶ with FISA,[49] neither the companies nor the President needed to¶ believe they were complying with FISA in order for the companies to¶ receive immunity. Congress has therefore allowed the Administration¶ and private companies to act outside of the statutory framework that¶ Congress created. The effectiveness of FISA as a comprehensive¶ scheme governing electronic surveillance is undermined if the President¶ can circumvent its procedures simply by asserting that he has the¶ executive authority to act outside of its framework. **FISA's effectiveness¶ will be further undermined if telecommunications companies are¶ willing to cooperate with intelligence agencies even when FISA procedures¶ have not been followed.**¶¶ Furthermore, as the intelligence community increasingly relies on¶ the help of private companies to conduct electronic surveillance, it is¶ essential that a range of government actors - including Congress -¶ gets to weigh in on important policy considerations, including the¶ proper balance between individual privacy rights and national security.[50]¶ **Congress can and should serve as a check on the executive, as¶ the executive branch may be "institutionally predisposed" to value security¶ over civil liberties.**[51] It is therefore important that Congress establish¶ the proper procedures for the Administration to follow when it¶ works with the private sector to conduct electronic surveillance, and¶ that Congress then makes sure that these procedures are followed.¶ When the Administration and private parties act outside of the statutory¶ framework, they should pay a price, even if Congress would have¶ approved of their actions had its approval been sought; in this case,¶ that price should be civil liability. There is nothing wrong with Congress¶ changing FISA at the request of the Administration; in other¶ provisions of the Act, Congress does just that - it updates and¶ changes the procedures for conducting electronic surveillance.[52] However,¶ **in order for Congress to play a meaningful role in determining¶ surveillance policy, the Administration should have to seek Congress's¶ approval before making a major policy change and acting outside the¶ statutory framework.** Despite its intention to limit extralegal abe able to determine the validity of the Administration's argument¶ that the President has the inherent constitutional authority to conduct¶ electronic surveillance without congressional approval and that this¶ authority is supplemented by the AUMF.[55] Regardless of whether the¶ Administration's arguments would hold up in court, a decision one¶ way or the other would provide more certainty to all parties involved:¶ **the Administration would know whether it has to follow FISA under¶ all circumstances; Congress would know to what extent it can limit the¶ President's ability to conduct surveillance; and the telecommunications¶ companies would know whether they can rely on the Administration's¶ assertions that providing assistance is legal.** Also, since any pending¶ lawsuits will almost certainly be dismissed, individuals whose privacy¶ rights were violated will be

unable to vindicate those rights in court.[56] ¶ Because of these problems, Congress should not have enacted the blanket immunity provision unless it was absolutely necessary, which it was not. Proponents of blanket immunity argued that it was necessary both to prevent unfairly punishing telecommunications companies that tried to assist the government **in preventing another terrorist attack**[57] and to ensure the cooperation of telecommunications companies in the future.[58] However, **The amendment proposed by Senator Specter would have accomplished both of these goals while avoiding some of the problems inherent in the blanket immunity provision**. Under this amendment, any telecommunications company that complied with the government and acted in good faith would be shielded from liability. If the FISA court found that a company did act in good faith, then the government would take its place in any lawsuits.[59] According to Senator Sheldon Whitehouse, it would be proper to hold the government accountable because "if the companies acted reasonably and in good faith at the direction of the Government but ended up breaking the law, the Government truly is the morally proper party to the case."[60] ¶ Furthermore, some companies had threatened that if they were not given immunity, they would refuse to cooperate with the government in the future "except under strict compulsion."[61] The Specter amendment would enable most carriers to escape liability through a showing arrangements, Congress has signaled to both the Administration and the telecommunications companies that they can ignore the statutory framework without suffering adverse consequences. As a result, the Administration is likely to rely more on informal agreements with telecommunications companies,[53] and Congress's role in making policy and providing oversight will be diminished. ¶ Finally, the blanket immunity provision will also likely prevent any judicial rulings on the underlying legal issues at stake.[54] No court will of good faith, thereby providing them with the desired immunity and encouraging their future cooperation. ¶ ¶ In addition to addressing many of the concerns of the proponents of blanket immunity, the Specter amendment would also have reduced some of the problems caused by the blanket immunity provision. First, by protecting companies only after a judicial finding that they acted in reasonable good faith, Congress would have sent a clear signal to private companies that they must determine for themselves whether a government request for assistance is legal. Congress would also have sent a message to the President that he cannot ignore existing statutes and authorize private parties to commit potentially unlawful actions without being subjected to intense judicial scrutiny. Congress would therefore have encouraged both the Administration ad the private sector to comply with FISA. As a result, Congress would have reasserted its role in determining the proper surveillance procedures by holding parties accountable for circumventing those procedures. The Specter amendment may also have allowed courts to rule directly on the legality of several aspects of the TSP. Finally, the amendment would have given private citizens the "ability to vindicate their rights in court regarding wiretapping abuses of the past."[62] ¶ Senator Specter's amendment presented Congress with an opportunity to encourage both the executive branch and the private sector to follow the law, to provide some accountability for what appear to be extensive violations of the law, and to reassert itself as an important player in the debate over how to conduct electronic surveillance. Congress could have achieved these goals without making any major sacrifices in terms of fairness or national security. Yet Congress, at the behest of the Administration and the telecommunications industry, instead chose to provide blanket immunity to the telecommunications companies and virtually ensure that important legal questions about the TSP will remain unanswered.[63] Although it is important to encourage

cooperation between telecommunications companies and the intelligence agencies, it is also important for Congress to play a role in determining the proper balance between security and civil liberties rather than leaving such a determination to the Administration.64 By allowing the Administration and telecommunications companies to ignore FISA with impunity, Congress has abdicated this responsibility.

Solves: PRISM

Blanket immunity is the biggest problem facing domestic surveillance – pre-req to aff solvency

EFF, 2008 (Electronic Frontier Foundation, leading nonprofit organization defending civil liberties in the digital world; 2008; "Archive: The Case Against Retroactive Amnesty for Telecoms"; https://www.eff.org/pages/case-against-retroactive-amnesty-telecoms)//JPM

The litigation against AT&T and other companies is based upon clear, first-hand whistleblower documentary evidence¶ – authenticated in court by AT&T itself in the course of unsuccessfully trying to protect the documents as trade secrets – that¶ for years on end every e-mail, every text message, and every phone call carried over the massive fiber-optic links of sixteen separate¶ companies routed through AT&T's Internet hub in San Francisco – hundreds of millions of private, domestic communications¶ – have been illegally copied in their entirety by AT&T and knowingly diverted wholesale by means of multiple "splitters"¶ into a secret room controlled exclusively by the NSA. The whistleblower also discovered that there were at least five other such¶ rooms in San Diego, Los Angeles, San Jose, Seattle and Atlanta. Any filtering of the information took place only after the¶ entire fiber-optic data stream was copied and diverted into the secret room.¶ **As Judge Walker has held, it** simply **cannot be** credibly **suggested that the Government's telephone company partners in¶ a massive, ongoing, wholesale dragnet of millions upon millions of domestic e-mail, text message and phone communications¶ were under the excusable "misimpression" that this surveillance dragnet only "incidentally" might sweep in the¶ occasional domestic-to-domestic communications**. To the contrary, the AT&T whistleblower who installed and maintained¶ the "splitter" technology (and whose documents and affidavit are at the core of the case against AT&T) has made it¶ clear that the system clearly was designed to capture – and did in fact capture – hundreds of millions of ordinary domestic¶ communications, and had the technical capability to analyze them in real time.¶ Furthermore, independent experts have confirmed that the location of these splitters in San Francisco is inconsistent with¶ surveillance aimed solely at international or foreign traffic. There are apparently no foreign communications cables that¶ emerge from the sea near San Francisco or near another of the secret room locations confirmed in the whistleblower's documents,¶ hundreds of miles from the seashore in Atlanta, Georgia! **A federal court should weigh these facts.**

Solves: NSA Overreach

Blanket amnesty allows the government to retroactively exempt telecommunications companies from legal consequences to conducting mass surveillance – means even if the plan can solve for NSA surveillance, they will be circumvented by companies, only the CP solves.

Amnesty provisions for the telecom industry are a prereq to combating NSA overreach

-Indicting blanket amnesty was what originally led to the creation of the FISC

Greenwald, 13 (Glen, journalist, constitutional lawyer, and author of four New York Times best-selling books on politics and law. His most recent book, No Place to Hide, is about the U.S. surveillance state and his experiences reporting on the Snowden documents around the world. Prior to his collaboration with Pierre Omidyar, Glenn's column was featured at The Guardian and Salon. He was the debut winner, along with Amy Goodman, of the Park Center I.F. Stone Award for Independent Journalism in 2008, and also received the 2010 Online Journalism Award for his investigative work on the abusive detention conditions of Chelsea Manning. For his 2013 NSA reporting; 6/6/13; ""Digital blackwater": the National Security Administration, telecommunications companies and state-corporate crime";
http://go.galegroup.com.proxy.lib.umich.edu/ps/retrieve.do?sgHitCountType=None&sort=RELEVANCE&docType=Report&prodId=AONE&tabID=T002&searchId=R1&resultListType=RESULT_LIST&searchType=AdvancedSearchForm&contentSegment=&currentPosition=1&searchResultsType=SingleTab&inPS=true&userGroupName=lom_umichanna&docId=GALE%7CA403918836&contentSet=GALE%7CA403918836)//JPM

In this article, we provide a framework for demonstrating the illegality of the NSA surveillance programmes by arguing that these activities should be considered acts of state-facilitated state-corporate crime. That is, we contend that the broad and blanket surveillance of US citizens (Americans) who are not suspected of any criminal offence should be considered criminal activity that is occurring through the collusion of state and corporate entities. Specifically, we maintain that the NSA's spying on Americans' electronic communications, in partnership with Verizon, Google, and other telecommunications companies, is (1) in violation of the right to privacy, as outlined by numerous international human rights treaties; (2) unlawfully secretive and thus lacks the transparency guaranteed by international human rights treaties and (3) antithetical to democracy by unlawfully attacking and seeking to punish whistle-blowers, thereby silencing discourse, shirking accountability and ultimately undermining the rule of law. In addition, we maintain that it is the weak system of checks and balances offered by the FISA Court, and specifically the changes made to it as a result of the USA PATRIOT Act 2001, that has facilitated the state and corporate mass surveillance system. Using the definition of state-corporate crime developed by Aulette and Michalowski (1993), we intend to highlight the dangers of these relationships for liberty, justice and democracy.¶ State-Corporate Crime¶ Given that this issue is devoted to examining state-corporate crime, we offer only a brief review of the concept of state-corporate crime and the two types outlined by Michalowski and Kramer (2006). Michalowski and Kramer (2006: 20) define state-corporate crime as¶ illegal or socially injurious actions that result from a mutually¶ reinforcing interaction between (1) policies and/or practices in¶ pursuit of goals of one or more institutions of political¶ governance and (2) policies and/or practices in pursuit of the¶ goals of one or more institutions of economic production and¶ distribution.¶ Michalowski and Kramer distinguish between state-initiated and state-facilitated corporate crime and stress the importance of closely examining the interrelationships between state and corporate actors. They argue,¶ State-initiated corporate crime occurs when corporations employed by a government engage in organizational deviance at the direction of, or with the tacit approval of, that government. State-facilitated corporate crime occurs when government institutions of social control are guilty of clear failure to create regulatory institutions capable of restraining deviant business activities, either because of direct collusion between business and government or because they adhere to shared goals whose

attainment would be hampered by aggressive regulation. (Michalowski and Kramer 2006: 21)¶ Although the NSA surveillance can be seen as an example of both types, we focus here on examining the mass surveillance of telecommunications data as state-facilitated, documenting the direct collusion between telecommunications companies and the government and the weak legislative privacy protections that allow such companies to collect large amounts of personal, private data about individuals.¶ The NSA, Telecommunications Companies and Illegal Spying: A Brief History¶ The NSA has long coupled with the corporate sector to conduct warrantless surveillance of Americans. As Bamford (2008) wrote, the "rocky marriage" between the NSA and telecommunications companies began in the days following World War I, when cable companies turned over telegraph messages to the NSA. Project Minaret was a programme of the 1970s in which Radio Corporation of America (RCA), Western Union and other companies gave the NSA all incoming and outgoing US telephone calls and telegrams (Chaterjee 2013b). For decades, telecommunications leaders like AT&T "... have had a very secret, very cozy relationship with the NSA through the National Security Agency Advisory Board (NSAAB), made up of top company executives" (Bamford 2008).¶ Project Minaret, and others like it, led to a series of congressional hearings in 1975. The Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, which was chaired by Frank Church of Idaho, resulted in the creation of the FISA. FISA created a special court, known as the FISA Court, which approves actions to gain intelligence via electronic surveillance of foreign powers or agents of foreign powers (Chaterjee 2013b). Eleven federal circuit judges, appointed by the Chief Justice of the Supreme Court, make up the FISA Court, which meets in secret. Proceedings from the FISA Court are not made public. Targets of FISA-approved searches are not notified that they have been targeted unless they are to be prosecuted. Thus, any searches that result from FISA Court approval remain unknown to the public, and even to much of the Congress (Bamford 2008). They are not so secret, however, to the many private corporations with whom the NSA collaborates for intelligence gathering. FISA has been amended several times, each time weakening its provisions. The USA PATRIOT Act (1) eliminated the requirement that gathering foreign intelligence be the primary purpose of a warrant, replacing it with the language that it be a "significant purpose" (Keenan 2005). Keenan (2005: 104) explained, "When foreign-intelligence gathering needs to be merely 'a significant purpose', it is more likely that the government will be able to use the lower standard to end-run the privacy protections of the Constitution."¶ As a result of the USA PATRIOT Act changes to FISA, there has been a dramatic increase in warrants issued by the court. The number of warrants requested and granted increased 75 per cent between 2000 and 2004, and in 2002, FISA warrants outnumbered traditional federal search warrants for the first time (Keenan 2005). Bamford (2008) describes how, by 2008, the NSA was not only the largest and the costliest spy organization in the world but it had also become the most intrusive. No longer a "backwater agency whose director had to fight to sit at the same table with the CIA chief', the NSA currently has tens of thousands of employees and more than 50 buildings equipped with the most sophisticated technology (Bamford 2008: 13). Every day the NSA intercepts and stores 1.7 billion emails, phone calls, texts and other electronic information. Its new data centre in Utah is 5.7 times the size of the US Capitol (Kelley 2012).¶ As early as the summer of 2002, AT&T technician Mark Kline noted that the NSA was doing something illegal. Kline explained, "it appears the NSA is capable of conducting what amounts to vacuum-cleaner surveillance of all the data crossing the Internet--whether that be people's email, Web surfing, or any other data ... A lot of this was domestic" (in Bamford 2008: 191). **Much of this huge volume of data collected through the NSA's NARUS system located at AT&T's San Francisco office came from the telecommunications company's partners, like Sprint and Qwest** (Electronic Frontier Foundation n.d.). Moreover, "**America's two major telecom companies, AT&T and Verizon, have outsourced the bugging of their entire networks--carrying billions of American**

communications every day--to two mysterious companies with very troubling foreign connections" (Bamford 2008: 236), both formed in Israel and having no oversight by Congress.¶ NSA-Corporate Programmes as State-Facilitated State-Corporate Crime¶ In this section, we demonstrate how the NSA's spying programmes meet the criteria to be considered state-facilitated state-corporate crime.¶ Facilitated by state through weakening of checks and balances¶ Post 9/11, the growth in the amount of data being collected, as well as technological advancements, overwhelmed the NSA and prompted the need for more private contractors to do the increasing amount of data analysis. According to retired Air Force General and former director of the NSA, Michael V. Hayden, "the government's massive data collection and surveillance system was largely built not by professional spies or Washington bureaucrats but by Silicon Valley and private defense contractors" (quoted in Hirsh 2013). As Bamford (2008: 197) noted, "The NSA's new willingness to outsource eavesdropping, plus the warrantless eavesdropping and other new programs, thus became a giant boon to a growing fraternity of contractors who make their living off the NSA." The fact that the US national security functions have been delegated increasingly to corporations reflects a wider pattern of privatization and deregulation that has been gaining momentum since the Reagan administration. Not only has the national intelligence apparatus increasingly relied on private contractors, but the leadership of the national intelligence agencies is essentially the same as those with whom the government has contracted for surveillance services. These people are "... ideological allies", who are "**sympathetic to industry's interests. In this new environment, corporations and private entities of all sorts enjoy a new measure of sovereignty and the capacity to determine for themselves what they will and will not disclose to the public**" (Gup 2007: 24). Put simply, this is the "power elite" about whom sociologist Mills (1956) cautioned as having disproportionate power and influence. For example, Booz Allen Hamilton, a privately owned consulting company located in Virginia worth an estimated $5 billion annually, is one of the largest of the companies that contracts with the government to conduct surveillance. The current Director of National Intelligence (DNI), James Clapper, is a former Booz Allen executive. The company's current vice chairman, Mike McConnell, was the DNI in the George W. Bush administration (Goldman 2013).¶ There seems to be no end to the expansion of the government-corporate spying programme. A 2012 investigative report by Wired magazine revealed that the NSA is building a massive supercomputing facility in the Nevada desert (Bamford 2012, 2013). Former NSA employees who have examined the FISA order asking Verizon to provide information to the NSA note that as few as 40 and as many as 79 companies likely received similar orders in 2013 alone (Eisler and Page 2013). In November 2013, Snowden revealed additional documentation demonstrating that the NSA relies on relationships with corporations to obtain the vast amount of data it collects from fibre-optic cables (MacAskill and Rushe 2013). In a presentation prepared by the NSA's Special Source Operations Division, the opening section states the agency's goal to "Leverage unique key corporate partnerships to gain access to high-capacity international fiber-optic cables, switches and/or routes throughout the world" (MacAskill and Rushe 2013).

--Ext. Congressional Oversight Solvency

Solely executive control of surveillance ineffective- invades privacy and needs legislative checks

Bendix and Quirk, 15 (William, assistant professor of¶ political science at Keene¶ State College. His research¶ focuses on Congress,¶ legislative deliberation, and¶ homeland security and civil¶ liberties policies; Phil Lind Chair in U.S.¶ Politics and Representation¶ at the University of British¶ Columbia and a former¶ research associate at¶ the Brookings Institution.¶ His work focuses on¶ debate and deliberation in¶ Congress and the mass¶ public; March 2015; "Secrecy and negligence:
How Congress lost control of domestic surveillance"; Issues in Governance Studies Vol. 68;
http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)//JPM

¶During the last five years of legislative debates over the PATRIOT Act, Congress has failed to define¶ or control surveillance policy. Prior to the Snowden leaks, most members had little awareness of¶ NSA activities and Congress had little capacity to impose constraints. Now, more than 18 months¶ after Snowden exposed the mass seizure of phone records, not much has changed. To a great¶ extent, the source of difficulty has been the inadequacy of the institutional arrangements for¶ legislative deliberation on secret programs. Some members have declined opportunity to learn about¶ domestic-spying practices, while others have opposed placing restrictions on the NSA for fear of¶ giving terrorists any tactical advantage.¶¶ If Congress had conducted thorough, informed deliberations at all stages, we suspect it would have¶ endorsed extensive collection of communication records, but it would have also imposed limitations¶ and constraints to minimize the harm to privacy interests. Instead, it gave the executive branch¶ essentially unfettered authority to operate a massively intrusive program.¶

Congressional oversight fills in for FISA failures

HLR, 08 (Harvard Law Review, Student run publication with articles from professors, judges, practitioners, and students; June 2008; Vol. 121, No. 8; "NOTE: SHIFTING THE FISA PARADIGM: PROTECTING CIVIL LIBERTIES BY ELIMINATING EXANTE JUDICIAL APPROVAL"; http://www.harvardlawreview.org/wp-content/uploads/pdfs/shifting_the_FISA_paradigm.pdf)//JPM

¶The testimony during the initial FISA hearings of two former Attorneys¶ General, themselves responsible for authorizing foreign intelligence¶ surveillance in the pre-FISA arrangement, is instructive. Former¶ Attorney General Ramsey Clark observed that "we greatly¶ exaggerate the safety and value of" a requirement that "all wiretaps¶ . . . be approved by a judicial officer." Arguing that "[t]he idea¶ that there can be a meticulous review of these applications by the Judiciary¶ is contrary to our experience," he put primary emphasis on political¶ checks through reporting requirements and congressional oversight¶ and standard-setting.91 Additionally, former Attorney General¶ Elliot Richardson noted the "important role in assuring that this sensitive¶ tool is not abused" to be played by the Senate, via both direct¶ oversight and the confirmation of the Attorney General and Director¶ of the FBI.92¶ ¶ More importantly, the legislative history suggests that the most¶ consequential element of FISA is not its judicial review provisions.¶ Rather, FISA's crucial move was to institute a reliance on the use of¶ "public laws, publicly debated and adopted, which specify under what¶ circumstances and under what restrictions electronic surveillance for¶ foreign intelligence purposes can be conducted."93 The reliance on political¶ checks proposed in this Note avoids the problem identified by¶ Congress when it initially enacted FISA and raised by the TSP — that¶ "the substantial safeguards respecting foreign intelligence electronic¶ surveillance [then] embodied in classified Attorney General procedures" were not enough to overcome "the inappropriateness of relying¶ solely on executive branch discretion to safeguard civil

liberties."[94] Here, the Executive is subject not merely to internally created standards that it might change or ignore at will, but also to those set down by the statute, which were themselves created through the public "weighing of important public policy concerns" that Congress performs.[95] **Congress is better situated constitutionally and better equipped institutionally to make the sort of value judgments and political determinations that are necessary to fulfill FISA's purposes. If "[t]he government may abuse FISA in situations like that involving the L.A. Eight, when intrusive electronic surveillance is undertaken based on political activities, rather than on support for terrorist activities,"[96] it seems that Congress will be much better than courts at sniffing out such violations and fashioning broader and more flexible remedies.** If one hopes to realize the core purpose of FISA — as described by the ACLU, "to prevent future presidents from intercepting the 'international communications of American citizens whose privacy ought to be protected under [our] Constitution' ever again"[97] — then a new approach is needed.

--Ext. FISA Effectiveness Solvency

An effective FISA court threads the needle between stopping terror attacks and maintaining civil liberties

Blum, 08 (Stephanie, attorney for the Transportation Security Administration,¶ Department of Homeland Security. She is currently on a detail to the Department of¶ Justice. Ms. Blum holds a M.A. in security studies from the U.S. Naval Postgraduate¶ School's Center for Homeland Defense and Security, a J.D. from The University of Chicago¶ Law School, and a B.A. in political science from Yale University. She has published a book¶ and various articles on homeland security issues. She would like to thank Professor Robert¶ Chesney and the participants at the annual national security law junior faculty workshop for¶ their suggestions. The views in this article are the author's and do not necessarily represent¶ the views of the U.S. Government to include the Department of Homeland Security and¶ Department of Justice; 2008; "WHAT REALLY IS AT STAKE WITH THE FISA¶ AMENDMENTS ACT OF 2008 AND IDEAS FOR¶ FUTURE SURVEILLANCE REFORM"; http://128.197.26.34/law/central/jd/organizations/journals/pilj/vol18no2/documents/18-2BlumArticle.pdf, HeinOnline)//JPM

FISA does provide some added protection for U.S. citizens and permanent¶ resident aliens (referred to as "U.S. persons" in FISA). To obtain a FISA warrant¶ targeting a U.S. person, there must also be probable cause to believe that¶ the person is "knowingly" engaged in activities that "involve or may involve a¶ violation of the criminal statutes of the United States."48 In other words, while¶ suspicion of illegal activity is not required in the case of aliens who are not¶ permanent residents – as applied to them, membership in a terrorist group or Applications for FISA warrants go to federal judges that comprise the Foreign¶ Intelligence Surveillance Court (FISC). Like a grand jury proceeding, the¶ FISC conducts its business ex parte, meaning the government is the only party¶ present at its proceedings. Appeals from the FISC go to the FISCR. The FISC¶ has jurisdiction to hear applications for, and to grant court orders approving,¶ electronic surveillance or physical searches anywhere in the United States to¶ obtain foreign intelligence information under FISA.¶ In order for an executive official to get a FISA warrant to conduct "electronic¶ surveillance," the FISC must approve several requirements: (1) probable¶ cause that the target is an agent of a foreign power or a foreign power (and the¶ additional requirements discussed above if the target is a U.S. person);50 (2)¶ probable cause that the target is using or about to use the "facility" to be monitored;51¶ (3) applicable "minimization procedures" designed to minimize the acquisition¶ and retention, and to prevent the dissemination, of information concerning¶ U.S. persons that is unrelated to foreign-intelligence;52 (4) a¶ certification that the information sought "cannot reasonably be obtained by normal¶ investigative techniques,"53 and (5) the Attorney General must approve the¶ application and a high-ranking intelligence official must certify that a "significant¶ purpose" of the surveillance is to gain foreign intelligence information.54¶ If the target is a U.S. person, the basis for the aforementioned review is subject¶ to review for clear error.55

--Ext. Removing Blanket Immunity Solvency

Blanket immunity provisions allow for companies to hide NSA overreach – prereq to aff solvency

Masnick, 14 (Mike, founder and CEO of Floor64 and editor of the Techdirt blog; Jul 9th 2014; "Senate Intelligence Committee Approves Dangerous Cybersecurity Bill"; https://www.techdirt.com/articles/20140708/18003227819/senate-intelligence-committee-approves-dangerous-cybersecurity-bill.shtml)//JPM

We've written about the Senate's dangerous CIPA bill -- which is Congress' latest (bad) attempt to help increase the NSA-led surveillance state by giving companies blanket immunity if they share private information with the government... all in the name of overhyped "cybersecurity." We, of course, have been through this fight before, with the CISPA bill, which passed in the House a few times, but couldn't get any traction in the Senate. This time around, the (really bad) Senate version passed out of the Senate Intelligence Committee by a 12-3 vote (held in secret, of course). Not surprisingly, two of the three who voted against it are Ron Wyden and Mark Udall. ¶ By now you should know: if Ron Wyden and Mark Udall are against something related to surveillance, you should be against it too (and the opposite is true as well). ¶ The "good" news is that despite the overwhelming support by the NSA's biggest cheerleaders on the rest of the Senate Intelligence Committee, it seems unlikely that the bill will have enough support in the overall Senate. And it will hopefully remain that way. This bill is a dangerous one, that is solely designed to give the NSA and some companies additional legal "cover" for aiding the NSA's surveillance efforts. Thanks to Snowden's revelations, companies are, in general, a lot less willing to do that these days anyway, but giving those companies blanket liability to do so is a bad, bad idea. ¶ And while there's still little to no evidence that the "cybersecurity threat" is anywhere close to as big as what the FUDmongers insist it is, even if that is true, no one has yet explained what laws actually get in the way of having companies share critical cybersecurity information as needed. And, if such laws really do exist, any solution should to just be narrowly focused on fixing those laws, rather than granting broad immunity for sharing just about any info.

AT: Signal/Perception Solvency Deficits

Congressional oversight is a stronger IL to NSA perception and legitimacy

Schneier, 15, fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Ch. 13)//AK

More members of Congress must commit to meaningful NSA reform. We need comprehensive strategic oversight by independent government agencies, based on full transparency. We need meaningful rules for minimizing data gathered and stored about Americans, rules that require the NSA to delete data to which it should not have access. In the 1970s, the Church Committee investigated intelligence gathering by the NSA, CIA, and FBI. It was able to reform these agencies only after extensive research and discovery. We need a similar committee now. We need to convince President Obama to adopt the recommendations of his own NSA review group. And we need to give the Privacy and Civil Liberties Oversight Board real investigative powers.¶ Those recommendations all pertain to strategic oversight of mass surveillance. Next, let's consider tactical oversight. One primary mechanism for tactical oversight of government surveillance is the warrant process. Contrary to what many government officials argue, warrants do not harm security. They are a security mechanism, designed to protect us from government overreach.¶ Secret warrants don't work nearly as well. The judges who oversee NSA actions are from the secret FISA Court. Compared with a traditional court, the FISA Court has a much lower standard of evidence before it issues a warrant. Its cases are secret, its rulings are secret, and no one from the other side ever presents in front of it. Given how unbalanced the process it is, it's amazing that the FISA Court has shown as much backbone as it has in standing up to the NSA (despite almost never rejecting a warrant request).¶ Some surveillance orders bypass this process entirely. We know, for example, that US Cellular received only two judicially approved wiretap orders in 2012—and another 10,801 subpoenas for the same types of information without any judicial oversight whatsoever. All of this needs to be fixed.¶ Start with the FISA Court. It should be much more public. The FISA Court's chief judge should become a position that requires Senate confirmation. The court should publish its opinions to the extent possible. An official public interest advocate should be assigned the task of arguing against surveillance applications. Congress should enact a process for appealing FISA rulings, either to some appellate court or to the Supreme Court.¶ But more steps are needed to put the NSA under credible tactical oversight. Its internal procedures are better suited to detecting activities such as inadvertent and incorrect surveillance targeting than they are to detecting people who deliberately circumvent surveillance controls, either individually or for the organization as a whole. To rectify this, an external auditor is essential. Making government officials personally responsible for overreaching and illegal behavior is also important. Not a single one of those NSA LOVEINT snoops was fired, let alone prosecuted. And Snowden was rebuffed repeatedly when he tried to express his concern internally about the extent of the NSA's surveillance on Americans.¶ Other law enforcement agencies, like the FBI, have their own internal oversight mechanisms. Here, too, the more transparency, the better. We have always given the police extraordinary powers to investigate crime. We do this knowingly, and we are safer as a society because of it, because we regulate these actions and have some recourse to ensure that the police aren't abusing them. We can argue about how well these are working in the US and other countries, but the general idea is a sound one.

Ext. Terror Net Benefit

The CP doesn't decrease domestic surveillance, clearly we don't link to the Terror DA.

CP resurrects the TSP- solves terror attacks

Sessions, 5/20/15 (Jeff, Senator from Alabama, former practicing attorney in Russellville, Alabama, United States Attorney for Alabama's Southern District, a position he held for 12 years. Sessions was elected Alabama Attorney General in 1995, serving as the state's chief legal officer until 1997, when he entered the United States Senate; "Why Should Terrorists Be Harder to Investigate than Routine Criminals?"; http://www.nationalreview.com/article/418675/why-should-terrorists-be-harder-investigate-routine-criminals-jeff-sessions)//JPM

The 9/11 attacks exposed the dangerous wall separating the intelligence and law-enforcement communities. In response, Congress developed a number of tools to eliminate those barriers so that critical information could be timely and appropriately shared to address radical Islamic terrorism. Among them was Section 215 of the USA Patriot Act.¶ In 2006, the National Security Agency transitioned the bulk telephone-metadata acquisition program authorized under **the president's Terrorist Surveillance Program** to the business-records court-order authority of Section 215**. Since shortly after 9/11, this program has been helping to keep Americans safe by acquiring non-content call records, i.e., telephone numbers and the date, time, and duration of a call. This program has yielded invaluable intelligence that has helped prevent attacks and uncovered terrorist plots.**

The TSP in its current form (PRISM) **won't stop attacks – a revival of the original program is needed**

Taylor, 13 (Robert, writer for PolicyMic; 7/19/13; "PRISM Probably Never Stopped — and Never Will Stop — a Terrorist Attack"; http://mic.com/articles/49449/prism-probably-never-stopped-and-never-will-stop-a-terrorist-attack)//JPM

Thanks to NSA whistleblower Edward Snowden, we now know many of the dirty details behind the U.S. government's surveillance programs and the creation of a vast surveillance and data storage system.¶ Not only has Snowden helped further unturn the rock of secrecy behind these surveillance programs but his revelations and leaks have helped spark the debate about the proper balancing of freedom and security. If we are to supposedly accept these unprecedented powers and violations of civil liberties, does this type of mass surveillance at least actually keep us safe?¶ While the official party line, repeated ad nauseum, is that the NSA surveillance program has helped stop "dozens" of terrorist attacks, a closer look at the claims made by the White House and the program's defenders cast serious doubt about the program's actual effectiveness.¶ In a recent congressional hearing, Senators Mark Udall and Ron Wyden released a joint statement calling on NSA head General Keith Alexander — "Emperor Alexander" of the covert national security state — to be more forthcoming about the surveillance program. The senators argue that the attacks Alexander claims were thwarted "appear to have been identified using other collection methods. The public deserves a clear explanation." They also could have been one of the FBI's many, many "terrorism" sting operations.¶ Washington's Blog cites numerous sources — including an NSA veteran, Fortune Management, Wired, and constitutional and military law expert Jonathan Turley — which show that the NSA PRISM program, and other Orwellian surveillance programs, are useless and ineffective,

resulting in false information and are actually hindering the process of good police work and intelligence gathering. It didn't stop the Boston Bombing or 9/11 either.¶ Apparently the more eyes Big Brother has, the less he actually sees. The surveillance state is, after all, a massive centrally-planned government bureaucracy so one shouldn't be surprised by incompetence. Do we really want to entrust the government this type of surveillance power "to keep us safe" when it doesn't even know who it's killing with drone strikes?

Ext. Politics Net Benefit

Blanket immunity provisions unpopular in Congress

McGarity et al 13 (Thomas O., CPR Member Scholar, Prof. at UT, Editor of the Texas Law Review, leading scholar in the fields of both administrative law and environmental law; Sidney A. Shapiro, Prof. Law at Wake Forest, Frank U. Fletcher Chair of Administrative Law; Nicholas Vidargas, former Policy Analyst with the Center for Progressive Reform, honors attorney fellow at the U.S. Environmental Protection Agency, Region 9, Office of Regional Counsel, in San Francisco, where he worked on enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act and on Clean Water Act rulemaking, and where he initiated the first enforcement action under the Clean Air Act General Duty Clause in Region 9, Stanford University Grad; March 2013; "Sweeping Corporate Immunity¶ for the Fuel Industry:¶ The Next Front in the¶ 'Corporate Accountability' Wars"; http://www.progressivereform.org/articles/Corporate_Immunity_Fuel_Industry_1303.pdf)//JPM

The latest battle in the corporate accountability wars is an effort to persuade Congress to¶ grant blanket immunity to entire industries that might face litigation for defective products¶ or corporate negligence that endangers human health, imperils the environment, and¶ damages private property. The concept of sweeping corporate immunity from state tort law¶ – a twisted cousin of federal preemption legislation that also dismisses the rights of victims of¶ corporate negligence – was born in response to the hugely successful tobacco litigation of the¶ 1980s and 1990s, and later attempts at comprehensive litigation against gun manufacturers¶ and the fast food industry.

Blanket immunity provisions specifically unpopular in Congress- Specter and Feinstein

Nakashima, 07 (Ellen, writer for The Washington Post, national security reporter for The Washington Post. She focuses on issues relating to intelligence, technology and civil liberties. She previously served as a Southeast Asia correspondent for the paper. She wrote about the presidential candidacy of Al Gore and co-authored a biography of Gore, and has also covered federal agencies, Virginia state politics and local affairs. She joined the Post in 1995; Nov. 1, 2007; "Roadblock for Telecom Immunity"; http://www.washingtonpost.com/wp-dyn/content/article/2007/10/31/AR2007103103126.html)//JPM

In a blow to the Bush administration, the Senate Judiciary Committee's top Democrat and Republican expressed reluctance yesterday to granting blanket immunity to telecommunications carriers sued for assisting the government's warrantless surveillance program.¶ Committee Chairman Patrick J. Leahy (D-Vt.) and the ranking Republican, Sen. Arlen Specter (Pa.), had said that before even considering such a proposal, they would need to see the legal documents underpinning the program, which began after Sept. 11, 2001, and were put under court oversight in January.¶ On Tuesday, the committee was given access to some of the documents. But Leahy said yesterday that he had a "grave concern" about blanket immunity, saying that "it seems to grant . . . amnesty for telecommunications carriers for warrantless surveillance activities."¶ The activities seem to be "in violation of the privacy rights of Americans" and of federal domestic surveillance law, he said, noting that he is still "carefully considering" what is in the documents.¶ The immunity provision sought by the White House would wipe out about 40 lawsuits that accuse AT&T, Verizon Communications and Sprint Nextel of invading Americans' privacy and constitutional rights by assisting the government in domestic surveillance without a warrant.¶ The Senate intelligence committee approved the provision two weeks ago as part of a larger bill to amend the Foreign Intelligence Surveillance Act, which governs some aspects of domestic surveillance. The Judiciary Committee will take up the bill next.¶ Immunity "is designed to shield this administration from accountability for conducting surveillance outside the law," Leahy said. Dismissing the lawsuits would eliminate "perhaps the only avenue" for "an honest

assessment" of the legality of the warrantless surveillance program, he said.¶ Specter agreed that the "courts ought not to be closed" to such lawsuits. "If, at this late date, the Congress bails out whatever was done before -- and we can't even discuss what has been done -- that is just an open invitation for this kind of conduct in the future," he said.¶ Specter added that he thinks the carriers "have a strong, equitable case" but that his inclination is toward indemnification, where the government would assume any financial penalties.¶ Sen. Dianne Feinstein (D-Calif.) said the immunity provision was one of "two big issues" she had with the bill, and she suggested that limiting damages might be an alternative. She noted that the lawsuits could cost carriers as much as $30 billion in penalties -- a problem if taxpayers were to pick up the tab.¶ Assistant Attorney General Kenneth L. Wainstein told the committee that immunity was a question of "fairness" for the carriers. He also said that proceeding with the cases risks the divulgence of classified information. The government has invoked a claim of state secrets to stop the litigation. "If we don't prevail with state secrets," Wainstein said, "then there's no guarantee that that information is not going to get out. In fact, even just the filing of lawsuits and the allegations made can actually end up . . . compromising sensitive sources and methods."

Blanket amnesty for telecommunications companies are unpopular in Congress- Blue America lobby

Klein, 08 (Howie, writer for HuffPo; 7/18/2008; "Blue America Thanks Some Of The Patriots Who Stood Up For The Constitution"; http://www.huffingtonpost.com/howie-klein/blue-america-thanks-some_b_111919.html)//JPM

"The House of Representatives, with the support of Republican Scott Garrett, recently passed a bill that would grant President Bush and future administrations unprecedented powers to spy on American citizens without a warrant or review by any judge or court. The new law would also let our nation's largest telecom companies off the hook for knowingly violating the law and releasing their customers' private information at the behest of George Bush.¶ "Our constitutional right to protection against unsupervised searches was written into our Bill of Rights for good reason by Founders whom we rightly celebrate.¶ "Neither President Bush nor Scott Garrett are as wise as James Madison.¶ "It is unfortunate that it appears that the telecom industry has managed to falsely conflate its quest for retroactive immunity for lawbreaking with the issue of national security. The Founding Fathers understood that our safety as a nation depended on our being a nation of laws. Retroactive immunity undermines the rule of law, and therefore undermines our principles and security as a nation.¶ "The President, his advisers, and his rubber stamps in Congress, including Scott Garrett, have demonstrated a pattern of disregard for the laws of the United States. This bill not only immunizes telecom companies from lawsuits, but it would also block the American people from ever knowing the full extent of the Bush Administration's illegal behavior.¶ "I urge my fellow Democrats in the Senate to vote against this unnecessary and deeply troubling law.¶ "I believe that Congress must protect the rights of citizens and the laws of our country from career politicians in Washington too willing to cave to special interests and endanger the fundamental rights that we, as Americans, hold so dear."¶ State Senator Andrew Rice (D-OK) is running a strong campaign against one of the most extremist members of the U.S. Senate, James Inhofe, who raked in $12,550 from the Telecoms this year and was determined to grant them retroactive immunity -- and positively giddy about giving the government the right to listen in to all phone conversations and read all e-mails without a court order. Andrew disagrees -- strongly:¶ "Congress must remain vigilant in order to protect Americans from another terrorist attack. However, the bill that is before Congress this week bargains away the privacy of law-abiding American citizens while protecting the companies that allegedly participated in the President's illegal

wiretapping program. The Senate should stick to the narrow fix it set out to accomplish by making it clear that the government does not have to obtain a warrant to listen to foreign-to-foreign communications. Instead, this bill allows a significant expansion of the Foreign Intelligence Surveillance Act so that government can eavesdrop on the international communications of innocent American citizens. Since losing my brother on 9/11, I have vowed to improve America's anti-terrorism capability without sacrificing the freedoms that so many Americans have died to protect."¶ Rick Noriega is running in that big ole state just south of Oklahoma. His opponent, rubber stamp corporate shill John Cornyn has taken $15,250 from the Telecom industry this year and he is as eager as Inhofe to grant them retroactive immunity. Rick has thought about the issue more seriously and from a different perspective than just helping out campaign contributors.¶"Many times throughout my lifetime I have sworn an oath to protect and defend the Constitution of the United States . This isn't a part-time Constitution. We as a nation cannot grant anyone sweeping amnesty if they break the rules. It's appalling that my opponent, John Cornyn, puts his special interest campaign contributors ahead of the Constitution. Texans have had enough.¶Americans will not accept an abuse of power, and they will not accept corporations getting away with breaking the law.¶ We already have a law in place that balances national security concerns while adhering to the Constitution. This is not the time to compromise the privacy of the American people and not the time to disregard the Constitution of United States. I regret that the Senate has voted this way."¶Jim Himes is standing firmly with his state's senior senator, Chris Dodd on this issue. Fake moderate Chris Shayes is once again eager to rubber stamp the Bush-Cheney agenda, somehow trying to say that granting Bush the ability to wiretap all American citizens without a court order makes us "safe." Jim sees right through that craven, partisan posturing:¶ "In Congress, I will always stand up for the fundamental American belief that no man, and no corporation, is above the law. As always, this is a matter for the courts to decide-- not for Congress, and absolutely not for the same Bush Administration who may have violated the law in the first place. It is great to see so many American citizens of all backgrounds coming together to stand up for the rule of law and in opposition to retroactive immunity for telecommunications companies who may have illegally spied on American citizens at the Bush Administration's request. I am disappointed that Chris Shays and so many others continue to stand with President Bush by refusing to stand up for this most fundamental of American principles."¶ Jon Tester (D-MT) was a populist underdog who ran for the Senate in 2006 against an Insider Democrat backed by Chuck Schumer and the Beltway Establishment. He beat him in the primary, beat an entrenched Republican incumbent in November and has gone on to represent the interests of regular Montana folks in DC. His statement about the this fight was an inspiration and may well have influenced his Montana colleague: "It deals with the freedoms that so many people have fought and died for. If we want to get serious about the War on Terror, we need to make the investments to fight the war on terror. We ought not be taking rights away from honest citizens. If we've got terror cells around the world, then let's invest in human intelligence. Let's invest in our Special Forces. Let's go after 'em, and let's be serious, and not get sidetracked by Iraq. Right now, we're taking rights away from honest people. If they think you fall into their list, you're a target. By the time they figure out there's a terror cell, they can get a warrant.... The government ought not be taking away our freedoms."¶ Darcy Burner is running against a corporate hack and rubber stamp in Washington, Dave Reichert, who is all about rewarding his corporate donors with retroactive immunity. Reichert took $6,000 for the Telecoms so far this year and thinks they should not be accountable for crimes they may have committed. Darcy has been one of the most outspoken opponents of this bill; watch the 30 second video. After the bill passed in the House, she didn't despair; she start rallying for action:¶ Like many of you, I'm incredibly disappointed with today's vote on retroactive immunity for the telecommunications companies. I've made my position on this issue very clear, and I've been happy to be fighting to ensure that we uphold the Constitution through all of this. But the real question is what we do going forward. We need to make sure that we elect people to Congress who are going to defend the Constitution

--A2: Sqou Solves

Blanket immunity and the other problems of the 2008 FAA exist in the sqou

Byellin, 7/10/15 (Jeremy, attorney practicing in the areas of family law and estate planning; "Today in 2008: the FISA Amendments Act of 2008 are signed into law; http://blog.legalsolutions.thomsonreuters.com/legal-research/today-in-2008-the-fisa-amendments-act-of-2008-are-signed-into-law/#sthash.eBlylnoM.dpuf)//JPM

The U.S. Government's mass surveillance programs have become increasingly visible to the public over the past several years, thanks in part to disclosures by parties such as Wikileaks and Edward Snowden. Just because the public is more aware of these programs doesn't mean that they have stopped operating, or that the laws purported to authorize them aren't still fully in effect.¶ In fact, one such law, the FISA Amendments Act of 2008, is marking the seventh anniversary of its enactment and has since that time even survived a Supreme Court challenge. The amendments, signed into law by President George W. Bush on July 10, 2008, provide a slew of tools to further facilitate the operation many of these surveillance programs.¶ For example, the act releases telecommunication companies from any legal liability for furnishing information to or otherwise assisting the "Attorney General or the Director of National Intelligence." Furthermore, the act prevents the states from investigating or requiring disclosure from telecommunication companies over any such assistance provided to the federal government.¶ Beyond protecting telecoms, the act also allows the government to destroy any records of the searches and surveillance it performs, whereas government agencies are normally required to retain records for a period of ten years.¶ While the act allows for the surveillance of foreigners who are abroad, most pertinent to the surveillance of U.S. citizens, the Amendments Act authorizes the wiretapping of Americans who are also overseas. These last two provisions were the primary subject of the aforementioned Supreme Court case challenging the act's constitutionality: 2013's Clapper v. Amnesty International.¶ In Clapper, a group of attorneys with clients who have faced or are facing terrorism charges, a group of journalists, and a human rights organization (Amnesty International), all sued challenging the constitutionality of the amendments, claiming that they all engaged and continue to engage in sensitive communications with individuals believed to be the target of surveillance under the act.

The CISA* bill will maintain sqou blanket immunity and government overreach – only the CP checks

*The CISA bill has been introduced but not passed the Senate or House

-The argument is that even though it's marketed as a cyber security bill, it's really more of a surveillance bill, so if the opponent asks you why it's relevant say that

Jaycox, 3/19/15 (Mark, Legislative Analyst for EFF, educated at Reed College, spent a year abroad at the University of Oxford (Wadham College), and concentrated in Political History, Former legislative research assistant for Lexis Nexis; "Senate Intelligence Committee Advances Terrible ~~"Cybersecurity" Bill~~ Surveillance Bill in Secret Session"; https://www.eff.org/deeplinks/2015/03/senate-intelligence-committee-advances-terrible-cybersecurity-bill-surveillance)//JPM

The Senate Intelligence Committee advanced a terrible cybersecurity bill called the Cybersecurity Information Sharing Act of 2015 (CISA) to the Senate floor last week. The new chair (and huge fan of transparency) Senator Richard Burr may have set a record as he kept the bill secret until

Tuesday night. Unfortunately, the newest Senate Intelligence bill is one of the worst yet.¶ Cybersecurity bills aim to facilitate information sharing between companies and the government, but their broad immunity clauses for companies, vague definitions, and aggressive spying powers make them secret surveillance bills. CISA marks the fifth time in as many years that Congress has tried to pass "cybersecurity" legislation. Join us now in killing this bill.¶ The newest Senate Intelligence bill joins other cybersecurity information sharing legislation like Senator Carper's Cyber Threat Sharing Act of 2015. All of them are largely redundant. Last year, President Obama signed Executive Order 13636 (EO 13636) directing the Department of Homeland Security (DHS) to expand current information sharing programs. In February, he signed another Executive Order encouraging regional cybersecurity information sharing and creating yet another Cyber Threat Center. Despite this, members of Congress like Senators Dianne Feinstein and Richard Burr continue to introduce bills that would destroy privacy protections and grant new spying powers to companies.¶ New Countermeasures and Monitoring Powers¶ Aside from its redundancy, the Senate Intelligence bill grants two new authorities to companies. First, the bill authorizes companies to launch countermeasures (now called "defensive measures" in the bill) for a "cybersecurity purpose" against a "cybersecurity threat." "Cybersecurity purpose" is so broadly defined that it means almost anything related to protecting (including physically protecting) an information system, which can be a computer or software. The same goes for a "cybersecurity threat," which includes anything that "may result" in an unauthorized effort to impact the availability of the information system.¶ Even with the changed language, it's still unclear what restrictions exist on "defensive measures." Since the definition of "information system" is inclusive of files and software, can a company that has a file stolen from them launch "defensive measures" against the thief's computer? What's worse, the bill may allow such actions as long as they don't cause "substantial" harm. The bill leaves the term "substantial" undefined. If true, the countermeasures "defensive measures" clause could increasingly encourage computer exfiltration attacks on the Internet—a prospect that may appeal to some "active defense" (aka offensive) cybersecurity companies, but does not favor the everyday user.¶ Second, the bill adds a new authority for companies to monitor information systems to protect an entity's hardware or software. Here again, the broad definitions could be used in conjunction with the monitoring clause to spy on users engaged in potentially innocuous activity. Once collected, companies can then share the information, which is also called “cyber threat indicators,” freely with government agencies like the NSA.¶ Sharing Information with NSA¶ Such sharing will occur because under this bill, DHS would no longer be the lead agency making decisions about the cybersecurity information received, retained, or shared to companies or within the government. Its new role in the bill mandates DHS send information to agencies—like the NSA—"in real-time." The bill also allows companies to bypass DHS and share the information immediately with other agencies, like the intelligence agencies, which ensures that DHS's current privacy protections won’t be applied to the information. The provision is ripe for improper and over-expansive information sharing.¶ Overbroad Use of Information¶ Once the information is sent to any government agency (including local law enforcement), it can use the information for reasons other than for cybersecurity purposes. The provisions grant the government far too much leeway in how to use the information for non-cybersecurity purposes. The public won’t even know what information is being collected, shared, or used because the bill will exempt all of it from disclosure under the Freedom of Information Act.¶ In 2012, the Senate negotiated a much tighter definition in Senator Lieberman's Cybersecurity Act of 2012. The definition only allowed law enforcement to use information for a violation of the Computer Fraud and Abuse Act, an imminent threat of death, or a serious threat to a minor. The Senate Intelligence Committee's bill—at the minimum—should've followed the already negotiated language.¶ Near-Blanket Immunity¶ The bill also retains near-blanket immunity for companies to monitor information systems

and to share the information as long as it's conducted according to the act. Again, "cybersecurity purpose" rears its overly broad head since a wide range of actions conducted for a cybersecurity purpose are allowed by the bill. The high bar immunizes an incredible amount of activity. Existing private rights of action for violations of the Wiretap Act, Stored Communications Act, and potentially the Computer Fraud and Abuse Act would be precluded or at least sharply restricted by the clause**. It remains to be seen why such immunity is needed when just a few months ago, the FTC and DOJ noted they would not prosecute companies for sharing such information.** It's also unclear because we continue to see companies freely share information among each other and with the government both publicly via published reports, information sharing and analysis centers, and private communications.

--A2: Circumvention

CP avoids circumvention- civil justice system

McGarity et al 13 (Thomas O., CPR Member Scholar, Prof. at UT, Editor of the Texas Law Review, leading scholar in the fields of both administrative law and environmental law; Sidney A. Shapiro, Prof. Law at Wake Forest, Frank U. Fletcher Chair of Administrative Law; Nicholas Vidargas, former Policy Analyst with the Center for Progressive Reform, honors attorney fellow at the U.S. Environmental Protection Agency, Region 9, Office of Regional Counsel, in San Francisco, where he worked on enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act and on Clean Water Act rulemaking, and where he initiated the first enforcement action under the Clean Air Act General Duty Clause in Region 9, Stanford University Grad; March 2013; "Sweeping Corporate Immunity¶ for the Fuel Industry:¶ The Next Front in the¶ 'Corporate Accountability' Wars"; http://www.progressivereform.org/articles/Corporate_Immunity_Fuel_Industry_1303.pdf)//JPM

The civil justice system not only serves as a backstop for federal regulation, it supports¶ federal regulation and makes it more effective. Professor Thomas McGarity describes the¶ informational interactions between regulatory agencies and the courts as "feedback loops ...¶ in which each institution draws on information, experience and different incentives of the¶ other."62 Immunity legislation eliminates this possibility that the civil justice system will¶ make the regulatory system more effective.¶ As a result of tort actions, Congress is informed of problems in the regulatory system.¶ Consider, for example, how the civil justice system prompted legislation and regulation¶ in response to the Ford Explorer/Firestone tire problem. In 2000, Congress passed the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act,¶ which required NHTSA to develop a new system for gathering and analyzing reports¶ of tire, equipment, and motor vehicle defects.63 Regulatory agencies obtain technical data,¶ analyses of the state of the science from the relevant literature, and other information¶ that can inform subsequent regulatory decisions. At the same time, the courts look to the¶ agencies for analysis of the risks and benefits of regulated products, as well as regulatory¶ standards that can factor into decisions about whether regulated parties have met their duty¶ of care. Feedback loops "have unquestionably improved the quality of decision-making¶ in both institutions."64¶ Immunity legislation destroys the feedback loop, unwisely limiting the useful information¶ that is obtained from the tort system. Tort claims filed in state courts are a primary source¶ of information for agencies about potential holes or gaps in the regulatory protection system.¶ Simply by virtue of a claim having been filed, the tort system provides signals that defects¶ may exist or existing safety standards may be inadequate. "The availability of damages in state¶ tort lawsuits can give injured citizens the incentive to come forward and share potentially¶ valuable information."65¶ At each successive step in the litigation process, tort suits provide additional opportunities¶ for the development of information that could be useful to federal agencies.66 Pre-trial¶ discovery can turn up technical data about the risks posed by a product or practice.¶ The discovery process can also uncover useful information about decisions made¶ by manufacturers concerning safety and environmental decisions, thereby adding a level¶ of public accountability. Regulatory agencies may also be informed by expert testimony¶ given in discovery or at trial when the testimony is bolstered by the experts' analysis of the¶ state of the science. In addition, expert analysis of the specific facts that give rise to tort¶ claims sheds light on how injuries actually occur in the real world.67 Finally, jury decisions,¶ whether in favor of injured plaintiffs or manufacturer defendants, provide insight about¶ evolving social norms, information that can be useful to agencies when they analyze¶ the potential impacts of proposed regulations.¶ Immunity legislation would destroy this vital source of information about corporate¶ misconduct in areas subject to the immunity shield. Attorneys for the plaintiffs in the¶ MTBE litigation, for example, uncovered dozens of "smoking gun" documents showing¶ that the petroleum companies knew full well that MTBE was contaminating groundwater,¶ that it caused that water to be unfit for drinking, and that they had not disclosed information¶ to EPA. If Congress passes the DFA, there will be no civil justice actions to ferret out¶ evidence of corporate misconduct relating to ethanol and future fuel additives.¶ Adequate protection of public health depends on the continued existence of state common¶ law as a complement to federal regulation. Common law has a unique

ability to provide¶ corrective justice and is a useful way to fill regulatory gaps caused by outdated or imperfect¶ regulation. States have traditionally enjoyed primary authority to protect the health, safety,¶ and welfare of their citizens. Federal immunity legislation such as sweeping fuel immunity¶ efforts weaken this fundamental principle of American government in a simplistic effort¶ to relieve corporate defendants of liability for producing dangerous products.

---A2: Companies Protected under SSD

Federal judges agree- SSD doesn't stop the telecom. Industry from presenting defenses in courts

EFF, 2008 (Electronic Frontier Foundation, leading nonprofit organization defending civil liberties in the digital world; 2008; "Archive: The Case Against Retroactive Amnesty for Telecoms"; https://www.eff.org/pages/case-against-retroactive-amnesty-telecoms)//JPM

The federal judge who is considering all of the lawsuits against communications carriers has already held that the common law state secrets privilege does not prevent phone companies like AT&T from presenting their defenses to the court, in camera and ex parte. To the extent that Congress wants to ensure this result, EFF urges Congress to clarify that FISA's existing security procedures, codified at 18 USC §1806(f), already permit defendants in the pending cases to present all relevant evidence in their defense. EFF has shared such draft language with key Members of Congress and staff.

---A2: President has the Authority

Judicial branch checks the executive – simple checks and balances

EFF, 2008 (Electronic Frontier Foundation, leading nonprofit organization defending civil liberties in the digital world; 2008; "Archive: The Case Against Retroactive Amnesty for Telecoms"; https://www.eff.org/pages/case-against-retroactive-amnesty-telecoms)//JPM

The courts should be allowed to determine whether the President has exceeded his powers by obtaining wholesale access¶ to the domestic communications of millions of ordinary Americans from AT&T and the other communications companies,¶ based on the claim that Article II of the Constitution and the Authorization for Use of Military Force in Afghanistan allowed¶ both the President and the companies to ignore the Fourth Amendment, FISA, and multiple other privacy statutes.

