# 1NC

## Offcase

### NG Prices DA

#### Natural gas prices are rising now – causes utilities to shift to coal

Litvak 2012 (November 9, Anya, “Pennsylvania coal industry faces changing future” <http://www.bizjournals.com/pittsburgh/print-edition/2012/11/09/coal-industry-faces-changing-future.html?page=all>)

When having a discussion on the future of coal, it would be unlikely to hear natural gas go unmentioned. Natural gas is a cleaner burning fuel whose recently made available reserves have brought down prices to historic lows. “It is economics driving this move from coal to gas, at least right now,” said Paul Sotkiewicz, chief economist for PJM, the nation’s largest grid operator that controls the flow of electricity in 13 states, including Pennsylvania. In the first six months of this year, under 42 percent of electricity in PJM came from coal, while nearly 20 percent came from gas — a record high and a record low, respectively. Five years ago, coal was at 57 percent and gas below 6 percent. Over the past two years, new gas units coming into the grid have doubled, while nearly 18 gigawatts of coal generation will be deactivated. “Gas prices will be between $4-$5 per British thermal unit in the near term range and coal prices are only going to continue marching forward,” Sotkiewicz said. “We’re looking at a huge reconfiguration of the fleet.” In spite of all that, he warned, in paraphrasing Mark Twain, “the death of coal has been greatly exaggerated.” This year, Ohio-based FirstEnergy Corp. (NYSE: FE), the largest utility in Pennsylvania and owner of West Penn Power, said it was considering co-burning natural gas with coal at five of its power plants, including three in the state. More than 60 percent of FirstEnergy’s fuel comes from coal plants. Its first gas co-firing test target would be Hatfield’s Ferry, a three-boiler coal plant in Masontown with a capacity of 1,710 megawatts. Spokesman Mark Durbin said it’s unlikely FirstEnergy would go through with co-firing if natural gas prices go beyond $3 per MBtu (million British thermal units). That would make gas uncompetitive with the price of coal, he said. For the first part of 2012, the average price of a million Btus of coal at electric utilities was $2.44, according to the Energy Information Administration. The average price of natural gas was $2.50 per MBtu. Usually, the gap is much greater. In 2009, Consol Energy Inc. (NYSE: CNX), a 148-year-old coal company, entered the shale business, partly as a hedge against its traditional fuel. “We made a $3.5 billion bet that gas was going to be the fuel of the future,” said Randy Albert, COO of Consol’s gas division. Alpha Natural Resources (NYSE: ANR) did the same a year later, partnering with Rice Energy to explore the Marcellus Shale in Washington and Greene counties. Right now, low natural gas prices are actually hurting both sides of their business. They handicap the profits the companies can make on the gas side and make coal less competitive for utilities, thereby decreasing demand. However, when the price of one fuel goes up, the other follows. “People in the gas market are sitting there rooting for exports to Asia so they can get the price of coal up, so that can drive the prices of gas up,” said John Hynes, a partner with West Virginia-based Excidian LLC. In late September, natural gas finally broke the $3 mark for the first time this year and has since been on the rise. Already, Consol is seeing the upside of that trend, said Robert Pusateri, executive vice president of energy sales and transportation services. “Favorable natural gas price trends have enabled us to conclude several large thermal coal agreements for 2013,” Pusateri told investors during an earnings call last month. “In a recent conversation that I had with a fuel buyer, he commented that with the recent uptick of natural gas pricing, that this was making him rethink his coal purchase strategy for 2013 so that he didn’t get himself caught short as gas prices continually trend up.” With natural gas prices on the rebound, coal may regain its traditional rank as a stable, low-cost fuel. “Cheap energy’s not a right, it’s a privilege,” Albert said. “And at the end of the day, American people won’t stand for that privilege to be taken away.”

#### **The aff causes low gas prices and prevents coal fill in**

Plumer, your author, author @ The Washington Post, 2012,

Brad, “Why regulating gas fracking could be cheaper than the alternatives,” http://www.washingtonpost.com/blogs/ezra-klein/post/why-fracking-regulations-could-be-cheaper-than-no-regulations-at-all/2012/05/29/gJQAfcUKzU\_blog.html?wprss=rss\_ezra-klein

