# 1AC

### Plan

#### The Judicial Branch of the United States federal government should substantially reduce national security restrictions on the production of wind power, holding that the Committee on Foreign Investment in the United States’ ruling against the Ralls Corporation’s production of wind power violates the Administrative Procedures Act.

### FDI Advantage

#### Ralls case will deter future investment

Jalinous & Brewster 12

(Farhad, Partner in the firm’s National Security/CFIUS Practice Group & experience includes negotiating some of the most complex and sensitive national security agreements approved by the U.S. government & Chris, serves as Counsel in Kaye Scholer’s Washington, DC office, member of both the National Security/CFIUS Group, represents foreign and domestic clients in acquisitions that may affect U.S. national security; helps foreign- owned clients acquire and maintain security clearances; and advises on compliance with U.S. trade sanctions and embargoes; “Ralls Litigation Challenges Authority of US Committee on Foreign Investment in the United States (CFIUS),”China Legal Review 9/27/12 – Kurr)

Seventh, whether or not President Obama vetoes this transaction, and whether or not the District Court elects to decide the declaratory judgment action before her, the Ralls case may have the salient benefit of (a) forewarning future investors against avoiding CFIUS review on transactions that have national security implications, and (b) forewarning CFIUS itself that it can and may be called to account if it overreaches. The truth is that there are no real guideposts for CFIUS as it construct mitigation orders, and the secrecy within which the Committee must operate (not only reasons of national security but also because transactions often involve publicly traded companies and highly sensitive financial information) makes it difficult, if not impossible, for the Committee to benefit from constructive criticism of its practices. Ralls fairly asks how hard CFIUS should be asked to try at mitigation measures before it opts for divestment. All of these issues merit scrutiny, and are likely to be the subject of discussion and debate long after the Ralls case is resolved.

#### The decision deters US investment abroad

Hamilton and Quinlan 06

(Daniel, and Joseph, June, Protecting Our Prosperity Ensuring Both National Security and the Benefits of Foreign Investment in the United States, National Foundation for American Policy, online – Kurr)

Sixth, what goes around comes around. Restrictions on foreign investors in the U.S. are likely to ¶ hit U.S. investors abroad.¶ 36¶ Many nations are currently considering changes to their own investment ¶ rules, and are looking closely at the U.S. debate as a point of orientation. The European Union, for ¶ instance, is embroiled in its own foreign investment debate as France, Poland and Spain seek to check ¶ intra-European investments by their own EU fellow-members. French Prime Minister Dominique de ¶ Villepin is working to restrict foreign investment in eleven “strategic” sectors, including yogurt and casinos. ¶ Spain is taking action to prevent a German company from acquiring a Spanish energy company. Poland ¶ is taking action to block a number of Italian acquisitions of Polish companies. Canada is considering ¶ similar legislation to that of the United States. China continues to restrict investment in a number of ¶ important sectors, and Russia is considering additional restrictions, particularly in so-called “strategic” ¶ areas such as energy. In 2005 Indian telecom company Videsh Sanchar Nigam Ltd. agreed to a range of ¶ U.S. government-imposed management and shareholder restrictions when it acquired Tyco International ¶ Ltd’s fiber-optic cable unit. VSNL then pushed the Indian government to apply similar restrictions on U.S. ¶ and other investors entering the Indian telecom market.¶ 37¶ In short, efforts to target foreign firms here may ¶ wind up hitting American firms abroad.

#### Also, it chills future Chinese investment in the US

Alden 10/15/12

(Edward, Bernard L. Schwartz senior fellow at the Council on Foreign Relations (CFR), specializing in U.S. economic competitiveness, “Obama Slapdown on Chinese Wind Deal Sends Wrong Message” <http://chinausfocus.com/foreign-policy/obama-slapdown-on-chinese-wind-deal-sends-wrong-message/>, SEH)

President Obama has become the first president in 22 years to issue a formal order blocking a foreign investment into the United States on national security grounds. The decision, which denies the acquisition of a small Oregon wind farm project by a Chinese-owned company, will unfortunately be seen as yet another signal – this time from the highest possible level — that the United States does not really want Chinese investment. And for an economy still struggling to create jobs, that’s the wrong signal to send.¶ The action by Obama is the first presidential rejection of a foreign acquisition on security grounds since President George H.W. Bush blocked a Chinese aerospace company from acquiring Mamco, a Seattle maker of aerospace components. While many other potential transactions not involving Chinese companies have been withdrawn as a result of U.S. government security concerns, the formal decision by President Obama will reinforce Chinese fears that their acquisitions in the United States face an unfairly high level of scrutiny.¶ As David Marchick of the Carlyle Group wrote in a Renewing America Policy Innovation Memorandum earlier this year, “many Chinese executives believe the United States is unwelcoming of Chinese investment, even though the vast majority of Chinese investments in the United States have either been approved or have not required any approval.” The president's decision will be yet another case to add to the political firestorm that ended the Chinese National Offshore Oil Corporation's (CNOOC) effort to acquire Unocal Oil Company in 2005, or the brick wall that has greeted telecom giant Huawei’s U.S. acquisition bids.¶ The timing could hardly be worse, coming just as Chinese reluctance to enter the U.S. market seemed to have ended. Indeed, the Obama administration has tried hard to lay out the welcome mat, aware of the potential economic benefits of expanded Chinese investment. According to the Rhodium Group, Chinese investment in the United States has surged in the past three years, though from a very small base. Over the past two years, there have been roughly 100 deals worth some $5 billion, compared with an annual average of just 30 deals worth $500 million prior to 2009. In the first six month of 2012, another $3.6 billion in deals were closed, including several large acquisitions such as Sinopec’s purchase of shale gas producer Devon Energy and more recently the purchase of AMC Entertainment by Dalian Wanda, the Chinese media conglomerate.¶ According to Rhodium, U.S. affiliates of Chinese-owned companies had 27,000 employees in 2011, up from just 10,000 five years ago. If the current pace continues, Chinese investment would likely create 200,000 to 400,000 U.S. jobs by 2020.¶ The particulars of the president’s decision will probably not matter in how it is perceived. It will certainly be hard to explain just exactly how Chinese ownership of a tiny Oregon wind farm poses any national security threat. Based on claims made through a rare lawsuit, the Treasury-led, inter-agency group that reviews foreign investment on security grounds – known as the Committee on Foreign Investment in the U.S. (CFIUS) – appears to have behaved in a particularly heavy-handed way.¶ The land that was acquired by Ralls, the Chinese buyer, is near a U.S. Navy base that is used as a training site for low-level military aircraft and weapons. According to the court papers filed by Ralls, the company had already agreed at the Navy’s request earlier this year to move part of the wind farm to a new location. But then CFIUS in July abruptly ordered the company to halt all construction on the property and barred Ralls from any further access to the site. It also effectively blocked the company from selling the property to another buyer more to CFIUS's liking.¶ More details may emerge that help explain the president’s action (or may not given the secretive nature of CFIUS). But it's clear that the whole business has been handled abysmally. If the location of the wind farm did indeed pose real security concerns, the U.S. government should have worked quietly with the company to help it find a reasonable way to divest. The transaction was far too small and inconsequential to have risen to the level it did.¶ Instead, by forcing a presidential action, it becomes a big, public slapdown to another Chinese company. That is not in the economic interests of a country – the United States – that needs all the foreign investment it can get.

#### FDI solves war - 4 reasons

Lee and Mitchell 2010

Hoon, Dept of Political Science – Texas Tech, and Sarah, Dept of Political Science – University of Iowa, Foreign Direct Investment and Territorial Disputes

Theoretical arguments relating FDI to interstate conflict can be categorized into¶ three broad perspectives. The first perspective asserts that FDI provides more information to states about their opponents’ capabilities and resolve and mitigates asymmetries of privately held information in dyadic bargaining (Gartzke, Li, and¶ Boehmer 2001; Gartzke and Li 2003). A second theoretical position asserts that FDI¶ increases the opportunity costs of conflict and encourages more peaceful foreign¶ policy practices (Souva 2002; Souva and Prins 2006). A third theoretical perspective¶ treats FDI as a mechanism for states to peacefully extract wealth from other countries, as opposed to extraction of resources through military conquest (Brooks 1999;¶ Rosecrance 1999).¶ Although FDI is believed to make states less likely to engage in conquest of other¶ states’ territories, few studies directly test the relationship between FDI and territorial¶ disputes. Gartzke (2006) finds that economic development increases states’ abilities¶ to fight conflicts at greater distances, while at the same time decreasing the propensity¶ for neighbors to engage in border conflicts. However, this study does not track the¶ dynamic process of territorial conflict, which is problematic considering that over half¶ of all territorial claims never experience any militarized disputes (Hensel et al. 2008).¶ Another inconsistency in the FDI–conflict literature is the assumption that¶ conflict creates opportunity costs for future investments or trade. However, there¶ is little evidence that military conflict is harmful to states’ ability to attract FDI¶ from outside investors. Some studies find that military conflict has no¶ significant effect on FDI flows (Li 2006b; Lee 2008; Li and Vashchilko¶ 2010), although US investors appear sensitive to the presence of conflict¶ (Biglaiser and DeRouen 2007). By examining the effect of FDI on the onset¶ of new border disputes, the management of preexisting disputes, and the interaction between FDI and prior conflict, we can more clearly evaluate the¶ opportunity costs assumption.¶ Scholars in international relations have focused on the process or steps to war,¶ from lower levels of disagreement to higher levels of military conflict. The¶ steps-to-war model (Vasquez 1993) is based on the assumption that war stems¶ from a long-term process of conflict escalation. Few empirical studies examining the FDI–conflict relationship focus on the dynamics of conflict processes.¶ By studying contested issues from their diplomatic beginnings to their violent¶ endings, we can test the varied roles of FDI at different stages of issue conflict¶ more fully. Theory¶ We embed our theory in the work on territorial issues (Vasquez 1993; Huth and¶ Allee 2002; Senese and Vasquez 2008; Hensel et al. 2008). Territorial claims have¶ been shown to be one of the most important causes of militarized dispute onset and¶ escalation to interstate war (Vasquez 1993, 1995; Huth 1996; Hensel 1996,¶ 2001; Huth 1996; Huth and Allee 2002; Hensel and Mitchell 2005; Senese¶ 2005; Senese and Vasquez 2003, 2008). While conflict scholars show that contiguity is an important predictor of militarized conflict (Bremer 1992), research¶ on territorial issues demonstrates why contested borders are dangerous. Border¶ issues that remain unresolved are more likely to lead states down the steps to¶ war, while contiguous states with mutually accepted borders are less likely to¶ fight each other. Realpolitik strategies of arms buildups, repeated crises, alliance¶ formation, and hawkish foreign policies significantly increase the chances that a¶ territorial dispute will result in interstate war (Vasquez 1993, 1995; Senese and¶ Vasquez 2003, 2008).¶ These patterns have also been observed in a broader set of geopolitical issues,¶ including contestation over maritime areas and cross-border rivers. Hensel et al.¶ (2008) find that territorial, maritime, and river issues are more likely to result in militarized disputes if the contested stakes are more salient to the opposing sides. Prior¶ militarization and power parity increase the risks of militarized dispute onset for all¶ three types of geopolitical disputes. By expanding our focus beyond land borders to¶ water borders, we have access to a richer set of data for evaluating the effect of FDI¶ on interstate conflict and cooperation.¶ We present our theoretical framework relating FDI to the onset and management¶ of geopolitical issue claims in Figure 1. A new issue claim begins when one state¶ challenges another state’s rights over a land or water area. Once an issue claim is¶ underway, states can employ either militarized or peaceful tools to pursue their¶ issue-related goals or do nothing and maintain the status quo. These strategies are¶ not mutually exclusive, as states often pursue both diplomatic and militarized solutions to interstate issues simultaneously. Next, we show how monadic, dyadic, and¶ systemic FDI influence states’ actions in the dynamic process of interstate competition over issues.