---A2: Common Law Doctrines Shield Defendants

Common law doesn't overrule specific Congressional rules like Blanket Amnesty

EFF, 2008 (Electronic Frontier Foundation, leading nonprofit organization defending civil liberties in the digital world; 2008; "Archive: The Case Against Retroactive Amnesty for Telecoms"; https://www.eff.org/pages/case-against-retroactive-amnesty-telecoms)//JPM

Generally in law, common law immunities do not trump specific legal duties imposed by statute, such as the specific statutory¶ duties Congress has long imposed on telecommunications companies to protect their customer's privacy and records. Specifically,¶ in the pending case against AT&T, the judge – consistent with this venerable hierarchy of legal authority – already¶ has ruled unequivocally that: "AT&T cannot seriously contend that a reasonable entity in its position could have believed that¶ the alleged domestic dragnet was legal." Even so, the communications company defendants can and should have the opportunity¶ to present these defenses to the courts, and the courts – not Congress preemptively – should decide whether they are¶ sufficient. Again, the court should decide.

---A2: Hurts Companies Reputation/Consumer Base

Won't hurt companies- risk already exists, no empirics

EFF, 2008 (Electronic Frontier Foundation, leading nonprofit organization defending civil liberties in the digital world; 2008; "Archive: The Case Against Retroactive Amnesty for Telecoms"; https://www.eff.org/pages/case-against-retroactive-amnesty-telecoms)//JPM

There is no evidence that this litigation has or will reduce the defendant companies' bottom lines or customer base, and¶ vague assertions that the pending litigation might result in "reputational" damage to the defendant companies is utterly¶ belied by the facts. Despite nearly two years of very public litigation in which AT&T has lost motions at every turn, AT&T¶ just announced record profits for the third quarter of 2007: a 41% increase over the previous year. AT&T publicly attributed¶ its success to signing a record number of new customers. As to possible threats faced by the companies and their personnel¶ here and abroad, permitting the litigation to proceed will not increase such risk as already may exist. Ironically, telecommunications¶ companies' recent hand-in-glove participation in national security surveillance has been perhaps most¶ effectively broadcast around the globe by the Administration, including statements by the Director of National Intelligence,¶ along with other senior Bush Administration officials. Silencing the pending suits will not expunge these admissions from¶ the public record. Further, it strains credulity to suggest that the foreign enemies of the nation have not been aware for¶ decades of this obviously necessary partnership

---A2: Legal In-Roads Check

The attorney general's check on blanket amnesty is a rubber stamp

Single, 08 (Ryan, blogger and journalist covering tech business, tech policy, civil liberty and privacy issues. His work has appeared extensively in Wired.com, and Singel co-founded the Threat Level blog; 6/19/08; "Dems Agree to Expand Domestic Spying, Grant Telecoms Amnesty"; http://www.wired.com/2008/06/dems-agree-to-e/)//JPM

Under the longstanding rules of the Foreign Intelligence Surveillance Act, the government was free to engage in dragnet wiretapping outside the United States, but in order to tap communications inside the country, the government needed court approval and individualized warrants if an American's communications would be caught.¶ Additionally, the bill grants amnesty to the nation's telecoms that are being sued for allegedly breaking federal wiretapping laws by turning over billions of Americans' call records to government data-mining programs and giving the government access to internet and phone infrastructure inside the country. The bill strips the right of a federal district court to decide whether the companies violated federal laws prohibiting wiretapping without a court order.¶ Instead, the attorney general would need only certify to the court either that a sued company did not participate, or that the government provided some sort of written request to the companies that said that the president authorized the program and that his lawyers deemed it to be legal. That would be presented to federal district court Judge Vaughn Walker, who is overseeing the more than 40 consolidated cases against the telecoms. Walker's authority would be limited to judging whether the preponderance of the evidence is that the companies did get a written request, and if he finds that to be true – as the Senate Intelligence Committee has already publicly stated – he must dismiss the cases.¶ That's immunity, and it's unconstitutional, according to the ACLU's Caroline Fredrickson.¶ "The telecom companies simply have to produce a piece of paper we already know exists, resulting in immediate dismissal," Fredrickson said in a written statement. "That's not accountability. Loopholes and judicial theater don't do our Fourth Amendment rights justice."¶ Hoyer, under pressure from so-called Blue Dog Democrats wanting to avoid being labeled soft on terrorism in the fall campaigns, justified the bill as a necessary compromise.¶ "It is the result of compromise, and like any compromise is not perfect, but I believe it strikes a sound balance," Hoyer said in a press release announcing the deal.¶ That's a significant change for Hoyer, who in March in a House floor speech opposed blanket immunity, saying "I submit that a reasonable — responsible — Congress would not seek to immunize conduct without knowing what conduct or misconduct it is immunizing."¶ The bill itself oddly admits that the government's surveillance activities included more than the previously admitted "Terrorist Surveillance Program." That program, admitted by the president after The New York Times revealed it in December 2005, targeted Americans to intercept their international phone calls and e-mails without getting court approval. In a provision authorizing an oversight investigation, the bill refers to the "President's Surveillance Program," of which the so-called TSP was just one part.¶ That all but confirms what many have reported and suspected: that there was much more unilateral surveillance than the president or his lawyers have ever admitted.

State Courts Counterplan – HJPV

1nc

Text: The Fifty United States State Supreme Courts should <plan>

That solves the aff – state courts can interpret the constitution and sufficiently check expansive domestic surveillance

Gardner '03 --- professor of law @ State University of New York (James A, "State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions," Georgetown Law Journal, June 2003, 91 Geo. L.J. 1003)//Mnush

When we think about tyranny perpetrated by the national government, we tend to think about rights-invasive congressional measures, such as the Alien and Sedition Acts of 1798, n143 or presidential high-handedness, such as the military internment of Japanese-Americans during World War II n144--abuses, that is to say, by the legislative and executive branches. But liberty can also be abused by the judicial branch, most notably when federal courts refuse to acknowledge and protect individual rights. Abusively stingy readings of the U.S. Constitution not only may deny litigants their rights in individual cases, but generally also authorize other organs of government to invade liberties that they should be required to respect. While a state might combat this brand of judicial tyranny by invoking any of the forms of resistance mentioned earlier, state courts are especially well-suited to play a role in resisting abuse of national judicial power, and to do so through entirely peaceful and fully legal means. A powerful weapon state courts may wield in such a struggle is their authority to interpret state constitutions to provide more generous protection for individual rights than the U.S. Supreme Court has chosen to provide under the national Constitution.

2nc Solvency – General

State court interpretation of the constitution resists federal power and tyranny

Gardner '03 --- professor of law @ State University of New York (James A, "State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions," Georgetown Law Journal, June 2003, 91 Geo. L.J. 1003)//Mnush

Let me briefly review my argument. I have claimed to this point that state courts are capable of serving as agents of federalism. Should they occupy such a role, state courts would stand alongside the state executive and legislative branches when necessary by deploying judicial power for the purpose of resisting national tyranny. The principal tool that state courts possess to resist national power is their superintendency of the state constitution -that is, their power to interpret its provisions. State courts can wield this power against the national government by interpreting the state constitution both to assure vigorous, effective resistance to national power by the state executive and legislative branches, and to provide more protection for individual rights than does the national Constitution. Thus, my account of state judicial power is "functional" n280 in that it conceives of state judicial power as serving a distinct purpose in a complex federal system of overlapping powers and responsibilities. I have defended this account of state judicial power against strict constructionist theoretical objections, and I have shown that the actual record of state courts in resisting national power, supplemented by any of a range of reasonable assumptions about institutional constraints on judicial power, provides a sound basis for a state polity to invest its courts with a degree of trust or distrust that might reasonably vary across a broad range. This degree of trust or distrust in turn prompts a state polity to charge its courts-or not to charge them, or to charge them only to some limited degree, as the case may be-with serving as agents of federalism.

State courts, specifically those as agents of federalism are best at securing liberty

Gardner '03 --- professor of law @ State University of New York (James A, "State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions," Georgetown Law Journal, June 2003, 91 Geo. L.J. 1003)//Mnush

In contrast, courts that have been authorized to serve as strong agents of federalism will have been given a special kind of institutional responsibility to oversee the state constitution for the purpose of assuring that it serves as an effective charter for the deployment of state power to resist invasions of liberty by the national government. Judges who possess this responsibility would then have some degree of freedom to consult their own views about how state power and effective state public policy can best be structured and deployed to serve the protection of liberty. Courts operating under such instructions would thus be authorized, in appropriate circumstances, to engage in a comparatively open, free-wheeling kind of constitutional interpretation n281 that might more closely resemble the process of state common-law adjudication than it would th

e strict originalism to which their distrusted counterparts would be confined. n282 The state polity would still retain ultimate responsibility for the content of the state constitution, but [*1798] this responsibility would in all likelihood be exercised infrequently, and invoked for the most part to correct judicial interpretations of the constitution that stray too far afield from the rough plan of state self-governance contemplated by the state polity.

2nc Solvency – Aerial Surveillance

The state courts should restrict domestic drone use

Hudson 2/1 --- professor of law @ Vanderbilt University (David L, "How should states regulate drones and aerial surveillance?" ABA Journal, February 1st, 2015, http://www.abajournal.com/magazine/article/how_should_states_regulate_drones_and_aerial_surveillance/)//Mnush

One question that may arise from drone regulation is the difference between state and federal privacy protection. For example, the New Mexico Court of Appeals interpreted the state constitution as more protective of privacy than the U.S. Constitution. "**It would be better for states to legislate in this area**," says Vacek. "Perhaps we will have a conflict that could eventually wind up before the U.S. Supreme Court. Current Supreme Court law says surveillance from the public airspace is OK. **But the court could provide a different answer with respect to drones.**" Adds Chemerinsky: "It is unclear how the Fourth Amendment applies to drones. The technology is too new for the courts to have ruled." In Florida v. Riley, the Supreme Court ruled in 1989 that the police may use low-flying aircraft to gather information without a warrant or probable cause. The court said that this was not a search within the meaning of the Fourth Amendment, Chemerinsky says. "If the court follows this with regard to surveillance by drones, there would be no constitutional limit on their use." "Technology has outpaced law in this area," Whitehead says. "Traditional search warrants won't work with drones. They have the ability to hack into Wi-Fi and use scanning devices from airspace. They represent the essence of a surveillance-police state." Experts are still unclear how often drones are now being used. "We haven't been able to determine the amount of domestic drone use. Much of that information is confidential," Morris says. "Many police departments have bought drones and many of them are ramping up for their use in the future," he says. "I think the trend is going to continue. I don't know if I have ever seen such a hot-button issue with the public—as far as law enforcement surveillance with drones. People are really concerned about it." "Domestic drones are being used," says Whitehead. "We don't know how many, but we know that the Department of Homeland Security has used them and some police departments have used them. They will be used far more frequently in the near future." Whitehead is dubious about the future. "**The Fourth Amendment is on life support**," he asserts. "The [National Security Agency] is downloading 227 million text messages a day. This violates the Fourth Amendment. We have moved into a new paradigm. Many sci-fi movies are coming true. "Nearly every technology in the [2002] movie The Minority Report is available today. It's like those guys are prophets. By 2025 to 2030, we are going to be in a cyborg kind of reality. It sounds preposterous to most people, but it is reality."

The state courts should restrict aerial surveillance

Olivito '13 --- J.D. candidate @ Ohio State University (Jonathon, "Beyond the Fourth Amendment: Limiting Drone Surveillance Through the Constitutional Right to Informational Privacy," Ohio State Law Journal, June 26th, 2013, http://moritzlaw.osu.edu/students/groups/oslj/files/2013/12/8-Olivito.pdf)//Mnush

To remedy these privacy concerns, **courts should adjudicate cases involving drone surveillance under the constitutional right to informational privacy.** As already recognized by most courts applying the right, the constitutional right to privacy creates a right of action against the government.177 This right of action stands independent of the Fourth Amendment, augmenting the Fourth Amendment's protections rather than replacing them.

When courts confront the claim that drone surveillance has invaded an individual's constitutional right to privacy, courts should apply the following test. First, courts should require a claimant to establish a threshold requirement: that a government action has implicated a privacy interest. Once this threshold criterion is met, the court should engage in a balancing test that weighs the individual's privacy interests against the government's interests in conducting the challenged drone surveillance. Courts should consider five factors when applying the balancing test: (a) the duration of the surveillance; (b) the invasiveness of the technologies used; (c) the thoroughness of the surveillance; (d) the individualized nature of the surveillance; (e) and the presence of a warrant or probable cause. If the

individual's privacy interests outweigh the government's interests, then the court would, as a remedy, prohibit the government from storing, aggregating, transferring, or distributing any information gathered in the challenged surveillance. The court's remedy would apply both to any information that the government had already gathered and to information that the government might observe through the challenged drone surveillance in the future.179 The subsequent discussion elucidates the elements of this balancing test.

States solve aerial surveillance – most drone surveillance in the US is regulated by the states

Hudson 2/1 --- professor of law @ Vanderbilt University (David L, "How should states regulate drones and aerial surveillance?" ABA Journal, February 1st, 2015, http://www.abajournal.com/magazine/article/how_should_states_regulate_drones_and_aerial_surveillance/)//Mnush

States are taking notice and considering regulation. According to the National Conference of State Legislators, more than 20 states have passed laws related to drones. Some limit law enforcement's use of drones or other unmanned aircraft. For example, in Idaho, a law signed in 2013 provides that, except for emergencies "for safety, search-and-rescue or controlled substance investigations," no person or agency may use a drone to conduct surveillance of private property without a warrant. Tennessee has a similar law known as the Freedom from Unwarranted Surveillance Act. The law allows aggrieved individuals the right to sue law enforcement agencies in civil court for violations. It also provides that "no data collected on an individual, home or areas other than the target that justified deployment may be used, copied or disclosed for any purpose," and that such data must be deleted within 24 hours of collection. "The legislation doesn't eliminate the use of drones," says Austin, Texas-based attorney Gerry Morris, co-chair of the National Association of Criminal Defense Attorneys' Fourth Amendment Committee. They "require some sort of showing of probable cause. This is something that is constantly overlooked. Just because government officials are required to go get a warrant doesn't mean they won't be able to use the drones. It just means that they are required to follow the Constitution when they use them." However, in California, Gov. Jerry Brown vetoed a measure in September that would have required law enforcement to obtain a warrant for the vast majority of uses of drones. Brown claimed the bill, AB 1327, would put greater standards on law enforcement than those required by the U.S. and state constitutions. "AB 1327 would have been the first law in California to regulate drones," says constitutional law expert Erwin Chemerinsky, dean of the University of California at Irvine School of Law. "Drones may be a very valuable tool for investigation in some cases. Under AB 1327, the police still could use drones if they demonstrated to a judge that there was probable cause. I strongly favored AB 1327 and was very disappointed when Gov. Brown vetoed it." On the other hand, states have passed laws related to drones that fund the technology or encourage the development of testing sites. For example, the North Dakota legislature passed a law funding a drone test site. Legal experts believe that at some point courts will need to address the constitutionality of these measures and of law enforcement's use of the technology. "I do think more legislation is needed," Morris says. "I don't think the court opinions at this point have caught up with the technology. Legislators have to address the issue and get out in front of it." On the federal level, the 2012 Federal Aviation Administration Modernization and Reform Act governs the rules regulating drones' domestic use. "The FAA has the responsibility of drafting a set of rules for integrating unmanned aircraft systems into the airspace," says Joseph Vacek, a lawyer and aviation professor at the University of North Dakota. "It has taken more time than expected because there has been no industry consensus. I predict that by 2016 we will have the rules in place."

2nc Federal Follow-On

The Supreme Court models state court decisions ***do not read if going for a "court stripping" net benefit

Gardner '03 --- professor of law @ State University of New York (James A, "State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions," Georgetown Law Journal, June 2003, 91 Geo. L.J. 1003)//Mnush

State judicial rejection of excessively narrow Supreme Court precedents concerning the scope of individual rights helps check national power in at least four ways. First, whenever a state court dissents from the reasoning of a U.S. Supreme Court decision, it offers a forceful and very public critique of the national ruling, which can in the long run influence the formation of public and, eventually, official opinion on the propriety of the federal ruling. Second, state rulings that depart from or criticize U.S. Supreme Court precedents can contribute to the establishment of a nationwide legal consensus at the state level, a factor which the Supreme Court sometimes considers in the course of constitutional decision making. Third, generous state interpretations of individual rights can more directly check national power by prohibiting state and local governments from exercising authority permitted them under the U.S. Constitution to suppress certain kinds of private behavior. In so doing, state courts create spaces in which otherwise prohibitable behavior may flourish. Finally, rights-protective rulings by state courts can help ameliorate the harm to liberty caused by narrow national rulings by providing protection for second-best alternatives to the types of behavior that such national rulings permit governments to suppress.

AT//Bad Appointments

Fiat solves this…the ruling of the counterplan ensures that the state courts interpret the constitution in a way sufficient to solve their advantages.

The state courts are sufficiently independent

Gardner '03 --- professor of law @ State University of New York (James A, "STATE COURTS AS AGENTS OF FEDERALISM: POWER AND INTERPRETATION IN STATE CONSTITUTIONAL LAW," William & Mary Law Review, March 2003, 44 Wm. & Mary L. Rev. 1725)//Mnush

The trustworthiness of courts as guardians of liberty is usually defended on one of two grounds. The first is that courts are insulated from politics and basically unresponsive to popular sentiment. The other is that they are not. Has been applied most frequently to federal courts-though it is equally applicable to state courts that follow the national model-and is based upon the institutional arrangement under which federal judges are appointed rather than elected, and hold office for life. n166 The belief that unelected, politically unaccountable judges are the best guardians of liberty goes back as far as the founding, if not all the way back to Plato's Republic. n167 In a well-known essay, Alexander Hamilton argued that only an independent judiciary could be counted on to dispense justice, and that the necessary independence could be secured only by lifetime appointment. n168 "[J]udges who hold their offices by a temporary commission," Hamilton claimed, can hardly be counted on for "inflexible and uniform adherence to the rights of the Constitution." n169 On this view, the judiciary's lack of political accountability enables it to resist majoritarian pressure, n170 the very thing that makes it a reliable defender of liberty. Hamilton's [*1776] position dominated American political thought for the republic's first few decades: the first twenty-nine states admitted to the Union all created nonelective judiciaries on the national model. n171¶ Recent empirical studies provide some limited support for the intuition that electorally unaccountable judges will be more willing to defend liberty from popular passion than judges who must satisfy the voters to gain or retain office. One comparative study, for example, found that judges in nonelective state judicial systems are significantly more likely than their elected counterparts not only to hear challenges to controversial state laws but, when they hear them, to invalidate the laws. n172 Another study found that elected state judges are less likely to dissent in controversial cases when their constituents agree ideologically with the outcome of the case. n173

AT//Circumvention

State court rulings don't get circumvented

Gardner '03 --- professor of law @ State University of New York (James A, "State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions," Georgetown Law Journal, June 2003, 91 Geo. L.J. 1003)//Mnush

It is true, of course, that a more rights-protective state constitutional ruling cannot prevent federal FBI and DEA agents operating in the state from using the looser, federally authorized search practices. Nevertheless, the impact of the state ruling may be **considerable**. In most states, the likelihood that any person will come in contact with federal law enforcement officials is minuscule in comparison to the likelihood of contact with state or local police who **are subject to the restrictions of the state constitution**. n232 The state constitutional ruling, then, creates a space--a public sphere of potentially considerable scope--in which citizens of the state may enjoy a freedom from police searches that, in the view of the state polity, creates a more appropriate relationship between private conduct and official power.

AT//Dissent

People listen to state court rulings

Gardner '03 --- professor of law @ State University of New York (James A, "STATE COURTS AS AGENTS OF FEDERALISM: POWER AND INTERPRETATION IN STATE CONSTITUTIONAL LAW," William & Mary Law Review, March 2003, 44 Wm. & Mary L. Rev. 1725)//Mnush

It is certainly plausible-indeed, it is virtually certain-that the people of a state would wish to have a state government that is capable of fulfilling its role in the federal system as a potential check on national tyranny; that is why the national polity, of which each state polity is a part, adopted a constitutional system of federalism. If the state polity further believes that the judicial branch should stand alongside the executive and legislative branch when resistance to national authority becomes necessary, it is by no means inherently self-contradictory to ask whether the people might directly charge state courts with the responsibility to do what they can to make such resistance effective, including issuing facilitative interpretations of the state constitution. In these circumstances, state courts would not really be "using" the state constitution instrumentally, but "interpreting" it according to conventional understandings of positive constitutional law. Their method of interpretation would, to be sure, include in the inter-pretational mix a factor that plays no role in the federal judicial analysis, but state courts are not federal courts and their actions cannot necessarily be judged by the same criteria.

AT//Signal/Perception Solvency Deficits

State court rulings solve *better* than the Supreme Court – constitutional rejectionism influences the public's understanding of the constitution

Gardner '03 --- professor of law @ State University of New York (James A, "State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions," Georgetown Law Journal, June 2003, 91 Geo. L.J. 1003)//Mnush

Whenever a state's highest court, by constitutional ruling, recognizes a level of protection for individual rights that exceeds levels of protection for those rights established under parallel provisions of the national Constitution, it registers a forceful and often very public dissent from rulings of the U.S. Supreme Court. This kind of state constitutional rejectionism makes news--not merely among members of the bar or those who follow legal affairs, but in the mainstream press as well--and such publicity inevitably influences long-term public understandings of the appropriate content of constitutionally guaranteed rights.

AT//Supreme Court Key

State courts can check back national power

Gardner '03 --- professor of law @ State University of New York (James A, "STATE COURTS AS AGENTS OF FEDERALISM: POWER AND INTERPRETATION IN STATE CONSTITUTIONAL LAW," William & Mary Law Review, March 2003, 44 Wm. & Mary L. Rev. 1725)//Mnush

I think not. State law is capable of controlling something poten-tially significant to any struggle by states to resist national power: other state officials. Through their control over state law, and in particular through their control over the state constitution, state [*1731] courts are capable of exercising some influence over the manner and forcefulness with which state governments may wage the kinds of struggles against national authority contemplated by federalism. By construing the provisions of the state constitutions that both empower and restrict the state legislative and executive branches, state courts can influence the facility with which state government responds to threats originating at the national level; the tools that state actors have at their disposal to resist encroachments by national power; and the ways in which state officials may deploy those tools in intergovernmental power struggles.

State courts check national courts – state constitution implementation leads to resistance of national power

Gardner '03 --- professor of law @ State University of New York (James A, "STATE COURTS AS AGENTS OF FEDERALISM: POWER AND INTERPRETATION IN STATE CONSTITUTIONAL LAW," William & Mary Law Review, March 2003, 44 Wm. & Mary L. Rev. 1725)//Mnush

In a recent article, I explain how state courts can resist and counteract liberty-invasive abuses of national judicial power by giving a more generous construction to individual rights found in the state constitution than national courts give to similar provisions appearing in the Constitution. n93 Here, I want to focus on a different [*1751] method by which the state constitution can be deployed to resist national power. This method derives its force from the fact that the state constitution is the legal document that ultimately grants, allocates, and structures any powers possessed by state officials in other branches of state government. To put this proposition in its bluntest form, state courts may participate in state resistance to national power by construing the state constitution in such a way as to assure, insofar as possible, that the state legislative and executive branches have powers adequate to resist abuses of national authority.

The counterplan solves *internal self-restraint*, which protects liberty

Gardner '03 --- professor of law @ State University of New York (James A, "STATE COURTS AS AGENTS OF FEDERALISM: POWER AND INTERPRETATION IN STATE CONSTITUTIONAL LAW," William & Mary Law Review, March 2003, 44 Wm. & Mary L. Rev. 1725)//Mnush

If state courts generally have the authority under state constitutions to advance liberty by using their powers to achieve the public good directly, they also universally have the constitutional authority to use their power of judicial review to protect liberty in another way: by serving as a force for state governmental self- restraint. If a state government is to advance the public good, it must possess a certain amount of power. The more power a state government possesses, however, the more capable it is of threat-ening the liberties of its people. This threat may be restrained to a [*1745] degree by institutionalizing some form of internal self-restraint, such as horizontal separation of powers, creation of a bill of rights, and establishment of judicial review. State courts play a significant role in the exercise of power to achieve this kind of **internal self-restraint**.

Court Stripping Net Benefit

State courts don't link to court stripping

Devins and Mansker '03 --- (Neal and Nicole, Upenn Law University, 2003, http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1081&context=jcl)//Mnush

Differences between state constitutional systems and the federal system are so dramatic that the models political scientists employ to discuss the relationship between the U.S. Supreme Court and the American people have no application to democratically accountable state systems. Consider, for example, the argument that Supreme Court Justices simply vote their policy preferences and need not **take into account public or lawmaker backlash**. Political scientists who make this argument point to life tenure, docket control, and the near-impossibility of amending the Constitution to override a Court ruling.11 Most state supreme court justices are without any of these protections and, consequently, state justices are apt to take backlash risks into account. At the same time, **there are dramatic differences among state courts**. There is a wide range of appointment and retention schemes, mechanisms for amending state constitutions are highly varied, and docket control is dramatically different among the states. **In other words, some state justices are especially vulnerable to democratic checks and others are protected from most types of political retaliation.**

State courts are protected

Devins and Mansker '03 --- (Neal and Nicole, Upenn Law University, 2003, http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1081&context=jcl)//Mnush

Unlike the U.S. Supreme Court, where assessments of backlash risks are often a "shot in the dark,"92 state justices (in states with contested elections) **are well versed in state politics because of their direct connections to political parties, voters, campaign contributors, and interest groups**.93 Yet, even in states without contested elections, state justices typically know a great deal about state politics. Most state supreme courts, as discussed in Part I, are subject to significant democratic checks (and sometimes cannot steer clear of political ontroversy because of limits on their docket control). In direct democracy states, for example, state justices may render advisory opinions about the legality of initiatives, decide legal challenges to initiatives, and sometimes have their handiwork overturned by initiatives.94 More generally, "state judges are systematically exposed to and experienced in the legal institutions of their states," they "spend their professional lives dealing with state legislation and administrative regulation," and "[t]hey are much more likely than are their federal counterparts to know or be able to learn readily what is out there, how it came to be, and how well or badly it works."95 State supreme court justices echo this sentiment, noting that "state courts are closer to politics than their federal colleagues, whether . . . elected or appointed"96 and are "generally closer to the public, to the legal institutions and environments within the state, and to the public policy process."97 A state supreme court justice is almost certainly a longtime resident of her state, presumably reads state newspapers, likely sits and lives in the state capitol, has professional and social interactions with state officials, hears about state officials, hears about goings-on from numerous sources, and is generally well-informed with respect to the in-state political climate.98 As of 2000, 65.7% of state supreme court justices were born in the state in which they serve, and 60.5% received their law degrees from a school in that state.

States CP

Neg

1NC

Text: The fifty states and relevant territories should prohibit the provision of material support, participation, or assistance in any form with any federal agency which collects electronic data or metadata of any US person to any action not based on a warrant.

States can ban material assistance to intelligence agencies – this curtails domestic surveillance by forcing compliance

Daniel **Jennings**, **2015**, Off the Grid News, "This brilliant new plan may finally stop the NSA's spying," http://www.offthegridnews.com/privacy/this-brilliant-new-plan-may-finally-stop-the-nsas-spying/, mm

Legislators in eight **states have introduced laws designed to literally pull the plug from the National Security Agency by choking off the resources the organization needs to organize within a state's borders.**¶ **The bills are part of an effort to** end what critics see as **the NSA's systematic violation of the** Fourth Amendment to the US **Constitution**.¶ "We're saying, 'No, it's inappropriate.' We have a Fourth Amendment to the Constitution," Washington State Representative David Taylor (R-Moxee) told USA Today. "And if you violate that there's going to be civil penalties and jail time."¶ Taylor is **a** co-sponsor of **state** House **Bill** 1473, which **would make it a misdemeanor punishable** by up to a year in jail and a fine of up to $5,000 **for state officials or state contractors that "provide material support, participation, or assistance in any form" with any federal agency which collects "electronic data or metadata of any person pursuant to any action not based on a warrant**."¶ **The idea** behind the law **is to prevent any company from doing business with the NSA**. Among other things, **the proposed law would prohibit utilities from providing water, natural gas and electricity and tech companies like Microsoft and Amazon.com from doing business with the NSA. It would also stop contractors from delivering food to federal facilities and end service like trash collection**.¶ This is the second time that Taylor has sponsored legislation to stop the NSA from operating within his state. Last year he sponsored a similar law, which did not receive a vote.¶ An organization called OffNow.org is encouraging state legislators to introduce similar bills. **The group's mission is** a bold but **simple** one: **Make it impossible for the NSA to operate in the United States by barring companies and local governments from doing business with it.**¶ "The short version?" the group's website proclaims. "We intend to pull the rug out from under them, box them in and shut them down."¶ The website contains model legislation called the Fourth Amendment Protection Act and details the group's strategy to bypass Congress and assert state's rights against federal surveillance. The model legislation is at the heart of the plan.¶ "This model legislation, ready for introduction in any state, would ban a state (and all its political subdivisions) from providing assistance or material support in any way to federal spying programs," the OffNow website states.¶ This would include, but is not limited to:¶ Refusing to supply water or electricity.¶ Ending NSA partnerships with public universities and colleges.¶ Prohibiting state officials from using warrantless data given to them by federal agencies.¶ OffNow's lawyers believe a legal principle known as **the anti-commandeering doctrine gives state and local governments the right to refuse to cooperate with federal agencies**. **They cited several US Supreme Court decisions in which the doctrine has been upheld**.¶ Laws based on the model legislation have been introduced in state legislatures in Indiana, South Carolina, Oklahoma, Mississippi, Missouri, Oklahoma and Alaska as well as Washington State, USA Today reported. Some of the laws go further than OffNow's model and ban evidence from warrantless surveillance from being used in state courts.¶ OffNow's website reported that 171 universities nationwide operate National Centers of Academic Excellence in partnership with the National Security Agency's Central Security Service.

Solvency

Banning material support strikes at the Achilles Heel of the intelligence community – states can solves independent of federal action

Off Now, 2014, "the surveillance state has an achilles heel," http://www.offnow.org/, mm

How can average people like you and I confront a massive surveillance-state with the power to spy on virtually everybody in the world?¶ With cameras peering down at nearly every street corner, and the NSA vacuuming up and storing away staggering amounts of data, it can seem very daunting. And it continues to grow. Primarily funded, nurtured and operated from the federal level, mass surveillance trickles down to your community at a staggering pace.¶ But **the American surveillance-state has an Achilles Heel.¶ It needs help and resources**.¶ **These spy-programs cannot continue to expand without participation and assistance from the state and local level**.¶ **We can turn it off**.¶ **By passing legislation - state by state – we can thwart mass surveillance without relying on Congress or Supreme Court**.¶ Legislatively, **OffNow focuses on** four main areas¶ **Banning material support**. **This includes stopping the flow of state supplied resources** like water and electricity **to federal agencies conducting mass, warrantless surveillance**. See video below.¶ Prohibiting warrantless data sharing. In the Bush-era, the federal government enacted numerous laws largely turning state and local law enforcement agents into warrantless data transmitters for the national surveillance state, primarily via SOD and Fusion Centers. OffNow works to pass laws via ballot measures and regular legislation to prohibit such activities.¶ Ending warrantless location tracking. Through the use of "Stingrays" and other similar tools, federal and local agencies illegally collect location information from your cellphone. Once collected, these agencies share this information back and forth. Police at the local level also use license-plate readers as tracking devices. OffNow supports legislation to restrict and eventually eliminate these practices.¶ Stopping warrantless drone spying. Drones can serve as valuable tools, but in the hands of law enforcement, they can quickly become a tool of abuse. OffNow works to support legislation restricting or eliminating the use of drones by state and local entities.

Prohibiting access to utilities ends warrantless surveillance

Mike **Maharrey**, 3/16/**2015**, Tenth Amendment Center, "texas bill would turn off power to massive nsa surveillance facility," http://blog.tenthamendmentcenter.com/2015/03/texas-bill-would-turn-off-power-to-massive-nsa-surveillance-facility/, mm

In practice, **HB3916 would prohibit state or local-owned utilities from supplying water or electric service to NSA facilities in the state**. The bill does include a provision allowing for the municipality to repay any bonds payable from pledged revenue from water or electric service before discontinuing such service. A political subdivision would be able to fulfill any contractual obligations currently in place, but would prohibit any contract extensions.¶ **Passage into law would be a powerful step towards ending the bulk, warrantless surveillance of all electronic communication**s.¶ HB3916 will first be assigned to a House committee, where it will need to pass by majority vote to move forward.

Denying access to public utilities solves the aff – that either forces compliance from surveillance agencies or it shuts them down

Mike **Maharrey**, 3/16/**2015**, Tenth Amendment Center, "texas bill would turn off power to massive nsa surveillance facility," http://blog.tenthamendmentcenter.com/2015/03/texas-bill-would-turn-off-power-to-massive-nsa-surveillance-facility/, mm

A Texas legislator introduced a **bill** that **would stop the** independent Texas **power grid from being used to power mass, warrantless surveillance by the NSA**.¶ Rep. Jonathan Stickland (R) introduced House Bill 3916 (HB3916) on March 13. **The legislation would prohibit any political subdivision in Texas from providing water or electricity to any federal agency "involved in the routine surveillance or collection and storage of bulk telephone or e-mail records or related metadata concerning any citizen of the United States and that claims the legal authority to collect and store the bulk telephone or e-mail records or metadata concerning any citizen of the United States without**

the citizen's consent or a search warrant that describes the person, place, or thing to be searched or seized."¶ "No water and no electricity means no super-computers. **That will shut down NSA operations** in Texas. If Congress doesn't want to reform the NSA then we'll just turn it off," OffNow founder and associate director Michael Boldin said.¶ IMMEDIATE EFFECT¶ If passed, HB3916 would ultimately turn off water and electric service to the massive Texas Cryptologic Center in San Antonio.¶ In 2006, the Baltimore Sun reported that the NSA had maxed out capacity of the Baltimore-area power grid via Baltimore Gas and Electric. Insiders reported that "The NSA is already unable to install some costly and sophisticated new equipment. **At minimum, the problem could produce disruptions leading to outages and power surges. At worst, it could force a virtual shutdown of the agency.**"

Prohibiting material support from state and local agencies will force compliance from spying agencies

Steven **Nelson**, 1/28/**2015**, US News and World Report, "NSA's Water, Power Supply under threat in state legislatures," http://www.usnews.com/news/articles/2015/01/28/nsas-water-power-supply-under-threat-in-state-legislatures, mm

Congress failed to agree last year on a measure that would reform the practice of mass government surveillance, but privacy-minded state legislators have a back-up plan for shutting down alleged violations of their constituents' constitutional rights.¶ In eight **states**, legislators **are pushing bills they hope will either boot National Security Agency facilities or ban the agency from setting up shop**. **The bills would prohibit state and local governments from offering material support to the agency**, **including use of public utilities that carry water and electricity**. Two of the bills would criminalize official cooperation with the NSA and several seek to squeeze contractors out of work with the electronic spy agency.¶ The state-level push began months after whistleblower Edward Snowden revealed in June 2013 the NSA's bulk collection of U.S. phone records and Internet-mining programs. ¶ Last year, bills in Utah - home of the NSA's massive Utah Data Center - and Maryland - host of the agency's Fort Meade headquarters - sought to shut down those operations, winning broad media coverage.¶ The Utah bill remains active and its sponsor, Republican state Rep. Marc Roberts, is cautiously optimistic about its chances, particularly after a seemingly receptive committee hearing in November.¶ Roberts says colleagues he's spoken with "have concerns with the NSA programs and violations of the Fourth Amendment." But, he says, "when it comes down to a big vote on it like this I'm not sure [what] they will do."¶ Roberts is waiting to learn which legislative committee this year will hear his bill, which seeks to shut off the water supply to the NSA's vast Utah Data Center that's currently provided through a sweatheart deal with the city of Bluffdale.¶ **Legislators in Alaska, Indiana, Mississippi, Missouri, Oklahoma, South Carolina and Washington**, meanwhile, **introduced similar bills** this month, **many called Fourth Amendment protection acts,** based on model legislation from the OffNow coalition. More are likely to be introduced as the legislative season unfolds.¶ **The bills generally say states and their political subdivisions cannot supply material support to federal agencies that collect citizens' metadata without individualized warrants**, **and they intend to bar NSA-derived evidence from state courts and block the agency from research partnerships with state schools**.

Solvency – Federal Follow-On

The counterplan spurs federal action in the future – that solves the aff

Josh **Harkinson**, 6/21/**2014**, Mother Jones, "legislators in 6 states want to pull the plug on NSA spying - some literally," http://www.motherjones.com/politics/2014/01/state-legislators-offnow-nsa-spying, mm

Frustrated with the limited scope of the reforms to the National Security Agency detailed by President Obama on Friday, and the slow pace of Congress in addressing the issue, **civil liberties advocates are increasingly taking the privacy fight to state capitols**. This month, lawmakers in **six states introduced** versions of model **legislation** designed **to deny the NSA state resources** or cooperation from state officials. The bills cover everything from banning evidence collected by the NSA from being introduced in state courts to shutting off the supply of water and electricity to the agency's in-state data centers. ¶ "**If the feds aren't going to address the issue, then it's up to the states to do it**," says David Taylor, a GOP member of the Washington state House of Representatives whose Yakima Valley district hosts an NSA listening post. **Taylor's** bipartisan **bill**, introduced last week, **would cut off "material support, participation or assistance**" from the state and its contractors to any federal agency that collects data or metadata on people without a warrant. Practically speaking, it would mean severing ties between the NSA and state law enforcement, blocking state universities from serving as NSA research facilities and recruiting grounds, and cutting off the water and power to the agency's Yakima facility.¶ Similar bills, some of them less broad, have been floated in California, Oklahoma, Indiana, Missouri and Kansas. Others are expected in coming months in Michigan, Arizona, and Utah. Unlike the symbolic resolutions that oppose the NSA's warrantless spying, which have passed the Pennsylvania House and the California Senate, few, if any, of the more consequential anti-NSA bills are likely to become law. But their existence underscores the depth of grassroots opposition to the agency's dragnet surveillance programs, and the willingness of lawmakers from both parties to take a stand.¶ **"I think there is a value in the message that it sends to DC, which** is, 'We're not gonna put up with it,'" says Hanni Fakhoury, a staff attorney for the Electronic Frontier Foundation. "**It encourages lawmakers in DC to actually do something about the problem**."

Solvency – AT Supremacy Clause

The federal government can't force the states to provide access to public utilities – hundreds of years of Supreme Court precedent proves

Mike **Maharrey**, 3/16/**2015**, Tenth Amendment Center, "texas bill would turn off power to massive nsa surveillance facility," http://blog.tenthamendmentcenter.com/2015/03/texas-bill-would-turn-off-power-to-massive-nsa-surveillance-facility/, mm

HB3916 rests on a rock-solid legal doctrine. **The Supreme Court has repeatedly upheld the principle that the states cannot be required to supply resources or manpower to help the federal government carry out its acts or programs**.¶ **Known as the anti-commandeering doctrine, the legal principle rests primarily on four Supreme Court opinions dating back to 1842**. In Prigg v. Pennsylvania(1842), Justice Joseph Story held that the federal government could not force states to implement or carry out the Fugitive Slave Act of 1793. He said that it was a federal law, and the federal government ultimately had to enforce it.¶ The fundamental principle applicable to all cases of this sort, would seem to be, that where the end is required, the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted. The clause is found in the national Constitution, and not in that of any state. It does not point out any state functionaries, or any state action to carry its provisions into effect**. The states cannot**, therefore, **be compelled to enforce them**; and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or instrusted to them by the Constitution.¶ Other key cases include New York v. United States (1992), Printz v. United States (1997), and Independent Business v. Sebelius (2012).¶ **"State governments are free to refrain from cooperating with federal authorities if they so choose**. In general, states cannot attack federal operations, but that's not the same as refusing to help," Noted Constitutional scholar Randy Barnett of Georgetown Law said.

The counterplan is legal – the anti-commandeering doctrine means that states can't be forced to comply

Shane **Trejo**, 1/15/**2015**, Tenth Amendment Center, "Indiana vs NSA: new bill would ban material support or resources," http://blog.tenthamendmentcenter.com/2015/01/indiana-vs-nsa-new-bill-would-ban-material-support-or-resources/, mm

There is little to no concrete debate about the Constitutionality of Delph's bill, as **the Supreme Court has repeatedly upheld the principle that the states cannot be required to expend resources** or manpower to **help the federal government carry out its acts or programs**.¶ **Known as the anti-commandeering doctrine, the legal principle rests primarily on four Supreme Court opinions dating back to 1842.** In Prigg v. Pennsylvania (1842), Justice Joseph Story held that the federal government could not force states to implement or carry out the Fugitive Slave Act of 1793. He said that it was a federal law, and the federal government ultimately had to enforce it.¶ The fundamental principle applicable to all cases of this sort, would seem to be, that where the end is required, the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted. The clause is found in the national Constitution, and not in that of any state. It does not point out any state functionaries, or any state action to carry its provisions into effect. **The states cannot**, therefore, **be compelled to enforce them**; **and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national governmen**t, nowhere delegated or instrusted to them by the Constitution.¶ Other notable cases include New York v. United States (1992), Printz v. United States (1997), and Independent Business v. Sebelius (2012). Noted Constitutional scholar Randy Barnett of Georgetown Law said, "**State governments are free to refrain from cooperating with federal authorities if they so choose. In general, states cannot attack federal operations, but that's not the same as refusing to help.**"

Solvency – AT Supply Their Own Resources

States can shut down the NSA by cutting off resources – no chance that they could supply their own resources

Lily **Dane**, 1/24/**2015**, Freedom Outpost, "Fighting back against the surveillance state: turn off the NSA's resources," http://freedomoutpost.com/2015/01/fighting-back-surveillance-state-turn-off-nsas-resources/, mm

The Federal government is notorious for being unable (or unwilling) **to regulate** itself or make reforms. OffNow seeks to work at the state level to make it impossible for **the NSA** and other agencies that illegally spy on us to run their facilities.¶ OffNow's website says¶ We intend to pull the rug out from under them, box them in and shut them down. ¶ **As a legal matter, contracts for water, electricity and other resources and services are simply voluntary agreements made between the federal government** (or its agents) **and the state or local government. States legitimately can and should decide whether to honor the request based on the state's own set of priorities.¶ Of course, the federal government can bring in its own resources and supplies, but history shows they would likely struggle to do so.¶** Legislators in several states have already introduced bills to ban material support or resources to any federal agency engaged in warrantless spying, as the Tenth Amendment Center reports.

AT Nuclear Power Turn – Can't Solve

Nuclear power can't solve warming – plus wind and solar are solving in the status quo

Alan **Robock**, 5/12/**2014**, The Huffington Post, "nuclear energy is not a solution for global warming," http://www.huffingtonpost.com/alan-robock/nuclear-energy-is-not-a-solution_b_5305594.html, mm

There have been several recent **calls** from people and organizations concerned **about global warming to use nuclear electricity generation as part of the solution**. This includes The New York Times, the Center for Climate and Energy Solutions (formerly the Pew Center on Global Climate Change), and a group of leading climate scientists, James Hansen, Tom Wigley, Ken Caldeira, and Kerry Emanuel.¶ Don't get me wrong. Global warming is real, it is caused by human emissions of greenhouse gases, it is bad (as described in detail by the new National Climate Assessment), and we have to do something about it. **But solar and wind power**, combined with increased efficiency and conservation, **can do the trick**. Elimination of exorbitant government subsidies to the nuclear and fossil fuel industries, and a gradually increasing carbon tax, fee and dividend, or a cap and trade system like the one that worked to tame acid rain, will push us to do the right thing.¶ More than 99 percent of the current 437 nuclear power systems in the world use highly enriched uranium to produce heat and boil water, which drives turbines. Plutonium and many other highly radioactive elements are waste products. The benefits of nuclear power include minimal emissions of greenhouse gases that cause global warming, and a fairly reliable continuous source of electricity.¶ But **nuclear power presents many downsides**. **These include**:¶ Nuclear weapons proliferation. A plant for processing fuel for a typical nuclear reactor could produce enough highly enriched uranium for 10-30 nuclear weapons per year. Waste reprocessing could produce 30 plutonium weapons per year. Nuclear power, partly due to the ill-conceived Atoms for Peace program, preceded the spread of nuclear weapons to India, Pakistan, Israel, and North Korea, and Iran appears to be trying the same route. While additional nuclear reactors in existing nuclear states would not be a problem, proliferation of nuclear power around the world would only exacerbate the problem of nuclear weapons, and this is the greatest danger the world faces.¶ **Possibility of catastrophic accident**. **Based on the 20 core melt events that have occurred** in military and commercial reactors worldwide since the early 1950s, including Three Mile Island, Chernobyl, and Fukushima, Lelieveld, Kunkel, and Lawrence showed that **the risk of catastrophic nuclear accidents has been drastically underestimated**. They showed that the risk of human exposure to dangerous radiation from nuclear accidents in eastern United States, virtually all of Western Europe, and East Asia is higher than once every 50 years. Nuclear reactors are built, operated, and regulated by humans, and humans make mistakes. Accidents can happen not just from meltdowns, but from earthquakes, tsunamis, and aircraft accidents.¶ **Possibility of terrorist attack and radioactive release**. **None of the nuclear reactors in the United States are guarded against terrorist attacks**. The spent fuel, now being stored outside the containment vessels, would be an easy target, and sophisticated terrorists could also cause a meltdown.¶ Unsafe operation. In the United States, the Nuclear Regulatory Commission has a cozy relationship with the nuclear industry, resulting in poor oversight and enforcement of rules. The industry has a for-profit culture that emphasizes profit over safety. There are planned and unplanned radioactive releases during routine operation. There is lax enforcement of fire protection rules at nuclear plants. And there are no viable evacuation plans should accidents happen.¶ **Not economically viable**. **Nuclear power is incredibly expensive**. **It could not even exist in the U.S. without huge government subsidies,** including insurance against accidents. Too cheap to meter, a claim when nuclear power was first being developed, was a fantasy.¶ Waste disposal problem not solvable in near future. For political reasons, there is no repository for the spent fuel, which accumulates at each nuclear power plant, just waiting for an accident to happen.¶ Extraction of uranium very damaging. Uranium mining exposes workers to lung cancer and the surrounding areas to contamination. In the U.S., it is Native Americans who suffer disproportionately.¶ **Nuclear power emits 10-20 times the carbon dioxide as wind power**. Mining, processing, and transportation of nuclear fuel is energy intensive.¶ Proponents of nuclear power, recognizing these dangers, propose new "safe" future generation technology (which does not now exist), assembly line production of standard designs, and continued operation of existing plants that are already beyond their 40-year design lifetime in the United States. I certainly agree we need research into new nuclear technologies, to see if they are a real potential solution sometime in the future. But **solar and wind energy is here now**. In the meantime **we need a rapid move away from coal and into solar and wind sources of green energy**.¶ **Proponents assert that wind and solar are not viable because of cost, but with the plummeting price of solar panels, and the global potential of wind power to provide all the energy needed on the planet, they are wrong**. We will need electrical grids that will combine wind and solar over large areas to compensate for local intermittency, along with other backup sources and new electricity storage options. The planet has safer, cheaper options for energy that do not emit greenhouse gases and do not present the same dangers as nuclear power.

Nuclear power can't solve warming fast enough – it takes too long to construct reactors

Linda **Gunter and** Kevin **Kamps**, 11/7/**2013**, CNN, "Don't trade global warming for nuclear meltdowns," http://www.cnn.com/2013/11/07/opinion/pandora-nuclear-gunter-kamps/

The **climate change** crisis **is upon us**. The world's leading climate scientists agree that time is rapidly running out and that urgent steps are needed in the next 10 years to dramatically reduce our carbon emissions. **But exchanging global warming for nuclear meltdown is not the answer**.¶ **From a purely practical standpoint** — and ignoring for a moment nuclear power's other showstoppers such as cost, unmanaged nuclear waste, atomic weapons proliferation and catastrophic accident — **there** simply **isn't time to choose nuclear power**. There are faster, affordable alternatives, including energy efficiency and renewable energy installations such as wind farms and solar arrays that can be completed in months to a few years.¶ **The average construction time for a new nuclear power reactor is close to 10 years. A 2003 Massachusetts Institute of Technology study concluded that more than two new reactors would have to start operating somewhere in the world every month over the next 50 years to displace a significant amount of carbon-emitting fossil-fuel generation**.¶ Such a fantasy does not pass the reality check in corporate boardrooms or on Wall Street where nuclear power has been soundly rejected. The exorbitant costs and unpredictably long completion time -- a reactor at Watts Bar in Tennessee, for example, was "under construction" for 23 years and may be connected to the grid by 2015 -- make nuclear power an unappealing, even reckless, business choice for corporations and shareholders.¶ ¶ Construction costs for a new reactor are predicted to top at least $15 billion, assuming the project remains on budget, which those under way in France and Finland have demonstrably failed to do. Meanwhile, since 2008, the world market cost of solar photovoltaic modules has fallen by 80%.¶ In the U.S., the four reactors currently under already-behind-schedule construction in Georgia and South Carolina would never have begun without fleecing ratepayers in advance through a surcharge on their electricity bills. This cost is shouldered by ratepayers even if the reactor they are paying for is never completed.¶ **Government support does not sweeten the pill**. Constellation Energy abandoned its application for a new reactor in Maryland after being offered a federal loan of just under $8 billion, a burden that would likely have been shouldered at least in part by taxpayers. Constellation pulled out because it was unwilling to risk $880 million of its own money in federal financing charges.¶ Advocates of allegedly "new" designs such as the sodium-cooled integral fast reactor (IFR) touted in "Pandora's Promise" are reaching back into the atomic dark ages. Previous incarnations of this design have suffered fires, leaks and disastrous economics. For example, Monju in Japan, cost $10.11 billion and generated just one hour of electricity before closing. The "new" IFR design is decades away, economically unappealing, proliferation risky, and its safety claims are unproven.¶ The IFR cannot magically eat nuclear waste for lunch as some claim. Theoretically, it can gradually reduce the amount of the more dangerous isotopes in the waste, but the process comes at very high costs with marginal benefits and would take hundreds of years.¶ Energy efficiency measures and renewable energy, which have been marginalized by decades of disproportionate federal handouts to the nuclear sector, are the real answer. They can be deployed fast, far more cheaply and safely, are more practical in rural, developing countries, and are more effective in displacing carbon than nuclear power.¶ Germany has stepped in where the United States failed to lead, well on the way to a 100% renewable energy economy by 2050, with a revitalized supply chain and 380,000 jobs in the renewable energy sector compared with 30,000 in nuclear. Nuclear France, meanwhile, must import electricity in winter and during summer droughts and heat waves.¶ The ongoing nuclear crisis in Japan in the aftermath of the triple reactor meltdowns at the **Fukushima** Daiichi nuclear complex **serves as a permanent reminder of the unacceptable risks posed by the current fleet of nuclear plants**.¶ Given the latency period between exposure even to "low" doses of radiation and the manifestation of disease, we may not know the true health effects of the Fukushima nuclear disaster for decades. The experience of the 1986 Chernobyl reactor accident demonstrates that negative health effects can last generations, cause immense suffering and trigger other fatal and non-fatal illnesses as well as birth defects.¶ Even the routine radioactive releases from nuclear power plants can prove fatal. Studies in Germany and France found elevated rates of leukemia among children living near nuclear power plants.¶ The situation at Fukushima remains perilous and could still become orders of magnitude worse. A technology that has the capacity to poison human resources and render vast areas unfit for habitation for decades, even centuries, cannot be endorsed by environmentalists and runs contrary to the best interests of humanity.

AT Nuclear Power – Warming Impact Defense

Warming will be slow and the impact will be small

Ridley 6/19/14, (Matt Ridley is the author of The Rational Optimist, a columnist for the Times (London) and a member of the House of Lords. He spoke at Ideacity in Toronto on June 18., "PCC commissioned models to see if global warming would reach dangerous levels this century. Consensus is 'no'" , [http://tinyurl.com/mgyn8ln] , //hss-RJ)

The debate over climate change is horribly polarized. From the way it is conducted, you would think that only two positions are possible: that the whole thing is a hoax or that catastrophe is inevitable. In fact there is room for lots of intermediate positions, including the view I hold, which is that man-made climate change is real but not likely to do much harm, let alone prove to be the greatest crisis facing humankind this century. After more than 25 years reporting and commenting on this topic for various media organizations, and having started out alarmed, that's where I have ended up. But it is not just I that hold this view. I share it with a very large international organization, sponsored by the United Nations and supported by virtually all the world's governments: the Intergovernmental Panel on Climate Change (IPCC) itself. The IPCC commissioned four different models of what might happen to the world economy, society and technology in the 21st century and what each would mean for the climate, given a certain assumption about the atmosphere's "sensitivity" to carbon dioxide. Three of the models show a moderate, slow and mild warming, the hottest of which leaves the planet just 2 degrees Centigrade warmer than today in 2081-2100. The coolest comes out just 0.8 degrees warmer. Now two degrees is the threshold at which warming starts to turn dangerous, according to the scientific consensus. That is to say, in three of the four scenarios considered by the IPCC, by the time my children's children are elderly, the earth will still not have experienced any harmful warming, let alone catastrophe. But what about the fourth scenario? This is known as RCP8.5, and it produces 3.5 degrees of warming in 2081-2100. Curious to know what assumptions lay behind this model, I decided to look up the original papers describing the creation of this scenario. Frankly, I was gobsmacked. It is a world that is very, very implausible. For a start, this is a world of "continuously increasing global population" so that there are 12 billion on the planet. This is more than a billion more than the United Nations expects, and flies in the face of the fact that the world population growth rate has been falling for 50 years and is on course to reach zero – i.e., stable population – in around 2070. More people mean more emissions. Second, the world is assumed in the RCP8.5 scenario to be burning an astonishing 10 times as much coal as today, producing 50% of its primary energy from coal, compared with about 30% today. Indeed, because oil is assumed to have become scarce, a lot of liquid fuel would then be derived from coal. Nuclear and renewable technologies contribute little, because of a "slow pace of innovation" and hence "fossil fuel technologies continue to dominate the primary energy portfolio over the entire time horizon of the RCP8.5 scenario." Energy efficiency has improved very little. These are highly unlikely assumptions. With abundant natural gas displacing coal on a huge scale in the United States today, with the price of solar power plummeting, with nuclear power experiencing a revival, with gigantic methane-hydrate gas resources being discovered on the seabed, with energy efficiency rocketing upwards, and with population growth rates continuing to fall fast in virtually every country in the world, the one thing we can say about RCP8.5 is that it is very, very implausible. Notice, however, that even so, it is not a world of catastrophic pain. The per capita income of the average human being in 2100 is three times what it is now. Poverty would be history. So it's hardly Armageddon. But there's an even more startling fact. We now have many different studies of climate sensitivity based on observational data and they all converge on the conclusion that it is much lower than assumed by the IPCC in these models. It has to be, otherwise global temperatures would have risen much faster than they have over the past 50 years. As Ross McKitrick noted on this page earlier this week, temperatures have not risen at all now for more than 17 years. With these much more realistic estimates of sensitivity (known as "transient climate response"), even RCP8.5 cannot produce dangerous warming. It manages just 2.1C of warming by 2081-2100. That is to say, even if you pile crazy assumption upon crazy assumption

till you have an edifice of vanishingly small probability, you cannot even manage to make climate change cause minor damage in the time of our grandchildren, let alone catastrophe. That's not me saying this – it's the IPCC itself. But what strikes me as truly fascinating about these scenarios is that they tell us that globalization, innovation and economic growth are unambiguously good for the environment. At the other end of the scale from RCP8.5 is a much more cheerful scenario called RCP2.6. In this happy world, climate change is not a problem at all in 2100, because carbon dioxide emissions have plummeted thanks to the rapid development of cheap nuclear and solar, plus a surge in energy efficiency. The RCP2.6 world is much, much richer. The average person has an income about 15 times today's in real terms, so that most people are far richer than Americans are today. And it achieves this by free trade, massive globalization, and lots of investment in new technology. All the things the green movement keeps saying it opposes because they will wreck the planet. The answer to climate change is, and always has been, innovation. To worry now in 2014 about a very small, highly implausible set of circumstances in 2100 that just might, if climate sensitivity is much higher than the evidence suggests, produce a marginal damage to the world economy, makes no sense. Think of all the innovation that happened between 1914 and 2000. Do we really think there will be less in this century? As for how to deal with that small risk, well there are several possible options. You could encourage innovation and trade. You could put a modest but growing tax on carbon to nudge innovators in the right direction. You could offer prizes for low-carbon technologies. All of these might make a little sense. But the one thing you should not do is pour public subsidy into supporting old-fashioned existing technologies that produce more carbon dioxide per unit of energy even than coal (bio-energy), or into ones that produce expensive energy (existing solar), or that have very low energy density and so require huge areas of land (wind). The IPCC produced two reports last year. One said that the cost of climate change is likely to be less than 2% of GDP by the end of this century. The other said that the cost of decarbonizing the world economy with renewable energy is likely to be 4% of GDP. Why do something that you know will do more harm than good?