We’re living in a “Golden Age of Gas,” says the International Energy Agency. Trapped in shale-rock formations around the world are trillions of cubic feet of unconventional natural gas. And drillers now have the technology to pluck it out. That’s a lot of cheap fuel — and it’s lower-carbon than coal.¶ But as always, there’s a catch. The technology used to extract natural gas from shale rock — known as hydraulic fracturing — carries all sorts of unsettling side effects. The gallons of chemicals used for drilling could, potentially, contaminate nearby drinking wells. The disposal of wastewater has been linked to earthquakes in places like Ohio. And there’s the possibility that methane leaks from fracking could make natural gas even worse for global warming than coal.¶ That, in turn, has led to a prickly debate over how fracking should be regulated. Industry groups sometimes argue that too much regulation will stifle drilling and make this potent new energy source more costly. But Michael Levi points to a new IEA report suggesting that careful regulations might end up being cheaper for the industry than no regulations at all. Why? Because unrestrained fracking could lead to mass opposition that limits new gas development altogether.¶ The IEA report (pdf) estimates that strict environmental regulations on fracking would add just 7 percent to the cost of gas production. Here’s Levi: “The IEA estimates, of course, are extremely crude. It wouldn’t be surprising to see compliance costs twice what they estimate — or half. Either way, the bottom line remains: Smart regulation of shale gas looks like it would be relatively cheap.”¶ Under a scenario where governments and drillers agree to adopt these rules, the IEA expects production to boom and natural gas to replace coal as the world’s second-largest energy source by 2035, behind oil. (This is all assuming, by the way, that countries don’t take further action to curtail their carbon emissions — doing so could affect natural gas, which is still a fossil fuel, even if it’s cleaner than coal.)¶ The no-regulation alternative, meanwhile, could prove even worse for the shale-gas industry. If strict environmental rules aren’t adopted, the IEA warns that voters in countries around the world could turn on drilling projects, especially if accidents became more commonplace. Anti-fracking protests like those in New York State might become the norm.¶ In this case, the IEA projects, shale gas development probably wouldn’t rise much above current levels by 2035. Coal would maintain its dominant position as the fuel of choice for electricity production — and, as a result, global greenhouse-gas emissions would be about 1.3 percent higher than otherwise.¶ So what are these “golden rules” for fracking, anyway? They include everything from choosing drilling sites carefully to regulating the construction of wells and disposal sites to minimize the risk of leaks and earthquakes. The IEA also calls for careful monitoring of drinking water and for technologies to tamp down on methane leaks so as to minimize the climate impacts of fracking.¶ “If this new industry is to prosper, it needs to earn and maintain its social license to operate,” warned IEA Chief Economist Fatih Birol, author of the report. “This comes with a financial cost, but in our estimation the additional costs are likely to be limited.” And, at the very least, it might prove cheaper than the alternatives.

#### EPA regulations mean low natural gas prices stop the shift to CCS

McCarthy and Copeland 2011 - Specialist in Environmental Policy AND Specialist in Resources and Environmental Policy (August 8, James E. and Claudia, “EPA’s Regulation of Coal-Fired Power: Is a “Train Wreck” Coming? ” <http://www.lawandenvironment.com/uploads/file/CRS-EPA.pdf>)

What these scenarios tell us is that utilities will look at the impending regulations and decide what to do largely based on their assumptions regarding the cost of the alternatives—natural gas (where it’s available) being the most often discussed, but others include conservation, wind, and other renewable resources. If they expect the price of gas to remain low or the cost of other alternatives to be competitive, their primary method of compliance likely will be to retire old coal plants and switch to gas or the alternatives. If they expect the price of gas or other alternatives to be high, they’ll invest the money in retrofitting the coal plants to reduce their emissions. As the NERC report stated: Unit retirement is assumed when the generic required cost of compliance with the proposed environmental regulation exceeds the cost of replacement power.... For the purpose of this assessment, replacement power costs were based on new natural gas generation capacity. If the unit’s retrofit costs are less than the cost of replacement power, then the unit is marked to be upgraded and retrofitted to meet the requirements of the potential environmental regulation., i.e., it is not considered “economically vulnerable” for retirement. 99 As utilities attempt to forecast the price of natural gas, their conclusions will be based in large part on assumptions as to whether gas will be available in sufficient quantities to meet the increased demands of electric power generation. Natural gas faces its own controversies, as domestic production increasingly relies on “unconventional” sources such as shale, from which gas is obtained by hydraulic fracturing. (For additional information on this practice, see CRS Report R41760, Hydraulic Fracturing and Safe Drinking Water Act Issues, by Mary Tiemann and Adam Vann.) Nevertheless, a 2009 NERC report stated: Concerns regarding the availability and deliverability of natural gas have diminished during 2009 as North American production has begun to trend upward due to a shift toward unconventional gas production from shale, tight sands, and coal-bed methane reservoirs. In its latest biennial assessment, the Potential Gas Committee increased U.S. natural gas resources by nearly 45 percent to 1,836 TCF [trillion cubic feet], largely because of increases in unconventional gas across many geographic areas. Pipeline capacity has similarly increased, by 15 BCFD [billion cubic feet per day] in 2007 and 44 BCFD in 2008, with an increase of 35 BCFD expected in 2009. Storage capacity has also increased substantially. 100 In short, the “train wreck” facing the coal-fired electric generating industry, to the extent that it exists, is being caused by cheap, abundant natural gas as much as by EPA regulations. As John Rowe, Chairman and CEO of Exelon Corporation, recently stated: “These regulations will not kill coal.... In fact, modeling done on the impacts of these rules shows that up to 50% of retirements are due to the current economics of the plant due to natural gas and coal prices.