#### Without foreign investment China’s economy collapses- dollar trap

Lemoine 13

(Françoise Lemoine, Senior economist with the CEPII (Paris), 1/12/13 Economic Change and Restructuring January 2013 From foreign trade to international investment: a new step in China’s integration with the world economy

The rise of China’s investment abroad follows a well-known model according to¶ which a developing country is, in a ﬁrst stage, mainly a host country for foreign¶ investment. As the country is opening up and records high growth rates, foreign¶ capital ﬂows in. In a second stage, when the country gets richer and its companies¶ become stronger, the outward investment takes off. At this stage, the country is both¶ an exporter and an importer of capital. In a third stage, its investment abroad¶ overtakes the inward investment.¶ In the 2000s, macroeconomic factors have come at the forefront among the¶ reasons for encouraging Chinese direct investment abroad. China has accumulated¶ huge foreign currency reserves, as a result of its large current account surpluses¶ combined with big inﬂows of foreign capital and with the government control over¶ the appreciation of the renminbi.¶ Foreign exchange reserves increased from US$ 620 billion in 2004 to US$¶ 3,300 billion in 2011. This is a very high proportion of China’s GDP (45 %) and¶ also a large share of global foreign exchange reserves (30 % in 2010). The Central¶ Bank, through its State Administration of Foreign Exchange (SAFE), has put most¶ of them in US dollars holdings (70 %) and half of them in US government securities¶ (US$ 1,726 billion at mid-2011). China has displaced Japan as the ﬁrst foreign¶ creditor of the US government. China’s holdings in Euros are estimated at about¶ US$ 700 billion. The composition of its foreign assets makes China vulnerable to¶ exchange rate ﬂuctuations and to credit risks on sovereign debt. This also implies¶ opportunity costs since the return on foreign government debts are low. Moreover,¶ as the renminbi tends to appreciate in the long run, this translates into capital losses. In letting more capital ﬂow out of the country, the Chinese government intends to¶ decelerate the growth of its foreign exchanges reserves, or even to slowly diminish¶ its level, in order to get out of the ‘‘dollar trap’’ (as well as of the ‘‘Euro trap’’).¶ As the Chinese corporations expand their investment abroad, the country’s¶ external assets will diversify over time. In the composition of its external assets, the¶ share of ofﬁcial holdings will be reduced and the share of foreign assets owned by¶ Chinese corporations will increase. Given the size of Chinese external assets, this¶ would have a major impact on the world economy (Huang 2012).

#### Chinese economic collapse cause nuclear war

Yee 2 — Professor of Politics and International Relations at the Hong Kong Baptist University and Storey, Lecturer in Defence Studies at Deakin University, (Herbert Yee, Professor of Politics and International Relations at the Hong Kong Baptist University and Ian Storey, Lecturer in Defence Studies at Deakin University, 2002, “The China Threat: Perceptions, Myths and Reality,” p5)

The fourth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in territorial fragmentation, civil war and waves of refugees pouring into neighbouring countries. Naturally, any or all of these scenarios would have a profoundly negative impact on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialisation and pollution. These problems are putting a strain on the central government's ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China's neighbours. A fragmented China could also result in another nightmare scenario - nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords.2 From this perspective, a disintegrating China would also pose a threat to its neighbours and the world.

#### Scenario B- is a Trade War

#### Ralls decision risks a trade war with China

South China Morning Post 12

(“US should not politicise trade with China in ZTE and Huawei issue” http://www.scmp.com/comment/insight-opinion/article/1058195/us-should-not-politicise-trade-china-zte-and-huawei-issue)

Little is as damaging for a company's value and overseas expansion plans as to be singled out by a government for criticism. When it is a Chinese firm being taken to task by the world's most powerful economy, the US, and the concern is state-sponsored espionage, the matter instantly moves from business to the realm of trade and politics. The claim has been levelled at two of the biggest telecommunications equipment makers, Huawei and ZTE, just weeks after Ralls Corp was prevented by President Barack Obama from building wind farms near a military base. In the absence of evidence, we can only make assumptions - and with the American presidential election looming, political point-scoring and protectionism are immediate suspicions.

Obama and challenger Mitt Romney have often mentioned China on the campaign trail, accusing it of unfair trade practices. Twice in the past three months, the president has filed trade complaints against Chinese companies. In such an environment, his decision last month to back the Committee on Foreign Investments in the United States' recommendation to bar Ralls from acquiring four wind farms on security grounds seemed unsurprising. The latest cases appear headed for the panel after the release of the House of Representatives intelligence committee's report.

Huawei and ZTE have struck deals in dozens of countries without problems. Economic espionage is a commonly heard accusation that is rarely substantiated. It is a serious allegation, yet no charges have been filed. The rebuttals made would seem justified: that the report is political, its intention being to block competition and stymie the growth of Chinese companies.

The last time a US president blocked foreign investment in an American company was in 1990 and that also involved a Chinese firm. That was in the wake of the Tiananmen killings, but perceptions have been shifting thanks to diplomacy, trade, investment, contact and co-operation. It is disappointing that the US and Obama are acting as if nothing has changed.

Chinese companies thinking of investing in the US, particularly state-owned firms, have to clearly spell out business intentions and strategies. In a world of globalised trade, though, there is no room for protectionism. Allegations like those made can easily have serious consequences with long-lasting effects. They can breed nationalism, prompt a trade war and send diplomatic ties into a tailspin. This is not what China, the US or the world needs.

#### US-China trade war escalates to military conflict

Landy 7

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The greatest threat for the 21st century is that these economic flare-ups between the US and China will not be contained, but might spill over into the realm of military aggression between these two world powers. Economic conflict breeds military conflict. The stakes of trade override the ideological power of the Taiwan issue. China’s ability to continue growing at a rapid rate takes precedence, since there can be no sovereignty for China without economic growth. The United States’ role as the world’s superpower is dependent on its ability to lead economically. As many of you will know from reading this blog, I do not believe that war between the US and China is imminent, or a foregone conclusion in the future. I certainly do not hope for war. But I have little doubt that protectionist policies on both sides greatly increase the likelihood of conflict–far more than increases in military budgets and anti-satellite tests.

#### Escalation is likely – misperception and miscalc

Stares 11

(Council on Foreign Relations Senior Fellow for Conflict Prevention and Director of the Center for Preventive Action, 11 (Paul B., September, “Managing Instability on China’s Periphery,”<http://www.cfr.org/china/managing-instability-chinas-periphery/p25838>, pages7-8, accessed 10-10-11)

Crises are inherently volatile events. Misinformation, miscommunication,¶ and misunderstanding can all play a part in driving principal¶ actors to move in unpredictable and sometimes undesirable directions.¶ Decision-makers can also be exposed to domestic pressures that¶ coalesce suddenly to limit their room for maneuver or ability to compromise.¶ 13 Certain policy options can, as a consequence, gain almost¶ irresistible momentum to produce outcomes that might have seemed¶ before the crisis to be wholly improbable based on prior behavior or¶ rational expectations of the national interest.14¶ Senior officials in both China and the United States are sensitive to¶ the risks inherent in major crises. As a result, they have pursued highlevel¶ dialogues to better understand each other’s interests and concerns.¶ The resultant U.S.-China Strategic and Economic Dialogue (S&ED) is¶ now a regular event on both countries’ diplomatic calendars. The scope¶ 8 Managing Instability on China’s Periphery¶ of these talks has also steadily expanded since their inception through¶ the addition of a security dialogue as well as sub-dialogues on Africa,¶ Latin America, South Asia, Central Asia, nonproliferation, climate¶ change, and counterterrorism, among other issues. These discussions¶ are invaluable, but a broader range of initiatives are also necessary to¶ lessen the likelihood of serious crises arising and to manage the associated¶ risks when they do. While some of these efforts can be done jointly,¶ others will happen unilaterally but in a mutually supportive way.

### APA Advantage

#### Advantage two is APA

#### Ruling on APA grounds key to administrative law

Stewart 05

(Richard B Stewart University Professor and John E. Sexton Professor of Law, New York University. “The Emergence of Global Administrative Law: Article: U.S. Administrative Law: A Model for Global Administrative Law?” 2005 <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1362&context=lcp&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fhl%3Den%26q%3DThe%2BEmergence%2Bof%2BGlobal%2BAdministrative%2BLaw%253A%2BArticle%253A%2BU.S.%2BAdministrative%2BLaw%253A%2BA%2BModel%2Bfor%2BGlobal%2BAdministrative%2BLaw%26btnG%3D%26as_sdt%3D1%252C44%26as_sdtp%3D#search=%22Emergence%20Global%20Administrative%20Law%3A%20Article%3A%20U.S.%20Administrative%20Law%3A%20Model%20Global%20Administrative%20Law%22>)