Warming is slow – no risk of an impact

Michaels and Knappenberger 11/19/13, (*Chip Knappenberger is the assistant director of the Center for the Study of Science at the Cato Institute, and coordinates the scientific and outreach activities for the Center. He has over 20 years of experience in climate research and public outreach, including 10 years with the Virginia State Climatology Office and 15 years as the Research Coordinator for New Hope Environmental Services, Inc, **Patrick J. Michaels is the director of the Center for the Study of Science at the Cato Institute. Michaels is a past president of the American Association of State Climatologists and was program chair for the Committee on Applied Climatology of the American Meteorological Society. He was a research professor of Environmental Sciences at University of Virginia for thirty years. Michaels was a contributing author and is a reviewer of the United Nations Intergovernmental Panel on Climate Chanage, which was awarded the Nobel Peace Prize in 2007, "With or Without a "Pause" Climate Models Still Project Too Much Warming", [http://www.cato.org/blog/or-without-pause-climate-models-still-project-too-much-warming] //hss-RJ)

A new paper just hit the scientific literature that argues that the apparent pause in the rise in global average surface temperatures during the past 16 years was really just a slowdown. As you may imagine, this paper, by Kevin Cowtan and Robert Way is being hotly discussed in the global warming blogs, with reaction ranging from a warm embrace by the global-warming-is-going-to-be-bad-for-us crowd to revulsion from the human-activities-have-no-effect-on-the-climate claque. The lukewarmers (a school we take some credit for establishing) seem to be taking the results in stride. After all, the "pause" as curious as it is/was, is not central to the primary argument that, yes, human activities are pressuring the planet to warm, but that the rate of warming is going to be much slower than is being projected by the collection of global climate models (upon which mainstream projections of future climate change—and the resulting climate alarm (i.e., calls for emission regulations, etc.)—are based). Under the adjustments to the observed global temperature history put together by Cowtan and Way, the models fare a bit better than they do with the unadjusted temperature record. That is, the observed temperature trend over the past 34 years (the period of record analyzed by Cowtan and Way) is a tiny bit closer to the average trend from the collection of climate models used in the new report from the U.N.'s Intergovernmental Panel on Climate Change (IPCC) than is the old temperature record. Specifically, while the trend in observed global temperatures from 1979-2012 as calculated by Cowtan and Way is 0.17°C/decade, it is 0.16°C/decade in the temperature record compiled by the U.K. Hadley Center (the record that Cowtan and Way adjusted). Because of the sampling errors associated with trend estimation, these values are not significantly different from one another. Whether the 0.17°C/decade is significantly different from the climate model average simulated trend during that period of 0.23°C/decade is discussed extensively below. But, suffice it to say that an insignificant difference of 0.01°C/decade in the global trend measured over more than 30 years is pretty small beer and doesn't give model apologists very much to get happy over. Instead, the attention is being deflected to "The Pause"—the leveling off of global surface temperatures during the past 16 years (give or take). Here, the new results from Cowtan and Way show that during the period 1997-2012, instead of a statistically insignificant rise at a rate of 0.05°C/decade as is contained in the "old" temperature record, the rise becomes a statistically significant 0.12°C/decade. "The Pause" is transformed into "The Slowdown" and alarmists rejoice because global warming hasn't stopped after all. (If the logic sounds backwards, it does to us as well, if you were worried about catastrophic global warming, wouldn't you rejoice at findings that indicate that future climate change was going to be only modest, more so than results to the

contrary?) The science behind the new Cowtan and Way research is still being digested by the community of climate scientists and other interested parties alike. The main idea is that the existing compilations of the global average temperature are very data-sparse in the high latitudes. And since the Arctic (more so than the Antarctic) is warming faster than the global average, the lack of data there may mean that the global average temperature trend may be underestimated. Cowtan and Way developed a methodology which relied on other limited sources of temperature information from the Arctic (such as floating buoys and satellite observations) to try to make an estimate of how the surface temperature was behaving in regions lacking more traditional temperature observations (the authors released an informative video explaining their research which may better help you understand what they did). They found that the warming in the data-sparse regions was progressing faster than the global average (especially during the past couple of years) and that when they included the data that they derived for these regions in the computation of the global average temperature, they found the global trend was higher than previously reported—just how much higher depended on the period over which the trend was calculated. As we showed, the trend more than doubled over the period from 1997-2012, but barely increased at all over the longer period 1979-2012. Figure 1 shows the impact on the global average temperature trend for all trend lengths between 10 and 35 years (incorporating our educated guess as to what the 2013 temperature anomaly will be), and compares that to the distribution of climate model simulations of the same period. Statistically speaking, instead of there being a clear inconsistency (i.e., the observed trend value falls outside of the range which encompasses 95% of all modeled trends) between the observations and the climate mode simulations for lengths ranging generally from 11 to 28 years and a marginal inconsistency (i.e., the observed trend value falls outside of the range which encompasses 90% of all modeled trends) for most of the other lengths, now the observations track closely the marginal inconsistency line, although trends of length 17, 19, 20, 21 remain clearly inconsistent with the collection of modeled trends. Still, throughout the entirely of the 35-yr period (ending in 2013), the observed trend lies far below the model average simulated trend (additional information on the impact of the new Cowtan and Way adjustments on modeled/observed temperature comparison can be found here). The Cowtan and Way analysis is an attempt at using additional types of temperature information, or extracting "information" from records that have already told their stories, to fill in the missing data in the Arctic. There are concerns about the appropriateness of both the data sources and the methodologies applied to them. A major one is in the applicability of satellite data at such high latitudes. The nature of the satellite's orbit forces it to look "sideways" in order to sample polar regions. In fact, the orbit is such that the highest latitude areas cannot be seen at all. This is compounded by the fact that cold regions can develop substantial "inversions" of near-ground temperature, in which temperature actually rises with height such that there is not a straightforward relationship between the surface temperature and the temperature of the lower atmosphere where the satellites measure the temperature. If the nature of this complex relationship is not constant in time, an error is introduced into the Cowtan and Way analysis. Another unresolved problem comes up when extrapolating land-based weather station data far into the Arctic Ocean. While land temperatures can bounce around a lot, the fact that much of the ocean is partially ice-covered for many months. Under "well-mixed" conditions, this forces the near-surface temperature to be constrained to values near the freezing point of salt water, whether or not the associated land station is much warmer or colder. You can run this experiment yourself by filling a glass with a mix of ice and water and then making sure it is well mixed. The water surface temperature must hover around 33°F until all the ice melts. Given that the near-surface temperature is close to the water temperature, the limitations of land data become obvious. Considering all of the above, we advise caution with regard to Cowtan and Way's findings. While adding high arctic data should increase the observed trend, the nature of the data means that the amount of additional rise is subject to further revision. As they themselves note, there's quite a bit more work to be done this area. In the meantime, their results have tentatively breathed a small hint of life back into the climate models, basically buying them a bit more time—time for either the observed temperatures to start rising rapidly as current models expect, or, time for the modelers to try to fix/improve cloud processes, oceanic processes, and other process of variability (both natural and anthropogenic) that lie behind what would be the clearly overheated projections. We've also taken a look at how "sensitive" the results are to the length of the ongoing pause/slowdown. Our educated guess is that the "bit" of time that the Cowtan and Way findings bought the models is only a few years long, and it is a fact, not a guess, that each additional year at the current rate of lukewarming increases the disconnection between the models and reality.

AT Cybersecurity Turn - NSA Can't Solve Cybersecurity

The NSA doesn't enhance cybersecurity – if anything, it makes us more vulnerable

Danielle **Kehl et al., 2014**, New America's Open Technology Institute, "Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity," https://www.newamerica.org/downloads/Surveilance_Costs_Final.pdf, mm

We have previously focused on the economic¶ and political repercussions of the NSA¶ disclosures both in the United States and abroad.¶ In this section, we consider the impact on the¶ Internet itself and the ways in which **the NSA has**¶ both weakened overall trust in the network and¶ directly **harmed the security of the Internet**.¶ Certainly, the actions of the NSA have created¶ a serious trust and credibility problem for¶ the United States and its Internet industry. "All of¶ this denying and lying results in us not trusting¶ anything the NSA says, anything the president¶ says about the NSA, or anything companies say¶ about their involvement with the NSA," wrote¶ security expert Bruce Schneier in September¶ 2013.225 However, beyond undermining faith in¶ American government and business, a variety of¶ the NSA's efforts have undermined trust in the¶ security of the Internet itself. When Internet¶ users transmit or store their information using¶ the Internet, they believe—at least to a certain¶ degree—that the information will be protected¶ from unwanted third-party access. Indeed, the¶ continued growth of the Internet as both an¶ economic engine and an as avenue for private¶ communication and free expression relies on¶ that trust. Yet, **as the scope of the NSA's surveillance¶ dragnet and its negative impact on cybersecurity¶ comes into greater focus,** that **trust in¶ the Internet is eroding**.226¶ Trust is essential for a healthy functioning¶ society. As economist Joseph Stiglitz explains,¶ "Trust is what makes contracts, plans and¶ everyday transactions possible; it facilitates¶ the democratic process, from voting to law¶ creation, and is necessary for social stability."227¶ Individuals rely on online systems and services¶ for a growing number of sensitive activities,¶ including online banking and social services,¶ and they must be able to trust that the data they¶ are transmitting is safe. In particular, trust and¶ authentication are essential components of the¶ protocols and standards engineers develop to¶ create a safer and more secure Internet, including¶ encryption.228 The NSA's work to undermine¶ the tools and standards that help ensure cybersecurity—especially¶ its work to thwart encryption—also¶ undermines trust in the safety of the¶ overall network. Moreover, it reduces trust in the¶ United States itself, which many now perceive as¶ a nation that exploits vulnerabilities in the interest¶ of its own security.220 This loss of trust can¶ have a chilling effect on the behavior of Internet¶ users worldwide.230 Unfortunately, as we detail¶ below, the growing loss of trust in the security¶ of Internet as a result of the latest disclosures¶ is largely warranted. Based on the news stories¶ of the past year, **it appears that the Internet is¶ far less secure than people thought—a direct¶ result of the NSA's actions**. **These actions can be¶ traced to a core contradiction in NSA's two key¶ missions: information assurance**—protecting¶ America's and Americans' sensitive data—**and¶ signals intelligence**—spying on telephone and¶ electronic communications for foreign intelligence¶ purposes.¶ In the Internet era, these two missions of¶ the NSA are in obvious tension. The widespread¶ adoption of encryption technology to secure¶ Internet communications is considered one of¶ the largest threats to the NSA's ability to carry¶ out the goals of its signals intelligence mission.¶ As the National Journal explained, "strong¶ Internet security actually makes the NSA's job¶ harder."231 In the 1990s, the NSA lost the public¶ policy battle to mandate that U.S. technology¶ companies adopt a technology called the¶ "Clipper Chip" that would give the government¶ the ability to decrypt private communications,232¶ and since then strong encryption technology¶ has become a bedrock technology when it¶ comes to the security of the Internet. The¶ NSA lost that early battle against encryption,¶ sometimes called the "Crypto War,"233 not only¶ due to vocal opposition from privacy and civil¶ liberties stakeholders, but also because the¶ private sector convinced policymakers that¶ subverting the security of American communications¶ technology products would undermine¶ the U.S. technology industry and the growth of the Internet economy as a whole.234 However, as¶ an explosive New York Times story first revealed¶ in September 2013, **the NSA has apparently¶ continued to fight the "Crypto War" in secret**,¶ clandestinely inserting backdoors into secure¶ products and working to weaken key encryption¶ standards.235 "For the past decade, **N.S.A.¶ has led an aggressive, multipronged effort to¶ break widely used Internet encryption technologies**,"¶ said a 2010 memo from the Government¶ Communications Headquarters (GCHQ), the¶ NSA's British counterpart. "Cryptanalytic capabilities¶ are now coming online. Vast amounts of¶ encrypted Internet data which have up till now¶ been discarded are now exploitable."236¶ **Given the amount of information the NSA¶ is collecting, it is not surprising that the agency¶ would also take aggressive steps to improve its¶ ability to read that information**. According to the¶ "black budget" released by The Washington Post¶ in August 2013, 21 percent of the intelligence¶ budget (roughly $11 billion) goes toward the¶ Consolidated Cryptologic Program, with a staff¶ of 35,000 in the NSA and the armed forces'¶ surveillance and code breaking units.237 "The¶ resources devoted to signals intercepts are¶ extraordinary," wrote Barton Gellman and Greg¶ Miller.238 However, **the agency has employed¶ a variety of methods to achieve this goal far¶ beyond simple code-breaking—methods that¶ directly undermine U.S. cybersecurity**, not just¶ against the NSA, but also **against foreign governments,¶ organized crime, and other malicious¶ actors.** In this section, we consider four different¶ ways that the NSA has damaged cybersecurity in pursuit of its signals intelligence goals: (1) by¶ deliberately engineering weaknesses into widely-used¶ encryption standards; (2) by inserting¶ surveillance backdoors in widely-used software¶ and hardware products; (3) by stockpiling information¶ about security vulnerabilities for its own¶ use rather than disclosing those vulnerabilities so¶ that they can be remedied; and (4) by engaging¶ in a wide variety of offensive hacking techniques¶ to

compromise the integrity of computer systems¶ and networks around the world, including¶ impersonating the web sites of major American¶ companies like Facebook and LinkedIn.

AT Cybersecurity Turn – Impact Defense

Zero Threat of Cyber Attack – their ev is hype

Singer, 12 (Peter – Director 21st Century Defense Initiative, November, "The Cyber Terror Bogeyman" Armed Forces Journal, http://www.brookings.edu/research/articles/2012/11/cyber-terror-singer)

About 31,300. That is roughly the number of magazine and journal articles written so far that discuss the phenomenon of cyber terrorism. Zero. That is the number of people that who been hurt or killed by cyber terrorism at the time this went to press. In many ways, cyber terrorism is like the Discovery Channel's "Shark Week," when we obsess about shark attacks despite the fact that you are roughly 15,000 times more likely to be hurt or killed in an accident involving a toilet. But by looking at how terror groups actually use the Internet, rather than fixating on nightmare scenarios, we can properly prioritize and focus our efforts. Part of the problem is the way we talk about the issue. The FBI defines cyber terrorism as a "premeditated, politically motivated attack against information, computer systems, computer programs and data which results in violence against non-combatant targets by subnational groups or clandestine agents." A key word there is "violence," yet many discussions sweep all sorts of nonviolent online mischief into the "terror" bin. Various reports lump together everything from Defense Secretary Leon Panetta's recent statements that a terror group might launch a "digital Pearl Harbor" to Stuxnet-like sabotage (ahem, committed by state forces) to hacktivism, WikiLeaks and credit card fraud. As one congressional staffer put it, the way we use a term like cyber terrorism "has as much clarity as cybersecurity — that is, none at all." Another part of the problem is that we often mix up our fears with the actual state of affairs. Last year, Deputy Defense Secretary William Lynn, the Pentagon's lead official for cybersecurity, spoke to the top experts in the field at the RSA Conference in San Francisco. "It is possible for a terrorist group to develop cyber-attack tools on their own or to buy them on the black market," Lynn warned. "A couple dozen talented programmers wearing flip-flops and drinking Red Bull can do a lot of damage." The deputy defense secretary was conflating fear and reality, not just about what stimulant-drinking programmers are actually hired to do, but also what is needed to pull off an attack that causes meaningful violence. The requirements go well beyond finding top cyber experts. Taking down hydroelectric generators, or designing malware like Stuxnet that causes nuclear centrifuges to spin out of sequence doesn't just require the skills and means to get into a computer system. It's also knowing what to do once you are in. To cause true damage requires an understanding of the devices themselves and how they run, the engineering and physics behind the target. The Stuxnet case, for example, involved not just cyber experts well beyond a few wearing flip-flops, but also experts in areas that ranged from intelligence and surveillance to nuclear physics to the engineering of a specific kind of Siemens-brand industrial equipment. It also required expensive tests, not only of the software, but on working versions of the target hardware as well. As George R. Lucas Jr., a professor at the U.S. Naval Academy, put it, conducting a truly mass-scale action using cyber means "simply outstrips the intellectual, organizational and personnel capacities of even the most well-funded and well-organized terrorist organization, as well as those of even the most sophisticated international criminal enterprises." Lucas said **the threat of cyber terrorism has been vastly overblown.**

AT 50 State Fiat Illegitimate

50 state fiat for this specific counterplan is especially legitimate – action in the status quo proves multiple states are considering this idea

Anthony **Zurcher**, 4/27/**2015**, BBC, "US states take aim at NSA over warrantless surveillance," http://www.bbc.com/news/world-us-canada-32487971, mm

The Texas bill is just one of the most recent examples of a growing movement among states - both liberal and conservative - to end government support for NSA facilities.¶ Last year **California became the first to pass** what's been called **a Fourth Amendment Protection Act.** Its law prohibited the state from providing support to a federal agency "to collect electronically stored information or metadata of any person if the state has actual knowledge that the request constitutes an illegal or unconstitutional collection".¶ **This year 15 other states have introduced some kind of anti-NSA legislation**, including politically diverse locations like liberal Washington and Maryland and conservative Oklahoma and Mississippi.¶ **The movement has been championed by the Tenth Amendment Center** and its OffNow coalition, **which provides support and model legislation to politicians** like Stickland interested in **challenging the NSA**.

States CP

1NC

The 50 states, Washington D.C., and relevant territories should prohibit the use of unpiloted aerial vehicles for domestic surveillance without a warrant

States solves drone surveillance restrictions

David L. **Hudson** Jr., **2-1-2015**, How should states regulate drones and aerial surveillance?," No Publication, http://www.abajournal.com/mobile/mag_article/how_should_states_regulate_drones_and_aerial_surveillance, Accessed: 5-24-2015, /Bingham-MB

While the federal government uses these unmanned aerial vehicles for military purposes, **states are increasingly turning to drones for law enforcement as a means of enhancing surveillance and gathering data**. However, many worry that the increased use of drones domestically portends poorly for those who care about privacy and the Fourth Amendment freedom from search and seizure. "**Domestic drones will devastate the Fourth Amendment unless there are some really strict guidelines**," warns John Whitehead, president of the Rutherford Institute, a Charlottesville, Virginia-based nonprofit legal group. "Information collected by a drone should not be used as evidence by a court of law," adds Whitehead, who wrote about the technology in his 2013 book, A Government of Wolves: The Emerging American Police State. **States are taking notice and considering regulation**. According to the National Conference of State Legislators, **more than 20 states have passed laws related to drones. Some limit law enforcement's use of drones or other unmanned aircraft**. **For example**, in **Idaho**, a law signed in 2013 provides that, except for emergencies "for safety, search-and-rescue or controlled substance investigations," no person or agency may use a drone to conduct surveillance of private property without a warrant. **Tennessee** has a similar law known as the Freedom from Unwarranted Surveillance Act. The law allows aggrieved individuals the right to sue law enforcement agencies in civil court for violations. It also provides that "no data collected on an individual, home or areas other than the target that justified deployment may be used, copied or disclosed for any purpose," and that such data must be deleted within 24 hours of collection. "The legislation doesn't eliminate the use of drones," says Austin, Texas-based attorney Gerry Morris, co-chair of the National Association of Criminal Defense Attorneys' Fourth Amendment Committee. **They "require some sort of showing of probable cause. This is something that is constantly overlooked. Just because government officials are required to go get a warrant doesn't mean they won't be able to use the drones**. **It just means that they are required to follow the Constitution when they use them**." However, in California, Gov. Jerry Brown vetoed a measure in September that would have required law enforcement to obtain a warrant for the vast majority of uses of drones. Brown claimed the bill, AB 1327, would put greater standards on law enforcement than those required by the U.S. and state constitutions. "AB 1327 would have been the first law in California to regulate drones," says constitutional law expert Erwin Chemerinsky, dean of the University of California at Irvine School of Law. "Drones may be a very valuable tool for investigation in some cases. Under AB 1327, **the police still could use drones if they demonstrated to a judge that there was probable cause.** I strongly favored AB 1327 and was very disappointed when Gov. Brown vetoed it." On the other hand, states have passed laws related to drones that fund the technology or encourage the development of testing sites. For example, the North Dakota legislature passed a law funding a drone test site. Legal experts believe that at some point courts will need to address the constitutionality of these measures and of law enforcement's use of the technology. "I do think more legislation is needed," Morris says. "I don't think the court opinions at this point have caught up with the technology. Legislators have to address the issue and get out in front of it." On the federal level, the 2012 Federal Aviation Administration Modernization and Reform Act governs the rules regulating drones' domestic use. "The FAA has the responsibility of drafting a set of rules for integrating unmanned aircraft systems into the airspace," **says** Joseph **Vacek, a lawyer and aviation professor at the University of North Dakota.** "It has taken more time than expected because there has been no industry consensus. I predict that by 2016 we will have the rules in place." **One question that may arise from drone regulation is the difference between state and federal privacy protection**. For example, the New Mexico Court of Appeals interpreted the state constitution as more protective of privacy than the U.S. Constitution. "**It would be better for states to legislate in this area,**" **says Vacek**. "Perhaps we will have a conflict that could eventually wind up before the U.S. Supreme Court. Current Supreme Court law says surveillance from the public airspace is OK. But the court could provide a different answer with respect to drones."

2NC – Solvency

1NC evidence is comparative—states are a superior actor to legislate on drone surveillance—20 states have passed laws now, proves state action is durable and effective—that's Hudson

Empirically states can regulate drone use and privacy issues—multiple states prove

Michael **Berry, 9-25-2014**, State legislation governing private drone use," Washington Post, http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/09/25/state-legislation-governing-private-drone-use/, Accessed: 5-25-2015, /Bingham-MB

With many people, including journalists, photographers and filmmakers, **clamoring to fly drones**, and in the absence of FAA regulations, **states have begun to address the issue**. **Nearly all states have considered drone legislation over the past few years. More than a dozen states have passed laws substantively regulating drones, with most of these laws addressing the use of drones by government agencies and focusing primarily on law enforcement use**. **Several states also have enacted laws regulating** private **drone use**. Theses states have taken varying approaches, have articulated permissible uses, created new causes of action and established new crimes. Two states have sought to regulate private use of drones by addressing where they can fly. Last year, Oregon enacted a law that allows property owners to sue a drone operator if (1) a drone has flown less than 400 feet above the owner's property at least once, (2) the property owner has told the drone operator that he/she does not consent to the drone flying over his/her property, and (3) the operator then flies the drone less than 400 feet above the property again. If these three conditions are met, the property owner can seek injunctive relief, "treble damages for any injury to the person or the property," and attorney fees if the amount of damages is under $10,000. **Tennessee** also seeks to restrict drones from flying over private property, but has done so in a different way. It has amended its criminal trespass statute to make it a crime for drones to fly over private property below navigable airspace. In contrast to these two states' focus on drone flight, most states that have enacted laws on private drone use have sought to limit who, when and where drones film and photograph. **Texas** has enacted the most detailed of these laws. Its drone law — called the Texas Privacy Act— explicitly authorizes drones to capture images in certain circumstances. For instance, it permits owners and operators of pipelines to use drones for inspections and university professors to use them for "scholarly research." The Texas law also allows drones to capture images of people on "public real property," of people "on real property that is within 25 miles of the United States border," and "with the consent of the individual who owns or lawfully occupies the real property captured in the image." In addition to these permissible uses, the law prohibits certain conduct — specifically, using a drone to capture images of people or privately owned property "with the intent to conduct surveillance on the individual or property." The law, however, does not define "surveillance." Texas deems this conduct a misdemeanor and provides a defense if the alleged offender destroyed the image as soon as he or she realizes it was captured and has not disclosed it to anyone else. The law also makes it a misdemeanor to possess, disclose, distribute, or otherwise use an image after capturing it in violation of the law. In addition, Texas law gives owners and tenants of private property the right to file suit to enjoin an "imminent violation" of the criminal provisions and to seek civil penalties and attorney's fees. The civil penalties include statutory damages of up to $5,000 for "all images captured in a single episode" and up to $10,000 for the disclosure or "use" of "any images captured in a single episode." An owner and tenant also can recover actual damages if he or she can show that the images were disclosed or distributed with "malice." Tennessee has enacted a statute that follows the Texas model. It also has enacted a statute that prohibits the use of drones to conduct surveillance of people hunting or fishing without their consent. Illinois has passed a similar law, making it a crime to use a drone to interfere with hunting and fishing. **Idaho's** law sweeps more broadly. It bars people from using drones "to photograph or otherwise record an individual, without such individual's written consent, for the purpose of publishing or otherwise publicly disseminating such photograph or recording." The law, which would undoubtedly face constitutional challenges if enforced, allows a person to file suit and recover either $1,000 in statutory damages or "actual and general damages," whichever is greater, plus attorney fees and "other litigation costs reasonably incurred." **North Carolina**, likewise, prohibits using a drone to "photograph an individual, without the individual's consent, for the purpose of publishing or otherwise publicly disseminating the photograph." But, unlike Idaho, the Tar Heel state provides an exception for "newsgathering, newsworthy events, or events or places to which the general public is invited." North Carolina, taking a page from Texas's statute, also prohibits people from using drones to "conduct surveillance" of people, dwelling, and private property without the person or property owner's consent. If any of these provisions are violated, the person or property owner can sue, seeking actual damages, statutory damages ($5,000 per photograph or video disseminated), costs and fees, as well as injunctive relief. Finally, **Wisconsin** has passed a criminal law to deal with private drone use. Its law would punish anyone who uses a drone "with the intent to photograph, record, or otherwise observe another individual in a place or location where the person has a reasonable expectation of privacy." In Wisconsin, that crime is a misdemeanor. With many people, including journalists, photographers and filmmakers, clamoring to fly drones, and in the absence of FAA regulations, states have begun to address the issue. Nearly all states have considered drone legislation over the past few years. More than a dozen states have passed laws substantively regulating drones, with most of these laws addressing the use of drones by government agencies and focusing primarily on law enforcement use.

States can restrict federal drone use

Mike **Maharrey, 4-6-2013**, The War on Freedom," Tenth Amendment Center, http://tenthamendmentcenter.com/2013/04/16/the-war-on-freedom/, Accessed: 5-27-2015, /Bingham-MB

Work through our state and local governments to block these Constitution violating acts. Simply **getting state and local government to refuse cooperation with federal overreaches of power will go a long way toward neutering the feds**. Fact: feds **rely on state and local cooperation**. Imagine if the FBI shows up to indefinitely detain somebody in your town and nobody at the state or local level lifts a finger. No local law enforcement support. No use of state or local jails, or other facilities. No use of state and local resources at all. Zero cooperation. **We're beginning to see this movement developing across America. Virginia led the way, passing a bill refusing compliance with NDAA detention in 2012. This year, nearly two dozen states have similar bills pending, and several will likely become law**. Countless counties and municipalities have passed resolutions condemning federal kidnapping. **More than half of the states in the Union have bills pending that would place restrictions on drone use**. **If states refuse to deploy drones, the DHS will have no information to share.** States lawmakers are also looking at legislation that would stop the most intrusive TSA pat-downs. James Madison laid out the blueprint in Federalist 46, before the Constitution was ever ratified. **The states must check federal power**.

States can regulate drone surveillance without a warrant

Robert **Holly**, **3-21-2014**, States restrict drone use because of privacy concerns," Investigate Midwest, http://investigatemidwest.org/2014/03/21/states-restrict-drone-use-because-of-privacy-concerns/, Accessed: 5-27-2015, /Bingham-MB

Citing privacy concerns, **legislators throughout the country are increasingly passing laws to restrict the use of domestic drones over private land.** For more information on drone use, see the series: "Sunshine Week" **At least nine states have officially enacted some form of legislation that bans nonconsensual domestic drone use over private property**, found an analysis by the American Civil Liberties Union, a network of more than 500,000 members who monitor First Amendment and privacy rights. "We believe that we need a system of rules to ensure that we can enjoy the benefits of drones and technology without becoming a surveillance society in which everyone's movements are monitored, tracked, recorded and scrutinized by the authorities," said Allie Bohm, an advocacy and policy strategist for the American Civil Liberties Union. "We believe that **drones should be prohibited from indiscriminate mass surveillance." In the states with drone-restriction policies in place**, **drone pilots surveying land and capturing images need to first gain consent from the owners of the land they are flying over**. Likewise, **law enforcement authorities need to first secure a warrant**.. This year, at least **34 additional states have also introduced similar policies that aim to limit domestic drone use**.

Solvency – Commercial Use

States can solve commercial use---already have a fabric for safeguards

Bennett, 14

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But that's just the thing: **private aircraft matter, too**. These days **individuals, private universities and companies can** and do **fly surveillance-capable aircraft**, both with and without the specific blessing that the FAA requires.9 As unmanned flight technology matures and grows ever cheaper, it will find its way into more private hands. The already swift clip will quicken, once the FAA writes rules for wider domestic drone flight. Suffice it to say **private actors will soon operate drones in equal** if not greater **numbers than the government** does—and also acquire the potential to undertake just as much surveillance. **As pressing as the question of how best to safeguard "public" privacy, is the question of how best to safeguard its understudied counterpart, "private" privacy**. The urgency is reflected in a handful of legislative proposals concerning drone surveillance, and in a decision reportedly forthcoming from the Obama Administration. Though details remain sketchy, the White House is set to order the National Telecommunications and Information Administration ("NTIA") to develop, in consultation with various stakeholders, voluntary privacy guidelines for commercial drone use.10 This essay examines the current division of labor between state and federal governments, with respect to civilian drones and privacy. It proceeds in three parts, the first of which recognizes the most compelling reason, put forward by advocates of a state-based regime, for the states' primacy in shielding "private" privacy rights. **There's already a state law fabric meant to safeguard those very rights**, **one woven of common law doctrines, statutes, and laws meant to account for drone surveillance in particular. This body of law will be increasingly relevant as more private drones fly**, and civilian drone surveillance becomes more common. And, as the drone federalists rightly point out, **currently there is no firm consensus about how best to safeguard privacy rights from non-governmental drone surveillance**—**something a top-down, federal approach would require.**

Solvency – Clarity

State precedent is there to inform drone legislation---lack of uniform clarity means states are better than federal drone law

Bennett, 14

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The States' Primacy Opponents of a federal statutory scheme for civilian drones and privacy have broadly raised two claims, both of them valid. First, with some important federal-level exceptions, **the law of "private" privacy and aerial surveillance largely is state law**.11 **It** is mostly tech-neutral, and accordingly **has protected privacy from varied forms of surveillance by nongovernmental actors over time**. When the drones take to the skies in greater numbers, a body of varied state rules will be waiting for them. And it will do much of the work in addressing civilian drone surveillance—though how well remains to be seen. State privacy laws generally fit into one of three categories. In the first are longstanding statutory and common-law protections against nongovernmental intrusions. Often it is both a crime and a tort to trespass on another's property, for example by walking on it without permission.12 That is arguably just as true of low-level overflight. Thus an unannounced Quadcopter hover, inside a neighbor's back yard barbecue and at hair-parting altitude, could theoretically put a drone operator on the hook for trespassing. This depends on how a state trespassing statute has been written and how far a court is willing to go in interpreting it.13 Also in play are the classic statelaw "privacy" offenses, which largely "cover what most people think of when they think of personal privacy and social privacy norms."14 The prohibitions against invading privacy, intruding upon seclusion, publishing private facts, and stalking all might be implicated when a drone, heavily sensored up, hears or sees somebody who doesn't wish to be heard or seen.15 Again, outcomes will depend on the fit between a case's facts and criteria set by law. Simply filming a private conversation from a drone probably won't tee up a publication of private facts claim, absent some effort on the snooper's part to disseminate the conversation's contents; a quick fly-by, even when paired with video filming, probably won't rise to the level of an intrusion upon seclusion, either. A more sustained look might be a different story. More specialized rules make up the second group of state privacy laws. These include state wiretap laws, which preclude the recording of images or conversations without both parties' consent. Also, the somewhat rare "Peeping Tom" and anti-voyeurism laws, which bar peeking into the home under certain circumstances; and equally rare paparazzi statutes, which "ban paparazzi from using special technologies to intrude on the personal life and personal spaces of celebrities."16 Here too it is easy to imagine how drone surveillance might trigger one or more of the foregoing. An industrious Peeping Tom, for example, might acquire a Parrot Drone, and fly it close enough to an unsuspecting neighbor's bathroom window to snap a photo. It also goes without saying that paparazzi most assuredly will make ample use of surveillance technology—drones included—in their relentless and unending quest to keep up with the Kardashians.17 To the foregoing **we can add a** third and **growing category**: civil and criminal **laws designed** specifically **to block unwanted aerial surveillance** from privately owned, unmanned aircraft. So far, **thirteen states have enacted these**, either standing alone or coupled with statutes meant to account for surveillance from public aircraft. By way of examples, **Tennessee handed down two "private" privacy statutes in 2014**. One makes it a misdemeanor to conduct drone based video surveillance of citizens who are hunting or fishing in accordance with state law.18 Another precludes, with exceptions, the use of an "unmanned aircraft to capture an image of an individual or privately owned real property … with the intent to conduct surveillance on the individual or property captured in the image," when a snooper retains or publicizes the images. (There's an odd and possibly rule-eating catch: one can escape liability by showing that, upon learning the images were obtained unlawfully, the drone operator promptly destroyed or stopped publicizing them.19) Wisconsin's new drone law suggests a narrower scope of geographic application than Tennessee's. Under the former, a private individual commits a misdemeanor by using a drone to "photograph, record, or otherwise observe another individual in a place where the individual has a reasonable expectation of privacy."20 Two things stand out about this tripartite array. First, **there's a good-sized body of general privacy law out there, waiting to absorb the coming influx of domestic drones and associated surveillance**. The second is diversity. **Not all states define trespassing or drone surveillance in the same way**, or apply identical privacy protections to identical places. Between its statutes and court-crafted doctrines, this jurisdiction might take a relatively stringent approach to the safeguarding of "private" privacy, while that one might take a relatively permissive approach. The phenomenon is most vividly on display with regard to drone-specific statutes; many states don't have one to begin with, and thus accordingly handle nongovernmental privacy intrusions through a mix of laws in categories one and two. In this way, the law of "private" privacy is something of a hodgepodge. Its coverage can be expansive or porous or even nonexistent, depending on where you are, and what sort of technology is deployed. That registers a second, related point in the drone federalists' favor. **We don't quite yet know how effective any one's state law will be, as the domestic drone population grows denser** and private surveillance more pervasive; or which states' laws will withstand court challenges. And we won't have a better sense on either score for a while, either. The **uncertainty will frustrate consensus** about how best to regulate drones, snooping, and nongovernmental actors—**and thus bolster states' prerogatives** in the short run.21 **So far as "effectiveness" goes**, **we really don't have enough in the way of data just yet.** Though unmanned aircraft are increasingly visible, they also are not yet an everyday feature of American life in the same way that manned craft very much are. This is not to suggest that domestic drone flight lies far off in some wild future or that it is weird or unprecedented. In fact, odds are pretty good you've seen a YouTube video of footage taken from a Quadcopter, or maybe even fiddled with making such a recording yourself. Or perhaps you've read about a safety incident involving a slightly larger but still small drone, or even operated one pursuant to the FAA's licensing scheme. (So far, the FAA says it has authorized only three commercial drone operations, two over water and another over land.) Yet the odds are just as good that John Q. Citizen can go weeks, maybe even months, without laying eyes on a drone—or, more to the

point, without a drone laying its eyes on him. The rough probabilities naturally vary from one place to the next. There is plenty of unmanned flight ongoing at test ranges, to name one obvious example; and camera-carrying model aircraft likewise probably are thicker in the air above North Dakota than above Washington, D.C. Still, this fact remains. **The American drone era is in its adolescent phase, with the machines' numbers steadily increasing**, though still remaining small enough to keep civilian drone snooping out of most peoples' lives, most of the time.

Solvency – Privacy

States have lots of precedents for privacy law

Kaminski, 13

(Margot Kaminski, Executive Director of the Information Society Project, Research Scholar, and Lecturer in Law at Yale Law School. "Drone Federalism: Civilian Drones and the Things They Carry" http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1007&context=clrcircuit) Henge

V. WHY STATES ARE BETTER Assuming these conditions are met, **Congress should defer to states on** privacy **regulations governing** civilian **drone use for** video and audio **surveillance**.54 States **have experience regulating many** of the **kinds of privacy violations** contemplated by those who fear drones, and state legislation permits experimentation with these regulations, subject to crucial feedback from courts on First-Amendment boundaries. Congress should therefore wait to enact regulation of civilian use of drones for information-gathering until more data emerges out of state experimentation. At the least, **Congress should avoid preempting state regulation** in any drone privacy statute it does enact. A number of state laws raise questions similar to those likely to be raised by drone regulation. **State wiretapping laws, Peeping Tom laws, video voyeurism laws, and paparazzi laws all currently regulate privacy-intrusive photography, videography, and sound recordings**.55 These laws vary in how they handle the scope of privacy protection against video and photographic intrusion. **State wiretap laws**, for example, **vary** in whether they require the consent of one party, or the consent of all parties. They vary in whether there must be a reasonable expectation of privacy in the conversation for a privacy violation to occur, and they vary in whether the act of recording must be surreptitious to bjje banned.564 Peeping Tom **statutes criminalize peeping through a hole or other aperture** into a person's home. They are sparsely enacted, and relatively ineffective, because they require catching the Tom in the act.57 Video voyeurism **statutes criminalize the viewing, videotaping, or photographing of another without knowledge or consent**, when done for the purpose of sexual arousal.58 Some of these statutes require establishing a reasonable expectation of privacy, and some require that the criminalized image be of a nude or partially nude subject. Paparazzi **statutes ban paparazzi from using special technologies to intrude on the personal life and personal spaces of celebrities**.59 In handling these state statutes, many courts have shown a reluctance to find a reasonable expectation of privacy in public places.60 However, **states could** conceivably **get around** this **reluctance** if desired, **through legislation**. Presumably, states will also try to regulate the taking of photographs, video, or audio recordings from drones, as Texas H.B. 912 currently proposes. **Drone anti-surveillance laws thus resemble these state privacy statutes** that have led courts to grapple with the appropriate balance between privacy and free speech. The state wiretap law cases discussed above demonstrate that a wholesale ban on drone-based recordings would implicate a substantial First Amendment interest. A wholesale ban of drone videography would thus likely not be found constitutional, because it would ban an entire medium of expression.61 But as current state laws demonstrate that a number of narrower privacy protections may be societally acceptable and even necessary, these types of **restrictions may be imported into state anti-drone-surveillance legislation.** In the next section, I explore the various ways in which states might legislate to protect privacy implicated by drone use.

Solvency – Follow On

Fed will follow states

Kaminski, 13

(Margot Kaminski, Executive Director of the Information Society Project, Research Scholar, and Lecturer in Law at Yale Law School. "Drone Federalism: Civilian Drones and the Things They Carry" http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1007&context=clrcircuit) Henge

Thus **states have been the historical locus of governance of personal privacy, and**, as discussed, **have also been the locus of recent tensions between privacy and the First Amendment. This makes them the historical site of experimentation with privacy law that collides with the First Amendment**. It is appropriate for state laws to continue to serve that function with respect to civilian drone use. **Each state will be able to express privacy values reflective of its own citizens' differing principles and needs**, and courts can determine whether these values collide with the First Amendment. **Eventually, state civilian drone laws may converge into a floor that other states can each build on**, with the more successful statutes—the ones that survive First Amendment scrutiny in courts— **serving as the blueprint for eventual federal legislation**. **For now, however, we truly do not have a uniform idea of how to balance privacy against speech rights in gathering information**. If we federally legislate civilian drone surveillance, we risk creating a Congressional floor that collides with the First Amendment.

Solvency – AT: FAA

FAA isn't key---no federal preemption

Kaminski, 13

(Margot Kaminski, Executive Director of the Information Society Project, Research Scholar, and Lecturer in Law at Yale Law School. "Drone Federalism: Civilian Drones and the Things They Carry" http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1007&context=clrcircuit) Henge

VIII. PREEMPTION All **discussions of federalism must** eventually **address the possibility of federal preemption**. While this Essay is by no means an exhaustive exploration of this topic, it is worth at least cursorily addressing whether preemption already exists. **State privacy regulation of drones does not appear to be currently preempted by federal law**, insofar as it does not interfere with how or where flight occurs.75 One of the proposed federal drone bills, however, does attempt to preempt at least some state regulation.76 The location of the drone—that is, whether it flies particularly close to the ground—does not determine who regulates them. Historically, the FAA has regulated (although minimally) low-flying hobbyist aircraft, and now contemplates putting in place more stringent regulations to govern such aircraft when they are used for commercial purposes. Since 1981, the FAA has permitted hobbyists to fly remote-controlled aircraft without FAA licensing, as long as the flight is under 400 feet and within their line of sight.77 The FAA recently clarified, however, that when such aircraft are used for business purposes, they may require "compliance with applicable FAA regulations and guidance developed for this category." The FAA also plans to host rulemaking specifically directed at drones under 55 pounds.78 Thus there will be overlap of FAA regulatory authority with state regulation even of small, low-flying drones. However, **FAA regulation of small, low-flying drones does not preclude all state regulation**. Congress has not created express statutory preemption of laws governing aerial surveillance, and has even expressly nodded to exceptions to federal preemption in the field of aviation. **The original Federal Aviation Act had a** savings **clause explaining** that "[**n]othing contained in this Act shall** in any way abridge or **alter** the **remedies now existing** at common law or **by statute**."79 In 1994, Congress amended this clause to explain that a "remedy under this part is in addition to any other remedies provided by law."80 Presumably, **the 1994 revision still intends to exempt state** tort **laws**, for example, **from federal preemption**. A number of courts have found federal preemption of state attempts to impose curfews on airports or enjoin flight patterns over certain areas.81 But federal aviation law does not preempt state common law tort claims for injuries suffered during crashes.82 Additionally, federal aviation law does not preempt a city's zoning power on land, because that power does not conflict with air use. 83 However, aviation safety law impliedly preempts state schemes for regulating alcoholic beverages on board an aircraft.84 One interesting question will be whether the use of cameras on a drone is considered to fall under the regulatory power of the government in federal airspace, or under the state power to protect its citizens from privacy injuries on land.85 While to my knowledge **there is no extensive system of privacy regulation on airplanes**, courts might find that airplane safety regulations impliedly preempt state regulation of cameras on planes, as they did the regulation of alcoholic beverages. CONCLUSION In its haste to address the specter of a civilian drone invasion, **Congress should not preempt states from enacting privacy laws governing** civilian **drone use. States have served as laboratories for experimentation** in achieving a balance between First Amendment rights and privacy protection. **Congress should permit them to continue doing just that, until an appropriate balance is struck** and federal regulation of civilian drone use might again be considered.

2NC – AT: Perm Do Both

Obviously links to the net benefit

(____) Links to politics—states avoid the need for congressional debates that cost political capital

(____) Links to flex—doesn't tied down the executive with federal restrictions

2NC – AT: Perm Do the Counterplan

This is severance and a voting issue:

Ground—destroys the foundation of debate if the affirmative can sever choices they made in their plan text

Education—debate becomes meaningless if we allow severance, no incentive to research strategies because the aff will always avoid them

Voting issue for fairness—preserve the opportunity for both sides to compete

2NC – AT: Fifty State Fiat Bad

It is legitimate in this context—1NC Hudson evidence says the most relevant policy question for surveillance drones is whether the restrictions should be at the state or federal level

And you should default to specific solvency questions to determine counterplan legitimacy, because the literature should determine the shape of debates over the course of the season, incentivizes in depth research

And 50 state fiat is legitimate

-**Negative ground**: key test of federal key warrant on domestic topics and check affirmative innovations and topic explosion.

-**Protecting neg ground outweighs**: Huge affirmative flexibility and directionality on this topic plus no coherent negative ground. Flexible and bidirectional energy sources and mechanism means we should err on the side of protecting negative ground.

- **Best policy option**: debate should be a policy analyst not decision maker, means best policy witin reasonable constraints should guide division of ground.

- **Real world**: policy experts consider the counterplan, it's in the literature, its arbitrary and unpredictable to exclude it from the negative arsenal.

- **Solvency advocate checks**: 1NC solvency evidence says that collective state action is superior to federal action, prefer a literature – based interpretation of theory –it's in the context of energy policy and it describes collective state action.

-**Aff ground**: leadership, effectiveness, and signaling arguments, disads to states or impact turn all have a literature base to defend federal energy policy.

2NC – Net Benefit – Pres Powers

States solve the flex DA---ensures flexibility for immanent threats

Zoldi, 14

(Col. Dawn M.K. Zoldi, USAF, is Chief of Operations Law at Headquarters Air Combat Command. "On the Front Lines of the Home Front: The Intersection of Domestic Counterterrorism Operations and Drone Legislation" http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2379143) Henge

I. Introduction Find. Fix. Finish. Doctrinally, the targeting cycle remains the same, whether the target is located abroad or at home.1 Yet **operations to prevent**, counter, or respond to **domestic terrorism are different from those overseas** in many respects. State and federal law enforcement agencies, not the Department of Defense (DoD), will be the country's first line of defense for domestic counterterrorism (CT) operations.2 Even so, **the DoD may** be called upon to **support law enforcement agencies**. What if any one of these agencies planned to use a drone in support of its CT efforts at home?3 For some, this very idea raises the specter of illicit government surveillance—or even more controversial, the extrajudicial killing— of Americans on United States soil. To allay fears related to privacy and due process, 43 **states have proposed** 86 **drone bills to "protect citizens' privacy" or free them from "unwarranted" surveillance**.4 Eight states have already passed such legislation.5 Of these state proposals, 90% apply to state and local government actors, primarily to law enforcement agencies.6 Forty-one percent also extend their applicability to U.S. or federal government employe**e**s.7 Twelve percent of state bills directly address the U.S. military, but many more could also apply.8 Federal drone legislation has also been introduced.9 These proposals largely track state initiatives and apply to both state and federal actors. In addition, while DoD drone policies apply directly to DoD personnel, they also have indirect effects on the civilian agencies they support. Thus, drone legislation and policies will impact conduct across the range of governmental actors during all operations, but in particular domestic CT operations. The underlying assumption of this chapter is that states and the Congress will continue to revisit the subject of domestic drone use in relation to privacy and due process until laws are passed. The purpose of this article is to review these legislative drone proposals and policies, explore their potential impact on domestic CT operations and identify best practices that allow drones to be used to their full operational potential in CT operations, while protecting privacy and liberty. II. Find and Fix Finding a target means detecting it.10 Fixing the target means determining its positional location.11 Drones perform both of these functions well.12 To the extent that proposed drone laws and existing drone policies address using these assets to collect information or evidence about a person, they have implications for "finding and fixing" terrorists domestically. Below is an overview of state and federal drone bills and DoD policies relevant to the "find and fix" aspects of domestic CT operations. A. State Legislation—Information Collection Almost universally, state drone legislation prohibits the use of drones to collect information or evidence.13 There are, however, exceptions, the most common being where law enforcement obtains a judicial warrant or court order.14 Highly **relevant to a domestic CT scenario**, 22% of proposed **state drone bills permit drone use without a warrant in relation to a terrorist attack**. All the state bills that contain a "terrorist attack" exception use similar language: "**To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security . . . determines that credible intelligence indicates that there is such a risk**."15 Although the bills do not define "counter," the language appears to be preventive in nature, to thwart a likely future or imminent terror attack. The bills also do not define "terrorist attack." A scan of publicly available DHS documents does not provide an obvious definition of "terrorist attack."16 Because the exception always requires a predicate determination by the Secretary of Homeland Security that a high risk of a terrorist attack exists before it can be invoked, the secretary's interpretation as to what acts rise to the level of a domestic terror attack would be determinative. Along similar lines, Arkansas, Hawaii, Maine, and Michigan would allow state or federal agencies to use drones for emergencies involving "conspiratorial activities threatening the national security interest."17 Like the terror attack exception, the national security interest conspiracy exception contains significant terms that remain undefined, such as "conspiratorial activity" and "national security interest." As such, these state provisions would be subject to individual interpretation.18 **Most terror attack scenarios would invoke the potential of immediate danger of death, serious physical injury, or significant property damage**. All but 14 states have proposed drone bills to permit their use in a proactive manner to save lives in emergency situations.19 **These provisions are most commonly styled as an "imminent danger to life" exception**.20 Most of these same provisions also permit drone use to prevent property damage.21 Other CT-relevant exceptions include provisions that would permit drone use on or over public lands or to monitor borders.22 **Depending on the facts of a particular CT event**, **state drone legislative exceptions**, such as those permitting drones to pursue fleeing suspects, to prevent the destruction of evidence, or to be used in situations tantamount to "judicially recognized exceptions to the warrant requirement," **might also apply**.23 Less relevant in the CT arena, but worth mentioning, fewer than a quarter of drone bills surveyed permit their use where the target or property owner has consented.24 Some state drone bills also contain exceptions that would allow drones to be used to mitigate the effects of a domestic terrorist event, including provisions for disaster response and search and rescue (SAR).25 Other provisions that might be employed after a terror attack include those from Illinois, Oregon, and Texas, which allow drones to assess crime scenes.26

2NC – Net Benefit – Politics

States don't link

[ ] There's no reason Obama would be blamed or get credit for state policies.

[ ] Avoids conflict

States avoid politics

Rabe, 7

(Prof of Public Policy-Ford School at Michigan, "Beyond Kyoto: Climate Change Policy in Multilevel Governance Systems," Governance, Vol. 20, Issue 3, July)

Those more active states include many that have conventionally been among the most innovative in environmental and energy policy, particularly those lodged along the respective national coasts, but they increasingly include a diverse set from other regions such as the Southwest and Midwest (Rabe 2006). Most of the initiatives have been enacted with **minimal partisan rancor** and have not been dominated by a single political party. Most of these also appear quite **capable of enduring once partisan control of a state government**, including the governorship, **changes hands, and have not proven very controversial to enact** or implement. Clearly, state agencies have played a central role in policy development, building coalitions rather quietly around policies that are tailored around relatively inexpensive reduction opportunities. This is entirely consistent with a pattern of "bureaucratic autonomy" and agency-based entrepreneurship that has been established in other American policy contexts (Carpenter 2001; Mintrom 2002).

These steps have often been linked to early signs of climate change as manifest in a particular state, thereby framed as a response to a specific environmental problem facing the state. A further source of bipartisan appeal for these initiatives has been the promise of multiple benefits, whereby agency advocates demonstrate the potential of a program not only to reduce greenhouse gases but also to achieve other goals, such as reduction of conventional air pollutants, reduced reliance on imported fossil fuels, and longer term regulatory predictability to electrical utilities and other regulated entities, as well as economic development opportunities (Rabe 2004). Hence, a considerable part of the appeal of state-based climate policy initiatives has been the simultaneous pursuit of environmental protection and potential contribution to economic growth or stability. Indeed, much of this comports with Eugene Bardach's definition of smart practice: "What makes a practice smart is that the method also involves taking advantage of some latent opportunity for creating value on the cheap" (Bardach 1998, 36). In contrast, climate policy initiatives, whether or not they meet the definition of smart practices, are simply much harder to find at the Canadian provincial level. Only one of the 10 provinces, Manitoba, begins to approach the 15 most active American states in terms of the breadth and rigor of its greenhouse gas reduction strategy. Instead, most provinces remain focused on preliminary study of the issue and consideration of alternative policies that might be established at some future point. Among the three or four more active provinces, climate policy is almost exclusively confined to nonbinding "goals" and voluntary efforts. Any regulatory provisions, or exact rules to guide reduction, are focused narrowly on provincially funded activity, such as a mandate in Alberta to purchase a set of hybrid vehicles for government use. Fifteen years after Rio and nearly a decade after the signing of Kyoto, it remains very difficult to discern much of a pulse on serious climate policy development in most provinces, quite contrary to the experience of a growing and diverse set of American states. American state engagement on climate policy may be every bit as surprising as Canadian provincial disengagement. Given conventional depictions of the United States as a North American climate policy laggard and Canada as a

devoted adherent to Kyoto, why are so many—and such diverse—states apparently taking the lead in devising policies to reduce greenhouse gases? Why do the American states offer an increasingly large and robust set of policy initiatives where there is no evidence of a comparable trend in Canada? Subsequent discussion will explore three distinct factors that emerged through the comparative case analysis to explain this variability. Differing Intergovernmental Context The divergent paths of the respective federal governments on Kyoto served to create very distinct contexts for states and provinces to consider their own policy development options. These differing contexts were clearly unintended by-products of the very different ways in which the debate over Kyoto, involving both those steps leading toward final negotiations and consideration of possible ratification, played out in Washington and Ottawa. In turn, they illustrate the very differing roles that subnational units—states and provinces—played in these processes, with attendant impacts on their own involvement in climate policy development. A hallmark of the American federal government through the two Clinton administrations and the second Bush presidency has been **a consistent inability to reach agreement** on legislation related to environmental protection, energy, and other areas vitally important to climate change. During this period, every possible partisan configuration within the American two-party system has existed for at least some period of time and yet a consistent outcome has been lack of domestic policy consensus, even in terms of needed updating of established legislation such as air quality (Binder 2003). This divide is equally evident in the international climate realm, as the Clinton administration agreed to Kyoto in December 1997 even though a number of its key provisions directly contradicted a Senate resolution that passed by a 95–0 vote six months earlier. A few states sent representatives to Kyoto and earlier rounds of negotiation but they were not formally consulted either in developing the treaty or in examining ways in which the Senate might be persuaded to ratify it. Instead, Kyoto was widely recognized through the remaining three years of the Clinton administration as doomed politically, so much so that the administration never submitted it to the Senate for ratification nor actively developed a strategy seeking ratification. In many respects, the 2001 actions by the Bush administration were anticlimactic and neither the 2000 nor 2004 Democratic presidential nominees offered any blueprint for jump-starting Kyoto. In many respects, Kyoto was politically "dead on arrival" but nonetheless attracted tremendous division and controversy in Washington during subsequent years. As states were essentially excluded from this process, they had a relatively quiet decade in which to think about climate change, in terms of both how it might affect them in distinct ways and how they might fashion their own policies to reduce greenhouse gases and simultaneously promote economic development. In some instances, states have clearly responded to a perception that climate change poses serious threats to their residents—such as sea-level rise in coastal states and severe droughts in agricultural states—and that there is a significant environmental need to craft responsive policies as soon as possible. But these responses have also been coupled with efforts to design policy that "fits" the economic and political realities of a particular state. These are intended to minimize any economic disruptions that might occur during implementation and to take maximum advantage of economic development opportunities that may stem from early action on climate change. What has been missing in these state policy processes is the kind of anguished, often moralistic, rhetoric that has polarized national debate and made any semblance of consensus at that level so elusive. Instead, state policy deliberations over climate change have benefited from a kind of **"political cover"** provided by the widely held presumption that states lacked the incentives, resources, or authority necessary to play any serious role. Many states used this extended period to reflect seriously about the issue of climate change and how they might begin to respond to it. Many began with symbolic initiatives and analytical exercises, gradually moving toward policy development as ideas converged and opportunities arose. At various points, these efforts took institutional form, such as creation of a cross-agency task force or designation of a unit with a lead role in policy development. All of this continued apace, receiving surprisingly little attention from environmental groups, the media, or federal policymakers, while the latter continued to dominate

public attention by thrashing over the details of Kyoto and its aftermath. This served to give state officials considerable time to contemplate climate policy options, including the forging of policies that made considerable political, economic, and environmental sense for them to pursue unilaterally, with the reasonable expectation that no federal action of any consequence was in the offing.