#### Cheap natural gas obliterates the railroad industry – Coal shipping and competition with trucking

Ferry, Contributor to the Motley Fool Blog Network, 12

(6/17, Railroads Prepare for the Threat of Natural Gas, beta.fool.com/catominor/2012/06/17/railroads-prepare-threat-natural-gas/5836/

North American's freight railroads have delivered impressive performances since deregulation in the 1980s, growing into one of the largest and most efficient freight transportation systems in the world. Significant revenue drivers for railroads over the past few years have been large coal shipments to power plants, as well as a competitive advantage over trucking due to better fuel efficiency. Over the next decade, a secular trend in favor of cheap, clean natural gas will undermine these strengths. Railroads are anticipating the challenge and are taking steps to protect their businesses, but some lines will be far more exposed than others. American power plants have been hungry for coal, and the railroads have delivered it, transporting over 70% of the nation's coal. Coal typically accounts for around a quarter of rail volumes and just under a third of revenue for North America's Class I railroads. Like most commodities, coal volumes took a hit in 2009, which in turn dragged heavily on railroad's bottom lines. More distressingly, coal has been slow to recover with the rest of the economy, as a natural gas boom made possible by hydrofracking makes coal a less attractive fossil fuel. Worse for coal, the EPA has come out with new emissions guidelines that are likely to prevent another new coal plant from ever opening in the country. Last quarter, the volume of coal shipped by railroads slipped by 15–20%. But the railroads aren't sitting still. For one, while natural gas may be on the rise in the US, China is still hungry for coal and American exporters haven't even begun to meet this need. As domestic demand cools, coal miners and railroads alike are hoping that China can pick up the slack. Vast reserves in Wyoming's Powder River Basin are conveniently located for Pacific export, but current infrastructure on the West Coast is insufficient to handle large volumes. Plans are in the works to construct six new coal terminals in Washington and Oregon, and that would tremendously benefit rail lines with access to both the Powder River Basin and the planned terminals, including Union Pacific (NYSE: UNP) and BNSF, owned by Berkshire Hathaway (NYSE: BRK-B). Rail lines exposed primarily to Appalachian coal, without access to Pacific terminals, like CSX (NYSE: CSX) and Norfolk Southern (NYSE: NSC), will find it much more difficult to compensate for lagging domestic demand through export growth, as the European export market is already quite developed. These companies will simply have to diversify their shipment mix away from coal. Canadian National (NYSE: CNI) is the leader here, with coal accounting for only 7% of revenue, less than a quarter of its peers. Recently railroads have profited from an increase in the volume of automobiles and intermodal traffic, typically containerized cargo. Ironically the natural gas boom could help railroads, because cheap natural gas is used by American chemical companies as a feedstock for other products. Increased chemical production should translate to increased volumes of chemical shipments on the rails. Ultimately, the bigger threat from natural gas could be the advantage it gives to rail's chief competitor, freight trucking. The trucking industry is in the early stages of converting to natural gas engines, which will drastically reduce truckers' fuel costs. The better fuel efficiency of rail is what makes it competitive, because trucking benefits from public infrastructure support that rail doesn't have. Trucks do pay the Federal Highway Use Tax, but this doesn't cover the full cost of highway construction and maintenance, and truckers only have to pay the tax to the extent that they actually use roads, allowing them to better control expenses when volumes are low. Rail companies typically own their own tracks, and are fully responsible for maintenance and expansion. When volumes suffer, and fewer trains use the tracks, the railroads must still maintain them at full cost, putting them at a disadvantage. Most Class I railroads pay around 20% of total revenue on capital expenditure. If they lose their advantage in fuel efficiency to natural gas engine trucks, they could be forced to accept lower pricing to remain competitive. In an industry that has typically struggled to earn returns above and beyond their cost of capital, this prospect could negatively impact shareholders for many years to come.

#### Railroads key to military readiness and deployment

Pike, Policy analyst at the Federation of American Scientists, 12

(Strategic Rail Corridor Network (STRACNET), [www.globalsecurity.org/military/facility/stracnet.htm](http://www.globalsecurity.org/military/facility/stracnet.htm))