In the United States and other liberal democratic industrialized nations, ¶ administrative regulation is itself regulated by administrative law. It defines the ¶ structural position of administrative agencies within the governmental system, ¶ specifies the decisional procedures that they must follow, and determines the ¶ availability and scope of review of their actions by the independent judiciary. It ¶ furnishes a common set of principles and procedures that cut horizontally ¶ across the many different substantive fields of administration and regulation. In ¶ the United States, the system of federal administrative law has evolved significantly over the past forty years.¶ 35¶ A. Basic Elements of U.S. Federal Administrative Law ¶ The system of administration in the United States, like that in many European and other nations, has certain structural elements that are fundamental: ¶ (1) an elected legislative body that enacts statutes and delegates their implementation to executive officials; (2) an administrative body—a discrete, responsible decisionmaking entity, subordinate to and deriving authority from the legislature, that implements the relevant law through adjudication, rulemaking, or ¶ other forms of administrative decision; (3) an independent court or a tribunal ¶ that reviews the agency decisions for conformance with the terms of the statutory delegation and other applicable legal requirements; and (4) decisional ¶ transparency including public access to government records.¶ 36¶ The four basic components of U.S. federal administrative law are contained ¶ in the Administrative Procedure Act (APA): procedural requirements for ¶ agency decisionmaking, threshold requirements for the availability of judicial ¶ review, principles defining the scope of judicial review, and provisions regarding ¶ public access to agency information.¶ 37 The APA provides two basic types of procedures for agency decisionmaking: notice and comment rulemaking, and formal adjudication through trial- ¶ type hearings. These procedures generate an administrative record that serves ¶ as the exclusive basis for agency decision and judicial review. They, together ¶ with the Freedom of Information Act, provide transparency by generating extensive, publicly available records of the factual, analytic, and policy positions ¶ of the agency and of outside parties as well as the basis for the agency’s decision.¶ 38¶ The APA authorizes courts to review four basic types of issues: the ¶ agency’s compliance with applicable procedural requirements; the sufficiency of ¶ the record evidence to support agency factual determinations; whether the ¶ agency’s action is in conformity with applicable constitutional and statutory authorizations, requirements, and limitations, and other applicable law; and ¶ whether the agency’s exercise of discretion pursuant to governing law is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with ¶ law.”¶ 39¶ B. The Traditional Model of Administrative Law and Subsequent Developments ¶ The core of administrative law in the United States has focused on securing ¶ the rule of law, respecting private rights, and protecting the liberty and property ¶ of citizens by ensuring, through procedural requirements and judicial review, ¶ that agencies act within constitutional limitations and the bounds of the statutory authority delegated by the legislature.¶ 40¶ The traditional subject of administrative law is government issuance or enforcement of an order imposing regulatory requirements or liabilities on a specific person. Here the function of administrative law is primarily negative: to prevent unlawful or arbitrary administrative exercise of coercive power against private persons. This is to ensure accountability for the legality of administrative decisions. This function is rooted ¶ in principles of democratic self-government: the liberty or property of citizens ¶ should be subject to restriction by government only when the citizenry has authorized such restrictions through the processes of electoral representation and ¶ subject to the constitutional limitations and procedures adopted by the citizenry.¶ 41¶ In recent decades, U.S. administrative law has assumed a broader scope and ¶ function through the development of an interest-representation model of administrative law. It has developed new and more inclusive procedural require-ments and has promoted transparency in administrative decisionmaking, including rulemaking. It has expanded the right to participate in agency decisionmaking procedures and the scope of judicial review to include a broad range of affected social and economic interests beyond those regulated. The scope of judicial review has been expanded to include, in addition, substantial review of ¶ agencies’ exercise of policy discretion. Here administrative law has assumed ¶ the affirmative task of ensuring that regulatory agencies exercise their policymaking discretion in a manner that is informed and responsive to the wide ¶ range of social and economic interests and values affected by their decisions, ¶ including the beneficiaries of regulatory programs as well as those subject to ¶ regulatory controls and sanctions.¶ 42¶ The functions of administrative law go beyond the core of ensuring legal accountability to the broader goal of promoting ¶ responsiveness and securing accountability to social interests and values. ¶ The interest representation model implicitly recognizes the inherent limitations of an administrative law limited to a conception of democracy based solely ¶ on electoral representation. The extent of power exercised by administrative ¶ agencies and the breadth of the discretion that they enjoy under many statutory ¶ delegations means that the system of electoral representation can afford only a ¶ limited degree of accountability for their decisions. Broad statutory delegations ¶ enable agencies to escape any such tight agent-principal link and leave them ¶ with a large residual discretion that, on the traditional model, is not legally accountable. The interest-representation model seeks to fill this gap by creating a ¶ surrogate process of representation through legal procedures rather than ¶ through electoral mechanisms and to expand the scope of judicial review to include close scrutiny of agency exercises of discretion. Because of the heavy ¶ emphasis placed by reviewing courts on the requirement that agencies address ¶ and respond to the material submissions of all participating interests and provide a reasoned justification for the balance struck among them, this aspect of ¶ administrative law reflects a deliberative conception of democracy. ¶ The judiciary is the vital cockpit in administering this conception. For example, in applying the “arbitrary and capricious” standard of review of agency ¶ discretion, the courts do not substitute their own judgment regarding sound policy for those of the agency. Instead, they seek to promote a form of dialogic ¶ rationality in the administrative process by requiring the agency to articulate ¶ and justify its exercises of power by reference to legally relevant public norms ¶ invoked by outside parties and the agency itself, and by examining the sufficiency of the agencies’ responses to the data, analysis, and comments submitted ¶ by outside parties and the justifications that it gives for its policy choices.

#### That gets modeled globally

Aman 99

(Alfred Aman Dean and Professor of Law, Indiana University School of Law-Bloomington. “Globalization and the U.S. Administrative Procedures Act: Furthering Democracy and the Global Public Interest” *Global Legal Studies Journal* http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1157&context=ijgls&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3D%2522As%2BI%2Bhave%2Bargued%2Babove%252C%2Bthe%2Bglobalizing%2B%2522%2B%2522policy%2Bthat%2Bis%2Bmeaningful%2Bon%2Bthe%2Bglobal%2Blevel.%2522%26btnG%3D%26hl%3Den%26as\_sdt%3D0%252C44%26as\_ylo%3D1999%26as\_yhi%3D1999#search=%22As%20have%20argued%20above%2C%20globalizing%20%20policy%20meaningful%20global%20level.%22)

As I have argued above, the globalizing State is a decentered State that can¶ no longer deal with many of today's concerns by exercising power in a¶ monopolistic manner. From a global point of view, it often may need to share¶ power with other States more fully, and in certain proceedings, to incorporate¶ the approaches into issues devised by nongovernmental entities whose range¶ of influence and concerns transcend any single jurisdiction and whose¶ perspectives and influence are global in scope. This may take the form of¶ recognizing that certain domestic laws need to be synchronized with¶ international law strategies, thereby avoiding unnecessary regulatory¶ competition and a race to the bottom. On other occasions, cost and regulatory effectiveness may mandate the creative use of market incentives to carry out¶ tasks governments no longer can do or do as well. But were we to allow only¶ a narrow economic sense of global competitiveness to drive these reforms as¶ well as a view of the private sector that fails to understand the new¶ partnerships the globalized State must now create, democracy would suffer.¶ With this perspective in mind, I set forth three reforms of the APA that¶ should be considered. First, we should extend its coverage to private entities¶ carrying out essentially public duties. In other words, the APA should cover¶ more than just governmental agencies. Second, the APA should devise¶ procedures that open up the processes of contracting out public duties to¶ private entities. Third, I believe that there should be a requirement in all¶ rulemaking proceedings that the international and global implications of a¶ proposed policy be considered explicitly-a kind of global impact statement,¶ if you will. The National Environmental Policy Act (NEPA) required¶ environmental impact statements;¶ 37 ¶ we should require global impact¶ statements as well.¶ Now, none of these reforms will solve all of our problems, but such an¶ approach will begin to take account of the fact that the complex dynamics of¶ globalization require an integration of the public and the private and a much¶ more explicit recognition of the importance of domestic law to global¶ governance.¶ 1. Extension of the APA¶ The APA by its own terms applies only to agencies. Section 551(1)¶ defines agency as "each authority of the Government of the United¶ States .... " What happens when a governmental responsibility is contracted¶ out or delegated to a wholly private entity? For example, it has become¶ common to contract out the management of prisons at both the federal and¶ state level to private management companies. It is possible that our state¶ action doctrine might trigger due process protections, but such a decision is¶ contingent specifically on finding governmental involvement in these actions.¶ It may be that this will be the case, especially when prisons are involved, but¶ the extension of the APA to such activities should not be restricted only to¶ prisons, but to all private entities to whom governmental responsibilities have been delegated. Current approaches to welfare are involving the private sector¶ in new ways with private firms, in some cases, deciding welfare eligibility.¶ 39¶ Various proposals to reform social security now seek to utilize the market and¶ private entities in what is, for that program, a new approach.'¶ Triggering the APA need not require the "full panoply" of extensive ad¶ costly adjudicatory procedures that were devised in an earlier era for ratemaking cases or the application of command and control regulation. A¶ separate procedural provision designed for private actors could be crafted, one¶ which not only emphasizes flexibility, but also public involvement and the¶ basic public law protections of notice, participation, transparency, and some¶ form of accountability. Indeed, creative disclosure requirements designed to¶ inform the public just how certain markets work would also further these¶ goals. Such an approach would lessen the democracy deficit caused when¶ matters are deemed private, and would also leave room for the creation of a¶ discourse that could, depending on the issues involved, further public interest¶ goals that are global in outlook.¶ Closely related to the amendment of Section 551 of the APA that we are¶ proposing is an extension of the Freedom of Information Act to private¶ entities.¶ 4¶ ' It, too, represents a bright divide between public and private and¶ applies only to government agencies. Section 552 thus requires "each agency"¶ to make certain information available to the public." Yet, information¶ increasingly important to individuals is held by private entities and,¶ particularly when they are carrying out public functions, it would make sense¶ to include these entities in the coverage of this Act as well. Not unlike an¶ early draft of a British Freedom of Information Act (FOIA),¶ 0 ¶ such an¶ approach could recognize that individual interests in information do not begin¶ and end with government entities. 2. Contracting Out¶ The informal rulemaking proceedings in Section 553 of the APA are¶ elegantly simple." They provide for notice and comment. A decision to¶ contract out governmental services may not even be covered by these rulemaking provisions,¶ 45 ¶ but even if it is, the provisions of a contract between a¶ government agency and a private provider of services are not likely to be¶ considered fully. This is especially true if the policy decision involved is¶ viewed narrowly, as only the decision to contract out, not necessarily the¶ details of the contract. Even if the details are noticed, its day-to-day¶ implementation may not be visible to the public. The market logic of this¶ approach is that you give certain responsibilities to private providers and¶ review only the bottom line every few years or so, when the contract comes¶ up for renewal. This increases their efficiency and impresses upon them that¶ whatever the tasks are to which they agreed are their responsibilities and theirs¶ alone. But such an approach assumes a distinction between administration¶ and policymaking that does not exist in reality.¶ 46 ¶ The process of¶ administration inevitably involves policymaking, especially when emergencies¶ or unusual circumstances arise. Thus, noticing the full details of a proposed¶ contract with a private provider should be a minimum requirement of the¶ privatizing process, but these contracts themselves may need to be subject to¶ frequent review. Levels of accountability should be higher than those of¶ normal market transactions, and contract renewals should be required every¶ three to five years.¶ 3. A Global Impact Statement¶ Such relatively minor changes could go a long way toward recognizing¶ new ways of carrying out public responsibilities and need not diminish the¶ opportunities for public participation and transparency. More fundamentally,¶ however, the administrative rulemaking process should include an explicit¶ direction to consider seriously the global implications of proposed rules. This would not only encourage parties to the proceeding to present their¶ perspectives on these matters, but also impress upon the decisionmakers¶ involved that they are part of a complex national, international, and¶ denationalized set of processes. Not all issues can be resolved in any one¶ proceeding, but effective policymaking requires at least the consideration of¶ the global implications of the rules involved. If, for example, stringent¶ environmental regulations will shut down certain industries and move them¶ offshore, what impact is this likely to have on global pollution? Are we to be¶ the beneficiaries of this pollution by then being allowed to buy these imported¶ goods at a lower cost than if they were produced here while others bear the¶ pollution costs, but we enjoy the cheaper goods? Are there or should there be¶ international efforts undertaken to try to achieve limits on certain pollutants¶ that are global in nature? What efforts are underway? Will they be initiated?¶ Such questions can help create a global discourse and a debate on the global¶ public interests related to domestic regulatory proposals. Requiring they be¶ explicitly considered by the agency involved may not only facilitate global¶ awareness, but also facilitate global politics and discourse that are necessary¶ preconditions for the creation of public policy that is meaningful on the global¶ level.