Insulated from political fights

Rabe (Prof Public Policy @ U. of Michigan) **2004**

[Barry, Statehouse and Greenhouse: The Emerging Politics of American Climate Change Policy //mac-tjc]

But this is not what occurred in the **states** examined in this study. Instead, a much **quieter process of policy formation has emerged**, even during more recent years, when the pace of innovation has accelerated and the intent of many policies has been more far-reaching. This is not to suggesst that climate-related episodes have been irrelevant or that leading environmental groups have played no role in state policy development. **Contrary to the** kinds of **political brawls** so **common in debate about climate** change **policy at national** and international venues, however, **state-based policymaking has been far less visible and contentious, other cutting across traditional partisan and interest group fissures. It has**, moreover, **been far more productive in terms of generating actual policies** with the potential to reduce greenhouse gas releases.[p. 22]

Transparency CP

Shells

1NC

The United States federal government should:

Adopt a new public communication strategy regarding surveillance activities that at least emphasizes the strength of existing oversight and the limitations of transparency.

Codify in statute existing procedures, standards and minimization procedures governing NSA surveillance

Require both regular public reporting of aggregate data concerning the use of surveillance authorities and regular public disclosure of compliance and non-compliance reporting.

The CP's reforms restore public and foreign trust while maintaining NSA flexibility. Wittes, Brooking senior governance fellow, 2013

(Benjamin, "Legislative Changes to the Foreign Intelligence Surveillance Act", 9-26, http://www.brookings.edu/~/media/Research/Files/Testimony/2013/09/26-fisa-nsa-wittes/Wittes-SSCI-Hearing-StatementFinal-Draft92613.pdf?la=en)

To the extent that members of this committee continue to believe, as I do, in the essential integrity of the post-Watergate mechanisms of intelligence oversight, the first task in the current political environment is to defend those mechanisms— **publicly and energetically**—rather than race to correct imagined structural deficiencies, or even real structural imperfections that, however real they may be, bear little relation to the outcomes that disquiet us. And critically, **the defense of these mechanisms necessarily involves a defense of significant limitations on transparency**—just as the defense of the core operations of this committee involves a defense of significant limitations on transparency. This committee, and Congress more generally, ought therefore to make quick work of radical proposals that seek to, for example, abolish the FISA court system entirely in the name of transparency.5 Nor should members detain themselves long over the proliferating proposals to impose a strong norm of transparency on a system designed to avoid the consequences of transparency.6 Rather, the challenge when we speak of adding transparency to the FISA is a subtler one: it is to inject transparency within the basic confines of an oversight system designed to protect secrets. True opportunities for new transparency within this system are relatively limited, though some significant ones do exist, particularly now that major programs are compromised anyway. **The opportunities for transparency are limited because the price of transparency, at least while programs remain secret, is unacceptably high in operational terms**. Until someone like Snowden blows a particular program, the costs of having an open discussion about that program involves a damaging initial disclosure. Only after the fact of the program becomes public can one discuss even its broadest contours without doing the leaker's work for him. But ironically, the involuntary transparency foisted on the intelligence community by someone like Snowden will tend to create opportunities for official transparency. Snowden, for example, disclosed information revealing the fact of the Section 215 metadata collection program.7 Members of this committee know better than I do the operational consequences of those disclosures. But that damage's having been done, the executive branch suddenly faced an entirely different set of calculations regarding the costs and benefits of further disclosures. And it responded with significant document releases and public statements about the program,8 disclosures it never could have made before it had absorbed the initial damage. Something similar happened with respect to collection under Section 702. The result is that we now have declassified minimization procedures for collection under Section 7029 and primary orders10 for bulk metadata collection. **The fact that this information is now public offers Congress a significant opportunity to codify existing legal standards in statute—standards that, until this summer, Congress could not have written into law without revealing the fact of the program itself.** There is much to be said for codifying in statute the law developed in the iterative back-and-forth between the Executive Branch and the FISC in 2009 and now reflected both in FISC orders and the extant minimization procedures governing the metadata program. There is a perception, based on the text of 50 USC § 1861,11 that the FISC is ordering metadata production based on simple relevance—much as courts uphold grand jury subpoenas based on a showing of relevance. But as the recently-revealed primary order and other declassified documents show, there's actually much more going on in the way of standards and restrictions than merely a showing of the production's relevance. These rules, restrictions, and standards include, for example, the requirement that the sole purpose of the production be to support authorized investigations to protect against terrorism; the most recent primary order expressly forbids any other use.12 More importantly, the order also includes the requirement that the metadata database only be queried when there is a "reasonable, articulable suspicion" (RAS) that the telephone identifier is associated with terrorist activity. It also includes various restrictions designed to ensure that only RAS-approved identifiers are queried.13 Congress could craft out of the primary orders and the attendant minimization procedures a far more comprehensive statutory scheme to govern the production, maintenance and use of metadata under FISA. While this process would not add information to the public's understanding of the program, it would have the salutary dual benefits of ratifying existing practice and clarifying for the public in law the precise circumstances—now spelled out in an interlocking fabric of statute, executive procedure, and court order—under which the government can acquire and use bulk telephony metadata. The transparency benefit here is admittedly modest, since following the declassification of the orders and the procedures, the standards in question are already public. But there is at least a marginal transparency benefit to writing the rules into **law, and there is a significant benefit on their own terms in codification and congressional ratification.** In addition, Congress should consider requiring both regular public reporting of aggregate data concerning the use of 215 and 702 authorities and regular **public disclosure of compliance and non-compliance reporting.** The Director of National Intelligence recently announced that the Executive Branch would be releasing annually data describing the number of orders issued and the number of people targeted under the following authorities: ● FISA orders based on probable cause ● Section 702 of FISA ● FISA Business Records ● FISA Pen Register/Trap and Trace ● National Security Letters issued pursuant to 12 U.S.C. § 3414(a)(5), 15 U.S.C. §§ 1681u(a) and (b), 15 U.S.C. § 1681v, and 18 U.S.C. § 2709.14 Similarly,

the government has declassified a significant body of material related to compliance issues.15 There is little reason, particularly prospectively, why such compliance reporting could not be made public on a more routine basis—or at least summarized for the public. Similarly, there's no reason why the law should not codify and require public release of the sort of regular data streams the government is creating. Senator Feinstein has proposed other reporting mechanisms as well, suggesting annual disclosure of "the number of Americans' phone numbers submitted as queries of the NSA database," "the number of referrals made to the FBI each year based on those queries," and "the number of times in a year that any company is required to provide data pursuant to FISA's business records provision."16 **I do not purport to know which of these data streams can be safely released, but as a general matter, making such data public is critical to establishing long-term public understanding of what these programs are—and what they are not. That is, such disclosures are key to establishing and maintaining public legitimacy.**

Solvency

Communication – 2NC

Developing a better communication strategy restores public confidence.
Cordero, Georgetown National Security Studies director, 2013

(Carrie, "Thoughts on the Proposals to Make FISA More Friendly", 8-12, http://www.lawfareblog.com/2013/08/thoughts-on-the-proposals-to-make-fisa-more-friendly/)

There may be meaningful steps that are worth exploring that would foster public confidence. For example, it might help if there were a more consistent framework for declassifying information related to these activities. The drip, drip, drip of declassifying certain orders is, in my view, not helping. The orders on their own do not provide the full context of the activities, and it is likely that releasing the underlying documents would expose too many sources and methods. Similarly, selected examples of operational successes are both complicated to accurately extract, and turn attention away from the broader goals of the activities. **Developing a better method of communicating the value of national security surveillance activities to Congress and the public could help**. Finally, protecting foreign intelligence operational, analytic and oversight personnel from the budget mess might be a good idea. Wouldn't it be rich if personnel involved in the national security surveillance activities, and oversight activities in particular, were subject to furlough or other budget cuts even as the president embraces calls for a new layer of oversight bureaucracy?

More transparency while justifying secrecy is the best middle ground.
Foust, Foreign Policy Research Institute national security fellow, 2013

(Joshua, "Managing NSA's Public Image", 7-9, https://medium.com/state-of-play/managing-nsas-public-image-a706d6411558)

It is a difficult balancing act. The U.S. intelligence community is subjected to far more public scrutiny than any other intelligence service on the planet—and even then it operates largely in secret. **Congress has a unique opportunity to step in and shed some light on the nature of intelligence operations.** The circular legal structures that allow for secret interpretations of secret laws need to be made open. It won't be easy: Senators Ron Wyden and Jeff Merkley have tried to change laws to require more open legal reasoning for intelligence operations but both were voted down by their fellow Senators. The House of Representatives seems even less amenable to scaling back secret intelligence activities in the name of counterterrorism. The intelligence community also needs to be more upfront about the tradeoffs inherent to this discussion. Most members of the public are not trained in counterintelligence: They do not understand the damage or lost opportunities that come from certain kinds of openness. **Public education about how those tradeoffs will play out in real life—even if it results in some lost effectiveness in some quarters—is a vital step toward rebuilding trust that intel operations are in the public interest.**

Direct communication restores trust—the alternative is people assuming the worst case.
Corrin, Federal Times senior staff writer, 2014

(Amber, "Can the intelligence community win back public trust?", 9-19, http://archive.c4isrnet.com/article/20140919/C4ISRNET07/309190004/Can-intelligence-community-win-back-public-trust-)

"I want to bring in an outside perspective and take a look at how effective we are in our current communications strategy. I don't think we are where we need to be," Rogers, who also is commander of the U.S. Cyber Command, said at the INSA Intelligence and National Security Summit in Washington. "Secondly, I've said I want to engender a broader dialogue about what we do and why we do it, and why I as a citizen should feel comfortable that that capability we have is not going to misused or will be used against us." **Part of the problem is the public no longer trusts conventional watchdog models, such as congressional oversight and legal authorities**, Rogers said. "How you achieve a level of trust in a nation when those very mechanisms no longer enjoy a high confidence that they perhaps had previously or historically in our society?" Rogers said. "If those are going to be the venues that we traditionally had counted on to ensure that the American populace was comfortable with what we're doing — because the elected representatives had specific details on what we do and how, a court oversaw it and gave us legal authority in many cases specifically — how do you create an environment of trust and confidence in those mechanisms if they don't enjoy a level of trust they have historically?" The answer, Rogers said, is that the government needs to go beyond traditional mechanisms while also still ensuring compliance in existing laws and requirements. At **least part of that requires a direct conversation between the intelligence community and constituents, as well as with international partners, he noted.** "We've had what I think is a very incomplete dialogue to date. I would argue it's not even a dialogue," Rogers said. "We've heard details about amazing technical capabilities that people then assume we must be using indiscriminately. What we haven't talked about is the legal framework in place that drives what [we] do. What are the controls and compliance mechanisms that [we] have in place to make sure these technical

capabilities are not misused? Why should [the public] comfortable with these capabilities? That's the dialogue I'm interested in having over time."

Details will reduce NSA backlash.
Schindler, US Naval War College national security affairs professor, 2013

(John, "An Open Letter to the NSA", 10-30, http://foreignpolicy.com/2013/10/30/an-open-letter-to-the-nsa/)

The NSA does foreign intelligence. Tell the American people a bit more about that. It's overdue. Better to tell the story yourselves than to let your enemies do it. I'm not saying you need to let MTV film a reality show at agency headquarters — though I've heard worse ideas — but you need to level with the American people about what it is the NSA does and how it does it. It's 2013, and because of the Internet and the spread of smartphones, practically all Americans rely on information technology to function on a daily basis. So you can't blame people who until recently had never heard of SIGINT when they get a tad freaked out by the leaks they've heard so much about in recent months. **But the truth is far less scary than the lies being told about the agency**. If the agency's current leaders can't find a way to convincingly tell the American people what it does — including the indelible and truthful message that unless you're in bed with foreign spies or terrorists the NSA has less than zero interest in you — then it's time for new leadership. With NSA Director Keith Alexander likely to step down by next spring, that's coming soon anyway, but there's not much time to waste. By their nature, the agency's leadership and public affairs units are reactive and unaccustomed to being in the public eye. **But that era has ended — and it's not coming back. Deal with it. Rebrand now while you still can and regain the public's trust. I'm confident that once they understand what the NSA really does the vast majority of Americans will be glad the agency is on watch.**

Data Publishing – 2NC

Publishing data would boost trust-studies prove
Sternstein, Nextgov senior correspondent, 2010

(Aliya, "Study Links Online Transparency Efforts, Trust In Government", 2-16, http://www.nextgov.com/health/2010/02/study-links-online-transparency-efforts-trust-in-government/45965/)

The first-ever quantitative assessment of online open government efforts has concluded that the perceived transparency of federal Web sites drives trust in government. ForeSee Results, a market research firm, conducted the study, which was slated to be released publicly on Tuesday. Nextgov was briefed on the results by ForeSee Results. Over the past year, many organizations have tracked the amount of previously undisclosed information that agencies are posting online. Earlier this month, the White House began tracking compliance with the president's open government directive. But no one has measured the effects of Web-based disclosure on American public opinion. The longstanding approach to quantifying transparency has been, "well let's measure how much data they put out there," said Larry Freed, ForeSee Results' president and chief executive officer. "To me, that's not measuring transparency. That may be measuring confusion." Freed opted instead to survey citizens on their reactions to government Web sites, using the model of the American Customer Satisfaction Index, for which ForeSee Results also collects data. Researchers asked users questions related to how thoroughly the sites disclosed information about what the agency is doing, how quickly information was made available online and how accessible that information was on the sites. The answers were then run through the ACSI statistical engine to generate a score on transparency. Many agencies already measure satisfaction with their sites using the ACSI e-government index. The transparency project surveyed more than 36,000 citizens who visited 14 federal sites during the fourth quarter of 2009. The aggregate transparency score was 75 on a 100-point scale. The authors acknowledged that there are thousands of federal sites beyond the 14 that volunteered to participate. "Even those that appear to have lower scores in this short list of 14 would certainly be nowhere near the bottom of the pack in a comprehensive index of federal government online transparency," the report states. Agency sites that scored the highest included the Agriculture Department's Center for Nutrition Policy and Promotion (83), the Health and Human Services Department's National Mental Health Information Center (81), the State Department's Bureau of Consular Affairs (79) and the main site of the General Services Administration (78). **"If citizens find e-government transparent, they are more likely to return to the site, recommend it, and use it instead of a more costly channel," the study found. "They even express more trust in the government agency."** Citizens who believe a site is highly transparent are 46 percent more likely to trust the overall government, 49 percent more likely to use the site as a primary resource and 37 percent more likely to return to the site, according to the study. "We have always assumed that greater transparency [and] more openness in government would link to greater satisfaction and higher trust in government," said Dave McClure, GSA's associate administrator for its Office of Citizen Services and Communications, who also was briefed on the results. "What this study does is help confirm that."

Regular displays of openness is the only politically sustainable strategy that maintains the tools necessary to protect national security.
Goldsmith, Harvard law professor, 2015

(Jack, "My Speech at ODNI Legal Conference: "Toward Greater Transparency of National Security Legal Work"", 5-12, http://www.lawfareblog.com/2015/05/my-speech-at-odni-legal-conference-toward-greater-transparency-of-national-security-legal-work/)

The third and related principle is to rethink, really rethink, the pervasive resistance to public disclosure of any aspect of any intelligence operation, including the legal rationale for such operations. Director Clapper explained the basis for this resistance when he said: "Before the unauthorized [Snowden] disclosures, we were always conservative about discussing specifics of our collection programs, based on the truism that the more adversaries know about what we're doing**, the more they can avoid our surveillance."** Clapper added: "But the disclosures, for better or worse, have lowered the threshold for discussing these matters in public." Despite this ambiguous statement, and despite many voluntary ODNI disclosures related to the Snowden leaks, the intelligence community and many of its lawyers still appear to embrace an absolute presumption of secrecy when possible, and still see the costs of disclosure about secret operations in all-or-nothing terms. This attitude might have made sense in a world in which you could keep secrets. But in a world in which secret operations often become public, it doesn't make sense. It doesn't make sense because you are damaged much more by leaks and disclosures under pressure from leaks than you are by voluntary self-disclosure prior to leaks. Leaks and disclosure under pressure are reactive and invariably seem defensive and self-impeaching. When you disclose before leaks, by contrast, you can better control what is disclosed and the narrative about what is disclosed. Y**ou are also much more likely to get credit and gain legitimacy from self-disclosure,** especially compared to disclosure via or in response to a leak. The main counterargument to this point, and the sentiment that still dominates in your world, is that, as CIA Director Allen Dulles once put it, "what a government, or the press, tells the people it also automatically tells its foes." This argument has special salience in the surveillance context because any disclosure about collection techniques heightens the enemy's communications operational security and causes it to shift to other forms of communication less subject to

detection by the government. And I know it has super-special salience when you are on the inside watching the bad guys up close, and are loathe to give them any tactical advantage. But this argument proves too much as a basis for blanket secrecy. The same argument applies to fingerprint identification and most other investigative or surveillance tool in your toolkit. Secrecy about means and methods is an important value, but is not the only value. **Other values include the medium-term legitimacy and support for your programs that I just discussed, and the notion that the governed should know at least the basic outlines of what its government is entitled to do, especially vis a vis its citizens. These and other values must be weighed in the balance.** A related point is that not all voluntary revelations about an intelligence operation are equally harmful. Disclosure that the government has interpreted Section 215 to authorize bulk metadata collection is less damaging to the intelligence-collection mission than disclosure of the fine-grained details about how NSA collects and analyzes that metadata. Similarly, you can disclose large elements of the legal rationale and processes supporting targeted killing without exposing intelligence or the diplomatic deals associated with the program. I know that partial voluntary disclosures often lead to larger involuntary disclosures through subsequent unauthorized leaks, FOIA, and the like. But that risk must be balanced by the risk that **the absence of any disclosure might undermine the legitimacy of the entire program if it leaks.** Early openness about what the NSA was doing inside the United States might have diminished the effectiveness of the collection programs at a tactical level, but also would have given the government a better chance of securing longer-term strategic legitimacy for the programs. I am not denying that secrecy is vital to intelligence operations or to your legal work in support of those operations, even in operations in the domestic sphere. In the past at this Conference you heard from a CIA official who discussed the long-term operation to discover and take down the network of Russian sleeper agents living in the United States under non-official cover, and the vital need for secrecy in that operation. This shows clearly that the optimal mix of secrecy and openness is context-dependent even for domestic operations. My point is simply that the still-pervasive inclination toward absolute secrecy sometimes makes no sense and is often self-defeating.

Moves toward openness sufficient-don’t need to curtail.

Edgar, Watson Institute for International Affairs visiting fellow, 2013

(Timothy, “Timothy Edgar: Big Transparency for the NSA”, 8-1, http://www.wsj.com/articles/SB10001424127887323309404578617463152440542)

I am a civil-liberties lawyer who has worked both for Mr. Clapper and for the American Civil Liberties Union. I have a unique perspective on the vast gulf between the way the public views spy agencies and the way the intelligence community views itself. The intelligence community believes that it protects the public from dire threats, subject to strict oversight. Indeed, it was career national-security lawyers who were most disturbed by President George W. Bush's detour into executive unilateralism and warrantless wiretapping. They breathed a sigh of relief when that era came to an end. Following an intense and highly classified dialogue in which I participated during the latter half of the Bush administration, the intelligence community persuaded the Foreign Intelligence Surveillance Court to authorize bulk collection of phone records while putting these activities under a robust and highly detailed set of privacy and civil-liberties constraints. Queries of telephone-call records require that the targeted number is connected to an international terrorist organization. The targeted numbers must meet a well-defined legal standard—that of reasonable, articulable suspicion—and may only then be used to uncover, through sophisticated data analysis, the network of numbers with which the target has been in contact over time. Privacy safeguards are administered by teams of national-security lawyers in multiple agencies, and the entire process is subject to both congressional oversight and review by the FISA court. When the court and Congress identified compliance issues, the NSA took them seriously, overhauling their systems and creating a new office of compliance to address them. What, then, accounts for the public mistrust? Intelligence officials forget that the public sees none of this. Where the government sees three branches of government working together in harmony, the public sees a disturbing pattern of secret law and secret government accompanied by demands to "trust us, we are keeping you safe." Secret checks and balances appear to be nothing more than a pale shadow of our constitutional design. The FISA court may have reviewed the programs, but the public never got its day in court. The ACLU has challenged the constitutionality of NSA surveillance programs for years, but that case never got to the issue of constitutional rights. The intelligence community argued, and the Supreme Court agreed, that the civil-liberties groups couldn't maintain their lawsuit. Civil-liberties advocates represented a variety of people with entirely reasonable fears of monitoring. Whether they were actually under surveillance was a secret (and properly so). The government argued vigorously that this secrecy meant the case could not go forward, and the court agreed. Sens. Ron Wyden and Mark Udall encountered a similar Catch-22 in 2011 when trying to raise questions about the NSA call-records program, when the Patriot Act was up for review. Although they were briefed on the program behind closed doors, they made no headway in arguing for greater transparency with the public. The resulting debate was highly skewed. Administration officials were free to make misleading arguments that the Patriot Act was just like an ordinary subpoena. Any member of Congress willing to spend a few hours in a small room in the Capitol knew that secret court opinions had approved collection that reached far wider than any subpoena. Those who did know about the opinions could not express any concerns in open debate. Secrecy prevented the Congress, like the Supreme Court, from having a real argument over surveillance powers. Despite the Obama administration's best efforts, transparency is now on the rise. Mr. Clapper has chosen greater openness in reacting to the leak of the call-records program. Instead of providing the terse "no comment" that would have allowed the government to argue that legal challenges must be thrown out on secrecy grounds, in June Mr. Clapper confirmed the leaked program and provided details on its safeguards. The ACLU, seeing a stronger argument, promptly refiled its suit. Mr. Clapper made the right call—the government should welcome, not sidestep, debate on whether its programs are constitutional. **President Obama should go further, wresting control from the leakers and restoring trust with the publ**ic. He should ask Mr. Clapper to look across the intelligence community and disclose to the public the types of large databases it collects in bulk, under what legal powers or interpretations, and pursuant to what safeguards to protect Americans' privacy—while keeping necessary details secret. Many aspects of surveillance must remain secret. For example, the government should never provide a list of companies from which it acquires big data sets. Despite what Americans see in the movies, the NSA doesn't actually collect everything. Knowing which companies are included and which are not would tip off terrorists about how to avoid detection—telling them which providers to use and which to avoid. Likewise, the government will never be able to confirm or deny whether particular people are under surveillance, but it should avoid the temptation to use this necessary secrecy to avoid

meeting legal challenges to its activities. **The government has good arguments for why its programs are both vital for national security and perfectly constitutional. It should make them**.

Codify Statute – 2NC

Statutes are key to solvency—gives everyone a perception of legal certainty.
Sales, Syracuse law professor, 2014
(Nathan, "NSA SURVEILLANCE: ISSUES OF SECURITY, PRIVACY AND CIVIL LIBERTY: ARTICLE: Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", I/S: A Journal of Law and Policy for the Information Society, Summer, lexis)

A second principle follows from the first: Programmatic surveillance should, wherever possible, have explicit statutory authorization. Congress does not "hide elephants in mouseholes," n50 the saying goes, and we should not presume that Congress meant to conceal its approval of a potentially controversial programmatic surveillance system in the penumbrae and interstices of obscure federal statutes. Instead, Congress normally should use express and specific legislation when it wants to okay bulk data collection. **Clear laws will help remove any doubt about the authorized scope of the approved surveillance, thereby promoting legal certainty**. Express congressional backing also helps give the monitoring an air of legitimacy. **And, a requirement that programmatic surveillance usually should be approved by clear legislation helps promote accountability by minimizing the risk of congressional shirking.** n51 If the political winds shift, and a legislatively approved program becomes unpopular, Congress will not be able to hide behind an ambiguous statutory grant of power and deflect responsibility to the President.

Net Benefit

2NC

The CP's balancing of secrecy and transparency is necessary for the sustainability of NSA programs—the plan's curtailment goes too far and renders the NSA powers inoperative. Goldsmith, Harvard law professor, 2013

(Jack, "Reflections on NSA Oversight, and a Prediction That NSA Authorities (and Oversight, and Transparency) Will Expand", 8-9, http://www.lawfareblog.com/2013/08/reflections-on-nsa-oversight-and-a-prediction-that-nsa-authorities-and-oversight-and-transparency-will-expand/)

Second. I also have a different view of the relationship between NSA oversight and the NSA's national security mission (as opposed to its internal security mission – I know they are related, but Stewart separates them and speaks of the former at the end of his post). I agree with Stewart that NSA is subject to rigorous and intense oversight that can affect its national security mission by preventing NSA operators from collecting intelligence in certain contexts (for example, inside the United States, or against American citizens), and more generally by chilling NSA initiatives for collection and analysis at the margin (though the flip side of this "chill" is called prudence). **But whether the oversight and regulations are in these senses harmful, they are still necessary.** Here's why. Even after the Snowden revelations, few Americans know what the NSA does because so much of what it does remains secret. The public has hints – confirmed by Snowden, and others – that NSA's technical collection, storage, and analysis capabilities have grown enormously since 9/11. Even these few hints show that, like no other American institution, the NSA represents power, scale, technology secrecy, and intrusiveness – a combination that understandably causes skepticism and concern. Presumptively in our democracy, important national policies are vetted in public, subject to criticism and analysis in the press and by elected representatives and civil society and courts, and ultimately approved, or not, by the People in elections. The accountability system forces public officials to justify their actions, to address criticisms, to confront new and critical information and arguments, to consider new approaches, and to correct mistakes. This messy process does not always produce optimal policies. But it produces pretty good policies on the whole, allows for pretty robust policy change in light of new information, and in any event is a more legitimate system for executing public policy than one that takes place in secret. Few of the traditional elements of democratic scrutiny and deliberation apply to the NSA. Even after the Snowden affair, NSA and its oversight bodies remain extraordinarily secretive. Occasionally General Alexander or another top NSA official testifies before Congress. But these officials rarely face tough questions in public and do not reveal more than they want to – that happens, if at all, in classified settings. NSA is governed by publicly enacted laws. But many of the laws are obscure, esoteric, or outdated. The actual governing regime for NSA results from mostly secret interpretations of these laws by executive branch lawyers and judges on the FISC; and the governing regime seems more extensive and more complex – in its authorizations and its restrictions – than the law on the books. This is not unusual, of course. In other contexts law accretes in many directions through interpretation and practice. But when this happens with regard to NSA, citizens and the press and civil society and ordinary federal courts cannot (except to the extent of leaks like Snowden's) assess these accretions to determine whether they approve of them. There are good reasons why normal public lawmaking, law interpretation, and review practices do not apply to the NSA. **Surveillance techniques are fragile. Full public scrutiny of NSA operations would reveal those operations to our adversaries in ways that would seriously undermine, if not destroy, their effectiveness**. We need not be embarrassed about this need for secrecy (though the degree of secrecy almost certainly relates to the abundance of leaks, including those by Snowden). But we should also not deny that the nature, scale, and scope of secret NSA activities are a departure from normal operating procedure in a democracy, a compromise needed to meet modern national security threats that is fraught with the possibility (or appearance) of error, abuse, overreach, non-accountability, closed-mindedness, resistance to change, and other evils that democratic deliberation and review are designed to avoid. This is the background against which to understand and assess NSA oversight. NSA's robust oversight system is a substitute for traditional public checks and balances. But it is a dim substitute. The government ramp ups scrutiny behind the wall of secrecy as a replacement for the impossibility of normal public scrutiny**. Such secret scrutiny, however robust it may seem to those subject to it, and even accounting for Snowden's leaks, is less demanding and overall less robust than its normal public counterpart.** Which brings me to the relationship between oversight of NSA and NSA's national security mission. The right way to think about this relationship at the most general level is that scrupulous oversight and regulation of NSA empowers and enhances its mission. **Intensive scrutiny of NSA activities is a vital prerequisite to its political sustainability before Congress and the public, and thus to NSA receiving the authorities it needs to do its job**. This was true of the original creation of the FISC (in the 1970s) and the congressional intelligence committees (also in the 1970s), and of the 2008 amendments to FISA, which expanded NSA's authorities but also significantly ramped up NSA checks and oversight. These constraints are also key to NSA surviving the spate of Snowden revelations – the main reason there has not been a much greater outcry in the United States about the scope of NSA's surveillance activities is that they are subject to and have been approved by so many adversarial institutions, albeit in secret. (Imagine the reaction to Snowden if the Attorney General and FISC had not approved of its activities, and if the intelligence committees had not been fully informed.) Stewart thinks that the painful and sometimes politically opportunistic checks on the NSA threaten to defeat its security mission. Even with their warts, I think they are necessary to the security mission. Privacy regulation of NSA is not just about protecting privacy. **It is also about enhancing the NSA's public credibility for acting responsibly and in the public interest – a credibility that is crucial for the NSA to be able to exercise its scary powers in secret.** In some instances, of course, regulation and oversight can slow or restrict NSA activities in ways that affect the national security mission. (This was true of the pre-9/11 "wall," and it is almost certainly true of the geographical and citizenship limits on NSA's surveillance powers.) The proper balance between NSA oversight and transparency, and NSA's authorities, must constantly be assessed and updated, in every direction. But it is unrealistic to think that NSA could carry on its current mission, which involves extraordinary and unprecedented surveillance in secret, without extraordinary and unprecedented checks on its activities. The two go hand in hand. Sometimes, probably often, regulation and oversight that seem to lead to less than optimal security is actually optimal, because the alternative to the oversight and regulation is not more NSA discretion to surveil, but rather less discretion because the authorities will not be granted in the first place without the intrusive oversight.

(Again, enhanced restrictions on surveillance of U.S. persons is an example.) **The challenge for the NSA and for the country is to find the level of scrutiny and transparency that allows NSA the greatest freedom to do its security mission that is consistent with the effectiveness of its surveillance methods and public confidence that NSA is acting properly and in the public interest.** Many people have different views about how this complex balance should be struck, especially in light of Snowden's revelations. But here is a prediction. Whatever happens in the short term, in five years the NSA will have much broader authority than today to surveil in the U.S. homeland, not just for counterterrorism purposes, but also (and especially) in order to provide national cybersecurity. It will have broader authority because increasingly diffuse and powerful national security and cybersecurity threats will require it. And that broader authority will be accompanied by greater oversight, review, and auditing than at present, and greater NSA transparency as well – not because this scrutiny will (necessarily) better protect privacy, and not without potential costs to security, but because it will enhance trust in NSA. Two important lessons of the last dozen years are (1) the government will increase its powers to meet the national security threat fully (because the People demand it), and (2) the enhanced powers will be accompanied by novel systems of review and transparency that seem to those in the Executive branch to be intrusive and antagonistic to the traditional national security mission, but that in the end are key legitimating factors for the expanded authorities. This was true, I argued in Power and Constraint, about habeas review of GTMO detentions, enhanced congressional and judicial oversight of military commissions, the 2008 amendments to FISA, and greater public transparency and congressional oversight of targeted killing by UAV (a process still in flux). And it will be true of expanded NSA authorities as the NSA's vital capabilities become even more important to our security. In this sense, the Snowden revelations – to the extent that they force NSA to open up, and to get used to greater public scrutiny, and to avoid excesses, and to recalibrate its understanding of the tradeoffs between openness and security – might one day be seen to have paved the way to broader NSA powers.

A2: Transparency Links

The CP's managed transparency reduces secrecy in productive ways without disarming intelligence agencies like the AFF.

German, Brennan Center for Justice fellow, 2011

(Mike, " Congress Needs To Overhaul U.S. Secrecy Laws And Increase Oversight Of The Secret Security Establishment", July, https://www.aclu.org/files/assets/secrecyreport_20110727.pdf)

3. Secrecy undermines security The whole purpose and justification of laws permitting the U.S. government to hide information from the people they are working for—the American people—is national security. Yet, when secrecy is imposed beyond the very narrow circumstances where it is truly justified, it tends to diminish, not increase, the security of the American people. • Secrecy prevents effective information sharing. State and local law enforcement, emergency response personnel, other government and private sector entities, and the general public all need access to timely and accurate information about realistic threats to their communities and the appropriate methods for effectively addressing such threats. Excessive classification forces federal government officials to withhold crucial information not only from each other, but also from these other stakeholders. Rather than reducing the classification of terrorism-related intelligence that might affect our local communities so that it can more easily be shared with state and local law enforcement and first responders, the federal government has instead developed programs to increase the number of state and local officials that receive federal security clearances. But receipt of information by a cleared officer does not solve the problem because the information still cannot be shared with other stakeholders inside and outside government. Washington, D.C. Metropolitan Police Chief Cathy Lanier explained, "[i]t does a local police chief little good to receive information—including classified information—about a threat if she cannot use it to help prevent an attack."107 Simply increasing the number of cleared officers, though expensive, does little to remedy the problem of over-classification of terrorism intelligence. • Secrecy produces flawed intelligence and undermines effective policy. Excessive secrecy means that policymakers are often not fully informed of important developments or key pieces of information implicating the reliability of official intelligence estimates.108 Investigations into the intelligence failures regarding the presence of weapons of mass destruction (WMD) in Iraq prior to the U.S. invasion, for example, found the intelligence community made significant efforts to validate the separate pieces of information it received, but in the end its "finished" intelligence was wrong.109 This failure was not the result of a lack of information; rather it was the natural product of a fatally flawed analytic process. The intelligence process is flawed because it relies on a closed analytical system that compartmentalizes information, strips it of key details regarding the sources and methods by which it is obtained (which often provide the best clues as to its reliability) and then limits its distribution, preventing scrutiny from outside experts. When the Iraq WMD intelligence estimates were finally made public, they revealed that the intelligence community had relied on an untrustworthy source named "Curveball" despite ample warnings that he was a fabricator.110 Likewise, policymakers failed to heed dissenting opinions within the intelligence community about whether aluminum tubes Iraq purchased were designed for use in a nuclear centrifuge.111 Vigorous and open debate tends to uncover such critical errors in fact or analysis before poor decisions are made. A secret analytic system that obscures critical facts and opinions will inevitably produce unreliable information. An informed public enhances security. Reducing the secrecy surrounding terrorist threats and counterterrorism efforts will provide the public with the information necessary to quell inappropriate bias, put threats into proper perspective and respond appropriately. Widespread knowledge and a prepared citizenry are two of our greatest strengths—and they are both stymied by the excessive classification and compartmentalization of national security information. Eleanor Hill, Staff Director of Congress's investigation into 9/11, called "an alert and informed American public" the intelligence community's "most potent weapon,"113 and the 9/11 Commission concluded that publicity about the increased terrorism threat reporting during the summer of 2001 might have actually derailed the 9/11 plot.114 Yet too often the government's public information campaigns mislead more than they enlighten, spreading fear and sowing suspicion rather than providing timely, accurate and reliable information the public can use.115

Focusing too much on secrecy actually undermines counter terrorism.

Strossen, NYU law professor, 2014

(Nadine, "Reducing Secrecy: Balancing Legitimate Government Interests with Public Accountability", Harvard Journal of Law and Public Policy http://www.harvard-jlpp.com/wp-content/uploads/2015/02/Strossen_Final.pdf)

Now let me state a few factual premises on which I hope we can all agree.14 First, our classification system is dysfunctional, hugely bloated, and covers material that poses no genuine security risk.15 Second, and relatedly, our system is flooded with leaks16—as an inevitable counter to this excessive secrecy and essential for government accountability to We the People, the ultimate governors.17 Third, excessive secrecy is a huge waste of our precious security resources.18 All of you fiscal conservatives out there should balk at the huge cost of the counterproductive classification system—almost $10 billion in 2012.19 And that doesn't include classification expenses incurred by the security agencies themselves20 because, ironically, those numbers are classified!21 **Fourth, excessive secrecy actually undermines national security by preventing effective information sharing, thus leading to flawed**

intelligence.22 This point was underscored by none other than a former head of the whole classification system, J. William Leonard, who was a former Director of the Information Security Oversight Office. As he said: "Government secrecy just about guarantees the absence of an optimal decision on the part of our nation's leaders, oftentimes with tragic consequences for our nation."23 Additionally, the Bipartisan 9/11 Commission actually concluded that excessive secrecy could well have contributed to the 9/11 attacks.24 Given the Federalist Society's commitment to empowering state and local governments,25 I should stress state and local officials' complaints that undue secrecy has hampered their ability to fight terrorism,26 thus endangering all of us.27 For example, let me quote Commander Michael Dowling of the LAPD's Counterterrorism Bureau: "[The federal government's] classification process has been a substantial roadblock to [local law enforcement's] capacity to investigate terrorism cases and work hand-in-hand with these federal agencies."28

Competition

A2: PDCP

1. Curtail means to "Reduce in extent or quantity; impose a restriction on:"
Oxford Dictionaies-----http://www.oxforddictionaries.com/us/definition/american_english/curtail

The CP does not limit or restrict any surveillance that occurs in the status quo----it codifies rules as they exist and discloses data after the surveillance occurs

This permutation is severance which should be rejected to preserve stable negative ground requiring the AFF to reduce surveillance and prevents 2AC clarification which obviate negative strategy after the fact creating too large an advantage for the AFF.

A2: PDB

The permutation still contains the AFF limitations on surveillance which is what all our DA links are about---the CP doesn't help to resolve these links because they are all about operational flexibility and the CP only increases public acceptance while maintaining that flexibility.

The permutation injects predefined legislative criterion into surveillance authorities which renders them ineffective during an emergency.

Posner, Chicago law professor, 2012

(Eric, "Reflections On The Law Of September 11: A Ten-Year Retrospective: Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel," 35 Harv. J.L. & Pub. Pol'y 213, Lexis)

THE DEFERENCE THESIS The deference thesis states that during emergencies the legislature and judiciary should **defer to** the executive. n8 It assumes that the executive is controlled by **the President**, but to the extent that the President could be bound by agents within the executive, the deference thesis also holds that those agents should follow the President's orders, not the other way around. In normal times, the three branches of government share power. For example, if the executive believes that a new, dangerous drug has become available, but possession of the drug is not yet illegal, the executive may not act on its own to detain and prosecute those who deal and use the drug. The legislature must first enact a statute that outlaws the drug. The executive also depends on the legislature for financial appropriations and other forms of support. The executive also faces constraints from the courts. If the executive arrests drug dealers and seeks to imprison them, it must first obtain the approval of courts. The courts ensure that the executive does not go beyond the bounds of the new law, does not violate earlier-enacted laws [*215] that have not been superseded by the new law, and does not violate the Constitution. In emergencies, the executive often will contemplate actions that do not have clear legislative authority and might be constitutionally dubious. For example, after September 11, the U.S. government engaged in immigration sweeps, detained people without charges, used coercive interrogation, and engaged in warrantless wiretapping of American citizens. n9 Many, if not all, of these actions would have been considered violations of the law and the U.S. Constitution if they had been undertaken against normal criminal suspects the day before the attacks. After September 11, both the legislature and the courts gave the executive some deference. The legislature gave explicit authorities to the executive that it had initially lacked; n10 the courts did not block actions that they would have blocked during normal times. n11 But neither body was entirely passive. Congress objected to coercive interrogation and did not give the executive all the authorities that it requested. n12 After a slow start, the courts also resisted some of the assertions the executive made. There is some dispute about whether this resistance was meaningful and caused the executive to change policy or merely reacted to the same stimuli that caused the executive to moderate certain policies independently. n13 In any event, no one disputes that the courts gave the executive a nearly free pass over at least the first five to seven years of the conflict with al Qaeda. The deference thesis, then, can be strong-form or weak-form. This ambiguity has had unfortunate consequences for debates about post-September 11 legal policies. Few people believe that the courts should impose exactly the same restrictions on the [*216] executive during an emergency as during normal times. Indeed, doctrine itself instructs courts to balance the security value of a course of action and its cost to civil liberties, implying that certain actions might be legally justified to counter high-stakes threats but not to counter low-stakes threats. n14 Nor does anyone believe that the executive should be completely unconstrained. The debate is best understood in the context of the U.S. government's post-September 11 policies. Defenders of these policies frequently invoked the deference thesis--not so much as a way of justifying any particular policy, but as a way of insisting that **the executive should be given the benefit of the doubt**, at least in the short term. n15 The deference thesis rests on basic intuitions about institutional competence: that the executive can act more **decisively** and with **greater secrecy** than Congress or the courts because it is a hierarchical body and commands forces that are trained and **experienced** in countering security threats. **The other branches lack expertise.** Although they may have good ideas from time to time, and are free to volunteer them, the ability of the **exec**utive to respond to security threats would be **unacceptably hampered** if Congress and the courts had the power to block it to **any significant degree**. Secrecy is an important part of the argument. Policymaking depends on information, and information during emergencies often **must be kept secret.** Congress and the courts are by nature and tradition **open bodies**; if they were to act in secret, their value would be diminished. Meanwhile, the argument continues, the fear of an out-of-control executive who would engage in abuses unless it was constrained by the other branches is exaggerated. The President has strong electoral and other political incentives to act in the public interest (at least, in the United States). Even if the executive can conceal various "inputs" into counterterrorism policy, it cannot conceal the "output"--the existence, or not, of terrorist attacks that kill civilians. Thus, it was possible for defenders of the Bush Administration's counterterrorism policies to express discomfort with certain policy choices, while arguing nonetheless that Congress and the courts should not try to block executive policymaking [*217] for the duration of the emergency--at least not as a matter of presumption. Critics of the Bush Administration argued that deference was not warranted--or at least not more than a limited amount of deference was warranted, although again these subtleties often were lost in the debate--for a variety of reasons. I now turn to these arguments. II. EXTERNAL CONSTRAINTS: THE PROTOCOL ANALOGY A. Medical Protocols In an article published a few years ago, Professor Holmes uses the arresting image of the medical protocol as a device for criticizing the deference thesis--or, more broadly, the thesis that the executive should be "unconstrained" during emergencies. Holmes describes his own experience in an emergency room, where his daughter had been brought with a serious injury: At a crucial moment, two nurses rushed into her hospital room to prepare for a transfusion. One clutched a plastic pouch of blood and the other held aloft my daughter's medical chart. The first recited the words on the bag, "Type A blood," and the other read aloud from the file, "Alexa Holmes, Type A blood." They then proceeded, following a prepared and carefully rehearsed script to switch props and roles, the first nurse reading from the dossier, "Alexa Holmes, Type A blood," and the second reading from the bag, "Type A blood." n16 To the layman, the repetitive actions of the nurses seem senseless. Why are they repeating themselves when the patient might die unless she receives the blood transfusion immediately? Surely, the nurses should depart from the script rather than follow it in a time of extreme medical urgency. Yet the protocol makes good sense. Experience has taught medical personnel that basic errors--the transfusion of the wrong blood--occur frequently, and that they can be avoided through the use of simple protocols. Although following the protocol uses valuable time, in practice the increased risk to the patient as a result [*218] of the loss of time is less than the risk caused by the errors that protocols are designed to prevent. n17 The larger and more striking point of the example is that, even during emergencies, when the stakes are high and time is of the essence, agents should follow rules rather than improvise. In this way, agents should be constrained. n18 This argument has potentially radical implications. Recall that the conventional objection to deference is that the risk of executive abuse exceeds the benefits of giving the executive a free hand to counter al Qaeda. Professor Holmes argues--although at times he hedges--that in fact the benefits of giving the President a free hand are zero: A constrained executive, like a constrained medical technician, is more effective than an unconstrained executive. If the benefits of lack of constraint are zero, then the deference thesis is clearly wrong. Constraints both prevent executive abuses such as violations of civil liberties and ensure that counterterrorism policy is most effective. B. Rules and Standards The arresting medical protocol example helps clarify the tradeoffs involved, but it remains merely an illustration of the familiar rules versus standards tradeoff that has been a staple of the legal literature since time immemorial. n19 A rule is a norm that directs the decisionmaker to ignore some relevant policy considerations when deciding on a course of action; a standard is a norm that directs the decisionmaker to take into account all relevant policy considerations when deciding on a course of action. The familiar example is the speed limit. A sixty-mile-per-hour speed limit tells the driver that she does not face a legal sanction if she drives below sixty miles per hour, and that she does face a legal sanction if she exceeds that speed. A standard--for example, "drive carefully"--tells the driver that she does not face a legal sanction if she drives carefully, but that she does if she drives carelessly. The standard, unlike the rule, directs the driver to take into account all relevant considerations--the weather, traffic congestion, her own skill and [*219] experience, the responsiveness of her car, and so on--when deciding how to drive. A skilled and experienced driver who drives at sixty-five miles per hour on a clear day on an empty, straight road poses little threat to anyone, and most people would regard her driving as careful. Thus, under the standard she could not be held liable, although under a rule she would be. Meanwhile, an inexperienced driver who drives sixty miles per hour on a congested, dangerous road, at night, in bad weather, would probably be regarded as careless. He would be held liable under a standard but not under the rule. It is in the nature of standards that we cannot be sure that he would be held liable; it depends on the biases, intuitions, and experiences of the legal decisionmaker. n20 Thus, we say that applying standards involves high decision costs. It is in the nature of rules that we can easily tell whether the driver would be held liable or not, but only because the legal decisionmaker is forced to ignore relevant moral and policy considerations that otherwise complicate evaluation. Rules are under-and over-inclusive; **by design, they cause error**. These considerations lead to a basic prescription. n21 Rules should be used to govern recurrent behavior, and standards to govern unusual

behavior. Experience teaches us that if drivers obey certain rules (such as speed limits), the risk of accidents is greatly reduced, although judicious choice of (sometimes complex) rules ensures that error costs are low. When legislatures enact new rules, they can invest a great deal of time and effort determining the optimal rules, because the cost of the rules are then spread out over many instances of the behavior that the legislatures seek to regulate. Yet rules frustrate us because there always seems to be some **new, unanticipated case** where the application of rules leads to an injustice. The speed limit rule should not apply to the parent who rushes a badly injured child to the hospital. And there are many cases where rules can too easily be gamed. Tax rules, no matter how intricate, can be exploited: Lawyers set up tax shelters that evade the purpose of the rules. Congress reacted to this problem initially by creating ever more complex rules, but eventually trumped them [*220] with a standard that prohibited bad faith evasion of the tax laws. n22 The legal landscape is a complex mix of rules and standards, which often overlap. Drivers must obey both traffic rules like the speed limit and traffic standards like laws against reckless driving and tort norms against negligent driving. Indeed, one can think of traffic norms as complex rules with standards--where there are apparently bright-line rules (drive under sixty miles per hour) that are subject to muddy standards (unless there is an emergency). Medical protocols are just one more example of a choice along the rules-standards continuum. The nurses Professor Holmes describes follow a protocol that ensures that they do not use the wrong blood in a transfusion. Likewise, doctors are instructed to clear the windpipe before staunching the wound. n23 These protocols, like the speed limit, reflect generalizations from past medical experience. Delaying the blood transfusion is less risky than permitting only one nurse to check the blood type. Letting the blood flow from the wound is less risky than leaving the windpipe blocked. In the absence of protocols, medical practitioners may misjudge the situation, or panic, or allow themselves to be distracted by irrelevant factors (the goriness of the wound calls out for attention while the blocked windpipe is hidden). It is important to see that these rules, like the speed limit, are mere generalizations, and in individual cases the generalizations might be wrong. The patient dies because of the delay before the transfusion, yet we instruct medical practitioners to follow the rules because otherwise they are likely to make worse or more frequent errors. That uncompromising rules produce **high error costs** supports adopting sensible exceptions to rules. Indeed, medical practitioners may violate protocols. The reasons are obvious. Consider Professor Holmes's insistence that the rule "always wash your hands" is unalterable and written in stone. n24 This clearly cannot be the case. Suppose that, in the midst of an emergency involving a patient with a serious trauma, the staff [*221] is informed that the tap water is tainted, it is discovered that a patient has a rare allergy to the only soap available in the emergency room; or, for that matter, the emergency room runs out of soap. Common sense (which is just the application of the standard, "help the patient at minimal risk to him and oneself") will tell the doctors and nurses to deviate from the protocols when they clearly interfere with medical necessity. If they did not, they would be sued, and rightly so. The protocols, like many rules, turn out to be presumptions, which may be overcome by the press of events. That is why medical professionals are so highly trained; if one could really treat patients by following algorithms, one would not need doctors who have vast training and experience that supplies them with judgment and the ability to improvise. n25 In sum, medical protocols, like rules, provide a valuable service by simplifying the decision-making process at times of high stress, but, like rules, they unavoidably produce wrong results if they are not applied sensitively. Usually, when the stakes are high, rules and protocols create presumptions, but the decisionmaker is free to violate the presumption if circumstances suggest that that the presumption is based on factual assumptions that turn out not to be true in the particular setting in which the decisionmaker finds himself. C. Rules and Standards During Emergencies I now turn to the bulk of Professor Holmes's argument. Professor Holmes is right to identify confusion about the nature of emergency, and it is useful to distinguish a rule-development stage--which often but not always takes place before the emergency--and a rule-application stage--which takes place during the emergency. Holmes argues that during the emergency, rule application should be controlled by protocol, so the executive does not need (much) discretion; while pre-emergency, rule development does not need to be rushed and secret, so the executive can collaborate with Congress. The first problem with [*222] this argument is that during the emergency one can follow protocols rather than exercise discretion only if the emergency is the same as earlier emergencies. This was not the case for September 11, though it may be the case for other security threats. The second problem is that the rule-development stage cannot always take place during normal times. For example, September 11 required not only an **immediate response** to the newly discovered threat but also the development of new rules under the shadow of that threat. Those rules needed to be developed quickly and (for the most part) secretly, and these exigencies limited the ability of Congress to contribute. A final point is that Holmes ignores an important dimension of the problem: the difference between agents, who in theory can merely follow rules and protocols, and principals, who cannot. The Bush Administration did in fact recognize the value of protocols and used them frequently; it just did not apply them to itself. 1. Two Concepts of Emergency Professor Holmes makes a valuable point, often neglected in the literature, that there are two distinct phases for addressing emergencies n26 --what I will call the stage of rule development and the stage of rule application. As we will see, the two stages can run together, but conceptually they are distinct. The rule-application stage comes when the patient is on the gurney. The doctors follow the protocols in the course of helping the patient. The rule development stage occurs earlier. Someone must decide what the protocols should be. Someone had to invent the rule that two nurses must check the blood type and that doctors should unblock the windpipe before staunching wounds--just as the legislature must determine the speed limit before drivers comply with it and police enforce it. We might use the word "emergency" to refer to the time of rule application. As Professor Holmes points out, however, for the medical professionals, what seems like an emergency to a layperson is not an emergency at all. n27 They just apply the protocols that have been drilled into them, no different from assembly-line workers. Under this definition of "emergency," it is hard to support the deference thesis and those who argue that the executive [*223] must be unconstrained during emergencies. If doctors are constrained during emergencies, why not executives? If we refer instead to the time of rule-development, reliance on the idea of emergency seems even less appropriate. The doctors who develop emergency room protocols do not do so under time pressure but at their leisure. They also can do so in a large body, so as to take advantage of the perspectives of many different people, and in public, so that all stakeholders have a say. The executive can as well, the argument goes. When the executive determines the rules that will govern the response during a terrorist attack, it does so in advance, and it can, indeed should, do so in consultation with Congress and subject to judicial constraint. Thus, executive deference is unnecessary. During rule development, there is no emergency, and so the executive, Congress, and the courts can collaborate in developing appropriate rules that will govern during emergencies. They can do so openly, deliberately, and slowly, with full respect for constitutional norms. During rule application, there is an emergency, but the executive can merely follow the rules or protocols that were developed during the rule-development stage. Thus, in the rule-application phase, executive discretion is unnecessary. It follows that deference to the executive is also unnecessary. During rule development, Congress has no reason to defer to the executive. During rule application, courts also have no reason to defer to the executive, but should instead insist that the executive comply with the rules. 2. Rule Application Let us consider the stages in reverse order. We already have addressed some of the problems with Professor Holmes's argument from protocols. Rules are seldom as bright-line as they first appear. They often turn out to be presumptions which are themselves subject to standards (drive under the speed limit unless there is an emergency). It is true that security threats, like medical emergencies, often fall into patterns and can be addressed in partially rule-governed fashion. Thus, when a gunman takes a hostage, the police follow certain rules: first clearing the area, then making contact with the gunman, and so on. Some officers will be given very simple rule-governed tasks ("don't let anyone cross this line"). But the rules quickly give out. **Every hostage-taker is different**, and the most highly [*224] trained police officers will be given a great deal of discretion to deal with him and to make the crucial decision to use force. But even these types of threats are simple compared with the scenario that opened up on September 11. The government knew virtually nothing about the nature of the threat. It did not know how many more members of al Qaeda were in the United States, what their plans were, what resources were at their disposal, what their motives were, or how much support they had among American Muslims. n28 Protocols were worthless because nothing like the attack had ever happened before. (The closest analogy seemed to be the absurdly irrelevant example of Pearl Harbor.) The government could not follow rules; it had to improvise subject to a vague standard--protect the public while maintaining civil liberties to the extent possible. Improvise it did--instituting detentions, sweeps, profiling, surveillance, and many other policies on an unprecedented (in peacetime, if that was what it was) scale. n29 For the rule-application stage, the deference thesis counsels Congress and the judiciary to (presumptively) defer. Congress simply cannot set about holding hearings, debat[e]ing policy, and vot[e]ing on laws in the midst of emergency. Either **the problem will not be addressed**, or Congress will end up voting on a bill that it has not written, debated, or even read. n30 For courts, too, the alternatives are unrealistic. If courts enforce rules developed for normal times, then they will interfere with the proper response to the terrorist threat, just as they would if they required the U.S. military to comply with the Fourth Amendment on the battlefield. Alternatively, the courts could insist on applying a standard and halt executive actions that, in the courts' view, violated the standard described above--protect the nation while maintaining civil liberties to the extent possible. But here the courts are at a significant disadvantage. They do not have information [*225] about the nature of the threat. n31 Courts can demand this information from the government, but the government will not give it to them because the government fears leaks (to say nothing of recalcitrance caused by rivalries among intelligence agencies). Moreover, judges are inexperienced in national security unlike the specialists in the executive branch.

Restrictions allow for enemy adaptation.

Etzioni, George Washington IR professor, 2013

(Amitai, “The Danger of Overcorrecting on Terror”, 5-29, http://nationalinterest.org/commentary/the-danger-overcorrecting-terror-8525?page=1)

Each one of these “corrective” measures ought to be evaluated in its own right. It is fine to ask Congress to issue a new authorization of the use of military force overseas, but it makes no sense to go after only card-carrying members of Al Qaeda while tying our hands when it comes to other terrorist groups that are out to harm the United States. Carefully reviewing drone strikes to ensure civilians are not nearby is a sound idea though hardly a new one. And limiting the targets to only high-ranking members of Al Qaeda ignores the fact that those who brought down the World Trade Center and attacked the Pentagon were low-ranking ones. Similarly, ensuring that no civilians are nearby so as to minimize collateral damage is

morally sound and may help in curbing anti-American sentiment (though resentment towards the United States has numerous other sources). However, announcing this restraint publicly, in the name of transparency and to please critics, ensures that, from now on, Al Qaeda meetings will include at least some of the spouses of the terrorists. This is no exaggeration. There is considerable evidence that **the Taliban adapts its tactics to exploit our self-imposed restrictions based upon the information it receives about the orders given to our forces.** For example, when Taliban fighters learned that the United States will not fire on mosques, it used these to store ammunition and place snipers. Any suggestion that Al Qaeda and other terrorist groups are being defeated is not in line with recent reports. Indeed, Al Qaeda membership in Yemen has quadrupled in recent years, while terrorist groups have been progressively establishing themselves in countries such as Mali. It is true that, over the last decade, attacks on U.S. soil either failed or were carried out by "lone wolves." Yet the resulting complacency tends to lead to the kind of inattention that culminated in the FBI not sharing information with the Boston Police regarding the bombers there. Officials paid no mind to Tamerlan Tsarnaev's two violent outbursts during sermons in mosques in Boston, wherein he decried the celebration of U.S. holidays and praise for Martin Luther King Jr.—radicalism that should serve as a strong indication of a person who should be watched. (As it turns out, closer scrutiny would have revealed that Tsarnaev studied bomb making in Al Qaeda's online magazine, Inspire). Eight years passed between the first attack on the World Trade Center and the second one, in which a thousand times more people were killed. Ten years of no major attacks is not a long time when it comes to campaigns against terrorists. As one terrorist put it, U.S. agencies have to be lucky all of the time while we (the terrorists) only have to get lucky once. Washington should constantly review security measures, but such a review should include a caution against the tendency to oversteer—as we appear to be doing now, this time to the left.