The military places heavy and direct reliance on railroads to integrate bases and connect installations to predominantly maritime ports of embarkation. Mainlines, connectors, and clearance lines must all combine to support movement of heavy and/or oversized equipment. To ensure that military needs are factored into railroad industry decisions that may impact on national defense, the Department of Defense relies on the Military Traffic Management Command (MTMC). In this capacity, MTMC identifies facilities of the railroad infrastructure important to national defense, informs the commercial and civil sectors of Defense needs, and encourages the retention and upkeep of railroad assets vital to support military movements. To ensure this continuity and coordination, MTMC has created the Strategic Rail Corridor Network (STRACNET). STRACNET has identified 32,500 miles of rail line critical for movement of essential military equipment to ports located around the country as well as another 5,000 miles of track essential to connect one facility to another. In addition to identifying key lines and facilities, MTMC also conducts analysis of potential railroad industry construction, mergers, bankruptcies, and abandonments to determine how any of these actions may affect DOD mobility capabilities. Since 1976, MTMC has reviewed more than 2,100 abandonments affecting 33,000 miles of track, as well as eight bankruptcies affecting more 1/3 of the nation's railroad network. MTMC analysis and reviews are the main source of DOD input to the railroad industry in attempts to preclude the loss of a critical section of track or facility that is essential to effective movement of heavy military lift requirements. The Railroads for National Defense Program (RND) ensures the readiness capability of the national railroad network to support defense deployment and peacetime needs. The Program works to integrate defense rail needs into civil sector planning affecting the Nation's railroad system. Rail transportation is extremely important to DOD since the predominance of our heavy and tracked vehicles will deploy by rail to seaports of embarkation. The RND Program in conjunction with the US Federal Railroad Administration (FRA), established the Strategic Rail Corridor Network (STRACNET) to ensure DOD's minimum rail needs are identified and coordinated with appropriate transportation authorities. STRACNET is an interconnected and continuous rail line network consisting of over 38,000 miles of track serving over 170 defense installations.

#### Readiness which is key to global deterrence – decline causes lashout and war

Spencer, Senior Research Fellow at Heritage, 2000

(The Facts About Military Readiness, www.heritage.org/research/reports/2000/09/bg1394-the-facts-about-military-readiness