#### Scenario A – Interdependence

#### Extension of administrative law is key to legitimate international institutions.

Esty 06

(Daniel Esty Hillhouse Professor of Environmental Law and Policy, Yale University. “Good Governance at the Supranational Scale: Globalizing Administrative Law” http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1427&context=fss\_papers&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3D%25E2%2580%259CGood%2BGovernance%2Bat%2Bthe%2BSupranational%2BScale%253A%2BGlobalizing%2BAdministrative%2BLaw%25E2%2580%259D%26hl%3Den%26as\_sdt%3D0%252C44%26as\_ylo%3D%26as\_yhi%3D#search=%22%E2%80%9CGood%20Governance%20Supranational%20Scale%3A%20Globalizing%20Administrative%20Law%E2%80%9D%22)

In an interdependent world, a degree of supranational governance is¶ inevitable. Success in combating transboundary harms from terrorism to global warming, and in producing global public goods, including liberalized trade and¶ public health programs, will be easier to achieve if global policymaking¶ institutions function effectively.¶ Movement toward good governance at the supranational scale would be¶ enhanced by broader adoption of basic administrative law tools and¶ procedures. The administrative practices that have emerged in the United¶ States, Europe, Japan, South Korea, and elsewhere in recent decades cannot be¶ transferred wholesale to the global realm. The differences in the context of¶ governance at the national and supranational levels are significant.¶ Policymaking at the international scale can, however, be improved and¶ endowed with greater legitimacy through adoption of a set of rules and¶ procedures that are associated with good governance.¶ This Article does not argue for adoption of a Global Administrative¶ Procedure Act. The diversity of global governance circumstances and the range¶ of views across countries make such a vision both unwise and unworkable. Nor¶ does it seek to spell out definitively which administrative law tools should¶ apply in every circumstance. Instead, it offers the theoretical logic for, and¶ some first steps toward, globalizing administrative law. The core conclusion is¶ this: Even if supranational governance is limited and hampered by divergent¶ traditions, cultures, and political preferences, developing a baseline set of¶ administrative law tools and practices promises to strengthen whatever¶ supranational policymaking is undertaken.¶ As supranational bodies expand their governance role, move toward formal¶ rulemaking, and take up more politically charged issues, their legitimacy¶ becomes a matter of greater concern. Without elections, the democratic¶ legitimacy of international organizations will always be in question, and their¶ performance will be inhibited by the fact that their top officials do not face the¶ incentives for accountability created by the discipline of having to win¶ elections. Legitimacy, however, can also be grounded in an institution's¶ delivery of good results, its capacity to carry out rulemaking in ways that¶ provide clarity and stability, its systemic strength and structure of checks and¶ balances, its ability to promote political dialogue, and its commitment to¶ procedural rigor.¶ Administrative law, I have argued, lies at the heart of efforts to establish¶ these lines of legitimacy. Adoption of a more robust regime of administrative¶ rules and procedures by international policymaking bodies would directly¶ contribute to their capacity for good governance through the mechanism of¶ procedural rigor, and would indirectly enhance their democratic, results-based,¶ order-derived, systemic, and deliberative legitimacy.

#### That prevents great power wars

Deudney & ikenberry 09

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After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order After Major Wars. Foreign Affairs, January/February 2009, Volume 88, Number 1, p. 77 http://pomed.org/wordpress/wp-content/uploads/2009/12/the\_myth\_of\_the\_autocratic\_revival.pdf)

As the world becomes increasingly liberal and democratic, there are growing opportunities for ¶ even the most successful liberal states -- such as the United States -- to learn from their partners. ¶ AUTOCRATS ABROAD Not only do the autocratic revival theorists posit an alternative form of ¶ capitalism, but they also envision renewed international rivalries. According to Kagan's version ¶ of the argument, the twenty-first century will look much like the nineteenth century. There will ¶ be a combination of great-power rivalries and a growing ideological and geopolitical divide ¶ between autocracies and democracies. Rivalry among great powers, independent of regime type, ¶ will be an increasingly salient feature of world politics, according to this view. Rising powers --¶ most notably China, India, Japan, and Russia -- will aspire to improve their international ¶ positions and establish hegemony within their regions. As the power of these states grows, their ¶ definition of their national interest will expand, placing them on a collision course with one ¶ another. Because their envisioned spheres of influence overlap, these rising states will come into ¶ increasing conflict and competition. In East Asia, China's rise will come at Japan's expense; ¶ China and India will be rivals for leadership in Southeast Asia; and Russia's attempt to ¶ reestablish its imperial sphere of influence will put it on a collision course with both China and ¶ Europe. In Kagan's view, this emerging great-power struggle will be exacerbated by several ¶ factors. All of the rising great powers have well-developed senses of grievance based on their ¶ historical experiences over the last two centuries of decline in the face of encroachment by ¶ European imperialism and by one another. China's aspirations and view of itself are heavily ¶ shaped by the historical experience of its decline from the Middle Kingdom's hegemony in East ¶ Asia to the "century of humiliation," defined by predation by the Europeans and then by Japan in ¶ the 1930s and 1940s. Russia's narrative of grievance centers on the sudden loss of its centuriesold domination of eastern Europe, Ukraine, and Central Asia with the end of the Cold War. ¶ Another factor that will exacerbate the supposed coming great-power competition is the prospect ¶ of a nineteenth-century-style scramble for raw materials and markets. Tightening global oil ¶ supplies and voraciously rising demand presage a future of cutthroat mercantilist competition ¶ among the great powers. It is in combination with these factors that the regime divergence ¶ between autocracies and democracies will become increasingly dangerous. If all the states in the ¶ world were democracies, there would still be competition, but a world riven by a democraticautocratic divergence promises to be even more conflictual. There are even signs of the ¶ emergence of an "autocrats international" in the Shanghai Cooperation Organization, made up of ¶ China, Russia, and the poorer and weaker Central Asian dictatorships. Overall, the autocratic ¶ revivalists paint the picture of an international system marked by rising levels of conflict and ¶ competition, a picture quite unlike the "end of history" vision of growing convergence and ¶ cooperation. This bleak outlook is based on an exaggeration of recent developments and ignores ¶ powerful countervailing factors and forces. Indeed, contrary to what the revivalists describe, the ¶ most striking features of the contemporary international landscape are the intensification of ¶ economic globalization, thickening institutions, and shared problems of interdependence. The ¶ overall structure of the international system today is quite unlike that of the nine teenth century. ¶ Compared to older orders, the contemporary liberal-centered international order provides a set of ¶ constraints and opportunities -- of pushes and pulls -- that reduce the likelihood of severe conflict ¶ while creating strong imperatives for cooperative problem solving. Those invoking the ¶ nineteenth century as a model for the twenty-first also fail to acknowledge the extent to which war as a path to conflict resolution and great-power expansion has become largely obsolete. ¶ Most important, nuclear weapons have transformed great-power war from a routine feature of ¶ international politics into an exercise in national suicide. With all of the great powers possessing ¶ nuclear weapons and ample means to rapidly expand their deterrent forces, warfare among these ¶ states has truly become an option of last resort. The prospect of such great losses has instilled in ¶ the great powers a level of caution and restraint that effectively precludes major revisionist ¶ efforts. Furthermore, the diffusion of small arms and the near universality of nationalism have ¶ severely limited the ability of great powers to conquer and occupy territory inhabited by resisting ¶ populations (as Algeria, Vietnam, Afghanistan, and now Iraq have demonstrated). Unlike during ¶ the days of empire building in the nineteenth century, states today cannot translate great ¶ asymmetries of power into effective territorial control; at most, they can hope for loose ¶ hegemonic relationships that require them to give something in return. Also unlike in the ¶ nineteenth century, today the density of trade, investment, and production networks across ¶ international borders raises even more the costs of war.

#### Weakened international legal-procedural constraints lead to extinction

Demenchonok 09

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The idea of a hegemonic-centered world order is a recent version of what Kant two centuries ago called a “world republic,” warning that it would become an amalgamation of the nations under a hegemonic state like a despotic “universal monarchy.” Kant noticed that, since this is not the will of the nations, this idea cannot be realized, and thus as an alternative he proposed a league of nations or a pacific federation of free states as a basis for peace in the world.39 Although world hegemony is an unrealistic and failed project, attempts of its implementation are undermining the collective efforts in establishing a peaceful and just world order since World War II.¶ The project of a hegemonic-centered world order means abandoning the international system based on the rule of law and collective actions (including collective security), and replacing it by unilateral actions of individual states (or coalitions of states). Removing the existing legal-procedural constraints on the use of force will result in the stronger states becoming unchecked, while the weaker ones remain unprotected. This would also mean falling back toward the violent, unlawful “state of nature.”¶ The prospects of a unipolar hegemonic world look grim: a world of “social Darwinism,” where the divided nations would be dominated by a hegemonic power, but each nation would be left on its own in striving for survival in a hostile environment. Facing the economic challenges and the negative consequences of climate change and other environmental problems, the poor nations would be the most vulnerable. The major powers would more aggressively compete for the dominant position and control over the economy and the limited natural resources of the planet. Since the decisive factor in this competition is military force, this would boost militarization and the arms race, thus increasing the possibility of wars and the escalation of global violence.¶ A traditional reaction to social and global problems is governmental reliance on force and power politics, accompanied by “emergency” measures and a myth of protection. This simplistic approach obfuscates the root causes of the problems and thus is unable to solve them. Instead, the resulting arms race, the infringement of civil liberties, and the tendency toward neototalitarian control have become problems in themselves, keeping society hostage to a spiral of violence.40¶ For those politicians who rely mainly on military “hard power” rather than on the “soft power” of diplomacy, the reasoning seems to be that the use of force is a quick and efficient means for the solution to the problems of security, stability, human rights, and so on. However, many human and social problems by their very nature can not be resolved by force, and an unrestricted use of force can make things even worse, creating new problems. Even well-intentioned leaders or “benevolent hegemons,” being limited by their political cultures and interests, cannot know whether the consequences of their policies and actions are equally good for all. Therefore, policies and decisions that potentially could affect society and the international community must be based on collective wisdom in a broad context, through deliberative democracy, international multilateral will-formation, and inclusive legal procedures, thus equally considering the cognitive points of view and interests of all those potentially affected. The complex, diverse, and interdependent high-tech world of the twenty-first century requires genuinely robust democratic relations within society and among nations as equals, an adequate political culture, and an enlightened “reasoning public.” Otherwise, a society that has powerful techno-economic means but is ethically blind and short-sighted could ultimately suffer the same fate as the dinosaurs, with their huge bodies but disproportionately small brains.

#### Scenario B – Environment

#### Stronger administrative law key to global environmental protection

Esty 06

(Daniel Esty Hillhouse Professor of Environmental Law and Policy, Yale University. “Good Governance at the Supranational Scale: Globalizing Administrative Law” http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1427&context=fss\_papers&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3D%25E2%2580%259CGood%2BGovernance%2Bat%2Bthe%2BSupranational%2BScale%253A%2BGlobalizing%2BAdministrative%2BLaw%25E2%2580%259D%26hl%3Den%26as\_sdt%3D0%252C44%26as\_ylo%3D%26as\_yhi%3D#search=%22%E2%80%9CGood%20Governance%20Supranational%20Scale%3A%20Globalizing%20Administrative%20Law%E2%80%9D%22)