UN UPR Counterplan – HJPV

1nc – shell

The United States Federal Government should submit <the plan> to a binding United Nations Human Rights Council Universal Periodic Review.

The counterplan solves the aff and ensures U.S. human rights compliance within UN institutions– the process of the counterplan shapes implementation

St. Vincent 5/7/15 – CDT's Human Rights and Surveillance Fellow, J.D. at the University of Michigan Law School (Sarah, US to Answer for Surveillance Practices on Global Stage, CDT, https://cdt.org/blog/us-to-answer-for-surveillance-practices-on-global-stage/)//JJ

It only happens once every four and a half years, but it's about to happen this month: the United States will appear before the assembled United Nations Member States to listen and respond to critiques of its human rights record. CDT has been working hard to ensure that the US' surveillance practices are at the **top of the agenda** for this process, which is known as the Universal Periodic Review ("UPR"). We hope the official comments aired during the session will help to **reinforce strong human rights** standards around government surveillance and hold the US to account for its abuses. The UPR is conducted by the UN Human Rights Council, which is tasked with reviewing every UN Member State's compliance with its obligations under the human rights treaties it has ratified. The process is mandatory for all countries: the May session, for example, will see the US examined just after Bulgaria and Honduras and shortly before Jamaica and Libya. (The US will be in the hot seat on Monday, May 11 from 9:00 am to 12:30 pm Geneva time, so if you live in North America, set your alarm clock early.) If a country recommends that the US discontinue any indiscriminate interception of private communications, the Obama administration will be required to take a public position as to whether it accepts this recommendation. The US has **committed to upholding human rights** under several treaties, including the International Covenant on Civil and Political Rights ("ICCPR"), the Convention against Torture, and the International Convention on the Elimination of All Forms of Racial Discrimination. The ICCPR, in particular, contains rights to privacy and free expression. During the session, every other UN Member State will have the right to ask the US questions about its respect for the human rights enshrined in these treaties and **make recommendations** as to what the country should do differently in order to **comply with its obligations**. The US (represented by its Geneva diplomatic mission and other members of the executive branch) will have the opportunity to respond to these points during the session, and will also need to declare shortly afterward whether it accepts each of the recommendations. In other words, if (for example) a country recommends that the US discontinue any indiscriminate interception of private communications, the Obama administration will be required to take a public position as to whether it accepts this recommendation. The UPR is a relatively recent creation—it was established via a UN General Assembly resolution in 2006—and it continues to evolve as the UN institutions, the Member States, and NGOs such as CDT, decide how it can best be used. For example, unlike during its first review in 2010, the United States will now be encouraged to submit an official "midterm" follow-up report to the Human Rights Council some time after the review session to explain what the government is **doing to implement** the **human rights recommendations** that were made. (We expect that the government will indeed engage in such reporting.) Meanwhile, for an organization such as CDT, the review of the US represents a chance to remind the public and the global diplomatic community about **serious NSA surveillance abuses**, and to **strengthen the human rights** laws and standards that apply to government intrusions on privacy and free speech. The latter opportunity arises because countries frame their recommendations using careful legal language that reflects what they believe human rights law actually requires in practice; these **formal**

articulations can shape the **relevant legal tests** and ultimately have a **long-term impact** on what the US and other governments believe they must do in order to **fulfill their international commitments.** As part of the UPR process, CDT (along with the ACLU) submitted a joint expert report to the Human Rights Council on five particularly egregious global NSA surveillance programs, including MUSCULAR and QUANTUM, and we also contributed to a second expert report on US surveillance led by our colleagues at the Brennan Center. Additionally, we have been urging the other UN Member States to make **surveillance** one of their priority issues during the review session.

U.S. compliance within UN institutions bolsters UN legitimacy

Thakur 9 – director, Balsillie School of International Affairs, Distinguished Fellow, Centre for International Governance Innovation and Professor of Political Science, University of Waterloo (Ramesh, LAW, LEGITIMACY AND UNITED NATIONS, Melbourne Journal of International Law Volume 11, 12/7/9, p. 10-21)//JJ

All of these elements might be enough to put the ball back in the UN's court. But its authority, too, has been diminished by the Iraq War. As I have put it elsewhere: '[w]hat is to stop other leaders from mimicking the bumper sticker argument about not needing a permission slip from the UN to defend one's country?' In other words, **repeated US assaults on UN-centered law** governing the international use of force have undermined the norm of a world of laws, the efficacy of international law and the **legitimacy of the UN** as the authoritative validator of international behaviour. A norm cannot control the behaviour of those who reject its legitimacy. Norm compliance by those who reject the legitimacy of the existing order will be a function of their incapacity to break out, not of voluntary obedience. The de facto position of 'nuclear might equals right' is an inducement to join the club of nuclear enforcers. It is curious, to say the least, th at those who worship at the altar of nuclear weapons are the fiercest in denouncing as heretics anyone else wishing to join their sect. In order to enhance their credentials as critics and enforcers of the norm, the N5 need to move more rapidly from deterrence to disarmament. There have been signs that the Obama Administration might well take a lead on this. 43 The logic of non-proliferation is inseparable from that of disarmament. Hence, the axiom of non-prol iferation: as long as any one country has them, others, including terrorist groups, will try their best (or worst) to get them. If they did not exist, nuclear wea pons could not proliferate. Because they do, they will. The pursuit of nuclear non-proliferation is doomed without an accompanying duty to disarm. Paradoxically, counter-proliferation effo rts may well be legitimate even if illegal. The reality of contemporary threat s means that significant gaps exist in the legal and institutional framework to combat them. Within the constraints of the NPT , a non-nuclear country can build the ne cessary infrastructure to be but a screwdriver away from acquiring nuclea r weapons. Non-state actors are outside the jurisdiction and contro l of multilateral agreements. Recognising this, a US-led group of like-minded countries launched the Prolif eration Security Initiative to interdict illi cit air, sea and land cargo li nked to WMDs. Its premise is that the proliferation of such weapons dese rves to be criminalised by the civilised community of nations. The In itiative signals a new determination to overcome an unsatisfactory state of affairs through a br oad partnership of countries that, using their own national laws and resources, will coordinate actions to halt shipments of dangerous technologies and material. V A TROCITY C RIMES AND I NTERNATIONAL I NTERVENTIONS The Proliferation Security Initiative involves a limited use of force by groups of countries acting outside the UN fram ework. The law–legitimacy distinction arose with particular cogency with resp ect to the legal system promulgated and enforced by the apartheid regime in South Africa. If the constitutional system itself was essentially a criminal regime, then could not opposition to it be held up as legitimate even if illegal? That debate had barely faded when the same dilemma flared up in the 1990s with the sp ate of humanitarian atrocities and the role of international indifference, inaction or intervention with respect to these atrocities. Except, this time, the role s of the global North and South were reversed. When NATO launched a 'human itarian war' without UN authorisation in Kosovo, it raised a triple policy dilemma: 1 To respect sovereignty all the time is sometimes to be complicit in humanitarian tragedies; 2 To argue that the Secur ity Council must give its consent to international intervention for humanitarian purposes is to risk policy paralysis by handing over the agenda either to th e passivity and apathy of the Council as a whole, or to the mo st obstructionist member of the Council, including any one of the P5 determined to use the veto clause; 3 To use force without UN authorisation is to violate international law and undermine world order. The three propositions together high light a critical law–legitimacy gap between the needs and distress felt in th e real world and the codified instruments and modalities for managing world order. Faced with another Holocaust or Rwanda-type genocide on the one hand and a Security Council veto on the other, what would we do? Doing nothing would progressively de-legitimise the role and undermine the auth ority of the Security Council as the cornerstone of the international law enforcement system . But action without UN authorisation would be illegal and also undermine the la wful authority of th e Security Council. The law–legitimacy distinction was to resu rface four years later over Iraq and leave many Westerners rather less co mfortable than the Kosovo precedent. In making up the rules of intervention 'on the fly' in Kosovo, 45 NATO countries put at peril the requirement for a lasting system of world order grounded in the rule of international law. The attempt 'to limit the reach of the Kosovo precedent did not prevent the advo cates of the Iraq War from invoking it to justify toppling Saddam.' 46 The Iraq War's legality and legitimacy will be debated for years to come. The belligerent countries insisted that the war was both legal and legitimate, based on a series of prior UN resolutions and the long and frustrating history of combative-cum-deceitful defiance of the UN by Saddam Hussein. Others conceded that it may have been illegal but, like Kosovo in 1999, it was nevertheless legitimate in its largely humanitarian outcome. For a third group, the war was both illegal and illegitimate. Similarly, there were three views on the significance of the war for the UN–US relationship: that it demonstrated the irrelevance, centrality or potential complicity of the UN. 48 First, for the neo-conservatives, because it exists, the UN should be uninvented and there was therefore no reason to seek UN approval. 49 Under the second view, it was recognized that there was a need 'to confront Saddam Hussein but [it] ruled out acting without UN authorization.' 50 Third, UN authorization of the war was 'necessary but not sufficient' with irrelevance preferred to complicity. 51 In the opinion of some, the UN is '**now more than ever** reduced to the **servile function** of **after-sales service provider** for the United States, on permanent call as the **mop-up brigade**.' Humanitarianism provides us with a vocabulary and institutional machinery of emancipation. But '[f]ar from being a defense of the individual against the state, human rights has become a standard pa rt of the justification for the external use of force by the state against other states and individuals.' 53 The use of force may be lawful or unlawful; the decision to use force is a political act; and almost the only channel between legal authority and political legitimacy with regard to the international use of force is the UN. Conceding to any regional organisation the authority to decide when political legitimacy may override legal technicality would make a mockery of the entire basis of strictly limited, and in recent times increasingly constricted, recourse to force for settling international disputes. Conversely, restricting the right solely to NATO is 'an open argument for law-making by an elite group of Western powers sitting in judgment over their own actions' 54 — as well as that of all others. In effect, the West's position vis-a-vis the rest is: we shall hold you to account for your use of force domestically while exempting our internat ional use of force from any external accountability. While the West wants to proscribe the unconstrained use of force to maintain domestic order, developing countries wa nt to proscribe the use of force by outsiders to enforce justice within errant member states. There is also the moral hazard that outside intervention on behalf of groups resisting state authority by force encourages other recalcitrant groups in other places to resort to ever more violent challenges, since that is the trigger to internationalising their power struggle. The tension is both powerful and poignant with respect to moving the globally endorsed responsibility to protect from norm to action (or words to deeds, principle to practice). Here we enter the realm both of normative inconsistency — selective application and enfo rcement of global norms against friends and adversaries, for example dow nplaying the human rights abuses of Central Asian states and Israel while hi ghlighting those of Iraq and Iran — and normative incoherence — when different norms clash with each other — as between human rights requirements and prohi bitions against the use of force. Is it permissible (or legitimate) to violate some aspects of international law in order to enforce respect for human rights laws? Is it still legitimate if some states are more equal than others in facing intern ational pressure and sanctions, including military intervention as the ultimate sanction? Bernard Kouchner, the French Foreign Minister, advocated invoking the responsibility to pr otect in order to override the junta's recalcitrance about accepting international assistance after Cyclone Nargis in Myanmar in 2008, 55 but was notably silent about possible Israeli war crimes in Gaza in 2009. Such selectivity will quickly de-legitimise the new norm whose path to global endorsement was quite contentious. 56 In a Security Council debate on the prot ection of civilians in armed conflict on 4 December 2006, Chinese ambassador Liu Zhenmin warned that the 2005 World Summit Outcome 57 was a 'very cautious representation of the responsibility to protect popul ations from genocide, war crimes, ethnic cleansing 54 David Chandler, From Kosovo to Kabul: Human Rights and International Intervention (Pluto Press, 2002) 135. 55 See Seth Mydans, 'Myanmar Junta, Wary of Outsiders, Is Accused of Delaying Storm Aid', The New York Times (New York), 8 May 2008, A22. 56 That story is told in three books by three people closely associated with it: Gareth Evans, The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All (Brookings Institution Press, 2008); Ramesh Thakur, The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect (Cambridge University Press, 2006); Thomas G Weiss, Humanitarian Intervention (Polity, 2007). 57 2005 World Summit Outcome , GA Res 60/1, UN GAOR, 60 th sess, Agenda Items 46 and 120, UN Doc A/RES/60/1 (24 October 2005). 2010] Law, Legitimacy and United Nations 17 The philosophical antecedents of such beliefs lie in the 18 th –19 th century theory of evolutionary progress through diffusion and acculturation from the West to the rest. The implicit but clear assumption is that when Western and non-Western values diverge, the latter are in the wrong and it is only a matter of working on them with persuasion and pre ssure for the problem to be resolved and progress achieved. 77 The cognitive rigidity is s hown again in the phrase that '[p]ressure by Western states and intern ational organizations can greatly increase the vulnerability of norm -violating governments to external influences.' 78 Self-evidently, only non-Western governme nts can be norm vi olators; Western governments can only be norm-setters and enforcers. The rejection of the ICC by Washington highlights the irony that the US 'is prepared to bomb in the name of human rights but not to join institutions to enforce them.' 79 Even if we agree on universal huma n rights, they still have to be constructed, articulated and embedded in international conve ntions. The question remains of the agency and procedure for determining what they are, how they apply in specific circumstances and cases, what the proper remedies might be to breaches, who decides on these breaches and what rules of procedure and evidence they should follow. Under presen t conditions of world realities, the political calculus — relations based on military might, economic power and media and NGO dominance — cannot be taken out. The resilience of the opposition to the internationalis ation of the human conscien ce lies in the fear that the lofty rhetoric of universal human rights claims merely masks the more mundane and familiar pursuit of nati onal interests by different means. VII T HE U NITED N ATIONS S ECURITY C OUNCIL Almost all the above examples relate to the Security Council as the core of the international law enforcement system. General Rupert Smith argues that in Bosnia, '[t]he existence and actions of the Security Council negatively affected events ... The consequence of this failing was the destruction of the credibility of the UN.' 80 He concludes that '[i]f the Security Council ... is to change so as to wield force for good, then structural a nd organizational chan ges are necessary.' 81 An unreformed Security Council has been experiencing a steady erosion of international legitimacy, which helps to explain the growing willingness of many state and non-state actors to defy its edicts openly. That is, the increasing 77 Many in developing countries watched bemusedly from the sidelines when the same attitudinal divide opened up across the Atlantic in 2003 with respect to the US threat of war on Iraq and the stiff resistan ce from European citizens. Th e dominant view in Washington seemed once again to be that the European people could not possibly be right. The task was to show them the error of their ways or, fa iling that, to make sure that the European governments listened to the US Administration rather than to their own people. That the Administration could be wrong was a priori beyond the realm of possibility. 78 Thomas Risse and Stephen C Ropp, 'International Human Rights Norms and Domestic Change: Conclusions' in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), The Power of Human Rights (Cambridge University Press, 1999) 234, 277. 79 Christine Chinkin, 'Kosovo: A "Good" or "Bad" War?' (1999) 93 American Journal of International Law 841, 846. 80 Rupert Smith, 'The Security Council and the Bosnian Conflict: A Practitioner's View' in Vaughan Lowe et al (eds), The United Nations Security Council and War: The Evolution of Thought and Practice since 1945 (Oxford University Press, 2008) 442, 451. 81 Ibid. 18 Melbourne Journal of International Law [Vol 11 divergence of Security C ouncil-sourced law from le gitimacy dramatically reduces the efficacy of the UN in regula ting the international behaviour of a growing number of actors. For legality a nd legitimacy to come together again in the Security Council, its composition and procedures must be changed urgently to reflect today's military and ideational realities. The legitimacy of the Security Counc il as the authorita tive validator of international security action suffers from a quadruple legitimacy deficit: performance, representati onal, procedural and account ability. Its performance legitimacy suffers from two strikes: an uneven and a selective record. It is unrepresentative from almost any point of view. 82 Its procedural legitimacy is suspect on grounds of a lack of democratisati on and transparency in decision-making. And it is not answerable to the General Assembly, the World Court, the nations or the peoples of the world. Western countries often fret at the in effectual performance legitimacy of the Council. Their desire to resist the Counc il's role as the sole validator of the international use of force is the product of this dissa tisfaction at its perceived sorry record. But the moral authority of collective judgments does depend in part on the moral quality of the process of making those judgments. 83 Michael Ignatieff writes that '[w]hen democrats di sagree on substance, they need to agree on process.' 84 The collective nature of the decision-making process of the Security Council is suspect because of the skewed dist ribution of political power and resources among its members. If th e Security Council were to become increasingly activist, interventionist and effective, the erosion of representational and procedural legitimacy and the abse nce of any accountability mechanisms would lead many countries to question th e authority of the Council even more forcefully. There is a logical slippage between normative idealism and Realpolitik in picking and choosing which elements of th e existing order are to be challenged and which retained. If ethical imperati ves and calculations of justice are to inform, underpin and justify international interventions, then there is a powerful case for reforming the composition of the Security Council a nd eliminating the veto clause with respect to humanitarian operations. To self-censor such calls for major reform on the grounds that they are unacceptable to the major powers and therefore unrealistic, is to argue in e ffect that the motive for intervention is humanitarian, not strategic; yet, the agency and procedure for deciding on intervention must remain locked in the strategic logic of Realpolitik. The UN is usually attacked for doing t oo little, too late. Has the Security Council been doing too much and too soon? In recent times the Council has been coopting functions that belong properly to legislative and judicial spheres. It has taken on a legislative role in resolutions on terrorism and non-proliferation. This is intruding into the realm of state prerogatives as negotiated in international conferences and conventions . Security Council deci sions are binding, so 192 82 See Ramesh Thakur, 'UN Electoral Grou pings Reform' in Ramesh Thakur (ed), What is Equitable Geographic Representation in the Twenty-First Century? (United Nations University Press, 1999) 2–3. 83 Amy Gutmann and Dennis Thompson, Democracy and Disagreement (Belknap Press, 1996) 4. 84 Michael Ignatieff, The Lesser Evil: Political Ethics in an Age of Terror (Edinburgh University Press, 2004) viii. 2010] Law, Legitimacy and United Nations 19 legislatures are denied their right of review over international treaties. The Security Council imposed sanctions on Li bya for its failure to extradite two citizens accused of being the brains behind the Lockerbie bombing. That is, without a trial and conviction, the Secu rity Council was bent on compelling one sovereign state to hand over it s citizens to another sove reign state on the basis of allegations from the latter — which had itself, just a few years earlier, defied the World Court's verdict in a case brought against it by Nicaragua. In September 2004, the Council approved a US-backed resolution 85 demanding the immediate withdrawal of a ll foreign forces from Lebanon — at a time when more than 100 000 US troops were occupying Iraq. No-one held their breath over any possible UN i nvestigation of the tens — or is it hundreds — of thousands killed in Iraq since 2003. On 31 May 2007, a sharply divided Security Council voted 10:0:5 to estab lish an internati onal criminal tribunal to prosecute the perpetrators of the suicide-assassin ation of Lebanon's Prime Minister, Rafiq Hariri, and 22 others in February 2005, which put the organisation 'in the business of stigmatizing and punishing individuals for a political crime'. 86 The five abstainers — China, Indonesia, Qata r, Russia and South Africa — explained that the resolution 'bypassed the Lebanese parliament's constitutional role in approving international agreements'. 87 Hezbollah issued a statement denouncing the Security Council resolution as 'illegal and illegitimate at the national and international level'. 88 It is easy to understand why Iranians might have come to the same conclusion about the Security Council afte r their bitter war with Iraq. For eight long years, despite clear evidence of aggression by Saddam Hussein (who during this time was the West's useful idiot) and his use of chemical weapons, the Council's standard response was to suggest that 'bot h belligerents were equally at fault'. 89 If and when the UN Charter is reformed, one item on the agenda should be the introduction of curbs on untrammelled authority in the Security Council, which is presently subject to no count ervailing political check or judicial review. 90 The idea that the P5 should fuse legislative, executive and judicial 85 SC Res 1559, UN SCOR, 59 th sess, 5028 th mtg, UN Doc S/RES/1559 (2 September 2004). 86 Gary J Bass, 'Does the UN Understand What It's Getting Itself Into?', The Washington Post (Washington DC), 30 October 2005, B03. 87 Colum Lynch and Ellen Knickmeyer, 'UN Council Backs Tribunal for Lebanon: Beirut Braces for Unrest after Vote to Purs ue Assassins of Former Premier', The Washington Post (Washington DC), 31 May 2007, A01. 88 Hezbollah Condemns Hariri Court (31 May 2007) BBC News <http://news.bbc.co.uk>. 89 Charles Tripp, 'The Security Council and the Iran–Iraq War,' in Vaughan Lowe et al (eds), The United Nations Security Council and War: The Evolution of Thought and Practice since 1945 (Oxford University Press, 2008) 368, 374. 90 In Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) [1971] ICJ Rep 16; Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aeri al Incident at Lockerbie (Libya v UK) (Preliminary Objections) [1998] ICJ Rep 9; and Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v US) (Preliminary Objections) [1998] ICJ Rep 115, the ICJ cast doubts on the blanket immunity of the Security Council from judicial scrutiny but did not go so far as to enunciate a doctrine of judicial review. See Jose E Alvarez, 'Judging the Security Council' (1996) 90 American Journal of International Law 1; Thomas M Franck, 'The "Powers of Appreciation": Who Is the Ultimate Guardian of UN Legality?' (1992) 86 American Journal of International Law 519. 20 Melbourne Journal of International Law [Vol 11 powers to themselves violates elementary notions of due process. Imagine if abuser regimes, and only they, had perm anent membership and veto powers in the new Human Rights Council. Western commentators seem to point r outinely to China and Russia as the veto-wielding problem members of the P 5. In fact, since the end of the Cold War, the country to have cast the veto mo st frequently is the US. The UK and the US have been among the most heavily i nvolved in warfare and armed conflict over the last century, and if we limit the period to that starti ng after the Second World War, a third country in the list would be Israel. Not the least, because of the veto power in the Security Council, there is no prospect of anyone from any of these three countries being placed in the ICC dock in the foreseeable future. Little wonder that the precedent-setting in dictment of the President of Sudan by the ICC in March 2009 drew protests fr om the majority of the African Union, 91 the Arab League 92 and the Non-Aligned Movement 93 (the world's most representative general pur pose body after the UN itself) about the selective justice being meted out by the ICC. Until such time as Washington (and London) are prepared to lead the campaign for th e abolition of the veto clause, it is difficult to see how the expect ation, threat or use of ve to by others can legitimise any US or UK action that circumvents the veto. Those who live by the veto cannot rightfully complain about having to die by the veto. VIII **THE UNITED NATIONS –UNITED STATES DUALISM** The push for democratization in the world has been led by the three Western members of the P5 (UK, France and the US). Yet the three have been the most fiercely resistant to bringing democracy and transparency to the workings of the Council itself. In some respects, it is more accurate to speak these days of the '**P1' rather than the 'P5'**. Authority is the right to make policy and rules, while power is the capacity to implement the policy and enforce the rules. The UN has global reach and authority but **no power**. It symbolizes global governance but lacks the attributes of international government.

While lawful authority remains vested in the UN, power has become **increasingly concentrated in the US** which has **global grasp and power** but not international authority. The exercise of power is **rendered less effective** and generates its own resistance if divorced from authority. The latter in turn is **corroded** when challenges to it **go unanswered** by the necessary force. Lack of capacity to be the chief enforcer acting under Chapter VII of the UN Charter means that the **UN remains an incomplete organization**, one that practices only part s of its Charter. That being the case, Edward Luck asks, '[i]s it tenable for the UN to say that it only wants to walk on the soft side of the street but nevertheless wants to have some degree of control over what happens on the other side as well?' Until the First World War, war was an accepted and normal part of the state system with distinctive rules, norms and etiquette. In that Hobbesian world, the only protection against aggression was countervailing power, which increased both the cost of victory and the risk of failure. Since 1945, the UN has spawned a corpus of law to stigmatize aggression and create a robust norm against it. The UN exists to check the predatory instincts of the powerful towards the weak – one of the most enduring but not endearing lessons of history. Since 11 September 2001, a US that was already over-armed has **militarized** its foreign policy still more. Might the US irritation at the UN owe as much to its effectiveness in constraining imperial US behavior as alleged UN ineffectiveness against others? The Bush Administration rejected Harry Truman's counsel that the US must deny itself the license to do as it pleases, ignored John F Kennedy's wisdom that the US is neither omnipotent nor omniscient, and rode roughshod over four decades of tradition of en lightened self-interest and liberal internationalism as the guiding normative template of US foreign policy. Paul Heinbecker, Canada's former UN ambassador, comments that '[t]he distance between delusion and hubris is short and the Bush Administration covered it in a sprint.'

UN legitimacy solves extinction

Goldberg 13 – citing Chuck Hagel, former U.S. Secretary of Defense and Senator from Nebraska (Mark Leon, Why Chuck Hagel Supports the United Nations, UN Dispatch, 1/7/13, http://www.undispatch.com/why-chuck-hagel-supports-the-united-nations/)//JJ

The United Nations can play a **central and critical role** in forging connections. The **global challenges** of **terrorism**, **proliferation** of **weapons of mass destruction**, **hunger**, **disease**, and **poverty** **require multilateral responses and initiatives**. The United States should therefore take **every opportunity** to help **strengthen global institutions** and alliances, including **the UN**. Like all institutions, the United Nations has its limitations and problems. It needs reform. Too often, the UN, especially the General Assembly, succumbs to the worst forms of political posturing. Nevertheless, the United Nations has played an **essential role** **throughout the world** in postconflict transitions, supervising elections, providing humanitarian programs and assistance, 22 peacekeeping, and offering international legitimacy and expertise of the kind that have **helped stabilize** Korea, Haiti, Liberia, East Timor, the Balkans, Afghanistan, and a number of other regions. Helping bring security to those troubled areas required an immense international effort. Although many of these hot spots are still troubled today, **each is more stable** than it was, reducing the risk of further violence and regional escalation. More importantly, each has some hope for a peaceful future—although it may take years before that hope is realized. No international conflict is simple or easy to deal with, but each requires attention and the United Nations is the **only international organization** that can help bring the consensus that is **indispensable** in finding solutions and resolving crises. Critics have suggested that McCain's League of Democracies could diminish the role of the United Nations. When I mentioned this to Hagel, he said, "What is the point of the United Nations? The whole point, as anyone who has taken any history knows, was to bring all nations of the world **together** in some kind of imperfect body, a forum that allows all governments of the world, regardless of what kinds of government, to **work through their problems**–versus attacking each other and going to war. Now, in John's League of Democracies, does that mean Saudi Arabia is out? Does that mean our friend King Abdullah in Jordan is out? It would be only democracies. Well, we've got a lot of allies and relationships that are pretty important to us, and to our interests, who would be out of that club. And the

way John would probably see China and Russia, they wouldn't be in it, either. So it would be an interesting Book-of-the-Month Club. "But in order to solve problems you've got to have all the players at the table," Hagel went on, his voice rising. "How are you going to fix the problems in **Pakistan**, **Afghanistan**–the problems we've got with **poverty, proliferation, terrorism, wars**–when the largest segments of society in the world today are not at the table?" He paused, then added, more calmly, "The United Nations, as I've said many times, is imperfect. We've got NATO, multilateral institutions, multilateral-development banks, the World Trade Organization–all have flaws, that's true. But if you didn't have them what would you have? A world **completely out of control**, with **no structure**, **no order**, **no boundaries**."

***solvency

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Universal Periodic Review solves the aff and ensures human right compliance

CDT 5/11/15 – global non-profit organization championing global online civil liberties and human rights, driving policy outcomes that keep the Internet open, innovative, and free, *citing Sarah Vincent; J.D. at the University of Michigan Law School (Center for Democracy and Technology, UN Human Rights Council Highlights US Surveillance Abuses, https://cdt.org/press/un-human-rights-council-highlights-us-surveillance-abuses/)//JJ

Today, the United Nations Human Rights Council conducted its second **Universal Periodic Review of the United States' human rights practices**. During this process, UN Members States have the opportunity to **raise concerns** about a country's human rights record, highlighting particular concerns or areas for clarification. The human rights implications of **large-scale government surveillance** were a prominent topic of criticism by more than a dozen countries. The Center for Democracy & Technology (CDT) and the ACLU submitted a shadow report on five particularly egregious US surveillance programs in advance of the review, and CDT previewed the process last week. "The global community has said firmly that the **US must address** its **surveillance-related human rights abuses**. The US cannot continue to ignore these calls for action," said Sarah St. Vincent, Human Rights and Surveillance Legal fellow at CDT. The UN Human Rights Council review comes just **days before surveillance reform legislation** is to be taken up in Congress and follows last week's ruling by the Second Circuit Court of Appeals that the NSA bulk collection is not legal under Section 215 of the PATRIOT Act. "The Council's proceedings have put additional pressure on the US to **reform its surveillance practices** not just in the US, but around the world," St. Vincent added. "They've highlighted the need to ensure that **all surveillance programs** respect the rights to privacy and free expression for everyone, at all times." At least 17 nations questioned the US on its surveillance practices, raising issues related to the interception of private data, transparency, redress for violations, and the rights of individuals being monitored outside of the US' borders. CDT will provide additional analysis of the proceedings later this week.

Solves the aff

St. Vincent 5/15/15 – CDT's Human Rights and Surveillance Fellow, J.D. at the University of Michigan Law School (Sarah, UN Member States Call for US Surveillance Reforms, CDT, https://cdt.org/blog/un-member-states-call-for-us-surveillance-reforms/)//JJ

On Monday, US officials went before the gathered United Nations Member States in Geneva and were greeted with a message that was loud and clear: all surveillance, no matter where it takes place or whose data it involves, must comply with human rights law. As Congress and the Executive Branch continue to face urgent demands from the American public to reform surveillance, they would do well to heed this global call for change as well. In particular, the Administration should give immediate and serious consideration to **countries' recommendations** to recognize that **human rights apply** to all surveillance; that any surveillance program must be subject to adequate judicial, congressional, and independent oversight; and that anyone whose fundamental rights

are violated by surveillance activities must have access to effective redress. NSA surveillance remains a matter of strong and detailed concern to the global community. As CDT explained last week, the UN Human Rights Council conducted the Universal Periodic Review ("UPR") of the United States, which occurs once every four and a half years and entails a public review of the country's compliance with all of its obligations under human rights law. Every UN Member State had the right to participate in the US' review, and Monday's session demonstrated a remarkable cohesiveness among the serious issues that were raised—and showed that NSA surveillance remains a matter of strong and detailed concern to the global community. Among the 17 countries that commented on US surveillance (or privacy rights more broadly), several emphasized something the Administration has thus far refused to acknowledge: namely, that the US must respect human rights whenever it conducts surveillance operations, including surveillance of people who are outside the United States and are not Americans. As CDT and the ACLU observed in a report to the Human Rights Council prior to the session, the Snowden documents indicate that the NSA has been intercepting the private data of hundreds of millions of people around the world every day, and the Administration's failure to recognize that these activities give rise to human rights obligations remains a conspicuous and grave one. In addition to this general critique, several countries specifically indicated that the US must adopt better judicial, legislative, and independent oversight of its surveillance programs. Such oversight is an essential element of the right to privacy, and is a basic safeguard that CDT has been working hard to promote both within the US and internationally. A number of countries also highlighted the fact that US surveillance places a burden on individual rights from the moment the NSA acquires private data, regardless of whether analysts later view or use it—a point that echoes a similar finding by a US Second Circuit Court of Appeals last week in a case concerning the agency's bulk collection of records of phone calls to, from, and within the US. Next month, the US is expected to state publicly whether it accepts these and other surveillance-related recommendations. We believe the Administration should accept the following obligations, among others, as a matter of official policy: Respect and protect the human rights of all people when conducting surveillance: "**Ensure** that **all surveillance policies** and **measures comply** with **international human rights** law, particularly the right to privacy, regardless of the nationality or location of those affected, including through the development of effective safeguards against abuses" (recommendation made by Brazil). Do the same when requiring companies to disclose users' data: "Respect international human rights obligations regarding the right to privacy when intercepting digital communications of individuals, collecting personal data or requiring disclosure of personal data from third parties" (recommendation made by Germany). Conduct surveillance only on the **basis of clear, comprehensive,** non-discriminatory laws, and review existing laws accordingly: Review US federal laws and policies "in order to ensure that all surveillance of digital communications is consistent with its international human rights obligations and is conducted on the basis of a legal framework which is publicly accessible, clear, precise, comprehensive and non-discriminatory" (recommendation made by Liechtenstein). Restrict large-scale global surveillance, ensure sufficient oversight, and provide redress for violations: "Take all necessary measures to ensure an independent and effective oversight by all Government branches of the overseas surveillance operations of the National Security Agency, especially those carried out under Executive Order 12333, and guarantee access to effective judicial and other remedies for people whose right to privacy would have been violated by the surveillance activities of the United States" (recommendation made by Switzerland; similar recommendation made by Hungary). Take proactive measure to prevent abuses: "Take adequate and effective steps to guarantee against arbitrary and unlawful acquisition of [private] data" (recommendation made by Kenya; similar recommendation made by Costa Rica). It is to the Administration's credit that (as several participating countries noted) it has taken the Human Rights Council's review of its human rights record with evident seriousness thus far. US Ambassador Keith Harper remarked before the assembled delegates that "every nation benefits from having a mirror held before it," and the US' decision to send a high-level delegation representing a range of federal agencies reflects the sincerity of that view. In the case of surveillance, however, there's no escaping the fact that the mirror has revealed profound flaws. It is imperative for the Executive Branch to take action accordingly by **formally declaring** that it **will accept and uphold** the positions described above.

2nc – at: U.S. says no

U.S. will implement the recommendations – council and member state's authority

St. Vincent 5/7/15 – CDT's Human Rights and Surveillance Fellow, J.D. at the University of Michigan Law School (Sarah, US to Answer for Surveillance Practices on Global Stage, CDT, https://cdt.org/blog/us-to-answer-for-surveillance-practices-on-global-stage/)//JJ

During the UPR session, we will be on the lookout for whether: Countries with which the US has a positive relationship—particularly those that co-sponsored the recent groundbreaking resolution creating a new UN Special Rapporteur on the right to privacy—publicly remind the US government that many of the NSA surveillance programs revealed in the Snowden documents **violate human rights** and make recommendations as to **how those programs should be changed**; Countries state that the **US must comply** with **its human rights obligations** when **conducting surveillance** outside its own borders—an assertion that would **carry significant weight** in a major ongoing legal debate; Emphasis is placed upon the fact that even the initial interception or acquisition of private data interferes with the rights to privacy and free expression; There is a significant embrace of the UN Office of the High Commissioner for Human Rights' conclusion that any interferences with the right to privacy must be necessary and proportionate in order to comply with human rights (again, such statements by countries would help to strengthen a good global legal standard—one the US currently resists); The burden surveillance places on free expression is explicitly highlighted; and Countries address specific human rights issues such as meaningful oversight of surveillance programs (for example, by courts or independent bodies) and the need to ensure that anyone who experiences a violation of his/her rights due to surveillance has access to an effective remedy. The Universal Periodic Review is the **world's biggest stage** for highlighting human rights violations and working for clearer, stronger standards to protect the rights and freedoms of individuals everywhere. As the US steps into the spotlight, the world will be watching, and so will CDT.

U.S. will implement – empirics flow neg

DS 2/6/15 – U.S. Department of State (UPR Report of the United States of America, Department of State Diplomacy in Action, http://www.state.gov/j/drl/upr/2015/237250.htm)//JJ

In our first UPR in 2010, the United States supported in whole or in part **173 of 228** recommendations. We have divided these recommendations into ten thematic areas and have structured Section III of this report accordingly. Working groups comprising experts from relevant federal agencies **addressed each** of the thematic areas, **meeting periodically**, **assessing progress** on the recommendations, and consulting with civil society to share updates and receive feedback.

Here's specific ev to surveillance

ISHR 5/18/15 – independent, non-governmental organization dedicated to promoting and protecting human rights, developed the UN Declaration on Human Rights

Defenders (International Service For Human Rights, United States: **Implement UPR recommendations to establish national human rights institution** and review national security laws, http://www.ishr.ch/news/united-states-implement-upr-recommendations-establish-national-human-rights-institution-and)//JJ

The United States of America (US) was reviewed last week on Monday, 11 May for the second time, as part of the 22nd session of the Universal Periodic Review (UPR). Late last year, ISHR prepared a Briefing Paper on the Situation of Human Rights Defenders in the US to assist States and other stakeholders to formulate questions and recommendations regarding the protection of human rights defenders (HRDs) during the US' second UPR. In the briefing paper, ISHR called on the US Congress to reform national security legislation and ensure accountability surrounding the unwarranted surveillance of human rights defenders and journalists; enact specific legislation that protects HRDs from reprisals and intimidation; and to build and endorse human rights mechanisms necessary for consistent and effective oversight of human rights in the US. Encouragingly, many of these recommendations were taken up by States in last week's review.

2nc – at: U.S. lies

Irrelevant – rights groups, institutions, and NGOs solve
OHCHR 15 – Office of the High Commissioner for Human Rights (Basic facts about the UPR, United Nations Human Rights, 2015, http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx)//JJ
The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a "national report"; 2) information contained in the reports of **independent** human rights **experts and groups**, known as the Special Procedures, human rights **treaty bodies**, and other **UN entities**; 3) information from **other stakeholders** including national human rights **institutions** and **non-governmental organizations**.

2nc – at: every 4 years

Fiat solves – their interpretation justifies no affs or politics or counterplans during Congressional recess –

2nc – at: delay

UPR is grease lightning –
OHCHR 15 – Office of the High Commissioner for Human Rights (Basic facts about the UPR, United Nations Human Rights, 2015, http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx)//JJ

During the Working Group session **half an hour** is allocated to adopt each of the "outcome reports" for the States reviewed that session. These take place **no sooner than 48 hours** after the country review. The reviewed State has the opportunity to make preliminary comments on the recommendations choosing to either accept or note them. Both accepted and noted recommendations are included in the report. After the report has been adopted, editorial modifications can be made to the report by States on their own statements within the **following two weeks**. The report then has to be adopted at a plenary session of the Human Rights Council. During the plenary session, the State under review can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Time is also allotted to member and observer States who may wish to express their opinion on the outcome of the review and for NHRIs, NGOs and other stakeholders to make general comments.

2nc – at: surv compliance now

Extend St. Vincent (and 2nc solvency ev) **– most recent UPR proves U.S. surveillance violates international human rights**

They're wrong –
HRW 6/29/15 – international non-governmental organization that conducts research and advocacy on human rights, Peabody Award winner (Human Rights Watch, World Report 2015: United States, https://www.hrw.org/world-report/2015/country-chapters/united-states)//JJ

Documents leaked to journalists by former National Security Agency (NSA) contractor Edward Snowden continued to reveal new details about US surveillance programs. In the last year, reports based on the Snowden documents show that the US may be collecting millions of text messages worldwide each day and intercepting all phone calls and metadata in the Bahamas and Afghanistan, and gathering all phone metadata in Mexico, Kenya, and the Philippines. A July news story said several prominent American Muslim leaders, including the head of a Muslim civil liberties group, were targeted with electronic surveillance. On January 17, 2014, President Obama announced additional measures to restrict the use, retention, and dissemination of personal data gathered by intelligence services in Presidential Policy Directive 28. However, these measures fell short of ensuring that interference with privacy was limited to what was necessary and proportionate, and they left open the possibility of large-scale collection. Also, while the measures purported to bring rules on surveillance of non-US persons (foreigners abroad) closer to those governing data collected on US persons, the rules are vague and **create no justiciable rights**. In March, the **UN Human Rights Committee** called on the US to ensure that its surveillance activities **respect privacy rights** under the International Covenant on Civil and Political Rights, regardless of the nationality or location of individuals being monitored. It also expressed concern over the **lack of transparency** in US laws and court rulings governing surveillance. In July, Human Rights Watch released a report documenting how large-scale US surveillance is hampering journalists and lawyers in their work, making it more difficult to protect sources, and leading journalists to go to extreme lengths to avoid detection: from using encryption to burner phones, to ceasing all electronic communication. As a result, far less information about matters of public concern may be seeing the light of day. Also in July, Senator Patrick Leahy introduced a new version of the USA Freedom Act that would have limited some forms of domestic surveillance, while doing almost **nothing to safeguard the privacy** of foreigners abroad. However, it failed to move forward in the Senate.

2nc – cdt prodict

CDT is baller – here's the quals of the editor

CDT 15 – global non-profit organization championing global online civil liberties and human rights, driving policy outcomes that keep the Internet open, innovative, and free (Center for Democracy and Technology, Nuala O'Connor, 2015, https://cdt.org/staff/nuala-o%E2%80%99connor/)//JJ

Nuala O'Connor is the President & CEO of the Center for Democracy & Technology. She is an internationally recognized expert in Internet and technology policy, particularly in the areas of privacy and information governance. Nuala is passionate about the ways technology and the Internet can be instruments of global free expression and individual freedom, and is committed to finding policy solutions that affect real people. Nuala has experience in both the public and private sectors. She was the Global Privacy Leader at General Electric (GE), where she was responsible for privacy policy and practices across GE's numerous divisions. Prior to joining CDT, she worked at Amazon.com as Vice President of Compliance & Consumer Trust and Associate General Counsel for Data & Privacy Protection. Nuala's time in the technology sector began at DoubleClick, where she was part of a team of professionals brought in to address public outcry over the advertising giant's proposal to merge on- and offline data sets. She managed numerous class actions, a multistate settlement with state attorneys general, and an FTC investigation before going on to help found the privacy compliance department, which served as an influential model for companies in the technology sector and beyond. Later, Nuala served as Deputy Director of the Office of Policy & Strategic Planning, Chief Privacy Officer and as the Chief Counsel for Technology at the US Department of Commerce, where she worked on global technology policy including Internet governance and industry best practices. She became the first statutorily appointed Chief Privacy Officer in federal service when she was named as the first Chief Privacy Officer at the Department of Homeland Security. At DHS she was responsible for groundbreaking policy creation and implementation regarding the use of personal information in national security and law enforcement. Under her leadership, the DHS Privacy Office issued a seminal report criticizing the use of private-sector data in national security efforts. She serves on numerous nonprofit boards, and is the recipient of the International Association of Privacy Professionals (IAPP) Vanguard Award, the Executive Women's Forum's Woman of Influence award, and was named to the Federal 100, and "Geek of the Week" by the Minority Media & Telecom Council in May 2013. She also served as the Chairman of the Board of IAPP. Born in Belfast, Northern Ireland, Nuala grew up in and around New York City. She holds an **AB from Princeton**, an **M.Ed. from Harvard**, and a **JD from Georgetown University Law Center**. She lives in the Washington, DC, area with her three school-aged children.

2nc – health aff

Solvency advocate against Health Surveillance affs

Dixon 14 – executive director of the World Privacy Forum, formerly a research fellow with the Privacy Foundation at Denver University's Sturm School of Law, former author (Pam, WPF Universal Periodic Review Comments — The Right to Health Privacy: Human Rights and the Surveillance and Interception of Medical and Health Records by Security Agencies, World Privacy Forum, 10/7/14, https://www.worldprivacyforum.org/2014/10/wpf-universal-periodic-review-comments-the-right-to-health-privacy-human-rights-and-the-surveillance-and-interception-of-medical-and-health-records-by-security-agencies/)//JJ

The World Privacy Forum respectfully submits these comments to the Civil Society Consultation on the Universal Periodic Review Recommendations on National Security supported in whole or in part by the U.S. The World Privacy Forum is a 501 (c)(3) non-profit public interest research group based in the United States. We focus exclusively on privacy and security issues and have substantive expertise in health privacy. 1. Our comments focus on the issue of the U.S. National Security Agency's (NSA) interception of, acquisition of, and access to the health (including physical and mental health) records held by health care providers, health insurers, and health care clearinghouses located in the United States or otherwise subject to U.S. health privacy law. 2. The Universal Declaration of Human Rights, in Article 12 and 25, provides that individuals should be free to seek health care without intrusion by their government. The United Nations General Assembly adopted resolution 68/167 in December 2013, which expresses concern regarding the negative impact that surveillance and interception of communications may have on human rights. The United States in the 2010 UPR supported the right to privacy, and the goal of legislation or regulations that would work to prevent the violations of individual privacy, including "constant intrusion," by its intelligence and security organizations. Specifically, the U.S. supported in part: § 59: Legislate appropriate regulations to prevent the violations of individual privacy, constant intrusion in and control of cyberspace as well as eavesdropping of communications, by its intelligence and security organizations. §187: Guarantee the right to privacy and stop spying on its citizens without judicial authorization. 3. The World Privacy Forum acknowledges that there are lawful reasons for access to health records for investigations. 4. We are, however, most concerned that non-transparent access to patient health files by national security agencies occurs in two circumstances: 1.) When the files are held by health care providers, and 2.) When the files are in transmission between providers, insurers, and other lawful users. In these comments, we discuss the issue of a lack of transparency and oversight regarding the acquisition and use of health records by federal agencies with national security functions and, in particular, by the NSA. I. The lack of transparency regarding U.S. security agency acquisition of health records when held by health care providers and other entities covered under health privacy legislation. 5. There are no meaningful procedures or protections established by federal law governing the the acquisition or interception of patient health records by national security agencies from a health care provider, insurer, or clearinghouse. 6. U.S. health care providers are regulated under the federal health privacy rule. Federal law includes a broad national security exemption that offers no effective restrictions on the disclosure of health records by health care providers for national security and intelligence activities. The exemption [45 CFR 164.512(k)(2)] states: (2) National security and intelligence activities.A covered entity may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333). [45 CFR 164.512(k)(2)]. 7. Because of the breadth of this exemption, it is lawful for health care providers and other entities covered by the law to disclose health records to national security agencies without any procedural standards, any formal judicial request, any showing of relevance or importance, any probable cause, or any reasonable cause. The law does not require a written — or indeed any — request for it to be lawful for a covered entity to hand over patient health files. Further, there are no adequate procedures under which a record keeper or record subject can challenge a request for the records as unlawful, inappropriate, or as not in accordance with statutory procedures. II. The lack of transparency regarding the U.S. security agency acquisition of health records in transmission outside of the health care provider context 8. Events since 2010 have better informed the public and the world about health record privacy and national security investigation activities, including interception of health records in bulk collections. We are most concerned about examples regarding the NSA's activities. The NSA has broken the encryption that in the past has protected health records. (NewYork Times, Top Secret NSA Program Cracks Most Internet Encryption Tools, Sept. 05, 2013.) While this does not prove that the NSA is deliberately intercepting health records, it does indicate that traditional means of making health files private are no longer reliable against intrusion, particularly during transmission, even when the security meets the requirements set out in the federal health security rule. We certainly have no confidence that standard encryption protocols protect health records against NSA capabilities. 10. Health records of individuals, including non-targeted individuals, have been routinely intercepted by the

NSA. A reporter at the Washington Post who received copies of intercepted files from former NSA contractor Edward Snowden documented this issue, noting the presence of health files. He wrote: "About 16,000 of the data files contained the text of intercepted conversations. The rest were photographs or documents such as medical records, travel vouchers, school transcripts and marriage contracts." (Barton Gellman, The Washington Post, How 160,000 intercepted communications led to our latest NSA story, July 11, 2014. <http://www.washingtonpost.com/world/national-security/your-questions-answered-about-the-posts-recent-investigation-of-nsa-surveillance/2014/07/11/43d743e6-0908-11e4-8a6a-19355c7e870a_story.html>. 11. The U.S. Executive Branch acknowledged in 2013 that the business records provision of the USA PATRIOT ACT had been re-interpreted to allow the U.S. government to collect the private records of large numbers of ordinary Americans via bulk collection. A bi-partisan group of U.S. Senators wrote to the Director of National Intelligence on June 27, 2013 requesting answers to issues regarding interception of health records: "We are troubled by the possibility of this bulk collection authority being applied to other categories of records. The bulk collection authority could potentially be used to supersede bans on maintaining gun owner databases, or laws protecting the privacy of medical records, financial records, and records of book and movie purchases. These other types of bulk collection could clearly have a significant impact on Americans' privacy and civil liberties as well." <http://www.wyden.senate.gov/download/?id=87b45794-0fa4-4b1a-b3a6-e659a91a5042&download=1>. 12. No existing legal mechanisms provide appropriate standards, transparency, or oversight in the use of health records for national security investigations. III. The importance of health privacy as a human right and value worth protecting 13. We are concerned that individuals may be chilled from seeking necessary and even life-saving health treatment due to legitimate privacy concerns regarding their health records. As health records become increasingly digitized, routine access to patients' electronic health records by U.S. intelligence and security agencies becomes more likely. We include remote electronic access to this assessment. 14. The goals of UPR § 59 are that countries "Legislate appropriate regulations to prevent the violations of individual privacy, constant intrusion in and control of cyberspace as well as eavesdropping of communications, by its intelligence and security organizations. These goals are not being met in the United States with respect to disclosure and interception of health records by national security agencies. IV. Recommendations The World Privacy Forum recommends the following steps be taken: Recommendation 1. Change U.S. law so there are more accountability and better procedures for national security requests, demands, and interceptions. Specifically, we recommend the following changes to U.S. law with respect to access by or disclosure of health records to U.S. national security agencies: Health information should only be disclosed for national security purposes pursuant to a judicial warrant. There must be procedures under which record keepers can challenge national security demands for health records that are unlawful or inappropriate. If there is no requirement for a judicial warrant, then we offer these further recommendations: Requests for health information by all national security agencies must meet standards of reasonable or probable cause. Formal requests by all national security agencies for health records should be subject to the supervision of the federal courts. Recommendation 2. The U.S. should accept the letter and spirit of §59 and §187 and should take immediate corrective action. The **lack of sufficient human rights protections** for **health privacy and health records** in the U.S. **erodes the values** expressed in the Universal Declaration of Human Rights, in Article 12 and 25.

***theory/perms

2nc – theory – top-level

It's a core topic question –
St. Vincent and Hall 14 – CDT's Human Rights and Surveillance Fellow, J.D. at the University of Michigan Law School AND **Chief Technologist for CDT, Ph.D. in information systems from UC Berkley (Sarah and Joseph Lorenzo, Five US Surveillance Programs Undermining Global Human Rights, CDT, 9/18/14, https://cdt.org/blog/five-us-surveillance-programs-undermining-global-human-rights/)//JJ

Those of us in the United States often like to think—rightly or wrongly—that our overall human-rights record is in pretty good order. However, even those who view the US as a global human-rights leader have had to **take a deep breath** when **considering the past year** of **Big Brother-like surveillance revelations**. A major UN body highlighted these revelations—along with a decidedly sobering array of other US human-rights issues—in a set of recommendations back in April. In order to keep drawing attention to these surveillance-related problems, CDT and the ACLU submitted comments this past Monday to the United Nations describing five particularly egregious **surveillance programs** that have had a **grievous impact** on human rights around the world. Every four years, the UN Human Rights Council (HRC) evaluates all of a country's human-rights commitments during a process called the Universal Periodic Review (UPR). During the UPR, the UN HRC examines the promises a country has made—i.e., in human rights treaties such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights—and evaluates to what extent that country is living up to its obligations. We make it crystal clear that on a daily basis, US authorities are intercepting the private communications and other personal electronic data of hundreds of millions of people across the globe, the vast majority of whom are not suspected of any wrongdoing. In anticipation of next year's UPR of the United States, CDT and the ACLU sought to do something unique: after wading into the sea of NSA-related surveillance revelations that have emerged during this past year, we highlighted (and used our technical expertise to explain) five specific surveillance programs that have a particularly outrageous and broad impact on the human rights—including privacy, freedom of expression, and freedom of assembly—of people around the world. We aimed to provide an accessible technical description of the five programs and explain the impact these programs have on millions of people throughout the world, regardless of any suspicion of wrongdoing and without any judicial oversight. The five programs we analyzed include: **DISHFIRE,** an initiative through which the US collects hundreds of millions of private text messages worldwide every day; **CO-TRAVELER,** through which the US captures billions of location updates daily from mobile phones around the world; **MUSCULAR**, which entails the US' interception of all data transmitted between certain data centers operated by Yahoo! and Google outside of US territory; **MYSTIC**, a US program that collects all telephone call details in five sovereign countries other than the US, as well as the full content of all phone calls in two of those countries; and **QUANTUM,** a US program that listens in real-time to traffic on the Internet's most fundamental infrastructure and can respond based on certain triggering information with active attacks, including the delivery of malicious software to the end-user's device. In our submission we make it crystal clear that on a daily basis, US authorities are intercepting the private communications and other personal electronic data of hundreds of millions of people across the globe, the vast majority of whom are not suspected of any wrongdoing. The intercepted data includes information about where those hundreds of millions of people are, with whom they correspond, and what they say in their correspondence. At the end of our submission, we make a number of recommendations to the US about how it can improve its respect for human rights in this context. The recommendations focus on halting the US' indiscriminate interception of individuals' private communications data, getting greater (or, to be more accurate, any) Congressional and judicial oversight for these programs, stopping the attacks under QUANTUM, and ensuring that the relevant orders and regulations are brought into line with human-rights law.

2nc – at: process cp theory

Process counterplans are good –

a) topic education – this counterplan is specifically core to this topic – learning about the process is just as important as learning about the product

St. Vincent and Hall 14 – CDT's Human Rights and Surveillance Fellow, J.D. at the University of Michigan Law School AND **Chief Technologist for CDT, Ph.D. in information systems from UC Berkley (Sarah and Joseph Lorenzo, Five US Surveillance Programs Undermining Global Human Rights, CDT, 9/18/14, https://cdt.org/blog/five-us-surveillance-programs-undermining-global-human-rights/)//JJ

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b) fairness – there is no neg ground on this topic – process counterplans are necessary to make up for the atrocity of DA ground

c) research – voting us down on theory <u>discourages</u> good research practices – process counterplans <u>fosters in-depth</u> and <u>analytical</u> research for <u>tricky mechanisms</u>

d) reciprocal – the aff can get advantages based on the <u>process</u> of implementation

Reject the argument not the team

2nc – at: perm do both

Links to the net-benefit – unilateral U.S. action is perceived as bypassing the UPR recommendations

UN legitimacy is uniquely key to binding human rights compliance – U.S. involvement in the process tarnishes credibility –
Tasioulas 13 – inaugural Yeoh Professor of Politics, Philosophy and Law at The Dickson Poon School of Law, King's College London, doctorate from philosophy at Oxford (John, Human Rights, Legitimacy, and International Law, American Journal of Jurisprudence, 2013m http://ajj.oxfordjournals.org/content/58/1/1.full#sec-2)//JJ
That, of course, is a very general objection to any attempt to render the concept of a human right parasitic on the concept of a particular kind of institutional structure or geopolitical configuration. But let me proceed now to one broad manifestation of the political view of human rights, that according to which human rights are essentially benchmarks of **political legitimacy**. By the legitimacy of a political institution, I mean the right of a political institution, such as the state, to rule over its purported subjects. And by ruling, I mean the issuing of directives that purport to be **morally binding**—that purport to **impose obligations** of obedience—on those subjects. Moreover, these are obligations that are claimed to exist independently of the content of any particular directive, simply in **virtue of the institution's say-so**. It follows from this that a law may be **morally binding**, because enacted by a body that **enjoys legitimacy**, while being in some sense **unjust in terms** of its content or **the process** whereby it was enacted.