Military readiness is vital because declines in America's military readiness signal to the rest of the world that the United States is not prepared to defend its interests. Therefore, potentially hostile nations will be more likely to lash out against American allies and interests, inevitably leading to U.S. involvement in combat. A high state of military readiness is more likely to deter potentially hostile nations from acting aggressively in regions of vital national interest, thereby preserving peace. Readiness Defined. Readiness measures the ability of a military unit, such as an Army division or a carrier battle group, to accomplish its assigned mission. Logistics, available spare parts, training, equipment, and morale all contribute to readiness. The military recognizes four grades of readiness.7 At the highest level, a unit is prepared to move into position and accomplish its mission. At the lowest level, a unit requires further manpower, training, equipment, and/or logistics to accomplish its mission. There is evidence of a widespread lack of readiness within the U.S. armed forces. Recently leaked Army documents report that 12 of the 20 schools training soldiers in skills such as field artillery, infantry, and aviation have received the lowest readiness rating. They also disclose that over half of the Army's combat and support training centers are rated at the lowest readiness grade.8 As recently as last November, two of the Army's 10 active divisions were rated at the lowest readiness level, and none were rated at the highest.9 Every division required additional manpower, equipment, or training before it would be prepared for combat, due largely to the units' commitments to operations in the Balkans.10 And 23 percent of the Army's Chinook cargo helicopters, 19 percent of its Blackhawk helicopters, and 16 percent of its Apaches are not "mission-capable."11 In other words, they are not ready. The Facts about Military Readiness The reduction in forces of the U.S. armed forces began in the early 1990s. After the end of the Cold War, the Bush Administration began to reduce the size of the military so that it would be consistent with post-Cold War threats.12 Under the Clinton Administration, however, that reduction in forces escalated too rapidly at the same time that U.S. forces were deployed too often with too little funding. The result was decreased readiness as personnel, equipment, training, and location suffered. Since the Persian Gulf War in 1991, the U.S. military has been deployed on over 50 peacekeeping and peace-enforcement operations.13 Yet the resources available to fund these missions have steadily decreased: The number of total active personnel has decreased nearly 30 percent, and funding for the armed services has decreased 16 percent. The strain on the armed forces shows clearly now as the reduced forces deploy for too long with insufficient and antiquated equipment. The result is indisputable: Readiness is in decline. Because the security of the United States is at stake, it is imperative to present the facts about military readiness: FACT #1. The size of the U.S. military has been cut drastically in the past decade. Between 1992 and 2000, the Clinton Administration cut national defense by more than half a million personnel and $50 billion in inflation-adjusted dollars.14 (See Table 1.) The Army alone has lost four active divisions and two Reserve divisions. Because of such cuts, the Army has lost more than 205,000 soldiers, or 30 percent of its staff, although its missions have increased significantly throughout the 1990s. In 1992, the U.S. Air Force consisted of 57 tactical squadrons and 270 bombers. Today the Air Force has 52 squadrons and 178 bombers. The total number of active personnel has decreased by nearly 30 percent. In the Navy, the total number of ships has decreased significantly as well. In 1992, there were around 393 ships in the fleet, while today there are only 316, a decrease of 20 percent. The number of Navy personnel has fallen by over 30 percent. In 1992, the Marine Corps consisted of three divisions. The Corps still has three divisions, but since 1992, it has lost 22,000 active duty personnel, or 11 percent of its total. The Clinton Administration also cut the Marine Corps to 39,000 reserve personnel from 42,300 in 1992. Effect on Readiness. In spite of these drastic force reductions, missions and operations tempo have increased, resulting in decreased military readiness. Because every mission affects far greater numbers of servicemen than those directly involved, most operations other than warfare, such as peacekeeping, have a significant negative impact on readiness. For each serviceman who participates in a military operation, two others are involved in the mission: one who is preparing to take the participant's place, and another who is recovering from having participated and retraining. Therefore, if 10,000 troops are on peace operations in the Balkans, 30,000 troops are actually being taken away from preparing for combat. Ten thousand are actively participating, while 10,000 are recovering, and 10,000 are preparing to go. Coupled with declining personnel, increased tempo has a devastating effect on readiness. Morale problems stemming from prolonged deployments, equipment that wears out too quickly, and decreased combat training levels heighten when troops are committed to non-combat operations. Further exacerbating the military's declining readiness is the tendency to take troops with special skills from non-deployed units. Thus, a mission may affect non-deployed units as well because they will not be able to train properly. The soldiers integral to the non-deployed mission are not present, and there is no one to take their place. A mission's spillover effects are clearly illustrated by a July 2000 report by the U.S. General Accounting Office (GAO) on the U.S. commitments in the Balkans: In January 2000 ... four active divisions and one Guard division were affected by these operations [in the Balkans]. Among the active divisions, the 1st Cavalry Division was recovering from a 1-year deployment in Bosnia, the 10th Mountain Division was deployed there, and elements of the Guard's 49th Armored Division were preparing to deploy there. At the same time, the European-based 1st Infantry Division was deployed to Kosovo, and the 1st Armored Division was preparing to deploy there. Although none of these divisions deployed in its entirety, deployment of key components--especially headquarters--makes these divisions unavailable for deployment elsewhere in case of a major war.15 Simultaneously, the military's budget has continuously decreased over the past eight years; and, thus, the services are being forced to choose between funding quality of life improvements, procurement, training, and other essential spending. Consequently, none is adequately funded. For example, the Army is short by thousands of night vision goggles, binoculars, global positioning systems and hundreds of generator sets, battery chargers, and chemical agent monitors. (See Table 2.) According to the Office of the Army Deputy Chief of Staff for Logistics, these shortages are due to "recent increases in requirements," "slowed procurement funding," and "use of operations and maintenance funds for higher priorities."16 Furthermore, when smaller forces deploy for more missions, the result is increased wear-and-tear on equipment and longer deployments for servicemen. Coupled with too little money, the result is a military weakened by aging equipment, low morale, and poor training. FACT #2. Military deployments have increased dramatically throughout the 1990s. The pace of deployments has increased 16-fold since the end of the Cold War.17 According to Representative Curt Weldon (R-PA), the Clinton Administration has deployed U.S. forces 34 times in less than eight years. During the entire 40-year period of the Cold War, the military was committed to comparable deployments just 10 times.18 Between 1960 and 1991, the Army conducted 10 operations outside of normal training and alliance commitments, but between 1992 and 1998, the Army conducted 26 such operations. Similarly, the Marines conducted 15 contingency operations between 1982 and 1989, and 62 since 1989.19 During the 1990s, U.S. forces of 20,000 or more troops were engaged in non-warfighting missions in Somalia (1993), Haiti (1994), Bosnia (1996), and Iraq and Kuwait (1998).20 In 1998, before U.S. interventions in Kosovo and East Timor, General Henry Shelton, the Chairman of the Joint Chiefs of Staff, warned, "In the past four years we've conducted some four dozen major operations. And today, in support of our national strategy, we have more than 50,000 troops deployed in 12 major operations--and, I might add, many smaller ones--in dozens of countries around the world." Today the Army has 144,716 soldiers in 126 countries.21 Throughout the 1990s, U.S. taxpayers spent an average of $3 billion per year on peace operations.22 In 1990, the U.S. Department of Defense (DOD) spent around $200 million on peace operations. Today that amount has ballooned to $3.6 billion.23 The 78-day Kosovo campaign in 1999 cost around $5 billion, not including the ongoing peace mission.24 Operations Southern and North Watch in Iraq cost $1.1 billion per year; the Haiti operation cost a total of $2.4 billion; and to date, the Balkans have cost over $15 billion.25 (See Table 3.) Effect on Readiness. This dramatic increase in the use of America's armed forces has had a detrimental effect on overall combat readiness. According to General Shelton, "our experience in the Balkans underscores the reality that multiple, persistent commitments place a significant strain on our people and can erode warfighting readiness."26 Both people and equipment wear out faster under frequent use. For example, units deployed in Somalia took 10 months to restore their equipment to predeployment readiness levels.27 According to a Congressional Budget Office (CBO) survey of Army leaders who participated in peace missions, almost two-thirds said that their units' training readiness had declined.28 Training is a key component of readiness, and frequent missions cause the armed forces to reduce training schedules. For example, Operation Allied Force caused 22 joint exercises to be cancelled in 1999. Joint training exercises were reduced from 277 in fiscal year (FY) 1996 to 189 in FY 2000.