Environmental issues were long thought to be largely local. But in recent¶ decades a series of inescapably international problems have emerged, including¶ climate change, thinning of the Earth's protective ozone layer, loss of¶ biodiversity, and depletion of fisheries in the world's oceans. While an¶ increased recognition of ecological interdependence now exists, supranational¶ decisionmaking in the environmental realm remains fraught with¶ difficulties.¶ 5 ¶ The response strategies that might be adopted often have¶ substantial economic costs, which are often not distributed equally across¶ countries. In some circumstances, harms flow back and forth, giving all¶ countries a stake in controls. In other cases, however, there is no strong¶ reciprocity. Furthermore, environmental problems are almost always marked¶ by a degree of uncertainty that can lead to disagreements among people and¶ countries over the seriousness of an issue. Such divergences are exacerbated in the international realm, in which policymakers will approach problems with¶ divergent perspectives based on their countries' level of development, policy¶ priorities, economic conditions, climatic and geographic circumstances,¶ attitudes toward nature, and tolerances for risk.¶ High degrees of both interdependence and political salience make¶ supranational governance a particular challenge. UNEP lies at the center of the¶ international environmental regime.¶ 2¶ "' While UNEP has adopted a number of¶ good governance practices, it has not moved far along the spectrum from¶ intergovernmental to supranational, and its work is almost entirely at the¶ informal end of the Matrix I spectrum. The greater success of the North¶ American Commission for Environmental Cooperation (CEC) in this regard¶ may reflect the fact that it has less political space to cover as it encompasses¶ only three countries, but also reveals its more advanced structure of¶ administrative law.¶ 1. The United Nations Environment Program¶ At a few points in the past several decades, UNEP has played an important¶ role in bringing countries together to respond to shared problems. Most¶ notably, in the 1980s and early 199os UNEP's Executive Director, Mostafa¶ Tolba, led the charge to protect the ozone layer.¶ 2¶ "¶ 2 ¶ His efforts translated into a¶ framework convention followed by a series of protocols phasing out¶ chlorofluorocarbons and related chemicals. Beyond facilitating country-tocountry negotiations, UNEP has achieved a measure of success in informationgathering and scientific assessments"¶ 5 3 ¶ and its regional seas program is highly¶ regarded.¶ s4¶ But in recent years, UNEP's governance activities have diminished, and it¶ has not established itself as an independent or autonomous force in global-scale policymaking.¶ 2ss ¶ Despite its mandate to coordinate multilateral¶ environmental policymaking, UNEP has not been effective in setting the¶ international environmental agenda or addressing a number of critical¶ challenges, including climate change.¶ 6 ¶ Not only has UNEP failed to move¶ toward a broader role in supranational policymaking, but its intergovernmental¶ coordination role has also shrunk."¶ 7¶ UNEP's weak position could be a function of the highly political¶ atmosphere surrounding global environmental issues,25 in combination with¶ its weak legitimacy foundations. Unlike the WTO and the WHO, UNEP's staff¶ is not highly regarded. The organization has been hampered in its ability to¶ recruit top-notch technical experts by its location in Nairobi and its weak¶ analytical reputation.¶ 2 9 ¶ Lacking neo-Weberian expertise and knowledge,¶ UNEP has been further stymied in its quest for legitimacy by its uneven¶ reputation with regard to procedural rigor.¶ UNEP has been, however, a relatively transparent organization with a¶ strong tradition of inviting participation by NGOs and business.2¶ 6 ¶ When¶ policy proposals are advanced prior to UNEP Governing Council meetings, the¶ UNEP Secretariat, the Governing Council, and the Committee of Permanent¶ Representatives engage in extensive communication over the issues involved.¶ 6¶ 1¶ Decisions are published in a timely and comprehensive manner. Rules io and11 of the UNEP Rules of Procedure of the Governing Council also require¶ opportunities for comment on proposed Governing Council agendas and the¶ procedures designed to structure debates.¶ 6¶ 2 UNEP has furthermore been a¶ leader in bringing outside scientific and technical expertise into its policy¶ dialogues.2¶ 6¶ 3¶ While these elements of good governance position UNEP relatively¶ favorably with regard to participation and transparency, UNEP has suffered¶ from deficient internal administrative controls-such as lack of oversight of¶ staff and limited enforcement of conflict of interest rules-leading to a¶ perceived high degree of inefficiency and financial mismanagement¶ 6¶ 4¶ Ultimately, the lack of a solid foundation of operating rules and procedures has¶ undermined UNEP's supranational governance role.¶ In the analytical framework of this Article, UNEP offers high potential¶ gains from global governance given the deep interdependence imposed by¶ issues such as climate change. But the political nature of these issues creates a¶ demand for advanced administrative rules and procedures to draw in expertise,¶ encourage careful policy analysis, promote deliberation, and advance workable¶ policy solutions. UNEP has failed across this spectrum. As a result, it has¶ limited zones of competence, and it remains mired in a narrow¶ intergovernmental mode of operation. UNEP would benefit from a major¶ administrative law initiative bringing the full spectrum of tools identified in¶ Part III to its day-to-day workings.

#### Key to prevent extinction- resiliency arguments are wrong

Watson 06

(Captain Paul Watson Founder and President of Sea Shepherd Conservation Society “The Politics of Extinction” 2006, www.eco-action.org/dt/beerswil.html)

The facts are clear. More plant and animal species will go through extinction within our generation than have been lost thorough natural causes over the past two hundred million years. Our single human generation, that is, all people born between 1930 and 2010 will witness the complete obliteration of one third to one half of all the Earth's life forms, each and every one of them the product of more than two billion years of evolution. This is biological meltdown, and what this really means is the end to vertebrate evolution on planet Earth.¶ Nature is under siege on a global scale. Biotopes, i.e., environmentally distinct regions, from tropical and temperate rainforests to coral reefs and coastal estuaries, are disintegrating in the wake of human onslaught.¶ The destruction of forests and the proliferation of human activity will remove more than 20 percent of all terrestrial plant species over the next fifty years. Because plants form the foundation for entire biotic communities, their demise will carry with it the extinction of an exponentially greater number of animal species -- perhaps ten times as many faunal species for each type of plant eliminated.¶ Sixty-five million years ago, a natural cataclysmic event resulted in extinction of the dinosaurs. Even with a plant foundation intact, it took more than 100,000 years for faunal biological diversity to re-establish itself. More importantly, the resurrection of biological diversity assumes an intact zone of tropical forests to provide for new speciation after extinction. Today, the tropical rain forests are disappearing more rapidly than any other bio-region, ensuring that after the age of humans, the Earth will remain a biological, if not a literal desert for eons to come. The present course of civilization points to ecocide -- the death of nature.

#### The ocean is on the brink

NSF 06

(National Science Foundation “Accelerating Loss of Ocean Species Threatens Human Well-Being” November 2, 2006 http://www.ia.ucsb.edu/pa/display.aspx?pkey=1513)

In a study published in the November 3 issue of the journal Science, an international group of ecologists and economists shows that the loss of biodiversity is profoundly reducing the ocean's ability to produce seafood, resist diseases, filter pollutants, and rebound from stresses such as over fishing and climate change.¶ The study was based at the National Center for Ecological Analysis and Synthesis (NCEAS) at the University of California, Santa Barbara. NCEAS is funded by the National Science Foundation.¶ The study reveals that every species lost causes a faster unraveling of the overall ecosystem. Conversely, every species recovered adds significantly to overall productivity and stability of the ecosystem and its ability to withstand stresses.¶ "This study is the first to definitively link species losses in marine systems to their economic consequences for society, by choosing to measure the effects of species losses by their impacts on the things humans care most about: seafood production, clean beaches for swimming, coastal protection from storms, tourism revenue and absorption of our waste," said Kimberly A. Selkoe, co-author and postdoctoral researcher at NCEAS. "We found that the more that humans strip marine ecosystems of their species by unchecked exploitation, the fewer benefits we derive from them, and the more society suffers from the economic consequences, such as unstable seafood markets, health problems linked to polluted beaches, and coastal damage from storms."¶ The four-year analysis is the first to examine all existing data on ocean species and ecosystems, synthesizing historical, experimental, fisheries, and observational data sets to understand the importance of biodiversity at the global scale.¶ "Our results indicate that the current trend for losing marine species could have drastic consequences for what people can get from the oceans, but we also found that protection of ocean areas can restore these services," said Benjamin S. Halpern, co-author and researcher at NCEAS. "In other words, it is not too late to help make things better."¶ Lead author Boris Worm of Canada's Dalhousie University said, "Whether we looked at tide pools or studies over the entire world's ocean, we saw the same picture emerging. In losing species we lose the productivity and stability of entire ecosystems. I was shocked and disturbed by how consistent these trends are – beyond anything we suspected."¶ The results reveal global trends that mirror what scientists have observed at smaller scales, and they prove that progressive biodiversity loss not only impairs the ability of oceans to feed a growing human population, but also sabotages the stability of marine environments and their ability to recover from stresses. Every species matters.¶ "For generations, people have admired the denizens of the sea for their size, ferocity, strength or beauty. But as this study shows, the animals and plants that inhabit the sea are not merely embellishments to be wondered at," said Callum Roberts, professor at the University of York, England, who was not involved in the study. "They are essential to the health of the oceans and the well-being of human society."¶ Peter Kareiva, a former Brown University professor and U.S. government fisheries manager who now leads science efforts at The Nature Conservancy, said, "This analysis provides the best documentation I have ever seen regarding biodiversity's value. There is no way the world will protect biodiversity without this type of compelling data demonstrating the economic value of biodiversity."¶ The good news is that the data show that ocean ecosystems still hold great ability to rebound. However, the current global trend is a serious concern; it projects the collapse of all species of wild seafood that are currently fished by the year 2050 (collapse is defined as 90 percent depletion).¶ Collapses are also hastened by the decline in overall health of the ecosystem – fish rely on the clean water, prey populations, and diverse habitats that are linked to higher diversity systems. This points to the need for managers to consider all species together rather than continuing with single species management.¶ "Unless we fundamentally change the way we manage all the ocean's species together, as working ecosystems, then this century is the last century of wild seafood," said co-author Steve Palumbi of Stanford University.¶ The impacts of species loss go beyond declines in seafood. Human health risks emerge as depleted coastal ecosystems become vulnerable to invasive species, disease outbreaks and noxious algal blooms.¶ Many of the economic activities along our coasts rely on diverse systems and the healthy waters they supply. "The ocean is a great recycler," explained Palumbi. "It takes sewage and recycles it into nutrients, it scrubs toxins out of the water, and it produces food and turns carbon dioxide into food and oxygen." But in order to provide these services, the ocean needs all its working parts, the millions of plant and animal species that inhabit the sea.¶ The strength of the study is the consistent agreement of theory, experiments and observations across widely different scales and ecosystems. The study analyzed 32 controlled experiments, observational studies from 48 marine protected areas, and global catch data from the UN's Food and Agriculture Organization's (FAO) database of all fish and invertebrates worldwide from 1950 to 2003. The scientists also looked at a 1000-year time series for 12 coastal regions, drawing on data from archives, fishery records, sediment cores and archeological data.¶ "We see an accelerating decline in coastal species over the last 1000 years, resulting in the loss of biological filter capacity, nursery habitats, and healthy fisheries," said co-author Heike Lotze of Dalhousie University, who led the historical analysis of Chesapeake Bay, San Francisco Bay, the Bay of Fundy, and the North Sea, among others.¶ The scientists note that a pressing question for management is whether losses can be reversed. If species have not been pushed too far down, recovery can be fast – but there is also a point of no return as seen with species like northern Atlantic cod.¶ Examination of protected areas worldwide show that restoration of biodiversity increased productivity four-fold in terms of catch per unit effort and made ecosystems 21% less susceptible to environmental and human caused fluctuations on average.¶ "The data show us it's not too late," said Worm. "We can turn this around. But less than one percent of the global ocean is effectively protected right now. We won't see complete recovery in one year, but in many cases species come back more quickly than people anticipated – in three to five to ten years. And where this has been done we see immediate economic benefits."¶ The buffering impact of species diversity also generates long term insurance values that must be incorporated into future economic valuation and management decisions. "Although there are short-term economic costs associated with preservation of marine biodiversity, over the long term biodiversity conservation and economic development are complementary goals," said co-author Ed Barbier, an economist from the University of Wyoming.¶ The authors conclude that restoring marine biodiversity through an ecosystem based management approach – including integrated fisheries management, pollution control, maintenance of essential habitats and creation of marine reserves – is essential to avoid serious threats to global food security, coastal water quality and ecosystem stability.¶ "This isn't predicted to happen, this is happening now," said co-author Nicola Beaumont an ecological economist with Britain's Plymouth Marine Laboratory. "If biodiversity continues to decline, the marine environment will not be able to sustain our way of life, indeed it may not be able to sustain our lives at all."