^The permutation is driven by national security interests and won't receive UN recommendations

Tharoor 3 – UN Undersecretary-General for Communications and Public Information and the author of eight books (Shashi, Why America Still Needs the United Nations, Foreign Affairs, September 2003, https://www.foreignaffairs.org/articles/2003-09-01/why-america-still-needs-united-nations)//JJ
That Washington has often used force on behalf of such principles makes good political sense. After all, acting in the name of international law is **always preferable** to acting in the name of national security. Everyone has a stake in the former, and so couching U.S. action in terms of international law universalizes American interests and comforts potential allies. When **American actions** seem **driven by U.S. national security** imperatives **alone**, partners can **prove hard to find** -- as became clear when, in marked contrast to the first Gulf War, only a small "coalition of the willing" joined Washington the second time around in Iraq. Working within the UN allows the United States to **maximize** what Joseph Nye calls its "soft power" -- the ability to **attract and persuade** others to adopt the American agenda -- rather than relying purely on the dissuasive or coercive "hard power" of military force.

Legitimacy key to binding precedent – the permutation rubber stamps the UN

Tharoor 3 – UN Undersecretary-General for Communications and Public Information and the author of eight books (Shashi, Why America Still Needs the United Nations, Foreign Affairs, September 2003, https://www.foreignaffairs.org/articles/2003-09-01/why-america-still-needs-united-nations)//JJ

Equally important, however, is the **need for legitimacy**, and here again the UN has proven **invaluable**. The organization's role in legitimizing state action has been both its **most cherished function** and, in the United States, its most controversial. As the world's preeminent international organization, the UN embodies world opinion, or at least the opinion of the world's legally constituted states. When the UN Security Council passes a resolution, it is seen as speaking for (and in the interests of) humanity as a whole, and in so doing it confers a legitimacy that is respected by the world's governments, and usually by their publics. When the resolution in question is passed under Chapter VII of the charter -- that document's enforcement provisions -- it becomes **legally binding** on all member states. The composition of the council that passes a particular resolution is no more relevant to its legitimacy than that of a national parliament that passes a law; congressional legislation, by the same logic, is not less binding on Americans if the majority that votes for it comes overwhelmingly from small states. The legitimacy of the UN inheres in its universality and not in its structural details, which have long been subject to the clamor for reform. Some Americans have scorned the status and conduct of many of the Security Council members that failed to support the United States on Iraq. But this unseemly sneering over the right of Angola, Cameroon, or Guinea to pass judgment in the council overlooks the valuable contribution their presence makes. The election of small countries to the council bolsters its legitimacy by enhancing its role as a repository of world opinion. Universality of membership also allows the world to view the UN as something more than the sum of its parts, as an entity that transcends the interests of any one member state. The UN guards the vital principles entrenched in its charter, notably the sovereign equality of states and the inadmissibility of interference in their internal affairs. It is precisely because the UN is the chief guardian of both these sacrosanct principles that it alone is allowed to approve derogations from them. Thus when the UN, in particular the Security Council, legislates an intervention in a sovereign state, it is still seen as upholding the basic principles even while approving a departure from them. When an individual state acts in defiance of the UN, on the other hand, it merely violates these principles. This is why so many countries, including the most powerful ones, take care to embed their actions within the framework of the principles and purposes of the UN Charter. For examples of this, one need only peruse a random selection of speeches by countries explaining their votes on the Security Council, especially those concerning military action. The value of internationally recognized principles resonates across the globe and has been reified through 58 years of repetition -- including last March, when the council debated Iraq. To suggest -- as did some critics of the UN during the Iraq crisis -- that the organization has become irrelevant overlooks the message President George W. Bush himself sent when he appeared before the General Assembly in September 2002. In calling on the Security Council to take action, Bush framed the problem of Iraq as a question not of what the United States (unilaterally) wanted, but of how to implement Security Council resolutions. Indeed, these resolutions were at the heart of the U.S. case. Had the Security Council been able to agree that force was warranted, it would have provided unique (and incontestable) legitimacy for U.S. military action. The fact that the council did not ultimately agree, however, strengthens, rather than dilutes, the rationale for approaching it in such situations. The **council's refusal** to serve as a **rubber stamp** for Washington will give any future support it lends to the United States greater credibility.

Independent UN action is key to credibility – the perm positions the UN on the sideline

Shariati 9 – PhD, Professor of Economics and Sociology and KCKCC (Medhi, UNITED NATIONS AND THE CRISIS OF LEGITIMACY: The Anatomy of One of the Organs of Hegemonic Powers, Payvand Iran News, 2/23/09, http://www.payvand.com/news/09/feb/1277.html)//JJ

The world is desperately in need of a solution to the crises of socio-economic and political violence, lack of direction, and utter disregard for the declining moral and ethical standards. The reality points to a very frightening prospect and to a world that is not governed by any moral codes, ethical values, international law and the absence of **credible enforcing institutions**. As the behavior of certain permanent members even in the formative years of the United Nations reveals, the current dysfunctionality of the UN is neither a recent problem nor it is a matter of

bureaucratic inefficiency. Rather it is built into the hegemonic structure itself and the need for an alternative system with a philosophy and mission statement suitable for a sustainable global social, political and economic system is becoming increasingly urgent. As long as the world is managed by those **very few** so called "fit" who pursue their own selfish interest at the expense of the great majority, they are **given the right** to codify rules, regulations, morality and ethics and to write history. Are we to assume that the world is ruled by the fittest of the human species? If so then the results suggest that there is a cancer on the body of humanity and unless the world reverses its course and changes the culture of violence, the cancer will destroy it. Recently at Davos we heard calls for more deregulation, more free market, more capital inflow/outflow, more speculations, more free trade and much more free this and free that. Angela Merkel of Germany and Gordon Brown of Britain suggested the creation of a Security Council Economic Commission for more policing of the World economy. This however is not in opposition to the neoliberalism that Davos has been promoting. It simply means for control of the World economy by a few-a few that control Security Council itself. There is a hopeful sign that there is a growing awareness regarding the **very oligarchic structure** of global institutions and the various mechanisms of transfer of wealth from the poorest to richest. The developing world is displaying an advanced degree of awareness that often dwarfs that of their counterparts in the advanced industrial and capitalist countries. As their awareness advances inexorably, the hope for a better world must be sustained. It is not the hoarding and the wasteful consumption of resources --the foundation of uni-polar and bi-polar hegemonic system that has ruled the world. It is a world free of hegemonic tendencies, respect for the rules that everyone can live by. As long as **hegemonic powers control** the structure and **set policies**, the **structure will remain detrimental** to the health of the "real" international community. No one should believe that United Nations ought to solve the World's pressing problems, but no one expects the United Nations to be one of the causes of the problems. It is time for the United Nations and all of its agencies to renounce past practices on the part of some of its agencies, adopt a new paradigm, and join the voices speaking on behalf of the under-privilege at the World Social forum rather than as a **cheer leader on the sideline** for the voices of greed and failure at the World Economic Forum at Davos.

The margin for error is tiny

Thakur 9 – director, Balsillie School of International Affairs, Distinguished Fellow, Centre for International Governance Innovation and Professor of Political Science, University of Waterloo (Ramesh, LAW, LEGITIMACY AND UNITED NATIONS, Melbourne Journal of International Law Volume 11, 12/7/9, p. 12)//JJ

Similarly, there were three views on the significance of the war for the UN–US relationship: that it demonstrated the irrelevance, centrality or potential complicity of the UN. 48 First, for the neo-conservatives, because it exists, the UN should be uninvented and there was therefore no reason to seek UN approval. 49 Under the second view, it was recognized that there was a need 'to confront Saddam Hussein but [it] ruled out acting without UN authorization.' 50 Third, UN authorization of the war was 'necessary but not sufficient' with irrelevance preferred to complicity. 51 In the opinion of some, the UN is '**now more than ever** reduced to the **servile function** of **after-sales service provider** for the United States, on permanent call as the **mop-up brigade**.'

2nc – at: perm do the cp

Makes the plan extra-topical – the UPR recommendations are not limited to surveillance and are international actions

OHCHR 15 – Office of the High Commissioner for Human Rights (Basic facts about the UPR, United Nations Human Rights, 2015, http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx)//JJ

The ultimate goal of UPR is the improvement of the human rights situation in every country with significant consequences for people around the globe. The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground. To achieve this, the UPR involves **assessing** States' human rights records and **addressing** human rights violations **wherever they occur**. The UPR also aims to **provide technical assistance** to States and **enhance their capacity** to deal effectively with human rights challenges and to **share best practices** in the field of human rights among States and other stakeholders.

Voter for jursidiciton –

Severs the plan – no portion mentions the UN or the UPR – 5 programs prove the counterplan is a distinct form of action

St. Vincent and Hall 14 – CDT's Human Rights and Surveillance Fellow, J.D. at the University of Michigan Law School AND **Chief Technologist for CDT, Ph.D. in information systems from UC Berkley (Sarah and Joseph Lorenzo, Five US Surveillance Programs Undermining Global Human Rights, CDT, 9/18/14, https://cdt.org/blog/five-us-surveillance-programs-undermining-global-human-rights/)//JJ

Those of us in the United States often like to think—rightly or wrongly—that our overall human-rights record is in pretty good order. However, even those who view the US as a global human-rights leader have had to take a deep breath when considering the past year of Big Brother-like surveillance revelations. A major UN body highlighted these revelations—along with a decidedly sobering array of other US human-rights issues—in a set of recommendations back in April. In order to keep drawing attention to these surveillance-related problems, CDT and the ACLU submitted comments this past Monday to the United Nations describing five particularly egregious surveillance programs that have had a grievous impact on human rights around the world. Every four years, the UN Human Rights Council (HRC) evaluates all of a country's human-rights commitments during a process called the Universal Periodic Review (UPR). During the UPR, the UN HRC examines the promises a country has made—i.e., in human rights treaties such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights—and evaluates to what extent that country is living up to its obligations. We make it crystal clear that on a daily basis, US authorities are intercepting the private communications and other personal electronic data of hundreds of millions of people across the globe, the vast majority of whom are not suspected of any wrongdoing. In anticipation of next year's UPR of the United States, CDT and the ACLU sought to do something unique: after wading into the sea of NSA-related surveillance revelations that have emerged during this past year, we highlighted (and used our technical expertise to explain) five specific surveillance programs that have a particularly outrageous and broad impact on the human rights—including privacy, freedom of expression, and freedom of assembly—of people around the world. We aimed to provide an accessible technical description of the five programs and explain the impact these programs have on millions of people throughout the world, regardless of any suspicion of wrongdoing and without any judicial oversight. The five programs we analyzed include: DISHFIRE, an initiative through which the US collects hundreds of millions of private text messages worldwide every day; CO-TRAVELER, through which the US captures billions of location updates daily from mobile phones around the world; MUSCULAR, which entails the US' interception of all data transmitted between certain data centers operated by Yahoo! and Google outside of US territory; MYSTIC, a US program that collects all telephone call details in five sovereign countries other than the US, as well as the full content of all phone calls in two of those countries; and QUANTUM, a US program that listens in real-time to traffic on the Internet's most fundamental

infrastructure and can respond based on certain triggering information with active attacks, including the delivery of malicious software to the end-user's device. In our submission we make it crystal clear that on a daily basis, US authorities are intercepting the private communications and other personal electronic data of hundreds of millions of people across the globe, the vast majority of whom are not suspected of any wrongdoing. The intercepted data includes information about where those hundreds of millions of people are, with whom they correspond, and what they say in their correspondence. At the end of our submission, we make a number of recommendations to the US about how it can improve its respect for human rights in this context. The recommendations focus on halting the US' indiscriminate interception of individuals' private communications data, getting greater (or, to be more accurate, any) Congressional and judicial oversight for these programs, stopping the attacks under QUANTUM, and ensuring that the relevant orders and regulations are brought into line with human-rights law.

Should is certain and immediate

Nieto 9 – Judge Henry Nieto, Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009)
"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [**15] interpreting the word in various contexts have drawn conflicting conclusions, although the **weight of authority** appears to favor interpreting "should" in an **imperative, obligatory sense**. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and **could not be misunderstood** by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [**16] have also found that the word conveys to the jury a sense of duty or obligation and **not discretion**. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as **synonymous with the word "must"** and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the **same meaning**. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey **duty** or **obligation**. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

Severance – the counterplan's recommendations and *method of implementation* are uncertain and occur later

'Resolved' denotes legislation

Words and Phrases 64 Permanent Edition
Definition of the word "resolve," given by Webster is "to express an opinion or determination by resolution or vote; as 'it was resolved by the legislature;" It is of similar force to the word "enact," which is defined by Bouvier as meaning "to establish by law".

Severance – the recommendations are not implemented through legislative means, but rather internal reforms, etc.

Severance is a voter – allows the aff to spike out of all links and makes it a moving target – wrecks neg ground

2nc – at: perm lie

U.S. binding commitment is key – genuine or not, the perm will be perceived as a form of American exceptionalism

Morrison 6 – Director of Communications for the United Nations Development Program (Dave, The U.S. Relationship with the United Nations, Yale Journal of International Affairs, spring 2006, http://www.yale.edu/yjia/articles/Vol_1_Iss_2_Spring2006/unroundtable223.pdf)//JJ

So at its core, the UN is deeply tied to this country and to American values. But there is another strand in American foreign policy, which is **American "exceptionalism**." The most well-known example of this is the United States' position on the International Criminal Court, where the United States is really way out on its own. I think we have to accept that there are issues where the U.S. simply sees itself as **different from the rest** of the world and that in such cases the U.S. position is likely to **diverge** from that of the wider UN.

***net-benefit

2nc – at: case solves

Only UN legitimacy can solve

Sachs and Jeremic 14 – UN Secretary-General's Special Advisor on the Millennium Development Goals, is the director of The Earth Institute, Quetelet professor of sustainable development, and professor of health policy and management at Columbia University AND ** president of the Center for International Relations and Sustainable Development (CIRSD), former Serbia's foreign minister, former president of the 67th Session of the United Nations General Assembly (Jeffrey and Vuk, Global Cooperation in the Age of Sustainable Development, Huffington post, 3/7/14, http://www.huffingtonpost.com/vuk-jeremic/global-cooperation_b_4890371.html)//JJ

Achieving sustainable development will be the overriding strategic challenge of this generation. Throughout most of history, the tasks of integrating economic development, social inclusion, and environmental sustainability were local or regional. In the 21st century, however, they are indisputably global. Only through global cooperation can individual nations overcome the interconnected global-scale crises of extreme poverty, economic instability, social inequality, and environmental degradation. The crises of sustainable development have already become crises of national and global security. Every country faces increasingly complex challenges of energy, food, and water security. Every country faces the crisis of rising frequency and intensity of natural disasters, with a soaring number of floods, droughts, heat waves, extreme storms, and forest fires. Many countries face the unsolved problem of creating jobs for their young people, and many poor countries have populations growing too fast to meet their respective education and employment needs. Many of the today's conflicts -- in the Sahel, the Horn of Africa, Syria, and Western Asia -- are being stoked by droughts, famines, mass migration, and other manifestations of economic, social, and environmental unsustainability. This is no time for despair, but for resolve. The United Nations must become the functional center of the global sustainable development effort, one that draws on every stakeholder through the UN's unique convening power and universally-recognized legitimacy. Sustainable development must become the daily work of UN Member States, private businesses, non-governmental organizations, universities and research centers, international financial institutions, and the UN organs themselves.

2nc – at: U.S. commitment now

It's on the brink – any support is mere rhetoric
McDonald and Patrick 10 – former international affairs fellow in residence at the Council on Foreign Relations and a Foreign Service officer with the U.S. Department of State, fromer director for United Nations and international operations at the National Security Council, AND **Senior Fellow and Director of the International Institutions and Global Governance Program at the Council on Foreign Relations (Kara and Stewart, UN Security Council Enlargement and U.S. Interests, Council on Foreign Relations, December 2010, p. 13-14)//JJ

CURRENT U.S. POLICY **Despite its rhetorical commitment** to updating international institutions, the Obama administration, like administrations before it, has **shied from leadership** on UNSC reform. Rather than advance a particular proposal, U.S. officials have offered broad statements in support of a limited expansion of both permanent and nonpermanent members within five parameters. These statements include: — enlargement cannot diminish the UNSC's effectiveness or efficiency; — any proposal to expand permanent membership must name specific countries (ruling out so-called framework proposals); 21 — candidates for permanent membership must be judged on their ability to contribute to the maintenance of international peace and security; there should be no changes to the current veto structure; and — expansion proposals must accommodate charter requirements for ratification, including approval by two-thirds of the U S. Senate. The Obama administration's stance presents **only two modest changes** to that of its predecessor. First, it no longer conditions movement on UNSC expansion to progress on broader UN management and budgetary reform. Second, whereas the Bush administration supported only Japan's candidacy, the Obama administration has announced sup- port for India as an additional permanent member, leaving other potetial configurations open for discussion. Beyond these parameters, the Obama administration has not pro- posed any specific reforms, clarified the acceptable limits of any expansion, or endorsed any candidates.24 President Obama has not launched an interagency review ofthe matter, and aspirant countries have not yet pressed him vigorously on it. Whether the time has come to alter the UNSC's composition—and, if so, how it should be altered—remain subjects of fierce debate.

2nc – xt: HR cred

The counterplan is the last chance to maintain U.S. global human rights commitment

Sanchez-Moreno 5/11/15 – co-director of the U.S program at Human Rights Watch, J.D. from NYU Law School (Maria McFarland, Hold the US accountable on human rights, Aljazeera America, http://america.aljazeera.com/opinions/2015/5/holding-the-us-accountable-on-human-rights.html)//JJ

The U.S. has put a lot of effort into **strengthening** the U.N. Human Rights Council and making the UPR a useful process when it comes to dealing with other countries. It has also made a point of **setting a good example**, by engaging in extensive consultation with nongovernmental organizations and other stakeholders in the run-up to its review. But the U.S. will **risk undermining** these efforts if it **fails to fulfill its own** human rights commitments.

UPR solves human rights implementation – global reach

OHCHR 15 – United Nations Office of the High Commissioner for Human Rights, citing Ban Ki-moon, the UN Secretary-General (Universal Periodic Review, 2015, http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx)//JJ

The Universal Periodic Review "has **great potential** to promote and protect human rights in the **darkest corners** of the world." – Ban Ki-moon, UN Secretary-General

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to **fulfil their human rights obligations**. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed.

The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. It is a cooperative process which, by October 2011, has reviewed the human rights records of all 193 UN Member States. Currently, no other universal mechanism of this kind exists. The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and **implement all human rights** and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation **in all countries** and address human rights violations wherever they occur.

2nc – terrorism

U.S. HR leadership solves the root cause of terrorism

Duffy 6/26/15 – Senior Media Relations Associate for Human Rights First, former intern for or Senators Schumer, Gillibrand, and Clinton (Corrine, U.S. Government Should Promote Global Counterterrorism Strategy Rooted in Human Rights, Human Rights First, http://www.humanrightsfirst.org/press-release/us-government-should-promote-global-counterterrorism-strategy-rooted-human-rights)//JJ

Today, in response to terrorist attacks in Kuwait and Tunisia, Human Rights First urged the U.S. government to redouble its efforts to combat terrorism and counter violent extremism by tackling the **underlying drivers** of violent extremism. "It is clear that there is a need for a concerted, sustained international effort to combat and prevent terrorist violence such as the horrific attacks in Sousse and Kuwait today," said Human Rights First's Neil Hicks. "Violent extremists and repressive authoritarian governments are **mutually reinforcing**. To break this destructive cycle, governments that wish to be effective partners in the struggle against violent extremism must **extend human rights protections** to all members of their communities, make independent civil society a partner, **protect religious freedom** and **denounce sectarian incitement**." In February, President Obama outlined a preventive strategy at the White House Summit on Countering Violent Extremism, and this week a regional conference in Kenya focuses on similar issues. As Under Secretary of State Sarah Sewall reiterated in her opening remarks in Kenya yesterday, the international community must commit itself to a renewed focus on protecting the rights of religious and ethnic minorities, an end to the incitement of sectarian violence, which leads to atrocities such as the **suicide bombing** of a Shi'ite mosque in Kuwait today, and for empowering independent civil society organizations as **core partners** in the struggle against violent extremism. "Tunisia represents a hopeful alternative to endless conflict between repressive authoritarianism and violent extremism. The United States has a vital interest in ensuring the success of Tunisia's fragile transition towards democracy," noted Hicks. "Tunisia has become a target for terrorist violence in recent months because of the progress it has made in transitioning away from decades of authoritarian rule towards democratic government grounded in the rule of law. With its international partners, the United States should make clear that it will not let terrorism win a victory in Tunisia, and that it will stand behind the Tunisian economy and help the Tunisian security forces to secure further progress towards a peaceful democratic future for Tunisia." The Islamic State of Iraq and the Levant (**ISIL**) has claimed responsibility for the suicide bombing of a Shi'ite mosque in Kuwait, further spreading its sectarian violence in the Gulf region. The global struggle against ISIL requires cooperation from key Arab partners, especially among the Gulf Cooperation Council (GCC) states. Since the Arab Spring protests of 2011 Saudi Arabia and the GCC states have been leading a region-wide pushback against popular demands for more representative, more responsive government. This has included a Saudi-led, GCC supported, military incursion into Bahrain to put down a peaceful protest movement and ample financial and political support for President Abdel Fattah al-Sisi's authoritarian rule in Egypt. The repressive policies of such governments **undermine global efforts** to counter violent extremism and combat terrorism.

Specifically nuclear terror

Weiss and Burroughs 4 – President of the New York-based Lawyers' Committee on Nuclear Policy and Vice President of the Paris-based International Federation of Human Rights Leagues, AND ** Executive Director of the Lawyers' Committee on Nuclear Policy and Adjunct Professor of International Law at Rutgers Law School (Peter and John, Weapons of mass destruction and human rights, HUMAN RIGHTS, HUMAN SECURITY AND DISARMAMENT, 2004, p. 33)//JJ

There can be no doubt that a world rife with weapons of mass destruction is less safe a place than a world without them, a point only reinforced by the rise of catastrophic terrorism. The elimination of WMD is a matter of political will. It can be achieved through full implementation of the Chemical Weapons Convention and the Biological Weapons Convention and the negotiation of measures to eliminate nuclear arms within the overarching framework of a convention. The nuclear weapons states are pledged to negotiate in good faith toward this end, but so far have refused to honour their pledge. When they do, they will also be acting to uphold the human rights to life and peace. The elimination of terrorism may be a more

difficult goal to reach. When leaders speak of waging the war against terrorism to its final victory, one can only wince and wonder what they have in mind. What war? Where fought? Against whom? With what weapons? The last question is probably the crucial one. Yes, competent intelligence and brute force can reduce the danger of terrorist attacks. But if there is one lesson that history teaches it is that social, economic, ethnic and religious differences can translate into feelings of powerlessness and give rise to violence—which the powerless call the search for justice and those at whom the violence is directed call terrorism. **This is where human rights come in**. There may never be a world without terrorism. But it is reasonable to expect that the closer the world comes to realizing the full panoply of human rights enshrined in the Universal Declaration and the International Covenants, the closer it will be to freedom from terrorism, **not least WMD terrorism**. It is a goal worth striving for.

2nc – middle east instability

U.S. human rights leadership solves Middle East instability –
Duffy 6/25/15 – Senior Media Relations Associate for Human Rights First, former intern for or Senators Schumer, Gillibrand, and Clinton (Corrine, State Department Country Reports Highlight **Need for U.S. Leadership on Human Rights**, Human Rights First, http://www.humanrightsfirst.org/press-release/state-department-country-reports-highlight-need-us-leadership-human-rights)//JJ

Human Rights First today welcomed the release of the State Department's 2015 Country Reports on Human Rights Practices, noting that the widespread violations of human rights detailed underscore the urgent need for the United States to press foreign governments to protect the basic rights and freedoms of their citizens. The Country Reports, which have been delayed for months, are released and submitted to Congress annually, and highlight human rights violations perpetuated during the past year in all countries that receive U.S. assistance as well as all United Nations member states. "This year's State Department Country Reports highlight key human rights concerns throughout the world, including abuses perpetrated by U.S. allies **in the Middle East** and elsewhere, the spread of discriminatory anti-LGBT legislation in central Asia, and the growth of antisemitic and racist violence in Europe," said Human Rights First's Tad Stahnke. "The reports give prominence to the terrible human rights violations committed by non-state actors, including terrorist groups like ISIL and Boko Haram, but they also emphasize the responsibilities of governments whose violations of human rights have **created the conditions exploited by violent extremists.** These reports should prompt further action by the U.S. government in pressing for human rights, including a strategy to ensure that the **fight against terrorism** and **extremism** is **enhanced by freedom and human rights protections**." In response to today's reports Human Rights First urges the Obama Administration to: Make clear at the highest levels its opposition to human rights violations by U.S. partners in the multilateral initiative to combat violent extremism and terrorism, including Bahrain, Saudi Arabia, and Egypt, which undermine this vital global effort. Press Saudi Arabia to end practices that fuel violent extremism, including the targeting non-violent human rights activists and inciting sectarian **tensions between Sunni and Shi'ite Muslims.** Urge Bahraini authorities to release non-violent political prisoners and human rights defenders, and to implement political reforms that would meet the legitimate demands of the majority of the population for more representative governance. Raise concerns about the misuse of counterterrorism laws to crackdown on peaceful dissent. Press the government of Kyrgyzstan to reject the passage of the proposed propaganda law, which, if passed, would violate the human rights of lesbian, gay, bisexual, and transgender (LGBT) persons and contribute to a climate of violence and discrimination against them. Adopt a strategy to reverse Hungary's backsliding on democracy and rule of law by supporting human rights, good governance and independent media organizations. As he did during his recent trip to Jamaica, President Obama should continue to champion those voices calling for positive change for LGBT people in the Caribbean. In line with his public comments at the Countering Violent Extremism Summit in February, President Obama should publicly oppose the targeting of legitimate human rights NGOs by the Kenyan government during his visit to Nairobi next month. "The Country Reports make clear that several U.S. allies are using counterterrorism and national security justifications to crack down on civil society groups, peaceful expression, and legitimate dissent," added Stahnke. "As President Obama prepares for his trip to Kenya, he should use these Country Reports to highlight that the **global struggle against terrorism** and violent extremism is **undermined** when **human rights are denied** and civil society oppressed."

2nc – at: last upr

Past UPR is our brink not their thumper – last chance to save U.S. human rights cred

Larson 5/10/15 – AFP journalist, citing Jamil Dakwar, head of human rights at the American Civil Liberties Union (Nina, The UN is about to put the United States under the microscope, Business Insider, http://www.businessinsider.com/afp-us-rights-record-in-un-spotlight-2015-5)//JJ

Hard questions

"The world will be asking hard questions of a country that considers itself a human rights champion," Jamil Dakwar, head of human rights at the American Civil Liberties Union (ACLU), told AFP.

How the US delegation responds to questions on a multitude of issues Monday could mark "the **last opportunity** for the Obama administration to **shape the human rights legacy** of the president," he warned.

Diplomats from around the world are expected to raise questions about widespread incarceration in the United States of illegal immigrants, including children.

Conditions inside US prisons, including the use of long-term solitary confinement and continued use of the death penalty, were also among the issues raised in reports and questions filed in advance of Monday's hearing.

The United States has seen its execution numbers drop in recent years to 35 in 2014, but still ranks fifth in the world after China, Iran, Saudi Arabia, and Iraq, according to Amnesty International.

The issue of mass surveillance systems brought to light in documents leaked by former NSA contractor Edward Snowden will also certainly be raised, as will US counterterrorism operations and targeted drone killings.

Also on the agenda is the US record on addressing its "war on terror" legacy, including alleged CIA torture, and Washington's failure to close the Guantanamo Bay detention centre in Cuba.

The United States underwent its first UPR in November 2010, but activists say it has done little to implement many of the 171 recommendations it accepted out of the 240 made by other countries that time around.

"The US has **little progress** to show for the many commitments it made during its first Universal Periodic Review," Antonio Ginatta, US advocacy director at Human Rights Watch, said in a statement.

He said he hoped diplomats this time would "press the US on mass surveillance, police violence and detention of migrant families," stressing that "the US should **take the opportunity** to make a **serious commitment to roll back** these abusive practices."

Dakwar agreed that after the last UPR, the US government "failed to deliver".

Now, he said, the administration had the **opportunity to show** what values it stands for.

"Will President Obama be remembered as the president who approved secret kill-lists, instituted indefinite detention, and failed to end unlawful surveillance practices?" he asked.

"Or will the president be on the right side of history by endorsing accountability for torture (and providing) an apology and reparations for victims?"

2nc – at: alt causes

Fiat solves – the recommendations would encompass more than surveillance policy

Past UPR is our brink not their thumper – last chance to save U.S. human rights cred

Larson 5/10/15 – AFP journalist, citing Jamil Dakwar, head of human rights at the American Civil Liberties Union (Nina, The UN is about to put the United States under the microscope, Business Insider, http://www.businessinsider.com/afp-us-rights-record-in-un-spotlight-2015-5)//JJ

Hard questions "The world will be asking hard questions of a country that considers itself a human rights champion," Jamil Dakwar, head of human rights at the American Civil Liberties Union (ACLU), told AFP. How the US delegation responds to questions on a multitude of issues Monday could mark "the **last opportunity** for the Obama administration to **shape the human rights legacy** of the president," he warned. Diplomats from around the world are expected to raise questions about widespread incarceration in the United States of illegal immigrants, including children. Conditions inside US prisons, including the use of long-term solitary confinement and continued use of the death penalty, were also among the issues raised in reports and questions filed in advance of Monday's hearing. The United States has seen its execution numbers drop in recent years to 35 in 2014, but still ranks fifth in the world after China, Iran, Saudi Arabia, and Iraq, according to Amnesty International. The issue of mass surveillance systems brought to light in documents leaked by former NSA contractor Edward Snowden will also certainly be raised, as will US counterterrorism operations and targeted drone killings. Also on the agenda is the US record on addressing its "war on terror" legacy, including alleged CIA torture, and Washington's failure to close the Guantanamo Bay detention centre in Cuba. The United States underwent its first UPR in November 2010, but activists say it has done little to implement many of the 171 recommendations it accepted out of the 240 made by other countries that time around. "The US has **little progress** to show for the many commitments it made during its first Universal Periodic Review," Antonio Ginatta, US advocacy director at Human Rights Watch, said in a statement. He said he hoped diplomats this time would "press the US on mass surveillance, police violence and detention of migrant families," stressing that "the US should **take the opportunity** to make a **serious commitment to roll back** these abusive practices." Dakwar agreed that after the last UPR, the US government "failed to deliver". Now, he said, the administration had the **opportunity to show** what values it stands for. "Will President Obama be remembered as the president who approved secret kill-lists, instituted indefinite detention, and failed to end unlawful surveillance practices?" he asked. "Or will the president be on the right side of history by endorsing accountability for torture (and providing) an apology and reparations for victims?"

HR thumpers are nill –

AFP 5/11/15 – international news agency headquartered in Paris, third largest news agency in the world (Agence France-Presse, US wants to improve police practices, enca, http://www.enca.com/world/us-wants-improve-police-practices)//JJ

GENEVA - The United States **acknowledged** Monday more needed to be done to **uphold its civil rights laws** following a string of recent killings of unarmed black men by police. Speaking before the United Nations Human Rights Council, a US representative stressed the advances his country had made in establishing a range of civil rights laws over the past half century. But referring to a long line of recent cases of alleged abuse of African Americans by police, James Cadogan, a senior counsellor in the justice department's civil rights division, admitted that "we must rededicate ourselves to ensuring that our civil rights laws live up to their promise." "The tragic deaths of Freddie Gray in Baltimore, Michael Brown in Missouri, Eric Garner in New York, Tamir Rice in Ohio, and Walter Scott in South Carolina have... challenged us to do better and to work harder for progress," he said. The United States was undergoing a so-called Universal Periodic Review of its rights record -- which all 193 UN countries must undergo every four years. The US delegation, headed by US ambassador to the council Keith Harper and acting US legal advisor Mary McLeod, faced a range of questions from diplomats about law enforcement tactics, police brutality and the disproportionate impact on African Americans and other minorities. The half-day review in Geneva came after the US justice department on Friday launched a federal civil rights investigation into whether police in Baltimore have systematically discriminated against residents, following the death of 25-year-old Freddie Gray in police custody last month. Six police officers have been charged in connection with Gray's arrest and death. One faces a second-degree murder charge. Cadogan insisted Washington was **intent** on bringing abusive police officers to justice. "When federal, state, local or tribal officials willfully use excessive force that violates the US Constitution or federal law, we have authority to prosecute them," he said, pointing to criminal charges brought against **more than 400** law

enforcement officials over the past six years. Also on the agenda during Monday's review was the continued use of the death penalty, and the US record on addressing its "war on terror" legacy, including Washington's failure to close the Guantanamo Bay detention centre in Cuba and CIA torture revelations. "As President (Barack) Obama has acknowledged, we crossed the line, we did not live up to our values, and **we take responsibility** for that," McLeod said of the past cases of CIA torture, detailed in an explosive Senate report last December. "We have since taken **steps to clarify** that the legal prohibition on torture applies everywhere and in all circumstances, and to ensure that the United States **never resorts** to the use of those harsh interrogation techniques again," she said.

2nc – at: treaties

Recent policy solves – this also proves recommendation implementation
Smith 15 – Project Attorney with the Human Rights in the U.S. Project at the Human Rights Institute, JD from Columbia Law School (Erin, Federal Outreach and Mechanisms to Ensure Human Rights Implementation and the Federal, State and Local Levels, Columbia Law School Human Rights Institute & The International Association of Official Human Rights Agencies, April 2015, https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/images/state_and_local_upr_report.pdf)//JJ

In recent years, the Obama Administration has taken a **number of important steps** to improve federal coordination around **treaty reporting and implementation**: a. The United States has created a federal level interagency Equality Working Group to coordinate federal agencies around human rights. 28 b. The U.S. has stepped up efforts to inform state and local actors about **treaty review processes**. In 2014, the State Department's Office of the Legal Adviser sent letters to state and local governments, emphasizing the U.S. "commitment to protecting human rights domestically through the operation of our comprehensive system of laws, policies, and programs at all levels of government – federal, state, local, insular, and tribal," and noting that the U.S. is "proud of this shared role in upholding and protecting human rights." 29 The 2014 letter followed up on earlier communications to state and local actors **seeking input** into U.S. treaty reports. 30 c. In 2014, the U.S. included a mayor and a state attorney general in its delegations for the **ICCPR** and **CERD** reviews. d. During the interactive dialogue with the Human Rights Committee, the Obama Administration committed to disseminate the Human Rights Committee's Concluding Observations to state and local actors. e. The State Department made a presentation on **human rights treaties** at **IAOHRA conferences** in **2010**, **2011** and **2012** , and at the **2014 Equal Employment Opportunity Commission conference** for state and local agencies.

No impact to treaties
Groves and Schaefer 10 – Bernard and Barbara Lomas Senior Research Fellow, The Davis Institute for National Security and Foreign Policy at The Heritage Foundation, AND ** Jay Kingham Senior Research Fellow in International Regulatory Affairs, The Davis Institute for National Security and Foreign Policy at The Heritage Foundation (Steven and Brett, United Nations Human Rights Council: Universal Periodic Review for the United States of America, Heritage Foundation, 4/20/10, http://www.heritage.org/research/testimony/united-nations-human-rights-council-universal-periodic-review-for-the-united-states-of-america)//JJ

The United States is not party to all of the core human rights treaties, but ratification of treaties is **not the indispensable condition** of the observation and protection of human rights. Many governments boast that they have ratified a treaty, or that human rights are enshrined in their constitutions and laws, yet **routinely and flagrantly** violate those rights. The evidence indicates that without an independent judiciary and an ability to enforce civil and political rights, such rights are under constant threat **regardless** of the number of treaties a state has ratified or the rights provided for under their laws. The United States' system of representative government, its independent judiciary, its robust civil society, and the principles enshrined in its Constitution represent best practices that all states and stakeholders should emulate in observing and protecting human rights and fundamental freedoms.

2nc – at: UPR bad

Empirics prove – massive impact on the most nefarious abusers
Diop 14 – Advocacy Advisor of Child Rights at Save the Children, has a Master's of Science in Human Rights from the University College Dublin and a Master's in Politics and International Relations from the Institute of Political Studies, Toulous (Diarra, Universal Periodic Review: Successful examples of child rights advocacy, Save The Children, 2014, http://resourcecentre.savethechildren.se/library/universal-periodic-review-successful-examples-child-rights-advocacy)//JJ

The Universal Periodic Review (UPR) is an inter-governmental human rights review within the Human Rights Council in Geneva. The **UPR assesses** the extent to which governments are meeting their obligations to **protect**, **respect** and **fulfil human rights**, including child rights, in their countries. Save the Children has seized the opportunity of the UPR from the outset (2008) to raise the profile of children's rights, by engaging directly in reporting and advocacy or supporting child rights coalitions. "Universal Periodic Review: Successful examples of child rights advocacy" provides **valuable insights** for future child rights advocates wanting to engage in the UPR process and more generally in child rights monitoring and advocacy. This document includes eight case studes (Nepal, Philippines, Pakistan, Republic of Korea, Peru, Zambia, Bangladesh and Mali,) which give good practices examples of Save the Children's **engagement in UPR reporting and advocacy**. It sheds light on the different strategies used to push forward child rights priorities to influence UPR recommendations. It also provides some pointers on how the UPR recommendations can **reinforce existing advocacy efforts** and be integrated into follow-up plans to **track their implementation**. Key success factors and lessons learned were drawn to capitalize on the experience from these countries over the last 6 years, and **inspire others** to **replicate these approaches** in order to **maximize advocacy outcomes** and impact for children.

Even if it's not perfect – it's the best option available
OHCHR 15 – Office of the High Commissioner for Human Rights (Basic facts about the UPR, United Nations Human Rights, 2015, http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx)//JJ

The Universal Periodic Review (**UPR**) is a **unique process** which involves a periodic review of the human rights records of **all** 193 UN Member States. The UPR is a **significant innovation** of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of **best human rights practices around the globe**. Currently, **no other mechanism** of this kind exists.

2nc – at: plan solves impact

UPR key
CDT 14 – global non-profit organization championing global online civil liberties and human rights, driving policy outcomes that keep the Internet open, innovative, and free (Center for Democracy and Technology, Protecting Human Rights in the Age of Surveillance, 4/8/14, https://cdt.org/insight/protecting-human-rights-in-the-age-of-surveillance/)//JJ

Leveraging United Nations Mechanisms

Participants agreed that it is important to **take advantage** of **UN human rights bodies and processes** in 2014 and beyond. Discussants raised the importance of the Human Rights Committee review of **United States compliance** with the ICCPR. They also talked about strategic contributions to the anticipated report from the High Commissioner for Human Rights on the right to privacy in the digital age, and the possibility of pushing the Human Rights Committee for a General Comment on privacy. In addition, discussants addressed the possibility of creating a UN Special Rapporteur on Privacy, and **considered processes in Human Rights Council**, including the upcoming **Universal Periodic Review** of the United States.

2nc – at: noko da

This isn't an argument – empirically denied by 2010 and 2015 U.S. UPRs and every other UPR ever

No war – deterrence and zero capabilities
Kimball 14 – executive director of the Arms Control Association (Daryl, Will North Korea ever use its nuclear weapons?, The Guardian, 10/31/14, http://www.theguardian.com/world/2014/oct/31/sp-north-korea-nuclear-weapons)//JJ

As president Ronald Reagan once said, "a nuclear war can never be won and must never be fought". North Korea does not have, and **will not have for many years**, the **means to strike** with nuclear weapons beyond the peninsula – that would be **suicide**. Combined US and South Korean forces would **end the Kim dynasty** and **destroy much of the country**. Therefore, there is a near **zero chance** of a premeditated North Korean nuclear attack.

All rhetoric – assumes all the warrants
Redhead 14 – Metro News Reporter (Harry lol, North Korea defends human rights record – then threatens 'nuclear war', Metro, 11/26/14, http://metro.co.uk/2014/11/26/north-korea-defends-human-rights-record-then-threatens-nuclear-war-4963760/)//JJ

A week after a U.N. resolution condemned **North Korea's human rights record**, the country has shown its commitment to preserving basic individual dignities by threatening the U.S. and Japan with nuclear war. North Korea reacted angrily after the U.N. General Assembly's Third Committee urged the Security Council to consider referring the country's human rights abuses to the International Criminal Court in a damning resolution last Tuesday. And the Democratic People's Republic of Korea's National Defence Commission (NDC) accused Japan and the U.S. of 'violating their dignity' and promised payback. 'Time will prove what high price those who unreasonably violated the dignity of the Demoratic People's Republic of Korea, despite its repeated warnings, will have to pay,' the NDC said. 'The US and its followers are now unable to escape merciless punishment for daring impair the prestige of the DPRK and foolishly trying to bring down the socialist system.' One of those perceived followers, **Japan** – who North Korea said would 'disappear from the world map' – were **completely unconcerned** the comments. 'It's **not the first time** that they've threatened us over nuclear issues,' Taro Tsutsumi, counsellor at Japan's mission to the United Nations, told VICE. 'It's actually a **usual**, **daily matter**.' In September, North Korea released a report declaring its human rights record as excellent.

White Terrorism CP

1NC — White Terrorism PIC

[Insert Text — see notes]

The counterplan solves the case because Islamophobic surveillance is targeted at religion, ethnicity, and national origin—*not* race. This is net-beneficial because it avoids our White Terrorism Critique. Surveillance based on race is *good*. It should be directed at white people who perpetrate *white terrorism*.

1NC — White Terrorism Critique

First, white terrorism against Black Americans is ubiquitous. White supremacy is maintained through a campaign of terror. Future attacks are inevitable.

Higgins 15 – Eoin Higgins, Reporter for the *Berkshire Courier*, Contributor to *The Huffington Post* and *Counterpunch*, holds an M.A. in History from Fordham University, 2015 ("White Terrorism in Charleston," *Counterpunch*, June 19th, Available Online at http://www.counterpunch.org/2015/06/19/white-terrorism-in-charleston/, Accessed 07-16-2015)

A white man guns down nine black people in a church in South Carolina. The state's Confederate battle flag stays waving in the wind the next day. The white man is arrested. He is given a Kevlar jacket.

Welcome to the United States of America in 2015.

The atrocity in Charleston on June 17, 2015, exemplifies the value of black life in America today. Dylann Roof's crime was **an abomination**. He slaughtered nine people in cold blood. But in the broader context of the American reality of black people and black lives, Roof's attack is **just another instance of white terrorism**.

Even in light of the violence black Americans experience daily, the attack in South Carolina was shocking. Gunning down nine innocent people in a church is beyond the pale. It's important to remember, though, that although this crime is notable for the callousness and coldness of the perpetrator – leaving people alive for the express purpose of sharing the story is some wannabe supervillain shit – the taking of black life by a white man in America is **not an aberration**.

The Black Lives Matter movement is **a direct response** to the carelessness with which white America treats the mortality of citizens of African descent. The name of the movement is a reaction to the reality. Black Americans are treated as if their lives were **disposable**. It is necessary to have a movement calling for the recognition that the America's black population's lives matter because at every turn we are shown they don't.

Blacks are criminalized in the news media, treated as less desirable than whites in the popular culture, and presented overwhelmingly as threatening criminal elements in film and television. Americans of all colors are inculcated to see blacks as threatening, alien, dangerous.

This is **terrorism**.

Black Americans are **killed** for eating skittles. Playing with toy guns as children. Listening to loud music. Selling cigarettes on the street. Running away from police officers. Hanging out at a pool party. Attending prayer meetings. There doesn't seem to be a way for black Americans to just **be** that doesn't involve **the threat of death or violence** at the hands of whites.

This is **terrorism**.

White Americans can drive without fear of being pulled over for the color of their skin and walk down the street without fear of being stopped and frisked. Black Americans **cannot**. White Americans can walk up to a police officer looking for help or directions. Black Americans face **the chance of death** if they do the same.

This is **terrorism**.

Terrorism is political and social violence and coercion that has the effect of changing the standard operating procedure of the societies it affects and striking fear into the communities it assaults. Blacks in America have no static standard operating procedure. Their behavior has to change constantly to reflect the threats and intimidation. For the black community in America, even the church is a place where one cannot feel safe. Not in 1963, not in the 90s, not in 2015.

The reason for white terrorism has one simple underlying explanation. There is a sociopathic part of the national white American subconscious that refuses to allow the black community to ever rise to an equal footing, and will use **whatever means necessary to maintain white supremacy**. In the wake of the conclusion of the Civil War, the KKK was formed in reaction to the freeing of the slaves. The terrorizing of blacks that began after the end of slavery has **continued to today**.

Whether we acknowledge it or not, the position of the white American must be **maintained through terror**. Thus the spectacle of Dylann Roof, sociopathic mass murderer of innocent black Americans, steered gently to a waiting police car, wearing a Kevlar vest. His crime has shocked the country, but only because of its flamboyancy. After the news cycle has run through, the nation will again ignore the Black Lives Matter movement, the issue of race relations in America, and white terrorism. Until, of course, it **inevitably happens again**.

Second, the affirmative wrongly presumes that surveillance authorities can *only* be used to target minority groups. On the contrary, surveillance is needed to target *white Americans* on the basis of their race and color.

Barry 15 – Dante Barry, grassroots organizer, digital campaigner, and Executive Director of Million Hoodies Movement for Justice—a national racial justice network of 50,000 members founded to protect and empower young people of color from mass criminalization and gun violence, 2015 ("Surviving White Terrorism: Next Steps in the Struggle for Black Lives," *Truthout*, June 21st, Available Online at http://www.truth-out.org/opinion/item/31480-surviving-white-terrorism-next-steps-in-the-struggle-for-black-lives, Accessed 07-16-2015)

This past week, we have been reminded yet again that state violence against Black people and racist vigilante attacks are a part of this country's legacy and foundation. Whether it's the murder of four school girls in a Birmingham church, cops attacking young Black children in McKinney, Texas, or the suicide of Kalief Browder after years of being jailed and tortured as a young person at Rikers Island - Black communities continue to suffer through **anti-Black violence**, **domestic terrorism** and **anti-Black racism**.

On Thursday, I woke up just as I normally do and caught a subway train uptown. As I sat, I watched a group of little Black girls and boys do what I also did when I was little: gossip, play around, laugh and smile. As they laughed and smiled with joy, I couldn't help thinking about how I just wanted to say sorry. I wanted to say sorry to all the young Black children who have to wake up each and every day and suffer through ongoing trauma and anti-Black violence in their communities, in their country and in their world.

I wanted to tell them sorry - for America failing all the Black little girls and boys who enter classrooms, put their hands on their chests and pledge allegiance. I wanted to tell them sorry because we have failed to protect them. Even in some of the "safest" spaces, our Black children are told that they cannot breathe, pray, eat skittles, wear a hoodie, play loud music or even exist as a Black child. I'm sorry that Black families must frame their conversations with their children around survival.

Black people have always had a complicated and violent relationship with citizenship in this country. There has been **a monopoly on who has the right to feel and be safe** - a monopoly that is often regulated and enforced by cops and corporations. This week's attack at Charleston's Emanuel A.M.E. Church was an undeniable act of terrorism to incite fear into Black communities where we have bravely declared that Black lives matter.

Over the past year, in response to a series of high-profile police killings, communities across the country have erupted in massive protests, sustained acts of civil disobedience, and militant and unapologetically Black direct actions. Born in Ferguson, this movement spread like wildfire to New York City and South Carolina, to Baltimore and Oakland.

Many conversations about policing, state power and anti-Black racism focus exclusively on **tweaks** to existing policing and incarceration practices. (For example, some cities have funded taskforces and police body cameras.) Meanwhile, **the state spies on Black communities rather than using its surveillance mechanisms to prevent racist vigilante attacks**.

Cops and corporations have teamed up to further **criminalize Black folks.** Predictive policing and "broken windows" tactics rely on the criminalization of Black bodies and the idea that more police in more places - armed with guns and body cameras, Stingray cell phone interceptors and license-plate readers - will make Black communities safer. These "community policing" strategies are ineffective, discriminatory and reliant on the criminalization of young, poor Black people. The traditional media narrative becomes one about a law enforcement or vigilante "hero" and a "criminal" Black person. Mass media images perpetuate this sense of criminalization through television shows like "Cops" and "Law and Order."

Third, collecting tangible evidence of racism via widespread surveillance is crucial to confront white terrorism.

Brown 15 – Tony Brown, Associate Professor of Sociology at Vanderbilt University, Associate Director of the Center for Research on Health Disparities and Health Policy Associate in the Center for Health Policy at Meharry Medical College, holds a Ph.D. in Sociology from the University of Michigan, 2015 ("Racism, white privilege still exist, and riots prove it," *The Tennessean*, April 30th, Available Online at http://www.tennessean.com/story/opinion/contributors/2015/04/28/capturing-racism-high-definition/26515991/, Accessed 07-16-2015)

Evidence proving that race and racism are meaningful is **increasingly easy to find**. We see it right here and right now. There is no need to recall Whites Only signage or sheet-clad KKK members. The facts show white people acting routinely to **harm, demean,** and **damage** black and brown people. The facts explain the lofty levels of frustration and despair among black and brown youth.

Evidence consists of protests and riots, such as what happened last night in Baltimore in response to the mysterious death of Freddie Gray while he was in police custody. Something is awry—people of color don't protest and riot out of boredom. Martin Luther King, Jr. said that "a riot is the language of the unheard."

Evidence consists of Oklahoma University fraternity and sorority members singing joyfully about the exclusion and lynching of black bodies. Supposedly, the song was taught to them and may connect back to the Confederate-identified white men who founded the fraternity.

Evidence consists of text and email messages exchanged between corporate executives, among police officers sworn to serve and protect the public, and by public servants and elected officials.

Evidence consists of graphic videos showing the willful killings (assassinations?) of unarmed black men in non-felonious interactions with police officers.

Litigation and Intent

Considering the white Oklahoma University fraternity and sorority members, the accused have retained an attorney. They are upset about being labeled racists. I imagine the defense's arguments will mirror comments made by the youth's parents (to paraphrase): Johnny is a good boy. There is no hate in his heart. He made a horrible (but not that horrible) mistake. He is young and didn't know any better.

To those specific parents and others like them, consider the following a public service announcement:

Your child's behavior is racist and it's your fault (mostly).

You never intentionally read children's books with main characters of color, but you raised Sarah to appreciate diversity.

You lived in a residentially segregated neighborhood, and thought that fact sent no implicit messages to Evan.

You chose to worship in a church or synagogue where Katey was surrounded by white people, and she understood that way of life to be normal.

You choose the best schools for Chase, but never considered the fact that those schools were racially homogenous.

You talked to Isabelle about poverty but implied that all poor people are black and it's their own fault.

You let grandma say n***** at Thanksgiving in front of Elizabeth because grandma is old and doesn't know any better.

You told a racially insensitive joke in front of Liam, condoning symbolic violence.

The take-home message here applies to every person exposed to the disturbing videos, and text and emails showing the significance of race and racism. The issue is not about any white person's heart or motivations or intent. Those things are hidden from sight. It's about their actions—which let me remind you—speak louder than their words.

The bottom line is that it's **everyday whites** making **everyday choices** that **lock in and protect white privilege** [https://www.isr.umich.edu/home/diversity/resources/white-privilege.pdf].

The New Paparazzi

This piece should be read as a call to action. Black and brown (and empathetic or doubting) whites—grab your cell phones. Turn on the video camera. Or grab your GoPro.

For people of color, record the discourteous way co-workers or service industry workers or police officers treat you. Record your friends talking about the indignities and micro-aggressions you as a person of color, for example, face in all- or mostly-white spaces. If you happen to identify as white, then record Uncle Roy talking at a private family gathering about the good old days when blacks knew their place (what sociologists call backstage racism). Record how pleasant your interactions are with police officers doing routine traffic stops. Record whether and how the conversation changes when people of color enter the room.

Then let's all post our videos. We can add our videos to the growing archive.

Posting our videos, among other things, will **confirm** that race and racism still matter. It will demonstrate that white privilege is **real** (and real in its consequences). It will provide evidence that black and brown people **do not experience the everyday world** in ways similar to whites.

Revelation

Despite stories that people of color tell repeatedly about institutional inequality, recent evidence of police brutality shocked many people. Those shocked individuals had minimized the contemporary significance of race and racism in U.S. society.

Just imagine if the only evidence of race and racism's impact was the stories that people of color tell—few whites would be moved to action. But we can now capture racist behavior and its impact on society **in high definition**. As such, it's been a revelation to many whites. And that is a good thing because **there can be no revolution without revelation**.

We must **document the significance of race and racism** before we can address it. Make it **routine** to **collect evidence** that allows us to address it. Otherwise, we are bound to **run in circles** debating whether a problem exists, while **things get worse**.

Fourth, reprioritizing surveillance targets is key to prevent white terrorism. There is one person currently assigned to white terrorism.

Nevins 15 – Sean Nevins, Staff Writer for *Mint Press*, holds a Master's in Asian Studies from Lund University in Sweden, 2015 ("White Supremacy And Homegrown Terrorism Pose A Growing Threat In The US," *Mint Press News*, January 16th, Available Online at http://www.mintpressnews.com/white-supremacy-homegrown-terrorism-pose-growing-threat-us/201258/, Accessed 07-16-2015)

The government's non-response

In response to the rising number of hate groups in the country, the U.S. Department of Homeland Security (DHS) commissioned an intelligence assessment of the situation in 2009. It was dispersed to federal, local, and tribal counterterrorism and law enforcement agencies across the country. That assessment did not find "specific information" about right-wing groups planning acts of violence, but it noted that right-wing extremists "may be gaining new recruits by playing on their fears about

several emergent issues. The economic downturn and the election of the first African American president present unique drivers for rightwing radicalization and recruitment."

The government defined right-wing extremism as "groups, movements, and adherents that are primarily hate-oriented (based on hatred of particular religious, racial or ethnic groups), and those that are mainly antigovernment, rejecting federal authority in favor of state or local authority, or rejecting government authority entirely. It may include groups and individuals that are dedicated to a single issue, such as opposition to abortion or immigration."

The assessment also determined that the rise of extremism may be the result of the economic and political atmosphere, which included the recession, outsourcing of jobs and a "perceived threat" to U.S. power. It said that "possible passage" of firearms restrictions and challenges faced by returning military veterans integrating back into society "could lead to the potential emergence of terrorist groups or lone wolf extremists capable of carrying out violent attacks."

"We're currently in one of **the hottest periods** of extremist activity in the United States that I've seen in my 20-year career. This blows what we saw pre-Oklahoma City out of the water and makes it look like **a kindergarten picnic**," Daryl Johnson, a domestic terrorism expert and founder of DT Analytics, a private consulting firm for law enforcement and Homeland Security professionals, says during an interview for the recent Vice News documentary. Johnson was also the main author of the intelligence assessment issued by DHS in 2009.

Yet, rather than **acting on** the information gathered in the assessment, the government **cancelled all of its domestic terrorism reporting** and law enforcement training after the report was leaked and politicized by conservative media outlets and politicians.

One such publication described "the piece of crap report" as "a sweeping indictment of conservatives." It continues, "In Obama land, there are no coincidences. It is no coincidence that this report echoes Tea Party-bashing left-wing blogs … and demonizes the very Americans who will be protesting in the thousands on Wednesday for the nationwide Tax Day Tea Party."

Conservative news organizations interpreted the publication of the report as a political power play by Obama to demonize the right, rather than an impartial analysis of domestic terrorism that could help law enforcement.

In 2011, two years after the report was released, Johnson said he was deeply disheartened by how the report was characterized. Johnson told Joe Hamilton at the Muskegon Chronicle that he was "a former intelligence analyst and counterterrorism expert for the U.S. Army, an Eagle Scout, Mormon, one-time church missionary, an anti-abortion gun owner, and third-generation lifetime registered Republican." In short, he said he is a conservative. Johnson added that the report could not have been a political move on the part of Obama, since he was hired in 2004 by the George W. Bush administration.

Following Hamilton's opinion piece, Johnson penned his own article for Salon, "Daryl Johnson: I tried to warn them." In it, he makes a damning indictment of the DHS decision not to follow through on recommendations made in his report.