### Regulations CP

#### The United States Federal Government should allow state regulation of natural gas production to take preference over federal rules in instances where state regulation is more extensive than federal regulation.

#### **The counterplan solves the aff by eliminating any potential obstruction the federal government creates for state regulators who want to regulate – THIS IF FROM THEIR SOLVENCY AUTHOR**

Willie ‘12
Matt Willie, J.D. candidate, April 2012, J. Reuben Clark Law School, Brigham Young University, Brigham Young University Law Review, 2011 B.Y.U.L. Rev. 1743, Hydraulic Fracturing and "Spotty" Regulation: Why the Federal Government Should Let States Control Unconventional Onshore Drilling, Lexis,

With state regulations already providing extensive environmental protections, additional federal fracking controls, in all likelihood, can have only one of two effects: either (1) they will “have little impact,” representing “no more than ideological tinkering with state law”;223 or (2) they will alter the entire state-centric system, essentially voiding many workable state rules, creating overlapping controls that slow down domestic oil and gas production, and producing uniform standards for fracking techniques that ought to vary by field and region.

### Avoidance CP 1NC

#### Text: The United States Supreme court should interpret all relevant congressional statutes and agency rules to allow the activities currently restricted by the Environmental Protection Agency’s New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews on natural gas production.

#### It competes – The plan invalidates existing restrictions but the counterplan revises the restriction without invalidating it

Kloppenberg, Professor of Law at Dayton, 06

Symposium: Judicial Independence and Judicial Accountability: Searching for the Right Balance: Does Avoiding Constitutional Questions Promote Judicial Independence? 56 Case W. Res. 1031

This brief essay will examine only one aspect of avoidance, the use of the canon of statutory construction to avoid "unnecessary" constitutional decisions and centering on one example, rather than a group of cases. The canon is a tool used to interpret statutes narrowly when they raise "serious constitutional questions." The canon is premised in part on deference to the legislature's role in constitutional interpretation. Rather than invalidate troubling legislation, a court "merely" revises the offending aspect of legislation. In theory, this affords legislatures another opportunity to consider the constitutional issues posed and strike a different balance between furthering its primary legislative aims and invading constitutionally protected areas.

#### The counterplan solves the case but avoids the net benefits because utilizing the avoidance doctrine builds support

Hooper, Associate at [Lightfoot, Franklin & White LLC](http://www.lightfootlaw.com/), 02

59 Wash & Lee L. Rev. 975

Despite criticism that the avoidance doctrine lends itself to judicial manipulation of legislative statutes - and therefore undermines Congress's primacy in lawmaking - the doctrine in fact supports Congress's legislative role in the constitutional scheme. When a court relies on the avoidance doctrine to refrain from making a constitutional ruling, it responds to Congress's preference for validation over invalidation, promotes democracy by leaving open issues for deliberation, and ensures that important public policy decisions are made by lawmakers who are accountable to the public. The avoidance doctrine provides judges an important device that allows them to pay proper respect to Congress's powers and discretion, thus preserving the separation of powers principle of the Constitution. These justifications for the avoidance doctrine were on full display in Zadvydas v. Davis. By avoiding a constitutional ruling on whether indefinite detention of deportable aliens violated the Due Process Clause, the Court signaled to Congress its concern about the constitutionality of indefinite alien detention. Congress heard the Court loud and clear, as proven by the rich debate on immigrant rights that occurred during Congress's consideration of antiterrorism legislation. [232](http://www.lexis.com/research/retrieve?pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=80ef48df66e0b00a23a2ac0e7ae142e7&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=222954c03b7165d52a2b795a7eec5ca9&focBudTerms=&focBudSel=all" \l "n232" \t "_self) Moreover, the Court's decision to decline from making a constitutional ruling in Zadyvdas reflected the American public's own uncertainty about the extent of immigrant rights and left the ultimate decision to Congress, where the matter could receive adequate deliberation. This result, Chief Justice Marshall and Justice Brandeis might argue, is desirable for it **both respects Congress's legislative supremacy and confirms the Court's own task of judicial review.**

#### Judicial restraint now - court negation of the actions of other branches obliterates legitimacy

Collett, Law Prof at St. Thomas, 10

Winter, Judicial Independence and Accountability in an Age of Unconstitutional Constitutional Amendments, 41 Loy. U. Chi. L.J. 327