#### Makes extinction inevitable

Craig 08

(Robin Kundis, Attorneys' Title Insurance Fund Professor of Law, Florida State University College of Law, Tallahassee, Florida, “ CLIMATE CHANGE, REGULATORY FRAGMENTATION, AND WATER TRIAGE”, Summer, 79 U. Colo. L. Rev. 825, lexis)

Marine ecosystems have immense value. Oceans cover more than 70% of our planet, 314 support vast reserves of biodiversity (in all senses), 315 produce at least half of the Earth's atmospheric oxygen, 316 drive the planet's hydrological cycle, 317 sequester carbon dioxide, 318 and play a significant role in the earth's climate and weather. 319 As such, oceans and estuaries are critical providers of ecosystem services - those "myriad of life support functions, the observable manifestations of ecosystem processes that ecosystems provide and without which human civilizations could not thrive." 320 According to a comprehensive study that appeared in Nature in 1997, "about 63% of the estimated value [of the world's ecosystem services] is contributed by marine ecosystems," especially coastal ecosystems. 321 Specifically, "coastal environments, including estuaries, [\*892] coastal wetlands, beds of sea grass and algae, coral reefs, and continental shelves ... cover only 6.3% of the world's surface, but are responsible for 43% of the estimated value of the world's ecosystem services." 322

#### Only multilateral institutions solve

Esty 06

(Daniel Esty Hillhouse Professor of Environmental Law and Policy, Yale University. “Good Governance at the Supranational Scale: Globalizing Administrative Law” http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1427&context=fss\_papers&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3D%25E2%2580%259CGood%2BGovernance%2Bat%2Bthe%2BSupranational%2BScale%253A%2BGlobalizing%2BAdministrative%2BLaw%25E2%2580%259D%26hl%3Den%26as\_sdt%3D0%252C44%26as\_ylo%3D%26as\_yhi%3D#search=%22%E2%80%9CGood%20Governance%20Supranational%20Scale%3A%20Globalizing%20Administrative%20Law%E2%80%9D%22)

Some international externalities are best understood as a function of the¶ workings of the natural world rather than policy choices. Certain¶ environmental problems, such as climate change, are inescapably global.¶ Absent policy cooperation at the international scale, these "super-externalities"¶ will result in market failures, economic inefficiency, and social welfare loss, not¶ to mention environmental degradation.¶ 32 ¶ Similarly, without international¶ policy cooperation, shared resources such as the oceans and their fisheries will be overexploited and global public goods (such as public health and¶ environmental protection programs) will be underproduced.

### Solvency

#### Judicial branch has the authority

Elwood 9/15/2012

(John, considerable experience litigating in the Supreme Court and the federal courts of appeals, served in senior-level positions in the U.S. Department of Justice, former assistant to the Solicitor General, briefed fifteen merits cases before the Supreme Court, former senior Deputy in the Office of Legal Counsel, former ex officio member of the U.S. Sentencing Commission, recipient of the Attorney General’s Award for Exceptional Service and the Attorney General’s Award for Distinguished Service, JD Yale Law School; “Landmark Foreign-Investment Suit Filed,” Volokh Conspiracy, http://www.volokh.com/2012/09/15/landmark-foreign-investment-suit-filed/ - Kurr)

On Wednesday, a Chinese-owned wind-farm developer sued CFIUS to seek review of recent CFIUS orders that effectively require the developer to unwind its purchase of four wind-farm projects in Oregon. The suit is a rarity in a field that has seen virtually no efforts to obtain judicial review. Even partial success by the plaintiff in obtaining review of CFIUS’s decision could have major implications for foreign direct investment in the United States and increase the transparency of a historically opaque government approval process. More after the jump. CFIUS is composed of the heads of Treasury, DOJ, State, DHS, Commerce, Energy, and other agencies, and together exercise, in the first instance, the President’s statutory and constitutional authority to review and “to suspend or prohibit any covered” foreign purchase of a U.S. business “that threatens to impair the national security of the United States.” If you’ve heard of CFIUS, it is probably in connection with the “Dubai Ports” kerfuffle back in 2006, involving outcry over a deal permitting a United Arab Emirates-based company to take over management of several U.S. ports. CFIUS approved that transaction, but congressional and popular opposition caused it to be scuttled. For the many U.S. companies that wish to sell units to foreign companies, or enter into joint ventures with them, it is impossible to overstate the importance of CFIUS. CFIUS’s decisions historically have not been reviewed by the courts. As a practical matter, lawsuits seeking to challenge actions by CFIUS are rarely brought. One noteworthy exception—a 2006 lawsuit by then-New Jersey Governor Jon Corzine seeking to force CFIUS to investigate the acquisition by Dubai Ports World involving the port of Newark—was dismissed voluntarily before any decision was made. The suit filed Wednesday by former SG Paul Clement, Viet Dinh, and Chris Bartolomucci seeks to change that. Ralls (which takes its name from the Texas town where its first US wind-farm was built) bought four small Oregon companies whose assets consist of wind-farm development rights, land rights, power-purchase agreements, and government permits. The projects—which would use wind turbines made in China by Sany Group to produce a modest total 40 megawatts of power (the small coal-fired plant in Old Town Alexandria produced 482 megawatts)—allegedly had received all other necessary state and federal regulatory approvals. In June, Ralls submitted the transaction for CFIUS approval. In July, CFIUS issued an order (later supplemented by a superseding August order) purporting to require Ralls to cease construction, “immediately cease all access” to the properties, and remove all items at the sites using U.S. citizen contractors who were permitted to enter the sites only for purposes of removal. The amended order also prohibited Ralls from transferring to any third party for installation at the sites any item made by Sany Group. The amended order also prohibited Ralls from transferring the properties until all items on them had been removed and Ralls gave CFIUS notice and opportunity to object to the potential buyer. On Wednesday, Ralls filed a complaint in the U.S. District Court for the District of Columbia challenging the CFIUS actions as a violation of the Administrative Procedure Act and an unconstitutional deprivation of property without due process. The suit argues that CFIUS exceeded its authority by failing to give reasons for its actions, prohibiting the transaction outright (rather than modifying the deal to mitigate national security risks), and prohibiting Ralls from selling items produced by Sany even to U.S. buyers. The suit also alleges that the order deprived Ralls of property without due process by prohibiting further construction, use of (or even access to) the property, and sale of assets on the property. Late last week, Ralls sought a temporary restraining order, which should be fully briefed early next week and may cause this case to come to a head quickly. There are many noteworthy things about the suit, but most fundamental is the possibility that the D.C. District Court could conclude that CFIUS actions are subject to even limited judicial review, which would represent a significant development given the historic lack of judicial decisions reviewing CFIUS actions. CFIUS’s authorizing statute, the Foreign Investment and National Security Act of 2007, gives the President authority to suspend or prohibit any covered transaction based on his finding of national security risks, and states that his actions and supporting findings “shall not be subject to judicial review.” The Ralls complaint is based on the idea that the actions of CFIUS can be subject to judicial review through the APA—particularly where, as here, it purported to issue an order under its own authority—even if the President’s own actions would be exempt. Whether this suit can proceed in federal court is therefore likely to be a principal focus of the litigation. The plaintiffs will likely draw support from the background presumption (recently and emphatically reaffirmed in Sackett v. EPA) that agency actions are subject to judicial review.

#### Judicial review ensures stronger APA compliance

Vigdor et al 10/29/12

(William, John Elwood, and Jeremy C. Marwell, members of Vinson & Elkins, LLP; “United States: Blocking Ore. Wind Farms: Overstepping Authority?,” Mondaq, Lexis – Kurr)

Second, and more fundamentally, the possibility that CFIUS actions could be subject to even a limited form of judicial review would reflect a sea change in CFIUS practice. As a practical matter, lawsuits seeking to challenge actions by CFIUS are rarely brought.1 CFIUS' authorizing statute, the Foreign Investment and National Security Act of 2007, gives the president authority to suspend or prohibit any covered transaction based on his finding of national security risks and states that his actions and supporting findings &quot;shall not be subject to judicial review.&quot; The Ralls complaint is based, in part, on the notion that CFIUS can be subject to judicial review through the APA even after the president has acted - particularly where, as here, CFIUS purported to issue an order under its own authority. Ralls also seeks review of the president's actions on the ground that they exceed his statutory authority. Whether any aspects of this suit can proceed in a federal court will be the central issue presented by the government's motion to dismiss. The plaintiffs will likely draw support from the background presumption that &quot;final&quot; agency actions are subject to judicial review.¶ Finally, Ralls challenges the scope of CFIUS's remedial authority. The company asserts that only the President, not CFIUS, may suspend or prohibit a transaction. Ralls also argues that CFIUS overstepped its authority by prohibiting Ralls from selling "to any third party" (including a U.S. owner) any items produced by the Sany Group. Such an order, Ralls asserts, oversteps both the limitation that CFIUS may review only transactions that involve acquisition of control by a foreign person (as the order covers U.S. buyers), and the limitation that CFIUS may only review acquisition of a U.S. business (since the order applies to "items" produced by Sany Group). The challenge reflects the unusual posture of this case, in which CFIUS issued a unilateral order rather than negotiating "consensual" mitigation with the parties upon threat that CFIUS would recommend that the President take action to block the transaction. Any judicial decision that limited CFIUS's remedial power to impose national-security-related mitigation conditions would be of great interest to the investment community.¶ In short, both CFIUS practitioners and a broad range of parties involved in foreign investment in the United States should watch the case closely. Although the plaintiffs will face threshold arguments from the government that the actions are non-reviewable, even a partial victory on the merits could have significant economic and legal effects for U.S. national security review of foreign investment, and thus the case may attract participation by a range of interested parties as amici curiae. Some indication of how the Court will treat the case could come as early as this week; on September 13, Ralls filed a motion for a temporary restraining order and preliminary injunction, which Judge Amy Berman Jackson set for expedited briefing and consideration.

#### Plan spills over

Vinson & Elkins 9/17/2012

(Vinson & Elkins lawyers have provided innovative business solutions for clients whose needs are as diverse as the entities they represent. In today's challenging environment of global markets, volatile economies, and complex human and environmental issues, our law firm’s time-tested role as trusted advisor has become even more critical; “Chinese Energy Developer Sues Committee on Foreign Investment in the United States (CFIUS) for Blocking Oregon Wind-Farm Investment on National Security Grounds” V&E CFIUS and National Security Review E-communication, <http://www.velaw.com/resources/ChineseEnergyDeveloperSuesCFIUSBlockingOregonWindFarmInvestment.aspx> - Kurr)

On September 12, the Ralls Corporation, a Chinese-owned wind-farm developer, sued the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”), raising statutory and constitutional challenges to recent CFIUS orders that effectively require Ralls to unwind its acquisition of four wind-farm projects in Oregon. The suit is a rarity, and there have been no significant instances of judicial review of CFIUS decisions in the past. Although the plaintiffs face threshold barriers to having their claims heard on the merits, even a partial success could have broad significance for the review of foreign direct investment across all sectors of the economy — because CFIUS approval is frequently a major concern for transactions involving foreign acquisitions of, or joint ventures with, U.S. businesses. The Ralls lawsuit challenges not only the lack of transparency in CFIUS’s procedures and decision making, but also CFIUS’s authority to prevent or unwind a transaction involving a foreign person based on national security concerns. Further, the lawsuit indicates that CFIUS has national security concerns regarding foreign acquisitions of even small wind turbine projects.