He wrote:

> "Since the DHS warning concerning the resurgence of right-wing extremism, 27 law enforcement officers have been shot (16 killed) by right-wing extremists. Over a dozen mosques have been burned with firebombs – likely attributed to individuals embracing Islamaphobic (sic) beliefs. In May 2009, an abortion doctor was murdered while attending church, two other assassination plots against abortion providers were thwarted during 2011 and a half-dozen women's health clinics were attacked with explosive and incendiary devices over the past two years.
>
> In January 2010, a tax resister deliberately crashed his small plane filled with a 50-gallon drum of gasoline into an IRS processing center in Austin, Texas; in January 2011, three incendiary bombs were mailed to government officials in Annapolis, Md., and Washington, D.C.; also, in January 2011, a backpack bomb was placed along a Martin Luther King Day parade route in Spokane, Wash.; and, during 2010-2012, there have been multiple plots to kill ethnic minorities, police and other government officials by **militia extremists** and **white supremacists**.
>
> The Sikh temple shooting in Oak Creek, Wis., and the shooting of four sheriff's deputies in St. Johns Parish, La., in August are only the latest manifestations of right-

wing extremist violence in the U.S. Yet, there have been no hearings on Capitol Hill about this issue. DHS still has **only one analyst** monitoring domestic terrorism. The federal government's failure to recognize the domestic terrorism threat tells me **there will assuredly be more attacks to come**."

Finally, the alternative is to demand surveillance of white people—*because they are white*. This rejects the erasure of whiteness and confronts the reality of white terrorism in America.

Bennett 15 – Brit Bennett, Writer whose work has appeared in *The New York Times Magazine*, *The New York Times*, *Paris Review*, and *Jezebel*, 2015 ("White Terrorism Is as Old as America," *The New York Times Magazine*, June 19th, Available Online at http://www.nytimes.com/2015/06/19/magazine/white-terrorism-is-as-old-as-america.html, Accessed 07-16-2015)

My grandmother used to speak of Klansmen riding through Louisiana at night, how she could see their white robes shimmering in the dark, how black people hid in bayous to escape them. Before her time, during Reconstruction, Ku Klux Klan members believed they could scare superstitious black people out of their newly won freedom. They wore terrifying costumes but were not exactly hiding — many former slaves recognized bosses and neighbors under their white sheets. They were haunting in masks, a seen yet unseen terror. In addition to killing and beating black people, they often claimed to be the ghosts of dead Confederate soldiers.

You could argue, of course, that there are no ghosts of the Confederacy, because the Confederacy is not yet dead. The stars and bars live on, proudly emblazoned on T-shirts and license plates; the pre-eminent symbol of slavery, the flag itself, still flies on the grounds of South Carolina's Capitol. The killing has not stopped either, as shown by the deaths of nine black people in a church in Charleston this week. The suspected gunman, who is white and was charged with nine counts of murder on Friday, is said to have told their Bible-study group: "You rape our women, and you are taking over our country. And you have to go."

Media outlets have been reluctant to classify the Charleston shooting as terrorism, despite how eerily it echoes our country's history of terrorism. American-bred terrorism originated in order to restrict the movement and freedom of newly liberated black Americans who, for the first time, began to gain an element of political power. The Ku Klux Klan Act, which would in part, lawmakers hoped, suppress the Klan through the use of military force, was one of America's **first pieces of antiterrorism legislation**. When it became federal law in 1871, nine South Carolina counties were placed under martial law, and scores of people were arrested. The Charleston gunman's fears — of black men raping white women, of black people taking over the country — are the same fears that were felt by Klansmen, who used violence and intimidation to control communities of freed blacks.

Even with these parallels, we still hear endless speculation about the Charleston shooter's motives. Gov. Nikki Haley of South Carolina wrote in a Facebook post that "while we do not yet know all of the details, we do know that we'll never understand what motivates anyone to enter one of our places of worship and take the life of another." Despite reports of the killer declaring his racial hatred before shooting members of the prayer group, his motives are inscrutable. Even after photos surfaced of the suspected shooter wearing a jacket decorated with the flags of Rhodesia and apartheid-era South Africa and leaning against a car with Confederate-flag plates, tangible proof of his alignment with violent, segregationist ideology, his actions remained supposedly indecipherable. A Seattle Times tweet (now deleted) asked if the gunman was "concentrated evil or a sweet kid," The Wall Street Journal termed him a "loner" and Charleston's mayor called him a "scoundrel," yet the seemingly obvious designations — murderer, thug, terrorist, killer, racist — are nowhere to be found.

This is **the privilege of whiteness**: While a terrorist may be white, his violence is **never based in his whiteness**. A white terrorist has unique, complicated motives that we will never comprehend. He can be a disturbed loner or a monster. He is either mentally ill or pure evil. The white terrorist exists solely as a dyad of extremes: Either he is humanized to the point of sympathy or he is so monstrous that he almost becomes mythological.

Either way, he is never indicative of anything larger about whiteness, nor is he ever a garden-variety racist. He represents nothing but himself. A white terrorist is anything that frames him as an anomaly and separates him from the long, storied history of white terrorism.

I'm always struck by this hesitance not only to name white terrorism but to name **whiteness itself** during acts of racial violence. In a recent New York Times article on the history of lynching, the victims are repeatedly described as black. Not once, however, are the violent actors described as they are: white. Instead, the white lynch mobs are simply described as "a group of men" or "a mob." In an article about racial violence, this **erasure of whiteness** is absurd. The race of the victims is relevant, but somehow the race of the killers is incidental. If we're willing to admit that race is a reason blacks were lynched, why are we **unwilling to admit** that race is a reason whites lynched them? In his remarks following the Charleston shooting, President Obama mentioned whiteness only once – in a quotation from the Rev. Dr. Martin Luther King Jr. intended to encourage interracial harmony. Obama vaguely acknowledged that "this is not the first time that black churches have been attacked" but declined to state who has attacked these churches. His passive language echoes this strange vagueness, a reluctance to even name white terrorism, as if black churches have been attacked by some disembodied force, not real people motivated by a racist ideology whose roots stretch past the founding of this country.

I understand the comfort of this silence. If white violence is unspoken and unacknowledged, if white terrorists are either saints or demons, we don't have to grapple with the much more **complicated reality** of racial violence. In our time, racialized terror no longer announces itself in white hoods and robes. You can be a 21-year-old who has many black Facebook friends and tells harmless racist jokes and still commit an act of horrifying racial violence. We cannot separate ourselves from the monsters because the monsters don't exist. **The monsters have been human all along**. In America's contemporary imagination, terrorism is **foreign and brown**. Those terrorists do not have complex motivations. We do not urge one another to reserve judgment until we search through their Facebook histories or interview their friends. We do not trot out psychologists to analyze their mental states. We know immediately why they kill. But a white terrorist is **an enigma**. A white terrorist has **no history, no context, no origin**. He is **forever unknowable**. His very existence is unspeakable. We see him, but we pretend we cannot. He is **a ghost floating in the night**.

They Say: "Permute"

( ) The permutation severs "race" or doesn't solve. Because the plan prohibits surveillance based on race, it prohibits surveillance based on *whiteness*. This prevents effective reprioritization of surveillance targets to prevent white terrorism — that's Barry, Brown, and Nevins.

( ) Reject severance perms. They undermine clash and discourage in-depth preparation, weakening rejoinder and scholarly engagement. Both teams learn more when the aff stakes out a clear position and consistently defends it. Backtracking isn't *fair*.

( ) White Erasure DA. The perm erases the role of whiteness in white terrorism. Right wing racist attacks *aren't* inexplicable; they are manifestations of whiteness — that's Bennett."

( ) Focus on *white terrorism* is key. It is more than "terrorism by white people." It is terrorism *by whiteness*.

Armah 15 – Esther Armah, radio host, playwright, award-winning international journalist, and national best-selling author, 2015 ("Black Bodies, White Terrorism: A Global Reimagining of Forgiveness," *Gawker*, July 4th, Available Online at http://gawker.com/black-bodies-white-terrorism-a-global-reimagining-of-1715637306, Accessed 07-16-2015)

Charleston, Ghana, South Africa, Kenya: we have **a global black inheritance of white supremacist terrorism**. It has left a legacy of **untreated trauma**. That inheritance has trained us to pour our pain into our own bodies. And then turn away when that pain manifests. Particularly when it comes to black girls and women. Our bodies are vehicles for rage, rejection, resentment, and denial to acknowledge the depth of our hurt. Instead, we are judgmental of each other in our pain. We are unkind, we replace empathy with analysis and invite an audience to engage the strength of our intellect. Our pain goes unheard and so instead it finds sanctuary in the intimate violence we subject ourselves and our bodies to. What, now, can we do with our pain? What forgiveness process might we create for ourselves, for all the ways we hurt and harm each other? Will we ever be able to trust each other with our pain?

Black folk are globally committed to notions of justice, due to our intimate relationships with injustice. Our emotionality must be part of that justice project. Emotional justice is crucial to our collective and individual healing. How is our emotionality not profoundly fucked up when every part of our history, the pain inflicted on us still requires that you centralize whiteness? How do we heal when there is no respite from the violence? Who do we become when white supremacy's manufactured fear matters more than our bruised, battered, and bloodied black bodies?

Apartheid was **white terrorism**. What the British did during the Kenyan Mau Mau was **white terrorism**. Dylann Roof was a **white terrorist**, supported by state sanctioned institutions of **white terrorism**. We do not negotiate with terrorists. That's what America teaches. **Except white terrorism**. Then we don't negotiate; we **privilege**; we **prioritize**; we **centralize**. Then we **spit up that privilege** via white Jesus, heart disease, fibroids, violence, obesity and a **soft, slow, sure killing**. White supremacy does not worship our God. It prays at the altar of **coffins filled with black bodies**. It tithes in **the blood of black folks**. Its hymn is the sound of **our tears and screams**. Its amen is **the stillness of our stolen breath**.

Wyden Committee CP

Explanation for Negative

This is a generic counterplan that can be read against any intelligence agency affirmative. Instead of enacting the plan, it proposes creating a new Church Committee to conduct a full, public investigation into the domestic surveillance of Americans by United States intelligence agencies. This investigation will result in a report to Congress outlining the committee's recommendations for legislative and regulatory reform. The negative argues that the result of this report will be the implementation of the plan (along with other beneficial reforms, perhaps).

There are several net-benefits, but the "do both" permutation beats many of them.

1. Terrorism — the negative argues that the committee will be in the best position to determine whether the program or authority curtailed by the plan is necessary for effective counter-terrorism. If the committee determines that the program or authority is not necessary, it will propose curtailing it. If the committee determines that the program or authority *is* necessary, it will propose maintaining it. This allows the negative to argue that the counterplan results in the plan *only if the plan does not link to the terrorism DA*. The permutation arguably still links to this net-benefit.

2. Politics — the negative argues that the committee shifts political responsibility for surveillance reform away from the President, saving his political capital. The negative can argue that the process of creating a new Church Committee will be bipartisan and relatively insulated from typical Congressional politics. The permutation arguably still links to this net-benefit.

3. Circumvention — the negative argues that investigation must precede legislation to ensure that policy reforms aren't circumvented by the intelligence agencies. The permutation resolves most of this, but the negative can argue that circumvention applies more to the permutation than to the counterplan alone.

4. Trust — the negative argues that the counterplan restores public trust in the federal government, something that is necessary to address a host of important policy challenges. Again, the permutation resolves most of this net-benefit. However, the negative can argue that the permutation sends mixed messages to the public while the counterplan stays consistent.

5. Secrecy — the negative argues that the counterplan provides oversight review of the intelligence agencies, lessening the risk of groupthink and its associated dangers. In this way, the counterplan allows Congress to check overreach by the executive branch. The permutation resolves most of this net-benefit.

When crafting a counterplan text, the negative should consider customizing it to use the language of the plan. A version could be written which fiats that the plan be recommended as part of the committee's report, but this carries a lot of theoretical baggage. The blocks in this file assume that the negative has read the counterplan text in the 1NC, not a version that fiats recommendation of the plan.

Explanation for Affirmative

In response to this counterplan, the affirmative should argue that the plan is necessary to solve the advantages. If the counterplan might not result in the plan, it might not solve the advantages. To win that the counterplan wouldn't result in the plan, the affirmative should argue that the committee's recommendations won't be adopted by Congress or that intelligence agencies will attempt to stall the committee's investigation.

The "do both" permutation is a powerful affirmative option. The affirmative can argue that this permutation avoids the link to the net-benefits. If there is a chance that the counterplan doesn't result in the plan, the affirmative can argue that the risk of a solvency deficit outweighs the risk of the net-benefits.

Negative

1NC

1NC — Wyden Committee CP

The United States federal government should conduct a full, public investigation into the domestic surveillance of Americans by United States intelligence agencies. This investigation should be modeled after the Church Committee, headed by Senator Ron Wyden, and tasked with producing a report to Congress outlining recommendations for appropriate legislative and regulatory reforms.

The counterplan solves the case and is net-beneficial.

First, it results in sustainable reforms and rebuilds public trust in government.
Church Committee Alums 14 – Counsel, Advisers, and Professional Staff Members of the Church Committee including Chief Counsel Frederick A.O. Schwarz Jr., Loch Johnson, John T. Elliff, Burt Wides, Jim Dick, Frederick Baron, Joseph Dennin, Peter Fenn, Anne Karalekas, Michael Madigan, Elliot Maxwell, Gordon Rhea, Eric Richard, Athan Theoharis, and Christopher Pyle, 2014 (Open Letter to Congress and the President, March 17th, Available Online at https://www.eff.org/files/2014/03/16/church_committee_-_march_17_2014__0.pdf, Accessed 07-08-2015, p. 1-2)
In 1975, the public learned that the National Security Agency (NSA) had been collecting and analyzing international telegrams of American citizens since the 1940s under secret agreements with all the major telegram companies. Years later, the NSA instituted another "Watch List" program to intercept the international communications of key figures in the civil rights and anti-Vietnam War movements among other prominent citizens. Innocent Americans were targeted by their government. These actions were only uncovered—and stopped—because of a special Senate investigative committee known as the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, commonly known as the Church Committee. We are former members and staff of the committee and write today as witnesses to history and as citizens with decades of collective experience in Congress, the federal courts, the executive branch, and the intelligence community. We write today to encourage Congress to create a Church Committee for the 21st Century—a special investigatory committee to undertake a thorough, and public, examination of current intelligence community practices affecting the rights of Americans and to make **specific recommendations for future oversight and reform**. Such a committee would work in good faith with the president, hold public and private hearings, and be empowered to obtain documents. Such congressional action is urgently needed to **restore the faith of citizens** in the intelligence community and, indeed, in our federal government.
The actions uncovered by the Church Committee in the 1970s bear striking similarities to the actions we've learned about over the past year. In the early 1970s, allegations of impropriety and illegal activity concerning the intelligence community spurred Congress to create committees to investigate those allegations. Our committee, chaired by Senator Frank Church, was charged with investigating illegal and unethical conduct of the intelligence community and with making legislative recommendations to govern the intelligence community's conduct. The bipartisan committee's reports remain one of the most searching reviews of intelligence agency practices in our nation's history.
Our findings were startling. Broadly speaking, we determined that sweeping domestic surveillance programs, conducted under the guise of foreign intelligence collection, had repeatedly undermined the privacy rights of US citizens. A number of reforms were implemented as a result, including the creation of permanent intelligence oversight committees in Congress and the passage of the Foreign Intelligence Surveillance Act.

Even though our work was over 30 years ago, our conclusions seem eerily prescient today. For example, our final report noted:

> We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses characterized as "vacuum cleaners," [end page 1] sweeping in information about lawful activities of American citizens. The tendency of intelligence activities to expand beyond their initial scope is a theme, which runs through every aspect of our investigative findings.

The need for another thorough, independent, and public congressional investigation of intelligence activity practices that affect the rights of Americans is apparent. There is **a crisis of public confidence**. Misleading statements by agency officials to Congress, the courts, and the public have undermined public trust in the intelligence community and in the capacity for the branches of government to provide meaningful oversight.

The scale of domestic communications surveillance the NSA engages in today dwarfs the programs revealed by the Church Committee. Indeed, 30 years ago, the NSA's surveillance practices raised similar concerns as those today. For instance, Senator Church explained:

> In the case of the NSA, which is of particular concern to us today, the rapid development of technology in this area of electronic surveillance has seriously aggravated present ambiguities in the law. The broad sweep of communications interception by NSA takes us far beyond the previous Fourth Amendment controversies where particular individuals and specific telephone lines were the target.

As former members and staff of the Church Committee we can authoritatively say: the erosion of public trust currently facing our intelligence community is not novel, nor is its solution. A Church Committee for the 21st Century—a special congressional investigatory committee that undertakes a significant and public reexamination of intelligence community practices that affect the rights of Americans and the laws governing those actions—is **urgently needed**. Nothing less than the confidence of the American public in our intelligence agencies and, indeed, the federal government, is at stake.

Second, investigation *before* legislation is the only way to avoid circumvention. The counterplan solves; the plan doesn't.

Bump 13 – Philip Bump, Staff Writer at the *Wire*—an *Atlantic* publication, former Writer for *Grist*, former Senior Designer at Adobe Systems, 2013 ("How Do You Solve a Problem Like NSA?," *The Wire*—an *Atlantic* publication, November 1st, Available Online at http://www.thewire.com/politics/2013/11/how-do-you-solve-problem-nsa/71154/, Accessed 07-08-2015)

Legal roadblocks

Advocates of the NSA's surveillance, like Feinstein, are quick to point out that what the NSA is doing is legal. It is overseen by (largely acquiescent) intelligence committees in the House and Senate. It is approved by the Department of Justice and White House. It is given a stamp of approval by the Foreign Intelligence Surveillance Court in a purposefully one-sided process. But, as American history has repeatedly shown, "legal" doesn't always correlate to "appropriate." And in this case, the assessment that the tools fall within the boundaries of the Fourth Amendment essentially hasn't been challenged before the Supreme Court.

The NSA says it wants to collect metadata on every phone call in the United States, and that the Patriot Act's Section 215 lets it do so. The FISC agrees. Therefore, these activities are legal — despite the author of the Patriot Act asserting that the data collection exceeds the boundaries of the law. Doesn't matter. The NSA and a secret court interpret the law to allow the NSA to conduct all of the activity that's mentioned in this article. A majority of members of Congress are not disposed to **challenge this interpretation**. There exist proposals that, unlike Feinstein's, would actually block certain NSA behavior, but they aren't likely to be make it into law without being watered down by amendments.

We reached out to staff attorneys from two of the organizations that have been most fervent in their critiques of the NSA's surveillance tools, asking them how, given the power, they'd revise the government's surveillance tools to ensure that public privacy was maintained. The question we posed: Knowing that the NSA is experienced at **massaging laws to meet their needs**, what legislation might prevent that?

Alex Abdo, staff attorney at the American Civil Liberties Union, advocated **transparency above all else**. "Our country's founders believed that tyranny could be prevented through checks and balances. I think the same holds true today." For that to happen, though, **people need to know what's happening**.

> [I]t should mean that the public has access to significant or novel legal interpretations issued by the FISC. That would have gone a long way toward preventing the 215 program, because Congress and the public would have been able to judge the lawfulness and necessity of the government's programs for themselves.

"In short," Abdo said, "our privacy rights shouldn't be interpreted away in secret. … Secrecy has its place, but it should not be used as an excuse to keep any branch of government or the public out of the debate entirely. This type of solution is also key to **long-term legitimacy**."

In the 1970s, following revelations of domestic surveillance by the NSA — and rampant abuses by other intelligence services – the Church Committee was formed in the Senate in an effort to better determine the guidelines under which the agencies should operate. There were eventually other steps: the 1978 Foreign Intelligence Surveillance Act itself, which codified some of the committee's findings, and President Ronald Reagan's 1981 executive order extending the agencies' power while adding some new boundaries. (The vast majority of the NSA violations revealed in the Snowden leaks were violations of this order.)

Kurt Opsahl, senior staff attorney at the Electronic Frontier Foundation, suggested revisiting the idea of forming a new Congressional commission to tackle these issues. "If Congress has the political will," he told us, "it can easily write language to stop bulk collection." **But:**

> [T]o really be sure that Congress can legislate well, we really need a new Church Commission. … The key idea behind a new Church Committee would be to **investigate first, and then legislate later with a better understanding**. It may not result in restrictions that will be effective for all time, in light of technologies not dreamed about now, but it's the right thing to do now.

Neither Opsahl nor Abdo, you'll notice, are advocating **specific proposals** since **without further exploration of what's actually happening, it's difficult to draw policy**. The most important part of Opsahl's statement, though, is the first part. "If Congress has the political will." The Senate Intelligence Committee, in passing the tweaks encompassed in the FISA Improvements Act has shown a lack of will to try and figure out how to create new limits on the NSA's activity. But perhaps the most obvious example of a lack of will comes from Feinstein's House counterpart, Rep. Mike Rogers of Michigan. In a hearing this week, he confronted American University law professor Steve Vladeck, as reported by MSNBC.

> Rogers: I would argue the fact that we haven't had any complaints come forward with any specificity arguing that their privacy has been violated, clearly indicates, in 10 years, clearly indicates that something must be doing right. Somebody must be doing something exactly right.
> Vladeck: But who would be complaining?
> Rogers: Somebody who's privacy was violated. You can't have your privacy violated if you don't know your privacy is violated.

This is a corollary to the Supreme Court's rejection, earlier this year, of a lawsuit targeting the NSA. The Court ruled that the plaintiffs weren't affected by the surveillance and therefore couldn't sue; assured by the government that those being watched

would be told — and so could knowingly bring a suit — the Court threw out the case. It then turned out that the government wasn't informing people that NSA surveillance generated the evidence against them.

Rogers lacks the political will to figure out how to rein in the NSA so that the privacy of Americans using email or Google or Tor is ensured. The will to study the problem may emerge as leaks continue and political pressure builds. As Rogers might note, **you can't fix your surveillance system until you know that your surveillance system needs to be fixed**. Assuming it can be fixed at all.

2NC/1NR — Net-Benefits

Circumvention Net-Benefit

To avoid circumvention, *investigation* must precede *legislation*. NSA relies on secret interpretations of statutory authority to justify their activities. Unless these secret interpretations are scrutinized by Congress, it is impossible to craft effective policy language — that's Bump.

Prefer our evidence: it quotes the ACLU's Abdo and the EFF's Opsahl, two leading civil liberties attorneys. Both agree that a new Church Committee—*not a specific policy reform*—is the best option for reigning in NSA. Here's more evidence.

Cohn and Jaycox 13 – Cindy Cohn, Executive Director and former Legal Director and General Counsel of the Electronic Frontier Foundation, holds a J.D. from the University of Michigan Law School, and Mark Jaycox, Legislative Analyst at the Electronic Frontier Foundation, former Contributor to *ArsTechnica*, former Legislative Research Assistant for LexisNexis, holds a B.A. in Political History from Reed College, 2013 ("Why A Special Congressional Committee Must Be Created To Investigate NSA's Unconstitutional Domestic Spying," Electronic Frontier Foundation, June 19th, Available Online at https://www.eff.org/deeplinks/2013/06/why-special-congressional-committee-must-be-created-investigate-nsas, Accessed 07-09-2015)

In the past couple of weeks, the NSA has, unsurprisingly, responded with a series of secret briefings to Congress that have left the public in the dark and vulnerable to misstatements and word games. Congress has many options at its disposal, but for **true accountability** any response must start with a special investigative committee. A coalition of **over 100 civil liberties groups** agrees. Such a committee is the right way the American people can **make informed decisions about the level of transparency and the reform needed**.

A Special Investigatory Committee is the Right Way to Shine the Light and Create True Accountability

A special investigatory committee should be bipartisan, consist of selected Intelligence and Judiciary committee members on both sides of the issue, and have full subpoena powers. After Watergate, Congress created the Church Committee to investigate domestic spying and other illegal actions committed by the intelligence community. What it found was staggering: in one example of abuse, the NSA was reading and copying all telegrams entering and exiting the country. In another, NSA had intercepted, opened and photographed more than 215,000 pieces of mail—mass surveillance circa 1970. The Church Committee brought these revelations to light, informed the American people, and took steps to limit the broad nature of the surveillance.

The contemporary Congress must create a similar, **independent**, and **empowered** committee. The President and some members of Congress prefer an investigation by the President's appointed Privacy and Civil Liberties Oversight Board (PCLOB), but the Board is not even empowered to issue subpoenas. And the two key committees that rubber-stamped the expansion of the NSA spying from foreigners-only to ordinary Americans have proven themselves unable to rein in the spying.

President Obama says he welcomes a public debate on the programs. If he's serious, he and Congress need to take the path of **a modern day Church Committee**.

The PCLOB

Last week, Senators called for an investigation by the PCLOB. The PCLOB was one of the recommendations of the 9/11 Commission and was set up to try to ensure that privacy and civil liberties played a role in the enormous expansion of surveillance laws like the PATRIOT Act and Foreign Intelligence Surveillance Amendments Act. Yet it has not. Instead, the PCLOB has lingered without a chairman—making it inoperable—for almost five years. It was only until this spring that the Senate finally confirmed David Medine as the chair, however the PCLOB has done little, if anything, since then. That's because it has no real power. If the PCLOB asked the NSA for certain documents related to the spying, for instance, the NSA would not have to hand the documents over or present testimony under oath. In a hearing this week, General Alexander, the Director of the National Security Agency, committed to cooperating with any investigation by the PCLOB. But given the NSA's history of gross misdirection, word games and limited answers to direct questions—including General Alexander's own falsehoods in Congressional testimony—this investigation should not rely on the good will of the NSA. Yet, that's exactly what the PCLOB would have to rely upon.

Hearings in Front of the Judiciary or Intelligence Committees

Nor do the Judiciary or Intelligence committees hold great promise. These committees should serve as the American people's robust window into—and constitutional check on—intelligence operations. For instance, in 2005, when the New York Times first reported on the warrantless wiretapping, many hearings took place in front of both the Senate and House Judiciary and Intelligence committees. The Committees certainly did not reveal the full extent of the spying, even though they had the opportunity. Instead, politicians were stonewalled, swallowed grossly misleading answers, and revealed few details.
Currently, the Senate Intelligence committee has met publicly only 2 times this year; from 2011 to 2012 it only met 8 times. The House of Representatives is no different. The House Intelligence committee's Subcommittee on Oversight has not met once this year. Yes, not once. And the full House Intelligence committee has only met four times. History tells us a similar story about the Judiciary Committees.
The public demands for a robust debate require more transparency and tenacity than these committees seem able to provide.
The Secret Veil Must Be Lifted
In short, the lessons of 2005 is that the standing Congressional committees are unable to get at the bottom of the NSA spying and the PCLOB does not have sufficient power to do so either. A special investigative committee with **full subpoena powers**, the ability to **force testimony under oath**, and the ability to **issue sanctions for failure to cooperate** is **the best hope** that the American people have to ensure the NSA's domestic spying isn't swept under the NSA's **giant secrecy cloak** once again. Tell Congress now to act.

Only **the counterplan results in a** ***complete audit*** **of domestic surveillance. Without it, circumvention is inevitable.**

Friedersdorf 13 – Conor Friedersdorf, Staff Writer for *The Atlantic*, 2013 ("Lawbreaking at the NSA: Bring On a New Church Committee," *The Atlantic*, August 16th, Available Online at http://www.theatlantic.com/politics/archive/2013/08/lawbreaking-at-the-nsa-bring-on-a-new-church-committee/278750/, Accessed 07-08-2015)

The time is ripe for a new Church Committee, the surveillance oversight effort named for Senator Frank Church, who oversaw a mid-1970s investigation into decades of jaw-dropping abuses by U.S. intelligence agencies. If recent stories about the NSA don't alarm you, odds are that you've never read the Church Committee findings, which ought to be part of the standard high-school curriculum. Their lesson is clear: Under cover of secrecy, government agents will commit abuses with impunity for years on end, and only intrusive Congressional snooping can stop them.
Why is another Church Committee needed now? For **more than a decade**, the NSA has repeatedly engaged in activity that violated the law and the Constitutional rights of many thousands or perhaps millions of Americans.
Let's review the NSA's recent history of serial illegality. President George W. Bush presided over the first wave. After the September 11 terrorist attacks, he signed a secret order that triggered a massive program of warrantless wiretapping. NSA analysts believed they possessed the authority to spy on the phone calls and emails of American citizens without a judge's permission. Circa October 2001, 90 NSA employees knew about the illegal program, but the public didn't. Later that month, four members of Congress, including Nancy Pelosi, were told of its existence, and subsequently discredited White House lawyer John Yoo wrote the first analysis of its legality. By 2002, 500 people knew about it, at which point telecom providers were participating.
The public didn't find out about warrantless wiretapping until December 2005, more than four years after it started, when the New York Times published a story that they'd long been holding.
How effective was the illegal spying?
"In the anxious months after the Sept. 11 attacks, the National Security Agency began sending a steady stream of telephone numbers, e-mail addresses and names to the FBI in search of terrorists. The stream soon became a flood, requiring hundreds of agents to check out thousands of tips a month," The New York Times reported in a January 2006 followup article. "But virtually all of them, current and former officials say, led to dead ends or innocent Americans. FBI officials repeatedly complained to the spy agency, which was collecting much of the data by eavesdropping on some Americans' international communications and conducting computer searches of foreign-related phone and Internet traffic, that the unfiltered information was swamping investigators. Some FBI officials and prosecutors also thought the checks, which sometimes involved interviews by agents, were pointless intrusions on Americans' privacy."
On July 9, 2008, telecom companies that participated in illegal warrantless wiretapping were granted retroactive immunity in a bill that Senator Barack Obama supported, despite a promise to oppose it.
Soon after, the Obama Administration took power.
On April 15, 2009, The New York Times reported on abuses in the NSA's surveillance activities (emphasis added):

> The National Security Agency intercepted private e-mail messages and phone calls of Americans in recent months on a scale that went beyond the broad legal limits established by Congress last year, government officials said in recent interviews. Several intelligence officials... said the N.S.A. had been engaged in "overcollection" of domestic communications of Americans. They described the practice as significant and systemic, although one official said it was

> believed to have been unintentional... The Justice Department, in response to inquiries from The New York Times, acknowledged Wednesday night that there had been problems with the N.S.A. surveillance operation, but said they had been resolved.

That July, an unclassified report produced by the inspectors general of five federal agencies "had difficulty citing specific instances when the National Security Agency's wiretapping program contributed to successes against terrorists," and "found that other intelligence tools used in assessing security threats posed by terrorists provided more timely and detailed information." The CIA found it "a useful tool but could not link it directly to counterterrorism successes."

Team Obama pressed on anyway.

Skip ahead to Edward Snowden's revelations, which began earlier this summer. The Obama Administration has insisted all along that Snowden wasn't able to document abuses because there aren't any. That claim was always dubious. As I noted earlier this week, the Obama Administration itself had already admitted that legal violations occurred, though it did so in the most vague terms. As of Monday, when I published my article, there was already enough documented bad behavior and official dissembling about surveillance to justify a sweeping investigation.

Now any member of Congress who doesn't press for an investigation is behaving indefensibly, for the Washington Post has just reported that the NSA violated the law on a much larger scale than anyone admitted. Its report shows that current oversight is laughably inadequate, and includes enough details to suggest that multiple NSA defenders have been lying in their public statements.

What would justify a Congressional investigation if not all that? If you're still not persuaded, recall the claims made by the Obama Administration alongside the latest scoops by Barton Gellman and Carol Leonnig. Team Obama's case has been straightforward: there are not NSA abuses, and adequate oversight is being conducted by all three branches of the U.S. government.

Now look at the facts reported Thursday evening:

* "The National Security Agency has broken privacy rules or overstepped its legal authority thousands of times each year since Congress granted the agency broad new powers in 2008."
* "Most of the infractions involve unauthorized surveillance of Americans or foreign intelligence targets in the United States, both of which are restricted by statute and executive order."
* "In one instance, the NSA decided that it need not report the unintended surveillance of Americans."
* "In another case, the Foreign Intelligence Surveillance Court, which has authority over some NSA operations, did not learn about a new collection method until it had been in operation for many months. The court ruled it unconstitutional."
* "The NSA audit obtained by The Post, dated May 2012, counted 2,776 incidents in the preceding 12 months of unauthorized collection, storage, access to or distribution of legally protected communications. Most were unintended. Many involved failures of due diligence or violations of standard operating procedure. The most serious incidents included a violation of a court order and unauthorized use of data about more than 3,000 Americans and green-card holders."

This is a good place to pause. Note that the 2,776 incidents of illegal surveillance don't mean that just 2,766 people had their rights violated -- in just a single one of those 2,776 incidents, 3,000 people had their rights violated. As the story notes, "There is no reliable way to calculate from the number of recorded compliance issues how many Americans have had their communications improperly collected, stored or distributed by the NSA." And that is another reason an intrusive Congressional investigation into these practices is **urgently necessary**.

What possible objection could there be to nailing down the number of Americans whose rights were violated? I'd like someone to explain how that could possibly make us less safe from al-Qaeda.

Here's something else I'd like to see investigated:

> The causes and severity of NSA infractions vary widely. One in 10 incidents is attributed to a typographical error in which an analyst enters an incorrect query and retrieves data about U.S phone calls or e-mails.

Does anyone else find it implausible that 10 percent of errors are due to typos? And even if that's true, are you telling me there's no way to eliminate typos when the consequences are intrusive spying in violation of the law and the Constitution? I find it hard to imagine how anyone isn't on board for a Congressional investigation at this point, but just in case, get this next part (emphasis added):

> The May 2012 audit, intended for the agency's top leaders, counts only incidents at the NSA's Fort Meade headquarters and other facilities in the Washington area. Three government officials, speaking on the condition of anonymity to discuss classified matters, said the number would be substantially higher if it included other NSA operating units and regional collection centers.

That brings us to the head of the Senate intelligence committee, who has sworn all along that she engages in thorough oversight of NSA surveillance, and that large-scale abuses just don't happen:

> Senate Intelligence Committee Chairman Dianne Feinstein (D-Calif.), who did not receive a copy of the 2012 audit until The Post asked her staff about it, said in a statement late Thursday that the committee "can and should do more to independently verify that NSA's operations are appropriate, and its reports of compliance incidents are accurate."

The newspaper got its hands on the audit -- more than a year after the fact -- before she did! And the trend? "Despite the quadrupling of the NSA's oversight staff after a series of significant violations in 2009," Gellman reports, "the rate of infractions increased throughout 2011 and early 2012."

There is a lot more to his article, which everyone should read in full. I'll excerpt just one more passage:

> The NSA uses the term "incidental" when it sweeps up the records of an American while targeting a foreigner or a U.S. person who is believed to be involved in terrorism. Official guidelines for NSA personnel say that kind of incident, pervasive under current practices, "does not constitute a ... violation" and "does not have to be reported" to the NSA inspector general for inclusion in quarterly reports to Congress. Once added to its databases, absent other restrictions, the communications of Americans may be searched freely.

Suffice it to say that the scale of actual NSA abuses is **substantially hidden**. An alarming number of communications are being illegally collected. But the truth could turn out to be shocking even to people who've been following this story closely. An investigation is **the only way to find out**.

The average member of Congress knows far less than Feinstein, and the only other check on the NSA, the FISA court, also provides **inadequate oversight**, according to the man in charge of it:

> The leader of the secret court that is supposed to provide critical oversight of the government's vast spying programs said that its ability do so is limited and that it must trust the government to report when it improperly spies on Americans.
>
> The chief judge of the Foreign Intelligence Surveillance Court said the court lacks the tools to independently verify how often the government's surveillance breaks the court's rules that aim to protect Americans' privacy. Without taking drastic steps, it also cannot check the veracity of the government's assertions that the violations its staff members report are unintentional mistakes.

All told, it's an airtight case for dramatically more oversight. Senator Ron Wyden has long led the lonely effort in his body to expose NSA abuses, and he is the natural choice to lead both an investigation and a Wyden Committee Report to Study Intelligence Activities in the War on Terror. Were there any justice in the world, Feinstein would be kept far away from the effort.

Trust Net-Benefit

The counterplan rebuilds trust in government. Revelations of illegal NSA spying has decimated *overall* public confidence in the federal government. Only a comprehensive Congressional investigation can rebuild trust — that's the Church Committee Alums.

Public trust in government is a prerequisite to solving all global problems. It's an existential risk.

Small 6 – Jonathan Small, former Americorps VISTA for the Human Services Coalition, 2006 ("Moving Forward," *The Journal for Civic Commitment*, Available Online via the Internet Archive's Wayback Machine at http://web.archive.org/web/20060711184600/http://www.mc.maricopa.edu/other/engagement/Journal/Issue7/Small.jsp, Accessed 09-22-2009)

What will be the challenges of the new millennium? And how should we equip young people to face these challenges? While we cannot be sure of the exact nature of the challenges, we can say unequivocally that humankind will face them together. If the end of the twentieth century marked the triumph of the capitalists, individualism, and personal responsibility, the new century will present challenges that require **collective action, unity, and enlightened self-interest**. Confronting **global warming, depleted natural resources, global super viruses, global crime syndicates**, and **multinational corporations** with no conscience and no accountability will require **cooperation, openness, honesty, compromise**, and most of all **solidarity** – ideals not exactly cultivated in the twentieth century. We can no longer suffer to see life through the tiny lens of our own existence. Never in the history of the world has our collective fate been so intricately interwoven. **Our very existence depends upon our ability to adapt to this new paradigm**, to envision a more cohesive society.

With humankind's next great challenge comes also great opportunity. Ironically, modern individualism backed us into a corner. We have two choices, **work together in solidarity or perish together in alienation**. Unlike any other crisis before, the noose is **truly around the neck of the whole world at once**. Global super viruses will ravage rich and poor alike, developed and developing nations, white and black, woman, man, and child. Global warming and damage to the environment will affect climate change and destroy ecosystems across the globe. Air pollution will force gas masks on our faces, our depleted atmosphere will make a predator of the sun, and chemicals will invade and corrupt our water supplies. Every single day we are presented the opportunity to change our current course, to survive modernity in a manner befitting our better nature. Through zealous cooperation and radical solidarity we can alter the course of human events.

Regarding the practical matter of equipping young people to face the challenges of a global, interconnected world, we need to teach cooperation, community, solidarity, balance and tolerance in schools. We need to take a holistic approach to education. Standardized test scores alone will not begin to prepare young people for the world they will inherit. The three staples of traditional education (reading, writing, and arithmetic) need to be supplemented by three cornerstones of a modern education, exposure, exposure, and more exposure. How can we teach solidarity? How can we teach community in the age of rugged individualism? How can we counterbalance crass commercialism and materialism? How can we impart the true meaning of power? These are the educational challenges we face in the new century. It will require a radical transformation of our conception of education. We'll need to trust a bit more, control a bit less, and put our faith in the potential of youth to make sense of their world.

In addition to a declaration of the gauntlet set before educators in the twenty-first century, this paper is a proposal and a case study of sorts toward a new paradigm of social justice and civic engagement education. Unfortunately, the current pedagogical climate of public K-12 education does not lend itself well to an exploratory study and trial of holistic education. Consequently, this proposal and case study targets a higher education model. Specifically, we will look at some possibilities for a large community college in an urban setting with a diverse student body.

Our guides through this process are specifically identified by the journal Equity and Excellence in Education. The dynamic interplay between ideas of social justice, civic engagement, and service learning in education will be the lantern in the dark cave of uncertainty. As such, a simple and straightforward explanation of the three terms is helpful to direct this inquiry. Before we look at a proposal and case study and the possible consequences contained therein, this paper will draw out a clear understanding of how we should characterize these ubiquitous terms and how their relationship to each other affects our study.

Social Justice, Civic Engagement, Service Learning and Other Commie Crap

Social justice is often ascribed long, complicated, and convoluted definitions. In fact, one could fill a good-sized library with treatises on this subject alone. Here we do not wish to belabor the issue or argue over fine points. For our purposes, it will suffice to have a general characterization of the term, focusing instead on the dynamics of its interaction with civic engagement and service learning. Social justice refers quite simply to a community vision and a community conscience that values inclusion, fairness, tolerance, and equality. The idea of social justice in America has been around since the Revolution and is intimately linked to the idea of a social contract. The Declaration of Independence is the best example of the prominence of social contract theory in the US. It states quite emphatically that the government has a contract with its citizens, from which we get the famous lines about life, liberty and the pursuit of happiness. Social contract theory and specifically the Declaration of Independence are concrete expressions of the spirit of social justice.

Similar clamor has been made over the appropriate definitions of civic engagement and service learning, respectively. Once again, let's not get bogged down on subtleties. Civic engagement is a measure or degree of the interest and/or involvement an individual and a community demonstrate around community issues. There is a longstanding dispute over how to properly quantify civic engagement. Some will say that today's youth are less involved politically and hence demonstrate a lower degree of civic engagement. Others cite high volunteer rates among the youth and claim it demonstrates a high exhibition of civic engagement. And there are about a hundred other theories put forward on the subject of civic engagement and today's youth. But one thing is for sure; today's youth **no longer see government and politics as an effective or valuable tool for affecting positive change in the world**. Instead of criticizing this judgment, perhaps we should come to sympathize and even admire it. Author Kurt Vonnegut said, "There is a tragic flaw in our precious Constitution, and I don't know what can be done to fix it. This is it: only nut cases want to be president." Maybe the youth's rejection of American politics isn't a shortcoming but rather a rational and appropriate response to their experience. Consequently, the term civic engagement takes on new meaning for us today. In order to foster fundamental change on the systemic level, which we have already said is **necessary for our survival in the twenty-first century**, we need to **fundamentally change our systems**. Therefore, part of our challenge becomes convincing the youth that these systems, and by systems we mean government and commerce, have the potential for positive change. Civic engagement consequently takes on a more specific and political meaning in this context.

***Independently*, public trust in government is key to progressive public policies that address poverty and racism.**

Hetherington 6 – Marc J. Hetherington, Associate Professor of Political Science at Vanderbilt University, 2006 ("Why Political Trust Matters," *Why Trust Matters: Declining Political Trust and the Demise of American Liberalism*, Published by Princeton University Press, ISBN, Available Online at http://press.princeton.edu/chapters/s7877.html, Accessed 04-30-2012)

Even more importantly, **declining political trust has played the central role in the demise of progressive public policy** in the United States over the last several decades. My claim defies the conventional wisdom. In explaining why public policy has grown more conservative since the 1960s, pundits and political scientists alike tend to identify a conservative turn in public opinion as the cause. However, **little evidence exists to support this explanation**. There remains **constant and widespread support for big government** in areas where most Americans benefit. For example, almost everyone wants to maintain or increase investment in the vast majority of federal programs, such as Medicare, Social Security, education, highways, environmental protection, and the like. Had public opinion truly grown more conservative, support for these initiatives would have decreased because conservatives have a philosophical aversion to government.

Contemporary political rhetoric fuels this misunderstanding. By railing against "big government" in general, conservative and moderate politicians imply that people want less government across the board. However, public opposition to government is **focused entirely on programs that require political majorities to make sacrifices for political minorities**, such as **antipoverty** and **race-targeted initiatives**. In short, Americans continue to support big government **when they benefit from it**, but they want limited government when they are asked to make sacrifices.

The massive deterioration in political trust that has occurred since the 1960s **explains this disjuncture**. Declining trust should not affect support for all things that government does. Indeed, people do not need to trust the government much when they benefit from it. Instead, **people need to trust the government when they pay the costs but do not receive the benefits**, which is **exactly what antipoverty and race-targeted programs require** of most Americans. When government programs require people to make sacrifices, **they need to trust that the result will be a better future for everyone**. Absent that trust, people will deem such sacrifices as unfair, even punitive, and, thus, **will not support the programs that require them**.

Progressive policies are vital to reduce widespread suffering and inequality. We have a moral obligation to collectively address these injustices through state action.

West 99 – Robin West, Professor of Law at the Georgetown University Law Center, holds a J.D. from the University of Maryland Law School and a J.S.M. from Stanford Law School, 1999 ("Is American Progressive Constitutionalism Dead?: I. Conceptual And Critical Themes In Normative Progressive Constitutionalism: Is Progressive Constitutionalism Possible?," *Widener Law Symposium* (4 Wid. L. Symp. J. 1), Spring, Available Online to Subscribing Institutions via Lexis-Nexis)

Progressivism is in part a particular moral and political response to the sadness of lesser lives, lives unnecessarily diminished by economic, psychic and physical insecurity in the midst of a society or world that offers plenty. This insecurity is **unjust** and should end; the suffering should be **alleviated**, and those lives should be enriched. **To do so must be one of the goals of a morally just** or justifiable **state**. Not all suffering and not all lesser lives, of course, give rise to such a response. The suffering attendant to accident, disease, war and happenstance is neither entirely chargeable to our societal account, nor is it within our control. A "lesser life" marred by the early loss of a parent, a parent's mourning occasioned by the accidental death of a child, or an adult's ongoing trauma set off by a childhood disease, although cosmically unjust, is neither unjust in the ordinary sense, nor is it easily ameliorated through politics. In contrast, the suffering attendant to poverty or stunted opportunities for growth, the suffering attendant to the absence of supportive communities, or the suffering attendant to the desperate attempt to nurture children while unsure of one's own physical or economic safety is largely chargeable to our moral account and may be ameliorated through politics--at least in a social world like our own, marked by abundant natural resources, vast economic opportunity, thriving neighborhoods, and competent police and security forces. That such suffering exists on **a shockingly widespread scale** in our world is a product of two states of affairs. First, it is the consequence of the decision to allow not simply "property," but vast quantities of wealth to accumulate in a few private hands, and social and sexual esteem as well as physical security and well-being to reside in one race and sex. Second, the suffering is a product of our **collective, political and legal inattention to the suffering those distributions leave in their wake**. Progressivism, I will assume, is marked by a distinctive moral response to that suffering. When brought on by collective inattention to private maldistributions of wealth, security or privilege, that suffering is **unjust**, and for that reason gives rise to a **moral and political imperative**: the conditions which give rise to the [*2] suffering **must be changed**, and changed through some form of **collective action**, which in turn may (although often times may not) require **the coercive power of the state**.

Secrecy Net-Benefit

Only the counterplan solves openness, preventing intelligence community groupthink.

Benkler 13 – Yochai Benkler, Berkman Professor of Entrepreneurial Legal Studies at Harvard Law School, Faculty Co-Director of the Berkman Center for Internet and Society at Harvard University, former Professor at New York University School of Law, recipient of the Electronic Frontier Foundation's Pioneer Award and the Ford Foundation Visionaries Award, holds an LL.B. from Tel-Aviv University and a J.D. from Harvard Law School, 2013 ("We Need a New Church Committee," *The New Republic*, June 11th, Available Online at http://www.newrepublic.com/article/113433/nsa-scandal-requires-new-church-committee, Accessed 07-08-2015)

Last week's groundbreaking reporting by The Guardian and The Washington Post exposed an NSA surveillance system of breathtaking scale, breadth, and depth. Even if legal under some tortured interpretation of the law, this system leaves the Fourth Amendment an empty vessel. The sheer audacity of the NSA surveillance and the complicity of segments of all three branches of government and the private sector suggest that we need a basic re-evaluation of intelligence operations on the scale of the Church Committee in the post-Watergate era. On Sunday, The Guardian disclosed—at his request—that the source of the leak was Edward Snowden, a 29-year-old former technical assistant at the CIA and current employee of a defense contractor. The president's defense of the surveillance programs last Friday depended on our trust in congressional oversight and judicial process. These made the program legitimate, he argued, as he doubled down on his aggressive denunciation of the whistle-blowing that exposed the abuses. The president's defense, however, merely underscores the subversion of checks and balances by the post-September 11 constitution. It is precisely when traditional checks and balances fail that the fourth estate is so crucial.

Secrecy breeds error

Secrecy undermines the foundation of learning: **criticism**. People on the inside of the national security establishment cannot be trusted to make **reasonable judgments**—not because they are bad people (one assumes that, for the most part, they are deeply committed and well-intentioned)—but because they inhabit **a deeply error-prone system** that lacks the basic elements of self-correction. Saddam Hussein is dead today because he created a system in which no one could tell him that if he kept obscuring the fact that he had no WMD, he would die.

Open societies thrive not because they have smarter people, or better armies, or perfect markets. They thrive because, in their very imperfection, they enable **continuous learning**. Open societies can't always act as effectively as non-open societies. For a while, planned economies looked like they were better at putting Sputnik in orbit, and spy agencies unfettered by democratic qualms, we feared, could foment revolution from Korea to Cuba. But in the long run, openness made us learn, adapt, and become better. That is why, eventually, either China will open up or America will continue to lead into the twenty-first century. But only if we stay an open society.

Secrecy has been allowed to metastasize under the Bush-Obama national security system. As the FISA Court order to Verizon showed, even the operation of the law is secret. The Department of Justice issues secret memos; these become unchallenged interpretations of law that FISA Court judges are asked to endorse without the benefit of an opponent's criticism. Any good lawyer knows that if you read the briefs of one side only, they seem overwhelmingly persuasive—until you read the other side's brief. These decisions, in turn, remain secret, and thus immune to criticism even after they have been issued. And that complete immunity from criticism insulates them from good reason. They are, **by design**, hobbled, **incapable of embodying good judgment**.

Congressional oversight suffers from similar information imbalances. When Senators Feinstein and Chambliss tell us that the intelligence gathered is invaluable and the civil rights

violations minimal, we cannot trust their judgment: Their honest judgments reflect information that is one side's brief for its own perspective. Legislators can work their way out of this dynamic in extraordinary cases, but such divergence is not the normal course. Congressional overseers who come with a critical frame of reference and interpret the information skeptically—like Senators Wyden and Udall, who obliquely raised the alarm for years—are **caught in a Catch-22**: They can only learn enough to criticize knowledgeably by signing away their freedom to criticize publicly.

We're told to trust the government's surveillance package as a whole, as a black box. But when we see two products of that opaque system that are so totally out of whack with the proper balance between national security and constitutional rights, we can have no confidence in the system. Asking us to simply trust the black box is **a completely inadequate response**.

The torture program was enabled by spooks cooperating with national security types in the executive manipulating the information available to the select few who participated in congressional oversight and wildly overstating the value of their work. The Senate Select Committee on Intelligence report on the incompetence, dissimulation, and sheer futility of that program remains a national security secret. But we know the basic storyline. And there is absolutely no reason to believe that the system of checks and balances that failed so spectacularly there has performed impeccably here, or that the self-affirming assertions of the spies about the critical value of their work are systematically more credible.

Only a **genuine**, **aggressive**, **independent**, and **transparent** review process can **restore the confidence necessary to maintain security** under the American Constitution. We need a new Church Committee to assess the NSA's work in this post-September 11, big data moment.

Groupthink risks extinction. Decentralized, open decision-making is key.

Adler 96 – David Gray Adler, Professor of Political Science at Idaho State University, 1996 ("The Judiciary and Presidential Power In Foreign Affairs: A Critique," *Perspectives on Law and the Public Interest* (1 Persp. on L. & Pub. Int. 1), Fall, Available Online to Subscribing Institutions via Hein Online, p. 1-9)

{4} The Constitution envisions the conduct of foreign policy as a partnership between the President and Congress. Perhaps surprisingly, the Constitution assigns Congress the role of **senior partner**. This assignment reflects, first, the **overwhelming preference** of both the framers at the Constitutional Convention and the ratifiers in state conventions for collective decision-making in both foreign and domestic affairs. Second, this assignment of powers reflects their equally **adamant opposition** to unilateral executive control of U.S. foreign policy. This constitutional arrangement is evidenced by specific, unambiguous textual language, almost undisputed arguments by framers and ratifiers, and by logical-structural inferences from the doctrine of separation of powers.[5]

{5} The constitutional assignment of powers, moreover, is **compelling** and **relevant** for twentieth century America for at least three reasons. First, separation of powers issues are perennial, for they require consideration of the proper repository of power. Contemporary questions about the allocation of power between the President and Congress in foreign affairs are largely the same as those addressed two centuries ago. Second, the logic of collective decisionmaking in the realm of foreign relations is **as sound today** as it was in the founding period. Third, although the world and the role of the United States in international relations have changed considerably over the past 200 years, most questions of foreign affairs still involve routine policy formulation and do not place a premium on immediate responsive action.

{6} The preference for collective, rather than individual, decisionmaking runs throughout those provisions of the Constitution that govern the conduct of foreign policy. Congress, as a collective governing body, derives broad and exclusive powers from Article I to regulate foreign commerce and to initiate all hostilities on behalf of the United States, including war. As Article II indicates, the President shares with the Senate the treaty-making power and the power to appoint ambassadors. Only two powers in foreign relations are assigned exclusively to the President. First, he is commander-in-chief, but he acts in this capacity **by** and **under** the authority of Congress. As Alexander Hamilton and James Iredell argued, the President, in this capacity, is merely first admiral or general of the armed forces, after war has been authorized by Congress or in the event of a sudden attack against the United States.[6] Secondly, the President has the power to receive ambassadors. Hamilton, James Madison, and Thomas Jefferson agreed that this clerk-like function was purely ceremonial in character. Although this function has come to entail recognition of states at international law, which carries with it certain legal implications, this founding trio contended that the duty of recognizing states was more conveniently placed in the hands of the executive than in the legislature.[7] These two powers exhaust the textual grant of authority to the President regarding foreign affairs jurisdiction. The President's constitutional authority **pales in comparison** to the powers of Congress.