It is axiomatic to the American political order that the legislature makes the laws, the executive enforces the laws, and the judiciary interprets and applies the laws.
Repeated and essentially **head-on confrontations** between the life-tenured branch and the representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter **may well erode** if self-restraint is not exercised in the utilization of the power **to negate the actions of the other branches.** [**102**](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n102)
Public confidence in the judicial branch is based upon its belief that the people have authorized the judiciary to rule upon disputes based upon the law and that the court rulings are unbiased applications of existing law. Destroy confidence in either of these propositions, and **the authority of the court disappears.**

V. Conclusion

In the American legal scheme, existing law controls the process of proposing new constitutional amendments but rarely controls the content. This means that judicial review has some role to play in the process of constitutional amendment, [103](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n103) but there is little constitutional  basis for substantive review. [104](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n104) As courts expand their constitutional review to encompass constitutional changes initiated by the people or other branches of government, they risk exceeding their constitutional authority. Large numbers of Americans no longer believe that the courts are applying the law in cases involving constitutional challenges; instead, they have come to believe that the courts are imposing the political preferences of judges. [105](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n105) This distinction between political and legal legitimacy is at the heart of the contemporary culture war over the role of courts. Based on a belief that courts are engaged in politics, rather than legal analysis, citizens are attempting to exert greater political control over those preferences through constitutional amendments and increased involvement in judicial elections. [107](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n107) This is not a new phenomenon, [108](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n108) and it is a reasonable response to the perceived problem.
Yet, with notable exceptions, the organized bar seems oblivious to this public perception. [109](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n109) Rather than responding to public concerns over the accountability of judges, leaders of the legal profession have demanded greater public respect for the independence of courts. [110](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n110) This is a bit like saying, "The answer to your belief that judges are out of control is to understand that judges should not be under any control"; such a response is hardly persuasive. Not surprisingly, these efforts have been largely unsuccessful. [**111**](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n111) Unless joined with serious discussions about judicial accountability, discussions of judicial independence merely reinforce public perceptions of the courts as political actors seeking to avoid political constraints.
In contrast to the opacity of the bar on this issue of growing public distrust, some **recent court opinions can be read as offering a renewed commitment to judicial restraint**. [**112**](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n112) If such a reading is correct, this bodes well for the renewal of Americans' confidence in the courts and the return of control over political issues to the political branches. If, however, such opinions merely reflect a **temporary ascendency** of judges holding conservative political and social views, it is likely that public efforts to exert political control over the courts will grow as liberals will come to share conservatives' long-held discontent with expansive judicial review.

#### Judicial legitimacy is key to prevent terrorism

Shapiro Associate Director Brookings 03

(Jeremy, March, Brookings, “French Lessons: The Importance of the Judicial System in Fighting Terrorism http:// www.brookings.edu/fp/cusf/analysis/shapiro20030325.htm)

The unique nature of terrorism means that maintaining the appearance of justice and democratic legitimacy will be much more important than in past wars. The terrorist threat is in a perpetual state of mutation and adaptation in response to government efforts to oppose it. The war on terrorism more closely resembles the war on drugs than World War II; it is unlikely to have any discernable endpoint, only irregular periods of calm. The French experience shows that ad-hoc anti-terrorist measures that have little basis in societal values and shallow support in public opinion may wither away during the periods of calm. In the U.S., there is an enormous reservoir of legitimacy, established by over 200 years of history and tradition, in the judiciary. That reservoir represents an important asset that the U.S. government can profit from to maintain long-term vigilance in this type of war. Despite the unusual opportunity for innovation afforded by the crisis of September 11, the U.S. government has not tried to reform American judicial institutions to enable them to meet the threat of terrorism. To prevent the next wave of attacks, however far off they might be, and to avoid re-inventing a slightly different wheel each time will require giving life to institutions that can persist and evolve, even in times of low terrorist activity. Given the numerous differences between the two countries, the U.S. cannot and should not simply import the French system, but it can learn from their mistakes. Their experience suggests a few possible reforms: • A specialized U.S. Attorney tasked solely with terrorism cases and entirely responsible for prosecuting such cases in the U.S. • Direct and formal links between that U.S. Attorney’s office and the various intelligence agencies, allowing prosecutors to task the intelligences agencies during judicial investigations • Special procedures for selecting and protecting juries in terrorism cases and special rules of evidence that allow for increased protection of classified information in terrorist cases Creating a normal, civilian judicial process that can prosecute terrorists and yet retain legitimacy is not merely morally satisfying. It may also help to prevent terrorist attacks in the long run. Not incidentally, it would demonstrate to the world a continuing faith in the ability of democratic societies to manage the threat of terrorism without sacrificing the very values they so desperately desire to protect.