#### Plan solves FDI – judicial review makes the process more transparent

Michaels 11

(John D., Acting Professor UCLA School of Law; June, “The (Willingly) Fettered Executive: Presidential Spinoffs in National Security Domains and Beyond,” 97 Va. L. Rev. 801 – Kurr)

In addition, by insulating the crucial work of CFIUS from the President, there is likely to be a higher level of consistency over time (and between presidential administrations) than if the President had sole discretion. n311 This is because the interests advanced by cabinet officials involved in the decisionmaking may reflect common institutional goals across administrations, rather than just partisan or presidential objectives. n312 Consistency over time is especially important in this space given the need to accommodate core regulatory questions, diplomatic considerations, national-security concerns, and the interests of the parties to the proposed transaction - coupled with the inability to explain publicly what, if anything, [\*880] distinguishes superficially inconsistent outcomes. n313 Without judicial review, changes in presidential administrations would lead to destabilizing about-faces in administrative governance of foreign investment. n314 Although much is made in the administrative law literature about ossification, n315 the converse - administrative vacillation - can be just as problematic. It is problematic not just for legitimacy reasons but also because uncertainty substantially increases costs to regulated parties. n316 American companies seeking to attract foreign investors and foreign investors seeking business opportunities in the United States already express unease about having to submit to CFIUS review. Prospective investors would have even colder feet and perhaps fewer deals would be pursued, especially in the months leading up to a presidential transition, were foreign-investment regulation more variable and unpredictable. n317 Investigations, mitigation negotiations, and final recommendations [\*881] that need to go through the Committee's inter-agency deliberative ringer - and thus are not simply a function of presidential predilections n318 - potentially go a long way in minimizing that unease. Further, this deliberative process conveys to participants that the legally and politically unaccountable framework for foreign-investment review is nevertheless rational and rigorous. n319 [\*882] Though the foreign investors might not on their own be clued in to this and other subtleties, many rely on a relatively small group of experienced lawyers who deal regularly with CFIUS and can counsel their clients accordingly. n320

### No Disads

#### Obama just approved a bunch of wind projects

Scheid 3/13

(Brian, Writer for Platts a leading global provider of energy, petrochemicals and metals information, and a premier source of benchmark price assessments for those commodity markets, “Obama administration approves wind, solar energy projects” http://www.platts.com/RSSFeedDetailedNews/RSSFeed/ElectricPower/6257674)

The Obama administration has approved two solar projects in California and one wind project in Nevada with the potential capacity of 1,100 MW, departing Interior Secretary Ken Salazar said Wednesday.¶ The projects, which have undergone environmental reviews and public comment processes, include the 750-MW McCoy Solar Energy Project and the 150-MW Desert Harvest Solar Farm, both in California's Riverside East Solar Energy Zone, and the 200-MW Searchlight Wind Energy Project in Clark County, Nevada.¶ "These renewable energy projects reflect the Obama Administration's commitment to expand domestic energy production on our public lands and diversify our nation's energy portfolio," Salazar said in a statement.¶ Including these three projects, Interior has approved 37 renewable energy projects since 2009 with the potential capacity of 11,500 MW, Salazar said.¶ The McCoy project, proposed by a NextEra subsidiary, will occupy nearly 4,400 acres and a 12.5-mile generation transmission line is planned to connect the project to Southern California Edison's Colorado River Substation. ¶ The Desert Harvest project, proposed by EDF Renewable Energy, will encompass more than 1,200 acres and includes an on-site substation and 230-kV line to the Red Bluff Substation, which will connect the project to the Southern California Edison regional transmission grid.¶ The Searchlight Wind project will be built on nearly 19,000 acres and the Western Area Power Administration is proposing to construct, operate and maintain a new switching station to connect the project to the existing power grid, Interior said.

#### He plans on approving more clean energy

Renew Grid 3/20

(“President Obama Unveils Energy Blueprint” http://www.renewgridmag.com/e107\_plugins/content/content.php?content.9709#.UUoTlBzqmz4)

Last week, the White House released President Barack Obama's "Blueprint for a Clean and Secure Energy Future," which includes renewable energy, smart grid and electric vehicle (EV) initiatives.¶ "The United States is on the path to a cleaner and more secure energy future," the blueprint says, adding that since President Obama took office, renewable energy generation has doubled and carbon emissions have fallen to their lowest level in almost 20 years. "But even with this progress,” the blueprint continues, “there is more work to do."¶ Here are a few noteworthy plans highlighted in President Obama’s energy blueprint:¶ - The president has set a goal of doubling renewable energy generation again by 2020. In order to help achieve this, Obama is urging Congress to make permanent the renewable energy production tax credit, a key tax incentive among the clean energy industries, especially the wind power sector.¶ - Obama wants the U.S. Department of the Interior (DOI) to continue making permitting for renewable energy projects “more robust.” In 2012, the DOI successfully reached the president’s goal to permit 10 GW of renewable projects on public lands. To further such progress, the president’s budget will boost funding for the DOI’s Bureau of Land Management energy programs by about 20%.¶ - The president’s budget also includes $200 million in performance-based funding to help state governments create and implement policies to reduce the waste of energy and support grid modernization. According to the White House fact sheet, key opportunities for states include “modernizing utility regulations to encourage cost-effective investments in efficiency like combined heat and power, clean distributed generation, and demand response resources; enhancing customer access to data; investments that improve the reliability, security and resilience of the grid; and enhancing the sharing of information regarding grid conditions.”¶ - The president has proposed an Energy Security Trust, which would put $2 billion over 10 years into research and development of advanced vehicles, including EVs.

#### Wind is massively increasing now

Upton 3/14

(John, Writer for Grist an environmental news site, “Wind power is poised to kick nuclear’s ass” http://grist.org/news/wind-power-is-poised-to-kick-nuclears-ass/)

In 2012, wind energy became the fastest-growing source of new electricity generation in the U.S., providing 42 percent of new generation capacity, according to the American Wind Energy Association.¶ Wind power is becoming so cheap and so commonplace that it appears poised to help blow up the country’s nuclear power sector, according to a recent Bloomberg article (which you really should read in full). Other highlights from the piece:¶ $25 billion was spent on wind energy in the U.S. in 2012.¶ The $25 billion outlay increased nationwide wind generating capacity by 13,124 megawatts – up 28 percent from 2011.¶ That spending spree was fueled in large part by a mad scramble to qualify for federal tax credits that were set to expire at the end of last year (but were ultimately renewed by Congress).¶ Wind-generated electricity met about 3.4 percent of of American demand in 2012, a figure that’s expected to reach 4.2 percent next year.¶ $120 billion spent on wind turbines since 2003 has increased wind power supplies 1,000 percent and created as much new electricity generation as could be provided by 14 new nuclear power plants.¶ In addition to federal tax credits, state-level renewable energy requirements are helping to spur wind’s growth, and the nuclear industry thinks that’s unfair:

#### Increases 17% annually

Wind Power Monthly 3/14

(“Wind increases output and coverage in US” http://www.windpowermonthly.com/article/1174632/Wind-increases-output-coverage-US)

UNITED STATES: Wind energy generation in the US increased by 17% per cent last year and played a greater role in more states, according to the American Wind Energy Association (AWEA). Citing data from the US Energy Information Administration's (EIA), AWEA says wind turbines generated at least 10% of electricity in nine US states in 2012, up from five states the year before.¶ In the top two states, wind energy was responsible for more than one fifth of total electricity production, hitting 24.5% in Iowa and 23.9% in South Dakota. Nationwide, wind produced 3.5% of US electricity in 2012 compared to roughly 2.9% in 2011.¶ "With wind power serving as the number one source of new generating capacity in 2012, it's no surprise that wind energy is increasing its role in the overall US power mix," said Elizabeth Salerno, AWEA's director of industry data & analysis. Wind energy provided more than 5% of generation in 14 states last year.

### Bottom of 1AC

#### US/China econ not zero-sum

Torode 11-5-12

Greg South China Morning Post

Dan Ikenson, a scholar at the pro-free trade Cato Institute in Washington, said he had noted a depressing reluctance in politicians of all stripes to attempt a coherent and sustained free-trade argument beyond the China-bashing rhetoric. "It does seem harder to be a free-trader than it was," he said.¶ "I think it's vital that politicians still make the case that imports and proper free trade can help our own growth and manufacturers ... It is about keeping us playing to our strengths and keeping us on top of the global value-added chain.¶ "We're not going to stay there by punishing our consumers through making them pay for protectionism - and that is not going to help us play to our economic strengths, such as innovative industries, high-end manufacturing and branding. The reality is that low-end retail is not for us anymore."¶ The US debate, Ikenson said, had to move beyond the "sports metaphor" of the China deficit. "It's like a scoreboard - our exports are our points, and our imports are their points. It's not zero-sum like in sports - history shows our economy just doesn't move in those terms."¶ That said, diplomatic and trade pressure to ensure proper market access and enforcement under WTO rules were vital - as long as protectionism could be avoided, he added.

#### No impact to rivalry, China wants to be perceived as cooperating, not competing

Tsering ‘12,

Bhuchung Vice President, International Campaign for Tibet Congressional Documents and Publications 7-25-12

It is the aspiration of the present leadership of the People's Republic of China (PRC) to project their country as an emerging super power, if not already one, that will abide by "universally-accepted norms." Towards that end, they have even advocated their relations with the United States as "a new-type relationship between major countries" which features "cooperation not confrontation, win-win results not 'zero-sum' game, and healthy competition not malicious rivalry."

#### Monsanto court case requires capital and thumps the DA

Gillam 13 (Carey – Reuters, “U.S. agriculture wary as Monsanto heads to Supreme Court”, 2/15, http://www.reuters.com/article/2013/02/15/us-monsanto-seeds-idUSBRE91E06Q20130215)

(Reuters) - A 75-year-old Indiana grain farmer will take on global seed giant Monsanto Co at the U.S. Supreme Court next week in a patent battle that could have ramifications for the biotechnology industry and possibly the future of food production. The highest court in the United States will hear arguments on Tuesday in the dispute, which started when soybean farmer Vernon Bowman bought and planted a mix of unmarked grain typically used for animal feed. The plants that grew turned out to contain the popular herbicide-resistant genetic trait known as Roundup Ready that Monsanto guards closely with patents. The St. Louis, Mo.-based biotech giant accused Bowman of infringing its patents by growing plants that contained its genetics. But Bowman, who grows wheat and corn along with soybeans on about 300 acres inherited from his father, argued that he used second-generation grain and not the original seeds covered by Monsanto's patents. A central issue for the court is the extent that a patent holder, or the developer of a genetically modified seed, can control its use through multiple generations of seed. The Supreme Court's decision to hear the dispute has sparked broad concerns in the biotech industry as a range of companies fear it will result in limits placed on their own patents of self-replicating technologies. At the same time, many farmer groups and biotech crop critics hope the Supreme Court might curb what they say is a patent system that gives too much power to biotech seed companies like Monsanto. "I think the case has enormous implications," said Dermot Hayes, an Iowa State University agribusiness and economics professor who believes Monsanto should prevail. "If Monsanto were to lose, many companies would have a reduced incentive for research in an area where we really need it right now. The world needs more food." The court battle has ballooned into a show-down that merges contentious matters of patent law with an ongoing national debate about the merits and pitfalls of genetically altered crops and efforts to increase food production. More than 50 organizations- from environmental groups to intellectual property experts - as well as the U.S. government, have filed legal briefs hoping to sway the high court. Companies developing patented cell lines and tools of molecular biotechnology could lose their ability to capture the ongoing value of these technologies if the Supreme Court sides with Bowman, said Hans Sauer, deputy general counsel for the Biotechnology Industry Organization. The case also is important to regenerative medicine that relies on stem cell technologies. A stem cell by definition is a cell that can self-replicate, thus the case may answer the question of whether a patentee can control progeny of a patented stem cell, according to Antoinette Konski, a partner with Foley & Lardner's intellectual property practice group. Monsanto, a $13 billion behemoth in agricultural seed and chemical sales, also sees the case as much bigger than itself. "This case really centers on the question of twenty-first century technology such as what we bring in agriculture and other companies bring for say stem cell research or nanotechnology.... and how they're going to be handled under principles of intellectual property law," said Monsanto general counsel Dave Snively.