{7} This Constitutional preference for shared decisionmaking is emphasized again in the construction of the shared treaty power: "He shall have Power, by and with the Advice and consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur."[8] The compelling simplicity and clarity of the plain words of this clause leave no room to doubt its meaning.[9] There is no other clause that even intimates a presidential power to make agreements with foreign nations. Therefore, as Hamilton argued, the treaty power constitutes the principal vehicle for conducting U.S. foreign relations.[10] In fact, there was no hint at the Constitutional Convention of an exclusive Presidential power to make foreign policy. To the contrary, all the arguments of the framers and ratifiers were to the effect that the Senate and President, which Hamilton and Madison described as a "fourth branch of government" in their capacity as treaty maker,[11] are to manage concerns with foreign nations.[12] While a number of factors contributed to this decision,[13] the pervasive fear of unbridled executive power loomed largest.[14] Hamilton's statement fairly represents these sentiments:

The history of human conduct does not warrant that exalted opinion of human nature which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.[15]

{8} The widespread fear of executive power that precluded presidential control of foreign policy also greatly influenced the Convention's design of the War Clause. Article I, section 8, paragraph 11 states: "The Congress shall have Power . . . To declare War."[16] The plain meaning of the clause is buttressed by the unanimous agreement among both framers and ratifiers that Congress was granted the sole and exclusive authority to initiate war. The warmaking power, which was viewed as a legislative power by Madison and Wilson, among others, was specifically withheld from the President.[17] James Wilson, second only to Madison as an architect of the Constitution, summed up the values and concerns underlying the war clause for the Pennsylvania Ratifying Convention:

This system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large. This declaration must be made with the concurrence of the House of Representatives; from this circumstance we may draw a certain conclusion that nothing but our national interest can draw us into war.[18]

No member of the Constitutional Convention and no member of any state ratifying convention ever attributed a different meaning to the War Clause.[19]

{9} This undisputed interpretation draws further support from early judicial decisions, the views of eminent treatise writers, and from nineteenth-century practice. I have discussed these factors elsewhere; here the barest review must suffice.[20] The meaning of the War Clause was put beyond doubt by several early judicial decisions. No court since has departed from this early view. In 1800, in Bas v. Tingy, the Supreme Court held that it is for Congress alone to declare either an "imperfect" (limited) war or a "perfect" (general) war.[21] In 1801, in Talbot v. Seeman, Chief Justice John Marshall, a member of the Virginia Ratifying Convention, stated that the "whole powers of war [are], by the Constitution of the United States, vested in [C]ongress. . . ."[22] In Little v. Barreme, decided in 1804, Marshall concluded that President John Adams' instructions to seize ships were in conflict with an act of Congress and were therefore illegal.[23] In 1806, in United States v. Smith, the question of whether the President may initiate hostilities was decided by Justice William Paterson, riding circuit, who wrote for himself and District Judge Tallmadge: "Does he [the President] possess the power of making war? That power is exclusively vested in Congress . . . It is the exclusive province of Congress to change a state of peace into a state of war."[24] In 1863, the Prize Cases presented the Court with its first opportunity to consider the power of the President to respond to sudden attacks.[25] Justice Robert C. Grier delivered the opinion of the Court:

By the Constitution, Congress alone has the power to declare a natural or foreign war . . . If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force, by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war, although the declaration of it be "unilateral."[26]

These judicial decisions established the constitutional fact that it is for Congress alone to initiate hostilities, whether in the form of general or limited war; the President, in his capacity as commander-in-chief, is granted only the power to repel sudden attacks against the United States.[27]

{10} The Convention's attachment to collective judgment and its decision to create a structure of shared power in foreign affairs provided, in the words of Wilson, "a security to the people," for it was a cardinal tenet of republican ideology that the conjoined wisdom of many is superior to that of one.[28] The emphasis on group decisionmaking came, of course, at the expense of unilateral executive authority. This hardly posed a difficult choice, however; for the framers and ratifiers held a pervasive distrust of executive power, a deeply held suspicion that dated to colonial times.[29] As a result of this aversion to executive authority, the Convention placed control of foreign policy beyond the unilateral capacity of the President. Furthermore, as Madison said, the Convention "defined and confined" the authority of the President so that a power not granted could not be assumed.[30]

{11} The structure of shared powers in foreign relations serves to **deter abuse of power, misguided policies, irrational action**, and **unaccountable behavior**.[31] As a fundamental matter, emphasis on joint policymaking permits the airing of sundry political, social, and economic values and concerns. Such a structure wisely ensures that the ultimate policies will not merely reflect **the private preferences** or **the short-term political interests** of the President.[32]

{12} Of course, this arrangement has come under fire in the postwar period on a number of policy grounds. Some have argued, for example, that fundamental political and technological changes in the character of international relations and the position of the United States in the world have rendered obsolete an eighteenth century document designed for a peripheral, small state in the European system of diplomatic relations. Moreover, it has been asserted that quick action and a single, authoritative voice are necessary to deal with an increasingly complex, interdependent, and technologically linked world capable of almost instantaneous massive destruction. Extollers of presidential dominance also have contended that only the President has the qualitative information, the expertise, and the capacity to act with the necessary dispatch to conduct U.S. foreign policy.[33]

{13} These policy arguments have been reviewed, and discredited, elsewhere; space limitations here permit only a brief commentary.[34] Above all else, the implications of U.S. power and action in the twentieth century have brought about **an even greater need** for **institutional accountability** and **collective judgment** than existed two hundred years ago. The **devastating, incomprehensible destruction of nuclear war and the possible extermination of the human race** demonstrate the need for **joint participation** in any decision to initiate war. Moreover, most of the disputes at stake between the executive and legislative branches in foreign affairs have **virtually nothing to do with** the need for rapid response to crisis. Rather, they are concerned only with **routine policy formulation and execution**, a classic example of the authority exercised under the separation of powers doctrine.[35]

{14} Nevertheless, these joint functions have been fused by the executive branch and have become increasingly **unilateral**, **secretive**, **insulated from public debate**, and hence **unaccountable**.[36] In the wake of Vietnam, Watergate, and the Iran-contra scandal, unilateral executive behavior has become **ever more difficult to defend**. Scholarly appraisals have **destroyed** arguments about intrinsic executive expertise and wisdom in foreign affairs and the alleged superiority of information available to the President.[37] Moreover, the inattentiveness of presidents to important details and the effects of **"groupthink"** that have dramatized and exacerbated the relative inexperience of various presidents in international relations have also devalued the extollers' arguments. Finally, foreign policies, like domestic policies, are reflections of values. Against **the strength of democratic principles**, recent occupants of the White House have **failed to demonstrate** the superiority of their values in comparison to those of the American people and their representatives in Congress.

{15} The assumption of foreign affairs powers by recent presidents represents a fundamental alteration of the Constitution that is both **imprudent** and **dangerous**. We turn now to an examination of the judiciary's contribution to executive hegemony in foreign affairs.

The counterplan solves this impact — it checks executive overreach.

German et al. 15 – Michael German, Fellow in the Liberty and National Security Program at the Brennan Center for Justice at the New York University School of Law, former Policy Counsel for National Security and Privacy for the American Civil Liberties Union Washington Legislative Office, former Adjunct Professor for Law Enforcement and Terrorism at the National Defense University, former Special Agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations, served as a Counterterrorism Instructor at the FBI National Academy, et al., co-authored and endorsed by Counsel, Advisers, and Professional Staff Members of the Church Committee including Chief Counsel Frederick A.O. Schwarz Jr., Loch Johnson, John T. Elliff, Burt Wides, Jim Dick, Frederick Baron, Joseph Dennin, Peter Fenn, Anne Karalekas, Michael Madigan, Elliot Maxwell, Gordon Rhea, Eric Richard, Athan Theoharis, and Christopher Pyle, 2015 ("Strengthening Intelligence Oversight," Report by the Brennan Center for Justice at the New York University School of Law, Available Online at https://www.brennancenter.org/sites/default/files/publications/Church_Committee_Web_REVISED.pdf, Accessed 07-09-2015, p. 4)

Moreover, as important as the Privacy and Civil Liberties Oversight Board and President's Review Group investigations are, it is the constitutional responsibility of **Congress**, as a co-equal branch of government and the direct representatives of the people, to restore the public trust in U.S. intelligence programs. The Senate Intelligence Committee's five-year inquiry into the CIA's abusive detention and interrogation practices provides a striking example of the diligence Congress can apply in meticulously scrutinizing covert government activities, and preparing a report suitable for public release. But it also exposes its limits. The summarized report details how the CIA successfully frustrated oversight of its torture program for several years by refusing, delaying, or inappropriately limiting congressional briefings, and providing incomplete, inaccurate, and misleading information to its overseers. The resources necessary to conduct such an investigation of one program within one agency reveal the depth of the challenge Congress faces in fulfilling its intelligence oversight responsibilities.

Congress needs to demonstrate its ability to **check executive branch overreach** across the multiple programs and agencies, re-establish democratic controls over intelligence policies, and ensure public accountability of intelligence practices. As part of a comprehensive review of the intelligence enterprise, Congress must examine its own performance in overseeing all 17 intelligence community member agencies, including the Federal Bureau of Investigation, the Central Intelligence Agency, the Drug Enforcement Administration, intelligence components of the Departments of Defense (including the National Security Agency), State, Treasury, Energy, and particularly the more recently established Department of Homeland Security.3 The purpose of such a review should be to evaluate whether current legal controls and congressional oversight structures and practices are **effective in allocating intelligence resources properly and efficiently**; to check agency abuses; and to adequately inform all members of Congress and the American public about the scope, necessity, and effectiveness of all authorized intelligence activities, to the greatest extent possible.

To their credit, both the House and Senate have periodically reviewed various aspects of their oversight operations to assess how to improve them. But their day-to-day duties of monitoring burgeoning, complex intelligence collection, counterintelligence, and covert action is extremely time consuming for committee members, even apart from their other congressional responsibilities. It would not be realistic for them to also undertake the kind of comprehensive and integrated review of the myriad intelligence oversight issues we raise below.

The Church Committee's work is perhaps best remembered for exposing significant wrongdoing by the intelligence agencies, often secretly authorized by presidents of both political parties, which undermined American freedoms and democratic values. But its lasting legacy was providing Congress with the **factual foundation and legal framework** for crafting appropriate organizational structures and constitutional controls to ensure that intelligence operations remain effective, lawful, and consistent with our national interests. Examining whether the controls and structures created four decades ago remain an effective bulwark against error and abuse is necessary and appropriate. And the growing mistrust of U.S. intelligence activities at home and abroad make it essential.

Terrorism Net-Benefit

The terrorism DA is a net-benefit. If particular intelligence programs are necessary to prevent terrorism, the committee will recommend they be continued. Only programs that *aren't* necessary for counter-terrorism will be on the chopping block — figuring out which is which is the committee's job.

The counterplan best protects national security — a comprehensive review of intelligence operations is vital.

German et al. 15 – Michael German, Fellow in the Liberty and National Security Program at the Brennan Center for Justice at the New York University School of Law, former Policy Counsel for National Security and Privacy for the American Civil Liberties Union Washington Legislative Office, former Adjunct Professor for Law Enforcement and Terrorism at the National Defense University, former Special Agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations, served as a Counterterrorism Instructor at the FBI National Academy, et al., co-authored and endorsed by Counsel, Advisers, and Professional Staff Members of the Church Committee including Chief Counsel Frederick A.O. Schwarz Jr., Loch Johnson, John T. Elliff, Burt Wides, Jim Dick, Frederick Baron, Joseph Dennin, Peter Fenn, Anne Karalekas, Michael Madigan, Elliot Maxwell, Gordon Rhea, Eric Richard, Athan Theoharis, and Christopher Pyle, 2015 ("Strengthening Intelligence Oversight," Report by the Brennan Center for Justice at the New York University School of Law, Available Online at https://www.brennancenter.org/sites/default/files/publications/Church_Committee_Web_REVISED.pdf, Accessed 07-09-2015, p. 3-4)

Lawful, properly controlled intelligence activities are **critical to our national security**. But they require **public support**, which can **only** be achieved through sound governance, independent oversight, and public accountability. To this end, several former Church Committee staff members signed a letter last year requesting that Congress establish **a new special investigative committee** to conduct a thorough public re-examination of intelligence community authorities and practices, and their impact on privacy and civil liberties. While recent investigations by the Privacy and Civil Liberties Oversight Board and the President's Review Group on Intelligence and Communications Technologies are extraordinarily helpful and will undoubtedly inform this new committee's work, they focused on just a few intelligence collection programs.2 Only **a comprehensive examination** of how the multitude of intelligence [end page 3] programs, agencies, and authorities work in combination can measure the **cumulative effect** on privacy and civil liberties, ensure **compliance** with the law, and **identify waste and redundancy that undermines performance**.

We don't need to win a decisive link. If there's *any* chance that the plan imperils important counter-terrorism programs, the counterplan is a better option: it results in effective reform and oversight *without* jeopardizing national security.

Jaycox and Tien 14 – Mark Jaycox, Legislative Analyst at the Electronic Frontier Foundation, former Contributor to *ArsTechnica*, former Legislative Research Assistant for LexisNexis, holds a B.A. in Political History from Reed College, and Lee Tien, Senior Staff Attorney and Adams Chair for Internet Rights at the Electronic Frontier Foundation, holds a J.D. from the University of California-Berkeley School of Law, 2014 ("Three Hearings, Nine Hours, and One Accurate Statement: Why Congress Must Begin a Full Investigation into NSA Spying," Electronic Frontier Foundation, January 7th, Available Online at https://www.eff.org/deeplinks/2013/12/three-hearings-nine-hours-and-one-accurate-statement-why-congress-must-begin-full, Accessed 07-09-2015)

Regaining Congressional Oversight

Something is very wrong when Congress and the public learn more about the NSA's activities from newspaper leaks than from the Senate and House intelligence committees. The

committees are supposed to oversee the intelligence community activities on behalf of the public, but more often—as the New Yorker describes it—"treat[] senior intelligence officials like **matinée idols**."

It's time for Congress to **reassert its oversight role** and **begin a full-scale investigation** into the NSA's surveillance and analytic activities. The current investigations—which **aren't led by Congress**—are **unable to fully investigate the revelations**. Congressional committees' hearings have added little, and Congress cannot rely solely on mandating more reports from the NSA as a solution.

Hearings Inside Congress

So far, Senate Judiciary Committee Chair Patrick Leahy is valiantly attempting to shine more light on the NSA's activities, but the hearings have only served as venues for administration officials to parrot talking points and provide non-answers to important questions. This is very similar to what happened after the New York Times released the first reports of warrantless wiretapping in December 2005.

The hearings' ineffectiveness are shown by the fact that it took three hearings—nine hours—for Senator Leahy to clarify just how many terrorist attacks the collection of all Americans' calling records stopped. In the first hearing (July), government witnesses said the program stopped "54 terrorist attacks." By the third hearing (October)—and after much pressure by Senator Leahy—General Alexander corrected his statement: it turns out the program had only stopped "one, perhaps two" terror plots, one of which involved "material support." Aside from this, there are still two sets of questions from the hearings by Senator Richard Blumenthal and Senator Ron Wyden that the intelligence community has still left unanswered.

It shouldn't take three hearings over several months for a member of Congress to obtain accurate and understandable information from the Director of the NSA.

A Congressional Investigation is Needed

Congress must initiate a **full-scale, targeted, investigation** outside of its regular committees. Such an investigation would normally fall under Congress' intelligence or other oversight committees. But any investigation into the NSA's activities must include a review of the current Congressional oversight regime. Since the creation of the intelligence committees in 1978, there has been no external audit or examination of how the system has performed.

A review is needed when the Senate intelligence committee's own chair, Senator Dianne Feinstein, admits how extraordinary difficult it is to obtain information from the intelligence community. Members of Congress have complained that briefings are like "playing a game of 20 questions" and other members have even noted how the House intelligence committee may have neglected to pass information to members before a key vote.

Current members of Congress aren't the only ones complaining: former Vice President Walter Mondale and Senator Gary Hart—two former members of Congress who were instrumental in creating the Senate intelligence committee—have also said that the intelligence committees are not operating as they were originally intended.

Increasing Reports is a Start

So far, Congress favors increasing reporting requirements or asking for an investigation by an Inspector General (IG). Transparency bills—like bills brought by both Senator Al Franken and Representative Zoe Lofgren—are a fantastic start. But such reports won't uncover the secret law the NSA is using or the secret collection of ordinary people's information. It also won't tell us about the use of Executive Order 12333. The bills will only provide a numerical range regarding the orders the government sends, companies receive, and the number of users or accounts the orders impact.

What's worse, the Inspector General of the Intelligence Community—who reports directly to the very officials who authorized the spying—told Senators he is unable to carry out a review of the programs due to a lack of resources. And even if such an investigation were to occur, the IG is unable to even request documents without the approval of the Director of National Intelligence.

Time for a New Investigation

The NSA leaks are ushering in a new day regarding Congressional oversight of the intelligence community. And it's why Congress must dedicate the resources to **a full-scale investigation by a special committee**. Such a committee will allow Congress to delve into what other data the NSA may be collecting en masse about Americans, to learn about how the surveillance laws it passed are being used, and to inform the American public—**all while protecting national security**. It's a **tough balancing act**, but Congress

was **able to do it in the 1970s** with the Church and Pike Committees. And it should have the courage to **do it again today**.

Politics Net-Benefit

The counterplan avoids politics — it is insulated from partisanship.

German et al. 15 – Michael German, Fellow in the Liberty and National Security Program at the Brennan Center for Justice at the New York University School of Law, former Policy Counsel for National Security and Privacy for the American Civil Liberties Union Washington Legislative Office, former Adjunct Professor for Law Enforcement and Terrorism at the National Defense University, former Special Agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations, served as a Counterterrorism Instructor at the FBI National Academy, et al., co-authored and endorsed by Counsel, Advisers, and Professional Staff Members of the Church Committee including Chief Counsel Frederick A.O. Schwarz Jr., Loch Johnson, John T. Elliff, Burt Wides, Jim Dick, Frederick Baron, Joseph Dennin, Peter Fenn, Anne Karalekas, Michael Madigan, Elliot Maxwell, Gordon Rhea, Eric Richard, Athan Theoharis, and Christopher Pyle, 2015 ("Strengthening Intelligence Oversight," Report by the Brennan Center for Justice at the New York University School of Law, Available Online at https://www.brennancenter.org/sites/default/files/publications/Church_Committee_Web_REVISED.pdf, Accessed 07-09-2015, p. 14)

The success of the Church Committee holds many lessons for those that would attempt a similar undertaking today. It conducted a thorough public examination of secret intelligence operations that revealed unnecessary, flawed, and abusive activities. At the same time, it **won public support for reform** while **still protecting properly classified information** and **retaining the trust of the intelligence community**.

Certainly, many of the Committee's achievements can be attributed to the leadership of Sens. Frank Church and John Tower, who ran the investigation in a strictly bipartisan manner. Defining the scope of the investigation to include intelligence activities undertaken under the authority of presidents of both parties helped to **alleviate any claims the Committee's criticisms were partisan**.

Since the intelligence activities now under public scrutiny have spanned the terms of **two presidents of different parties**, conducting a rigorous examination **unaffected by party politics** should be **similarly achievable**.

The counterplan removes Obama from the equation — the Committee will push the plan, not the President.

There is bipartisan support for a new Church Committee. It avoids partisan fights.

German et al. 15 – Michael German, Fellow in the Liberty and National Security Program at the Brennan Center for Justice at the New York University School of Law, former Policy Counsel for National Security and Privacy for the American Civil Liberties Union Washington Legislative Office, former Adjunct Professor for Law Enforcement and Terrorism at the National Defense University, former Special Agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations, served as a Counterterrorism Instructor at the FBI National Academy, et al., co-authored and endorsed by Counsel, Advisers, and Professional Staff Members of the Church Committee including Chief Counsel Frederick A.O. Schwarz Jr., Loch Johnson, John T. Elliff, Burt Wides, Jim Dick, Frederick Baron, Joseph Dennin, Peter Fenn, Anne Karalekas, Michael Madigan, Elliot Maxwell, Gordon Rhea, Eric Richard, Athan Theoharis, and Christopher Pyle, 2015 ("Strengthening Intelligence Oversight," Report by the Brennan Center for Justice at the New York University School of Law, Available Online at https://www.brennancenter.org/sites/default/files/publications/Church_Committee_Web_REVISED.pdf, Accessed 07-09-2015, p. 20-21)

A comprehensive evaluation of U.S. intelligence activities and the effectiveness of congressional oversight is necessary to ensure compliance with law and American values. **This is not a partisan matter**. Members of **both parties** have expressed **deep concerns** about recent revelations and **joined to propose legislative controls**. Nor is it a matter of inevitable legislative-executive conflict. Over the long term, the executive branch has a great interest in having Congress, and, to the extent possible, the public,

understand what intelligence is all about — and how it may affect Americans' private lives as well as our national security.
The Church Committee was formed by a newly elected Congress at a moment when the public demanded answers. Four decades later, **2015 offers a similar opportunity** for Congress to engage seriously with the intelligence challenges of the 21st century.

This is empirically proven by the Church Committee.

German 14 – Michael German, Fellow in the Liberty and National Security Program at the Brennan Center for Justice at the New York University School of Law, former Policy Counsel for National Security and Privacy for the American Civil Liberties Union Washington Legislative Office, former Adjunct Professor for Law Enforcement and Terrorism at the National Defense University, former Special Agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations, served as a Counterterrorism Instructor at the FBI National Academy, 2014 ("The US Needs a New Church Committee," *Defense One*, December 11th, Available Online at http://www.defenseone.com/ideas/2014/12/us-needs-new-church-committee/101046/, Accessed 07-08-2015)

The Church Committee protected legitimate secrets while exposing the abusive intelligence activities that had taken place under the orders of sequential presidential administrations. The committee's caution engendered **cooperation with the agencies** amid an already **bi-partisan consensus for reform**.
In the years that followed, Congress established permanent select intelligence committees to oversee intelligence activities and passed the Foreign Intelligence Surveillance Act, which placed domestic electronic surveillance for national security purposes under judicial supervision for the first time. A legislative charter limiting the investigative powers of the FBI failed, however, after Attorney General Edward Levi issued Justice Department guidelines serving that same purpose.
While these reforms certainly didn't prevent every future intelligence abuse and overreach, there can be no doubt that they made the intelligence agencies more deliberative and accountable. The Church Committee report warned that a new national security crisis would test its recommended reforms, and the terrorist attacks of September 11, 2001 have done just that. The 2013 leaks by National Security Agency contractor Edward Snowden revealed that the intelligence committees and the FISA Court had been complicit in expanding the intelligence agencies' power to collect excessive amounts of information about Americans not suspected of any wrongdoing, shocking even members of Congress who voted on these authorities. New questions are now being asked not only about the conduct of the intelligence agencies, but the competence of the post-Church Committee oversight structures to identify and curb abuses.

2NC/1NR – Solvency

They Say: "No Solvency — CP Doesn't Pass Plan"

1. Yes, Results In Plan: if the plan is a good idea, the committee will recommend it as part of its report. This will result in a short delay, but the net-benefits outweigh.

2. Plan Doesn't Solve: investigation is needed *before* legislation to avoid circumvention. Otherwise, policy language will be lawyered — that's Bump.

3. Counterplan Deters NSA: "*anticipated reaction*" prevents future abuse even if the counterplan doesn't pass the plan.

German 14 – Michael German, Fellow in the Liberty and National Security Program at the Brennan Center for Justice at the New York University School of Law, former Policy Counsel for National Security and Privacy for the American Civil Liberties Union Washington Legislative Office, former Adjunct Professor for Law Enforcement and Terrorism at the National Defense University, former Special Agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations, served as a Counterterrorism Instructor at the FBI National Academy, 2014 ("The US Needs a New Church Committee," *Defense One*, December 11th, Available Online at http://www.defenseone.com/ideas/2014/12/us-needs-new-church-committee/101046/, Accessed 07-08-2015)

Dr. John Elliff, the Church Committee's domestic intelligence task force leader, argued that while oversight doesn't prevent errant intelligence activities — it exposes them after the fact — the resulting criticism creates **a lasting bureaucratic chilling effect that inhibits abuse**. In short, this phenomena, called "anticipated reaction" means that an agency that gets in trouble will seek to **avoid that trouble in the future**.

Elliff, who went on to serve on the Senate Intelligence and Judiciary Committees as well as in intelligence positions within the FBI, CIA and Defense Department, describes the current oversight system as "inadequate."

4. Process Trumps Policy: investigation is *more important* than the policy outcome.

German 14 – Michael German, Fellow in the Liberty and National Security Program at the Brennan Center for Justice at the New York University School of Law, former Policy Counsel for National Security and Privacy for the American Civil Liberties Union Washington Legislative Office, former Adjunct Professor for Law Enforcement and Terrorism at the National Defense University, former Special Agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations, served as a Counterterrorism Instructor at the FBI National Academy, 2014 ("The US Needs a New Church Committee," *Defense One*, December 11th, Available Online at http://www.defenseone.com/ideas/2014/12/us-needs-new-church-committee/101046/, Accessed 07-08-2015)

However, because so little is publicly known about how oversight by intelligence committees and the FISA Court work **in practice**, it is difficult to know whether fixing problems that lead to weaker congressional oversight **would really improve the results** we receive from our intelligence agencies. **Asking the questions**, then, **becomes just as important as finding solutions**. It is **more important than ever** to start evaluating what is needed to create meaningful and lasting intelligence oversight.

The U.S. has reinitiated military engagement in Iraq, and started a new one in Syria. The president and intelligence officials have acknowledged this military intervention was necessary because the intelligence agencies were slow to recognize the growing threat the Islamic State posed to the U.S. **Rigorous oversight** is essential to ensuring our intelligence agencies **operate at peak efficiency and effectiveness**.

Last year, Schwarz and Elliff joined 13 other former Church Committee staff members in calling for a new comprehensive examination of the intelligence agencies. This examination must certainly include an evaluation of how we can existing strengthen oversight structures or whether new mechanisms need to be created.

They Say: "No Solvency — CP Doesn't Pass Legislation"

1. Committee Mandate: the counterplan results in specific recommendations for legislative and regulatory changes — this is part of its mandate.

Cohn and Jaycox 13 – Cindy Cohn, Executive Director and former Legal Director and General Counsel of the Electronic Frontier Foundation, holds a J.D. from the University of Michigan Law School, and Mark Jaycox, Legislative Analyst at the Electronic Frontier Foundation, former Contributor to *ArsTechnica*, former Legislative Research Assistant for LexisNexis, holds a B.A. in Political History from Reed College, 2013 ("NSA Spying: The Three Pillars of Government Trust Have Fallen," Electronic Frontier Foundation, August 15th, Available Online at https://www.eff.org/deeplinks/2013/08/nsa-spying-three-pillars-government-trust-have-fallen, Accessed 07-09-2015)

The pattern is now clear and it's getting old. With each new revelation the government comes out with a new story for why things are really just fine, only to have that assertion demolished by the next revelation. It's time for those in government who want to rebuild the trust of the American people and others all over the world to come clean and take some **actual steps** to rein in the NSA. And if they don't, the American people and the public, adversarial courts, must force change upon it.

We still think the first step ought to be **a truly independent investigatory body** that is assigned to look into the unconstitutional spying. It must be empowered to search, read and compel documents and testimony, must be required to give a public report that only redacts sensitive operational details, and must **suggest specific legislation and regulatory changes to fix the problem**—something like the Church Committee or maybe even the 9/11 Commission. The President made a mockery of this idea recently, by initially handing control of the "independent" investigation he announced in his press conference to the man who most famously lied to Congress and the American people about the spying, the Director of National Intelligence James Clapper.

The three pillars of American trust have fallen. It's time to get a full reckoning and build a new house from the wreckage, but it has to start with some honesty.

2. Church Committee Proves: it recommended a series of reforms that Congress then implemented.

3. Trust Wyden: he will push through *meaningful reforms*. His record of challenging the intelligence agencies is unmatched.

Peterson 13 – Andrea Peterson, Technology Policy Reporter for the *Washington Post* covering cybersecurity, consumer privacy, transparency, surveillance, and open government, 2013 ("Wyden is trying to tell us something about the opinion justifying the phone records program," *The Switch*—a *Washington Post* blog, October 14th, Available Online at https://www.washingtonpost.com/blogs/the-switch/wp/2013/10/14/wyden-is-trying-to-tell-us-something-about-the-opinion-justifying-the-phone-records-program/, Accessed 07-09-2015)

As a member of the Senate Intelligence Committee, Wyden has access to more details about intelligence community activities than almost anyone not part of them carrying them out. And for years he has asked very pointed questions in public hearings, argued for declassification of significant FISA Court opinions, and introduced legislation aimed at curbing spying programs. You might remember that time just months before the NSA documents came out that one of Wyden's questions caught Director of National Intelligence James Clapper in what sounded an awful lot like a lie about if the U.S. collected any sort of data on U.S. persons. If not, we've helpfully included the video below.

[Video of James Clapper lying omitted]

Rep. Justin Amash (R-Mich.) recently called him a sort of "**congressional whistleblower**." But because of the classified nature of many of the things he is objecting to, often Wyden

has been forced to keep his warnings vague. For instance, he warned that "when the American people find out how their government has secretly interpreted the Patriot Act, they will be stunned and they will be angry," on the Senate floor in May 2011.

But there are other times his efforts have been more explicit – for instance, his repeated suggestions that Americans should be worried about the privacy of their geolocation data. Not only did he bring it up during speeches and hearings, he's introduced legislation addressing the topic for the past several years.

Wyden has been so dogged about geolocation that the NSA did finally give him some sort of on-the-record response, admitting that they ran a test program a few years ago. But he has implied that that's not a full answer, saying their response still leaves "most of the real story secret."

Considering Wyden's history of nudging the conversation toward meaningful disclosure, I'd be willing to bet there's more for us to learn about geolocation programs. Just like I'm willing to bet there's something interesting in the original FISA Court justification for the bulk collection of domestic phone records. Because if the ongoing surveillance debate is a coal mine, Wyden is **the canary for privacy issues**.

4. Yes, Votes: Democrats will line up behind Wyden — he'll get the votes.

Clift 14 – Eleanor Clift, Political Correspondent for *The Daily Beast*, 2014 ("Ron Wyden and Rand Paul, the Senate's NSA-Busting 'Ben Franklin Caucus'," *The Daily Beast*, June 14th, Available Online at http://www.thedailybeast.com/articles/2014/06/14/ron-wyden-and-rand-paul-the-senate-s-nsa-busting-ben-franklin-caucus.html, Accessed 07-09-2015)

Just as Paul's apostasy on some issues irks Republicans, Wyden's assertiveness on the NSA hasn't always been welcomed by fellow Democrats, notably Intelligence Committee Chair Dianne Feinstein. The Snowden disclosures have **moved more colleagues into his camp**.

"If Democrats could choose between Wyden and Feinstein by a secret ballot, **he would win a substantial number of votes, maybe even a majority**," says William Galston with the Brookings Institution. That's not true of Paul, who represents more of a dissident voice within Republican ranks. That could change after November if the GOP gains control of the senate.

5. Meaningful Reform: the counterplan is the only way to push through serious legislation.

Fenn 15 – Peter Fenn, Democratic Political Strategist and Head of Fenn Communications—a leading political and public affairs media firm, Adjunct Professor in the Graduate School of Political Management at George Washington University, holds an M.A. in International Relations from the University of Southern California, 2015 ("'No Place to Hide'," *U.S. News & World Report*, June 3rd, Available Online at http://www.usnews.com/opinion/blogs/peter-fenn/2015/06/03/nsa-fbi-spying-excesses-underscore-need-for-a-new-church-committee, Accessed 07-08-2015)

The Electronic Frontier Foundation and the Brennan Center for Justice at New York University School of Law are both calling for increased oversight, reform of the Foreign Intelligence Surveillance Act legislation and serious examination of the impact of the new technology on Americans' basic privacy. Section 702 of the FISA Amendments Act allows for mass surveillance of online communications, and the Electronic Frontier Foundation believes it should be curtailed.

The House and the Senate passed the new USA Freedom Act and the president signed it, but that is **only a first step**. If we are truly going to get a handle on everything from drones to detention camps to torture, as well as NSA surveillance, we need **a full investigation of our intelligence agencies** similar to the Church Committee and **serious legal and executive remedies**.

They Say: "No Solvency — CP Doesn't Solve Privacy"

1. Yes, Privacy: the counterplan results in sustainable reform that protects individual rights.

Ellsberg 13 – Daniel Ellsberg, Whistleblower who leaked the Pentagon Papers in 1971, Co-Founder of the Freedom of the Press Foundation, served as a Strategic Analyst for the RAND Corporation, holds a Ph.D. in Economics from Harvard University, 2013 ("Tell Congress: Investigate Nsa Abuses And Protect Our Constitutional Rights," Petition to Congress, Available Online at https://www.credomobilize.com/petitions/tell-congress-investigate-nsa-abuses-and-protect-our-constitutional-rights, Accessed 07-09-2015)

We need a new Church Committee that is fully empowered to investigate the abuses of the NSA and make public its findings, and that is charged with recommending new laws to ensure the U.S. government does not violate our constitutional rights.

Why is this important?

In 1975, Senator Frank Church, who led a committee charged with investigating and making public the abuses of American intelligence agencies, spoke of the National Security Agency in these terms: "I know the capacity that is there to make tyranny total in America, and we must see to it that this agency and all agencies that possess this technology operate within the law and under proper supervision, so that we never cross over that abyss. That is the abyss from which there is no return."

The dangerous prospect of which he warned was that America's intelligence-gathering capability – which is today beyond any comparison with what existed in his pre-digital era – "at any time could be turned around on the American people and no American would have any privacy left."

That has now happened. And so we need a new congressional committee like the one Senator Church led to investigate the revelations by Edward Snowden. The existing Intelligence Committees in House and Senate, gagged by secrecy and co-opted by the intelligence community they supposedly oversee, have failed to check dangerously excessive surveillance of Americans' communications.

Pressure by an informed public on Congress to form a select committee to investigate these revelations might lead us to bring the NSA and the rest of the intelligence community under real supervision and restraint and restore the protections of the Bill of Rights.

2. Wyden Proves: he's the biggest privacy defender in Congress. He'll steer the recommendations to protect civil liberties.

3. Best Balancing Act: the counterplan results in effective cost-benefit analysis that balances privacy and security. It solve the case but avoids the DA.

German et al. 15 – Michael German, Fellow in the Liberty and National Security Program at the Brennan Center for Justice at the New York University School of Law, former Policy Counsel for National Security and Privacy for the American Civil Liberties Union Washington Legislative Office, former Adjunct Professor for Law Enforcement and Terrorism at the National Defense University, former Special Agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations, served as a Counterterrorism Instructor at the FBI National Academy, et al., co-authored and endorsed by Counsel, Advisers, and Professional Staff Members of the Church Committee including Chief Counsel Frederick A.O. Schwarz Jr., Loch Johnson, John T. Elliff, Burt Wides, Jim Dick, Frederick Baron, Joseph Dennin, Peter Fenn, Anne Karalekas, Michael Madigan, Elliot Maxwell, Gordon Rhea, Eric Richard, Athan Theoharis, and Christopher Pyle, 2015 ("Strengthening Intelligence Oversight," Report by the Brennan Center for Justice at the New York University School of Law, Available Online at https://www.brennancenter.org/sites/default/files/publications/Church_Committee_Web_REVISED.pdf, Accessed 07-09-2015, p. 20-21)

The Privacy and Civil Liberties Board's report on the government's intelligence activities under the FISA Amendments Act included a recommendation that the government "should develop a comprehensive methodology for assessing the efficacy and relative value of counterterrorism programs."60 It would be improper for any government agency to operate major programs without evaluating their effectiveness, much less agencies with such important security missions. Congress must fill the void and, in consultation with the agencies, develop metrics to measure the performance of all intelligence, law enforcement, and homeland security programs. In conducting such an evaluation it is important to recognize, as the President's Review Group suggested, that **all risks** must be considered and addressed.

a. Impact on individual rights

As the Church Committee reported, most intelligence activities take place in secret, and the victim of abusive government activity may never know the source of his misfortune.61 The scope of today's mass surveillance programs threaten everyone's privacy rights by their mere existence, and potentially chill free speech and association, particularly over the Internet. The President's Review Group highlighted these concerns, identifying privacy as a "central aspect of liberty" that must be protected.62 Legislators with responsibility over intelligence, law enforcement, and homeland security programs owe a special obligation to ensure these activities do not infringe on individual rights.

b. Impact on other interests

Other important interests to protect include our relations with foreign nations. Treating allies with respect is essential, of course, but the rule of law should be our guide even when dealing with adversaries. American values should not just be something we talk about. Our actions in the international arena will set an example for other nations, so we must ensure that our actions match our words.

Congress is also responsible to ensure the taxpayers' money is spent wisely, so the financial costs of the programs must be weighed against their effectiveness. Waste, fraud, and abuse in these programs does **real harm to our security**, not just the bottom line. And spending government resources on security measures means other priorities cannot be addressed. There are also other ancillary economic consequences of intelligence activities, which U.S. tech companies are currently experiencing as a result of the global response to NSA surveillance activities.63

Government officials working in the national security field have a natural tendency to overestimate near-term threats and favor quick and decisive action to address them. As policymakers responsible for a broad range of national interests, Congress must be **more deliberative** and compel these agencies to consider the **long-term impacts** of their activities. [end page 20]

C. Cost-benefit analysis

Finally, these costs must be measured against the benefits, which are often much harder to evaluate. If an agency overestimates a potential threat, then employs expensive and intrusive means to deter it, does the fact that the threat did not materialize mean the methods were effective? After more than a dozen years of war, pervasive surveillance, infringements on liberty, as well as trillions of dollars spent and thousands of soldiers lost, can we tell if Americans are any safer or more prosperous? Congress must develop its own ability to **independently evaluate** the threats we face and the proper means to address them to ensure all the interests of the American people are being served, including the right to be free from unwarranted government interference.

They Say: "No Solvency — CP Doesn't Solve X"

* This is a blueprint for how to answer solvency deficit arguments about advantages other than privacy/civil liberties. It requires editing to apply it to particular advantages.

1. Yes, [Advantage]: the committee will take into account the importance of [the advantage] and propose recommendations based on it in their report.

2. Best Cost-Benefit Analysis: the counterplan results in more effective cost-benefit analysis that balances short- and long-term interests.

German et al. 15 – Michael German, Fellow in the Liberty and National Security Program at the Brennan Center for Justice at the New York University School of Law, former Policy Counsel for National Security and Privacy for the American Civil Liberties Union Washington Legislative Office, former Adjunct Professor for Law Enforcement and Terrorism at the National Defense University, former Special Agent with the Federal Bureau of Investigation specializing in domestic terrorism and covert operations, served as a Counterterrorism Instructor at the FBI National Academy, et al., co-authored and endorsed by Counsel, Advisers, and Professional Staff Members of the Church Committee including Chief Counsel Frederick A.O. Schwarz Jr., Loch Johnson, John T. Elliff, Burt Wides, Jim Dick, Frederick Baron, Joseph Dennin, Peter Fenn, Anne Karalekas, Michael Madigan, Elliot Maxwell, Gordon Rhea, Eric Richard, Athan Theoharis, and Christopher Pyle, 2015 ("Strengthening Intelligence Oversight," Report by the Brennan Center for Justice at the New York University School of Law, Available Online at https://www.brennancenter.org/sites/default/files/publications/Church_Committee_Web_REVISED.pdf, Accessed 07-09-2015, p. 8)

Part of Congress's oversight responsibility includes assisting the intelligence agencies in conducting this type of **pre-operational cost-benefit analysis**. Members of Congress often have **a much greater awareness of and appreciation for** the breadth of U.S. interests involved in international relations, and the patience for taking **a long-term approach** that many working in the national security and intelligence professions do **not**. Not surprisingly, given the nature of their jobs, national security officials have a tendency to view potential threats as imminent and favor action over deliberation, which is what leads to a focus on resolving **short-term problems** without appropriately considering **the long-term impact**.

They Say: "No Solvency — Delays"

1. Plan Gets Delayed, Too: even if it isn't outright circumvented, agencies will push back and delay reforms. Section 215 proves — despite the Freedom Act, NSA got a six-month extension from the FISC.

2. No Significant Delay: it won't take long to produce a report — the Church Committee proves.

Hartmann 14 – The Thom Hartmann Program—a progressive radio program, 2014 ("Is It Time for a New Church Committee?," *Truthout*, February 25th, Available Online at http://www.truth-out.org/opinion/item/22103-is-it-time-for-a-new-church-committee, Accessed 07-09-2015)

Once the Watergate scandal broke open and news of illegal intelligence gathering by government agencies began to spread, Senator Frank Church, a Democrat from Idaho, formed the Church Committee, which was tasked with investigating illegal intelligence gathering activities by the FBI, NSA, and CIA.

Between 1975 and 1976, the Church Committee published fourteen reports on intelligence gathering abuses by U.S. intelligence agencies.

In August of 1975, the Church Committee released its findings.

They Say: "No Solvency — Church Committee Failed"

The Church Committee didn't fail — FISA worked until it was gutted in 2008.

Cohn and Timm 13 – Cindy Cohn, Executive Director and former Legal Director and General Counsel of the Electronic Frontier Foundation, holds a J.D. from the University of Michigan Law School, and Trevor Timm, Activist at the Electronic Frontier Foundation, holds a J.D. from New York Law School, 2013 ("In Response to the NSA, We Need A New Church Committee and We Need It Now," Electronic Frontier Foundation, June 7th, Available Online at https://www.eff.org/deeplinks/2013/06/response-nsa-we-need-new-church-commission-and-we-need-it-now, Accessed 07-09-2015)

Following on the heels of the Guardian reporting that the NSA is collecting all US call data records of Verizon customers, the Guardian and Washington Post yesterday reported that nine of the biggest Internet companies, including Facebook, Google, Yahoo, and Microsoft, are also working with the government in a vast spying program, where a massive amount of online data flows to the NSA, all in secret.

The revelations not only confirmed what EFF has long alleged, they went even further and honestly, we're still reeling. EFF will, of course, be continuing its efforts to get this egregious situation addressed by the courts.

But one thing is clear. Congress now has a responsibility to the American people to conduct a **full, public investigation** into the domestic surveillance of Americans by the intelligence communities, whether done directly or in concert with the FBI. And it **then** has a duty to make changes in the law to stop the spying and ensure that it does not happen again.

In short, we need **a new Church Committee**.

In the mid-70s, in response to revelation that the government was engaging in systematic domestic surveillance on domestic targets—including anti-war activists, academics, and government critics like Martin Luther King Jr., John Lennon and Daniel Ellsberg—the distinguished Senator from Idaho, Frank Church, convened a Senate investigative committee that ultimately put a stop to large scale domestic spying for decades.

The Church Committee report, which can be read in full here, led to the passage of the Foreign Intelligence Surveillance Act (FISA), setting up the secret FISA court that put strict procedures in place for conducting surveillance for intelligence activities. Most importantly, following a Supreme Court ruling in 1973, FISA required an individualized, probable cause warrant for national security spying, just as the Fourth Amendment requires.

While there is much to criticize in the original FISA, it did rein in the government, and its system of checks and balances remained largely in place until shortly after September 11, 2001, when President George W. Bush first authorized a broad warrantless wiretapping program. The government decided to illegally bypass the FISA court and started warrantlessly wiretapping the communications, as well as collecting and data-mining the communications records of innocent Americans.

When a portion of the NSA warrantless surveillance was revealed by the New York Times in 2005, there was widespread outrage among the American people. Unfortunately, Congress reacted in the opposite way as the Church Committee once did. Instead of fixing the problems, they institutionalized most of them and swept the rest under the rug.

In 2008, Congress gutted the original balance of FISA with the FISA Amendments Act, which allowed the government to get court orders with less than probable cause that would target groups of people—instead of individuals, like the Constitution requires. The law also allowed the NSA to collect information on innocent Americans when they are talking to people outside the US who are targeted by the government.

But it gets worse. EFF and others had long alleged that, despite the rhetoric surrounding the Patriot Act and the FISA Amendments Act, the government was still vacuuming up the records of the purely domestic communications of millions of Americans. And yesterday, of course, with the Verizon order, we got solid proof.. And it appears that the reach of this vacuum goes much further, into the records of our Internet service providers as well.

Now it's not as if these efforts haven't been challenged. EFF has been seeking judicial review of the dragnet surveillance, both wiretapping and records collection, since 2006, facing one procedural maneuver after another by the government. The ACLU brought a strong constitutional challenge to the FISA Amendments Act that was dismissed by the Supreme Court only two months

ago for lack of "standing." The court ruled in a contentious 5-4 decision that because the ACLU couldn't prove for a "certainty" that their clients were being surveilled, they couldn't challenge the law.

Well, it turns out, the new revelations prove everything the ACLU was arguing, in addition to confirming all of the allegations in EFF's warrantless wiretapping case, Jewel v. NSA.

Of course, the evidence has been there all along. Even after the FISA Amendments Act passed, the New York Times reported in 2009 the NSA was still collecting purely domestic communications in a "significant and systematic" way after the original bill passed in 2008. And just last year, the government admitted, the secret FISA court has ruled "on at least one occasion" that the government's surveillance under the law had violated the Fourth Amendment.

That secret FISA court ruling is still classified, as are the OLC memos that supposedly give the government's best case that all this purely domestic surveillance is legal. But one has to wonder, if the FISA court "routinely" authorizes the collection of all US call data, what kind of surveillance was the NSA conducting that they couldn't approve?

Shamefully, Congress has had a chance to add provisions to both the Patriot Act and FISA Amendments Act in the last two years. In 2011, the Obama administration opposed all transparency and accountability amendments to the Patriot Act when key provisions were renewed for another five years. Just six months ago in December 2012, the administration again opposed all oversight amendments, even those more moderate than the ones he voted for as Senator in 2008.

So here's your wake up call Congress, and an opportunity to be a hero. We need a Church Committee for a new era. It could be headed by Ron Wyden and Mark Udall, the two Senators who have been trying to warn the American people about the government dangerous interpretation of the Patriot Act for years. Udall said today, he "did everything short of leaking classified information" to stop it.

But someone in Congress needs to step up and fill Frank Church's shoes. They are big ones, but EFF stands willing to help. And so, we suspect, will millions of innocent Americans whose privacy has been violated and who are ready to have their constitutional rights back.

They Say: "SQ Solves — General"

1. They can't make this argument. If oversight is effective, there shouldn't be an inherent advantage.

2. Status Quo Oversight Fails: investigations are worthless.

Jaycox 13 – Mark Jaycox, Legislative Analyst at the Electronic Frontier Foundation, former Contributor to *ArsTechnica*, former Legislative Research Assistant for LexisNexis, holds a B.A. in Political History from Reed College, 2013 ("Three Illusory 'Investigations' of the NSA Spying Are Unable to Succeed," Electronic Frontier Foundation, August 23rd, Available Online at https://www.eff.org/deeplinks/2013/08/three-illusory-investigations-nsa-spying-are-unable-succeed, Accessed 07-08-2015)

Since the revelations of confirmed National Security Agency spying in June, three different "investigations" have been announced. One by the Privacy and Civil Liberties Oversight Board (PCLOB), another by the Director of National Intelligence, Gen. James Clapper, and the third by the Senate Intelligence Committee, formally called the Senate Select Committee on Intelligence (SSCI).

All three investigations are insufficient, because they are unable to find out the full details needed to stop the government's abuse of Section 215 of the PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act. The PCLOB can only request—not require—documents from the NSA and must rely on its goodwill, while the investigation led by Gen. Clapper is led by a man who not only lied to Congress, but also oversees the spying. And the Senate Intelligence Committee—which was originally designed to effectively oversee the intelligence community—has failed time and time again. What's needed is a **new, independent, Congressional committee** to fully delve into the spying.

3. Counterplan Key: *only* the counterplan provides effective oversight.

Jaycox 13 – Mark Jaycox, Legislative Analyst at the Electronic Frontier Foundation, former Contributor to *ArsTechnica*, former Legislative Research Assistant for LexisNexis, holds a B.A. in Political History from Reed College, 2013 ("Three Illusory 'Investigations' of the NSA Spying Are Unable to Succeed," Electronic Frontier Foundation, August 23rd, Available Online at https://www.eff.org/deeplinks/2013/08/three-illusory-investigations-nsa-spying-are-unable-succeed, Accessed 07-08-2015)

A New Church Committee

All three of these investigations are destined to fail. What's needed is a **new, special, investigatory committee** to look into the abuses of by the NSA, its use of spying powers, its legal justifications, and why the intelligence committees were unable to rein in the spying. In short, we need **a contemporary Church Committee**. It's time for Congress to reassert its oversight capacity. The American public must be provided more information about the NSA's unconstitutional actions and the NSA must be held accountable. Tell your Congressperson now to join the effort.

They Say: "SQ Solves —PCLOB"

The PCLOB can't compel disclosure — it's toothless.

Jaycox 13 – Mark Jaycox, Legislative Analyst at the Electronic Frontier Foundation, former Contributor to *ArsTechnica*, former Legislative Research Assistant for LexisNexis, holds a B.A. in Political History from Reed College, 2013 ("Three Illusory 'Investigations' of the NSA Spying Are Unable to Succeed," Electronic Frontier Foundation, August 23rd, Available Online at https://www.eff.org/deeplinks/2013/08/three-illusory-investigations-nsa-spying-are-unable-succeed, Accessed 07-08-2015)

The PCLOB: Powerless to Obtain Documents

The PCLOB was created after a recommendation from the 9/11 Commission to ensure civil liberties and privacy were included in the government's surveillance and spying policies and practices.

But it languished. From 2008 until May of this year, the board was without a Chair and unable to hire staff or perform any work. It was only after the June revelations that the President asked the board to begin an investigation into the unconstitutional NSA spying. Yet even with the full board constituted, it is unable to fulfill its mission as it has no choice but to base its analysis on a steady diet of carefully crafted statements from the intelligence community.

As we explained, the board must rely on the goodwill of the NSA's director, Gen. Keith Alexander, and Gen. Clapper—two men who have repeatedly said the NSA doesn't collect information on Americans.

In order to conduct a full investigation, the PCLOB will need access to all relevant NSA, FBI, and DOJ files. But the PCLOB is unable to compel testimony or documents because Congress did not give it the same powers as a Congressional committee or independent agency. This is a major problem. If the NSA won't hand over documents to Congress, then it will certainly not give them to the PCLOB.

They Say: "SQ Solves —Clapper Task Force"

The Clapper investigation is obviously a joke.

Jaycox 13 – Mark Jaycox, Legislative Analyst at the Electronic Frontier Foundation, former Contributor to *ArsTechnica*, former Legislative Research Assistant for LexisNexis, holds a B.A. in Political History from Reed College, 2013 ("Three Illusory 'Investigations' of the NSA Spying Are Unable to Succeed," Electronic Frontier Foundation, August 23rd, Available Online at https://www.eff.org/deeplinks/2013/08/three-illusory-investigations-nsa-spying-are-unable-succeed, Accessed 07-08-2015)
The Clapper Investigation: Overseen by a Man Accused of Lying to Congress

The second investigation was announced by President Obama in a Friday afternoon news conference. The President called for the creation of an "independent" task force with "outside experts" to make sure "there absolutely is no abuse in terms of how these surveillance technologies are used." Less than two days later, the White House followed up with a press release announcing the task force would be led by Gen. Clapper and would also report to him. What's even worse: the task force was not tasked with looking at any abuse. It was told to focus on how to "protect our national security and advance our foreign policy." And just this week, ABC News reported the task force will be full of Washington insiders—not "outside experts." For instance, one has advocated the Department of Homeland Security be allowed to scan all Internet traffic going in and out of the US. And another, while a noted legal scholar on regulatory issues, has written a paper about government campaigns to infiltrate online groups and activists. In one good act, the White House selected Peter Swire to be on the task force. Swire is a professor at Georgia Tech and has served as the White House's first ever Chief Privacy Officer. Recently, he signed an amicus brief in a case against the NSA spying by the Electronic Privacy Information Center arguing that the NSA's telephony metadata program is illegal under Section 215 of the PATRIOT Act. Despite this, and at the end of the day, a task force led by General Clapper full of insiders—and not directed to look at the extensive abuse—will never get at the bottom of the unconstitutional spying.

They Say: "SQ Solves —Intelligence Committees"

Oversight by the Senate Intelligence Committee has failed — the counterplan is needed.

Jaycox 13 – Mark Jaycox, Legislative Analyst at the Electronic Frontier Foundation, former Contributor to *ArsTechnica*, former Legislative Research Assistant for LexisNexis, holds a B.A. in Political History from Reed College, 2013 ("Three Illusory 'Investigations' of the NSA Spying Are Unable to Succeed," Electronic Frontier Foundation, August 23rd, Available Online at https://www.eff.org/deeplinks/2013/08/three-illusory-investigations-nsa-spying-are-unable-succeed, Accessed 07-08-2015)

The Senate Intelligence Committee Has Already Failed

The last "investigation" occurring is a "review" led by the Senate Intelligence Committee overseeing the intelligence community. But time and time again the committee has failed at providing any semblance of oversight. First, the chair and ranking member of the committee, Senators Dianne Feinstein (CA) and Saxby Chambliss (GA), respectively, are stalwart defenders of the NSA and its spying activities. They have both justified the spying, brushed aside any complaints, and denied any ideas of abuse by the NSA.

Besides defending the intelligence community, the committee leadership have utterly failed in oversight – the reason why the Senate Intelligence Committee was originally created by the Church Committee. As was revealed last week, Senator Feinstein was not shown or even told about the thousands of violations of the spying programs in NSA audits of the programs. This is in direct contradiction to her statements touting the "robust" oversight of the Intelligence Committee. Lastly, the committee is prone to secrets and hiding behind closed doors: this year, the Senate Intelligence Committee has met publicly only twice. What's clear is that the Intelligence Committee has been unable to carry out its oversight role and fresh eyes are needed to protect the American people from the abuses of the NSA.

2NC/1NR – Theory/Competition

They Say: "Permute — Do CP"

1. This severs the whole plan. The counterplan establishes a committee and tasks it with producing a report; it doesn't implement the plan. The counterplan might *eventually result in* the plan, but that's an *effect*—not a *mandate*.

2. Reject severance permutations — they evade clash and undermine comparative policy analysis. Requiring a stable advocacy protects neg ground and creates more productive debates.

They Say: "Permute — Do Both"

( ) Links to Politics: the immediate fight over the plan drains Obama's political capital. The Committee Report can't shield the link before it exists.

( ) Links to Terrorism: immediate passage of the plan before the Wyden Committee's review jeopardizes national security. Only comprehensive review of intelligence programs enables holistic, informed legislative action. Even if they're right that the plan isn't key to counter-terrorism, don't take the risk: waiting for the Committee's report is a small price to pay for national security.

( ) Doesn't Restore Trust: the counterplan *alone* is key to rebuild public trust because it reassures the public that Congress has the intelligence agencies under control. The permutation creates the perception of confusion and chaos: passing the plan *before* the Wyden Committee has a chance to investigate doesn't make sense.

( ) Sequencing DA: investigation *before* legislation is crucial to effective implementation of surveillance reforms. The plan and permutation will be circumvented; the counterplan *alone* is the only way to write policy language that sticks — that's Bump. A consensus of experts agrees.

Marczak 13 – Trisha Marczak, Reporter for *Mint Press News*, 2013 ("New Petition Website Calls For Congressional Investigation Of NSA Surveillance Program," *Mint Press News*, June 11th, Available Online at http://www.mintpressnews.com/petition-website-launches-calling-for-congressional-investigation-of-nsa-surveillance-program/, Accessed 07-09-2015)

A coalition of **85 technology companies, organizations and privacy advocates** — including the American Civil Liberties Union and the Electronic Frontier Foundation — is launching a website Tuesday calling for a special congressional committee to investigate the National Security Agency's secret surveillance program.

Sina Khanifar, participating advocate and founder of FixtheDMCA.org, told Mint Press News in a statement that the "Stop Watching Us" movement is intended to push the government to create **an investigative Congressional body** similar to the Church Committee, which was formed to investigate the Watergate scandal in the 1970s.

"As it stands, **we simply don't know the scope** of the NSA's surveillance programs," he said. "Greater transparency is **critical**."

( ) No Net-Benefit: singular reforms like the plan don't solve without a comprehensive overhaul.

Rumold 13 – Mark Rumold, Staff Attorney at the Electronic Frontier Foundation, quoted in an article by Rainey Reitman, 2013 ("86 Civil Liberties Groups and Internet Companies Demand an End to NSA Spying," Electronic Frontier Foundation, June 10th, Available Online at https://www.eff.org/deeplinks/2013/06/86-civil-liberties-groups-and-internet-companies-demand-end-nsa-spying, Accessed 07-09-2015)

As Mark Rumold, a staff attorney at the Electronic Frontier Foundation who focuses on government transparency and national security, says, "Now is the time for Congress to act. **We don't need a narrow fix to one part of the PATRIOT Act**; we need **a full public accounting** of how the United States is turning sophisticated spying technology on its own citizens, we need accountability from public

officials, and we need **an overhaul of the laws** to ensure these abuses **can never happen again**."

( ) Credibility DA: the permutation makes the Committee look like a puppet by spoiling its report with preemptive legislation.

Westby 12 – Jody Westby, Chief Executive Officer of Global Cyber Risk—a consulting firm specializing in privacy, security, cybercrime, and IT governance, Adjunct Professor in the School of Computer Science at the Georgia Institute of Technology, Distinguished Fellow for Carnegie Mellon University's CyLab, Chair of the American Bar Association's Privacy & Computer Crime Committee, former Co-Chair of the World Federation of Scientists' Permanent Monitoring Panel on Information Security, holds a J.D. from Georgetown University Law School, 2012 ("The Sheep Stop Here: Another Church Committee or Full Review of Privacy Laws Needed?," *Forbes*, September 20th, Available Online at http://www.forbes.com/sites/jodywestby/2012/09/20/the-sheep-stop-here-another-church-committee-or-full-review-of-privacy-laws-needed/2/, Accessed 07-09-2015)

A **full Congressional review** of privacy laws and intelligence community practices is needed so **informed decisions** can be made going forward and any violations of rights or laws can be addressed. Steven Aftergood, head of the Federation of American Scientists' Project on Government Secrecy notes that, "Mr. Binney and his colleagues raise compelling questions that deserve an answer; it is up to Congress to assert itself and represent the public interest in getting to the bottom of these tough questions. This is what we have oversight for." Of course, the process by which such a review is conducted — whether by Congressional Committee or another less formal means of review — is critical. Lee Tien, Senior Staff Attorney for EFF, noted that, "Such a review **could not be a whitewash**; it **cannot be conducted by puppets** or **so redacted that it is meaningless**."

Those who protest against such a review have a hard climb. If all is proceeding according to law, then **there is nothing to hide** and **prior justifications will be vindicated**. And we will not need to count sheep to get to sleep.

They Say: "CP Theoretically Illegitimate"

( ) Not Plan-Inclusive: even if could result in the plan, the counterplan doesn't "steal the aff." Our evidence proves that implementing the plan as a standalone policy and recommending the plan as part of a Committee Report are distinct policy options. The counterplan never "fiats" the plan.

( ) Core Neg Ground: it's a core reform proposal with several qualified solvency advocates. Even if *some* commission counterplans are illegitimate, *this* one boosts topic knowledge, tests the desirability of the plan, and is crucial to neg ground.