#### Controversy inevitable – numerous blockbusters

Liptak 12

(Adam – New York Times, “Supreme Court Faces Weighty Cases and a New Dynamic”, 9/29, http://www.nytimes.com/2012/09/30/us/supreme-court-faces-crucial-cases-in-new-session.html?pagewanted=all)

The Supreme Court returns to the bench on Monday to confront not only a docket studded with momentous issues but also a new dynamic among the justices. The coming term will probably include major decisions on affirmative action in higher education admissions, same-sex marriage and a challenge to the heart of the Voting Rights Act of 1965. Those rulings could easily rival the last term’s as the most consequential in recent memory. The theme this term is the nature of equality, and it will play out over issues that have bedeviled the nation for decades. “Last term will be remembered for one case,” said Kannon K. Shanmugam, a lawyer with Williams & Connolly. “This term will be remembered for several.” The term will also provide signals about the repercussions of Chief Justice John G. Roberts Jr.’s surprise decision in June to join the court’s four more liberal members and supply the decisive fifth vote in the landmark decision to uphold President Obama’s health care law. Every decision of the new term will be scrutinized for signs of whether Chief Justice Roberts, who had been a reliable member of the court’s conservative wing, has moved toward the ideological center of the court. “The salient question is: Is it a little bit, or is it a lot?” said Paul D. Clement, a lawyer for the 26 states on the losing side of the core of the health care decision. The term could clarify whether the health care ruling will come to be seen as the case that helped Chief Justice Roberts protect the authority of his court against charges of partisanship while accruing a mountain of political capital in the process. He and his fellow conservative justices might then run the table on the causes that engage him more than the limits of federal power ever have: cutting back on racial preferences, on campaign finance restrictions and on procedural protections for people accused of crimes. It is also possible that the chief justice will become yet another disappointment to conservatives, who are used to them from the Supreme Court, and that he will join Justice Anthony M. Kennedy as a swing vote at the court’s center. There is already some early evidence of this trend: in each of the last three terms, only Chief Justice Roberts and Justice Kennedy were in the majority more than 90 percent of the time. “We all start with the conventional wisdom that Justice Kennedy is going to decide the close cases,” said Mr. Clement, who served as United States solicitor general under President George W. Bush. “We’ve all been reminded that that’s not always the case.” The texture of the new term will be different, as the court’s attention shifts from federalism and the economy to questions involving race and sexual orientation. The new issues before the court are concrete and consequential: Who gets to go to college? To get married? To vote? On Oct. 10, the court will hear Fisher v. University of Texas, No. 11-345, a major challenge to affirmative action in higher education. The case was brought by Abigail Fisher, a white woman who says she was denied admission to the University of Texas based on her race. The university selects part of its class by taking race into account, as one factor among many, in an effort to ensure educational diversity. Just nine years ago, the Supreme Court endorsed that approach in a 5-to-4 vote. The majority opinion in the case, Grutter v. Bollinger, was written by Justice Sandra Day O’Connor, who said she expected it to last for a quarter of a century. But Justice O’Connor retired in 2006. She was succeeded by Justice Samuel A. Alito Jr., who was appointed by Mr. Bush and who has consistently voted to limit race-conscious decision making by the government. Chief Justice Roberts, another Bush appointee, has made no secret of his distaste for what he has called “a sordid business, this divvying us up by race.” Justices Kennedy, Antonin Scalia and Clarence Thomas all dissented in the Grutter case, and simple math suggests that there may now be five votes to limit or overturn it. The reach of such a decision could be limited by the idiosyncrasies of the admissions system in Texas. The university provides automatic admission to students in Texas who graduate in roughly the top 10 percent of their high school classes. That approach generates substantial diversity, partly because many Texas high schools remain racially homogeneous. Ms. Fisher narrowly missed the cutoff at a high school whose students have above-average test scores for the state. She was rejected for one of the remaining spots under the part of the admissions program that considers applicants’ race. The court may uphold the Texas system under Grutter, or it may rule against it on narrow grounds by saying, for instance, that race-conscious admissions are forbidden where a race-neutral method — like the 10 percent program — can be said to be working. But the court may also follow the health care ruling with a second landmark decision, this one barring racial preferences in admissions decisions altogether. Given persistent achievement gaps, even after controlling for family income, such a ruling would make the student bodies of many colleges less black and Hispanic and more white and Asian. The court will probably also take on same-sex marriage. “I think it’s most likely that we will have that issue before the court toward the end of the current term,” Justice Ruth Bader Ginsburg said at the University of Colorado on Sept. 19. She was referring to challenges to an aspect of the federal Defense of Marriage Act, which bars the federal government from providing benefits to same-sex couples married in states that allow such unions. The federal appeals court in Boston struck down that part of the law, and both sides have urged the court to hear the case. More than 1,000 federal laws deny tax breaks, medical coverage and burial services, among other benefits, to spouses in same-sex marriages. The justices will also soon decide whether to hear a more ambitious marriage case filed in California by Theodore B. Olson and David Boies. It seeks to establish a federal constitutional right to same-sex marriage. Chief Justice Roberts has not yet voted in a major gay rights case. Justice Kennedy wrote the majority opinions in both Lawrence v. Texas, a 2003 decision that struck down a Texas law making gay sex a crime, and Romer v. Evans, a 1996 decision that struck down a Colorado constitutional amendment that banned the passage of laws protecting gay men and lesbians. Most observers see him as the decisive vote in same-sex marriage cases. The justices are also quite likely to take another look at the constitutionality of a signature legacy of the civil rights era, the Voting Rights Act of 1965. In 2009, the court signaled that it had reservations about the part of the law that requires the federal review of changes in election procedures in parts of the country with a history of discrimination, mostly the South. “We are now a very different nation” than the one that first enacted the Voting Rights Act, Chief Justice Roberts wrote for himself and seven other justices. “Whether conditions continue to justify such legislation is a difficult constitutional question we do not answer today.” The chief justice seemed to invite Congress to revise the law, but lawmakers have taken no action. Challenges to the law have arisen in several lawsuits in the current election season, including ones concerning redistricting and voter identification requirements. “It will be interesting to see if the justices worry half as much about the emerging restrictions on voting as they worried about restrictions on political spending,” said Pamela S. Karlan, a law professor at Stanford. On Monday, the new term will start with a case of great interest to business groups, Kiobel v. Royal Dutch Petroleum, No. 10-1491. The case was brought by 12 Nigerian plaintiffs who said the defendants, foreign oil companies, had been complicit in human rights violations committed against them by the Abacha dictatorship in Nigeria. The question in the case is whether American courts have jurisdiction over such suits, and business groups are hoping the answer is no.

#### Legitimacy is tanked already

Rosen 12

(Jeffrey – Legal Affairs Editor at New Republic, “The Supreme Court Has a Legitimacy Crisis, But Not For the Reason You Think “, 2012, http://www.tnr.com/article/politics/103987/the-supreme-court-has-legitimacy-crisis-not-the-reason-you-think)

Last week, a New York Times/CBS poll found that only 44 percent of Americans approve of the Supreme Court’s job performance and 75 percent say the justices are sometimes influenced by their political views. But although the results of the poll were striking, commentators may have been too quick to suggest a direct link between the two findings. In the Times article on the poll, for example, Adam Liptak and Allison Kopicki suggested that the drop in the Court's 66 percent approval ratings in the late 1980s “could reflect a sense that the court is more political, after the ideologically divided 5-to-4 decisions in Bush v. Gore and Citizens United.” At the beginning of his tenure, Chief Justice John Roberts said that he subscribed to a similar theory. “I do think the rule of law is threatened by a steady term after term after term focus on 5-4 decisions,” Roberts told me. But a new study by Nathaniel Persily of Columbia Law School and Stephen Ansolabehere of Harvard suggests that the relationship between the Court’s declining approval ratings and increased perceptions of the Court’s partisanship may be more complicated than the New York Times and the Chief Justice suggest. According to the study, Americans already judge the Court according to political criteria: They generally support the Court when they think they would have ruled the same way as the justices in particular cases, or when they perceive the Court overall to be ruling in ways that correlate with their partisan views. If this finding is correct, the most straightforward way for the Court to maintain its high approval ratings is to hand down decisions that majorities of the public agree with. And, like its predecessors, the Roberts Court has, in fact, managed to mirror the views of national majorities more often than not. In a 2009 survey, Persily and Ansolabehere found that the public strongly supported many of the Supreme Court’s recent high-profile decisions, including conservative rulings recognizing gun rights and upholding bans on partial birth abortions, as well as liberal rulings upholding the regulation of global warming and striking down a Texas law banning sex between gay men. But if the public agrees with most of the Court's decisions, why is it more unpopular than ever? Part of the answer has to do with the fact that there are a handful of high profile decisions on which the Court is out of step with public opinion, including the Kelo decision allowing a local government to seize a house under eminent domain and the Boumediene case extending habeas corpus to accused enemy combatants abroad, and recent First Amendment decisions protecting unpopular speakers, such as funeral protesters, manufacturers of violent video games, and corporations (in the Citizens United case.) All of these decisions were unpopular with strong majorities of the public. But Persily and Ansolabehere also found that even decisions that closely divide the public **can lead to a decrease in the Court’s approval rating over time**, by increasing the perception among half the public that the Court is out of step with its partisan preferences. Bush v. Gore is perhaps the clearest example. In the short term, the Court’s overall approval ratings didn’t suffer: Republicans liked the decision, while Democrats didn’t, and the two effects canceled each other out. But Persily and his colleagues found that ten years later, Bush v. Gore continues to define the Court for many citizens, destroying confidence in the Court among Democrats while reinvigorating it among Republicans. Since an important component of the Court’s overall approval rating is whether Americans perceive themselves to be in partisan agreement with the Court as an institution, Bush v. Gore has led to a statistically significant decline in approval among Democrats as a whole.

#### Legitimacy resilient – single decisions don’t matter

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(Anke and Jeffrey Mondak, Professor of Political Science – University of Pittsburgh and Florida State University, “Do Attitudes Toward Specific Supreme Court Decisions Matter? The Impact of Webster and Texas v. Johnson on Public Confidence in the Supreme Court”, Political Research Quarterly, 51(3), September)

Opinion about the Supreme Court may influence opinion about the Court’s decisions, but is the opposite true? Viewed from the perspective of the Court’s justices, it would be preferable if public reaction to rulings did not shape subsequent levels of support for the Court. If opinion about the Court were fully determined by early political socialization and deeply rooted attachments to democratic values, then justices would be free to intervene in controversial policy questions without risk that doing so would expend political capital. Consistent with this perspective, a long tradition of scholarship argues that the Supreme Court is esteemed partly because it commands a bedrock of public support or a reservoir of goodwill, which helps it to remain legitimate despite occasional critical reaction to unpopular rulings (Murphy and Tanenhaus 1958; Easton 1965, 1975; Caldeira 1986; Caldiera and Gibson 1992). The sources of this diffuse support are usually seen as rather stable and immune from short-term influences, implying that evaluations of specific decisions are of little or no broad importance. For instance, Caldeira and Gibson (1992) find that basic democratic values, not reactions to decisions, act as the strongest determinants of institutional support.