#### Escalates to nuclear war

Speice, ’06

[Patrick F. Speice, Jr., JD Candidate at The College of William and Mary, “NEGLIGENCE AND NUCLEAR NONPROLIFERATION: ELIMINATING THE CURRENT LIABILITY BARRIER TO BILATERAL U.S.-RUSSIAN NONPROLIFERATION ASSISTANCE PROGRAMS,” William & Mary Law Review, February 2006, 47 Wm and Mary L. Rev. 1427]

Accordingly, there is a significant and ever-present risk that terrorists could acquire a nuclear device or fissile material from Russia as a result of the confluence of Russian economic decline and the end of stringent Soviet-era nuclear security measures. 39 Terrorist groups could acquire a nuclear weapon by a number of methods, including "steal[ing] one intact from the stockpile of a country possessing such weapons, or ... [being] sold or given one by [\*1438] such a country, or [buying or stealing] one from another subnational group that had obtained it in one of these ways." 40 Equally threatening, however, is the risk that terrorists will steal or purchase fissile material and construct a nuclear device on their own. Very little material is necessary to construct a highly destructive nuclear weapon. 41 Although nuclear devices are extraordinarily complex, the technical barriers to constructing a workable weapon are not significant. 42 Moreover, the sheer number of methods that could be used to deliver a nuclear device into the United States makes it incredibly likely that terrorists could successfully employ a nuclear weapon once it was built. 43 Accordingly, supply-side controls that are aimed at preventing terrorists from acquiring nuclear material in the first place are the most effective means of countering the risk of nuclear terrorism. 44 Moreover, the end of the Cold War eliminated the rationale for maintaining a large military-industrial complex in Russia, and the nuclear cities were closed. 45 This resulted in at least 35,000 nuclear scientists becoming unemployed in an economy that was collapsing. 46 Although the economy has stabilized somewhat, there [\*1439] are still at least 20,000 former scientists who are unemployed or underpaid and who are too young to retire, 47 raising the chilling prospect that these scientists will be tempted to sell their nuclear knowledge, or steal nuclear material to sell, to states or terrorist organizations with nuclear ambitions. 48 The potential consequences of the unchecked spread of nuclear knowledge and material to terrorist groups that seek to cause mass destruction in the United States are truly horrifying. A terrorist attack with a nuclear weapon would be devastating in terms of immediate human and economic losses. 49 Moreover, there would be immense political pressure in the United States to discover the perpetrators and retaliate with nuclear weapons, massively increasing the number of casualties and potentially triggering a full-scale nuclear conflict. 50

### Politics

#### Democrats prefer the CP to the plan – they don’t trust Republican states to regulate.

John Kincaid, 2012, Professor of Government and Public Service and Director of the Meyner Center for the Study of State and Local Government, Lafayette College, “State-Federal Relations:

Revolt Against Coercive Federalism,” http://knowledgecenter.csg.org/drupal/system/files/john\_kincaid\_2012\_0.pdf

At the same time, partisan polarization has revived a kind of dual, competitive federalism in which the party not in power in Washington, D.C., uses its dominance in a majority or sizable number of states to challenge policies of the party in power in Washington. Hence, state-based Republicans will continue challenging federal policies promulgated under President Obama, as they also did during Clinton’s presidency, thereby generating intergovernmental conﬂict, just like state-based Democrats opposed some federal policies promulgated under President Ronald Reagan and the two Bush presidencies. Partisan Polarization and Federalism In recent years, elected ofﬁcials, media pundits and many voters have polarized into boisterous ideological monologues. Maine Republican Olympia Snowe’s announced retirement from the U.S. Senate in 2012 marked, perhaps, the death knell for bipartisanship. In 2011, for the second year in a row and only the third time in 30 years, “no Senate Democrat compiled a voting record to the right of any Senate Republican, and no Republican came down on the left of any Senate Democrat.”3 Another indication of polarization is the rise of the Senate ﬁlibuster, which reached historic highs during the 110th and 111th Congresses, from 2007 to 2011. Polarization has had two notable impacts on the federal system. It contributed signiﬁcantly to centralization and coercive federalism because control of Congress, the White House, and a majority of the state legislatures and governorships by one party smooths the way for expansive federal policymaking. State partisan allies of the party in power in Washington, D.C., usually embrace policies emanating from their federal counterparts. Polarization also escalates state-federal conﬂict when the party in power in Washington, D.C., faces many states controlled by the other party.

### K

#### You should view consumption as a complex network of environmental pressures – addressing one “hotspot” for environmental collapse distracts focus from the broader system and produces efficiency gains that are only re-invested for more consumption – only a reduction in consumption patterns can solve inevitable human extinction

Ehrlich & Ehrlich 13

(Paul, Professor of Biology and President of the Center for Conservation Biology at Stanford University, and Adjunct Professor at the University of Technology, Sydney, Anne, Senior Research Scientist in Biology at Stanford, “Can a collapse of global civilization be avoided?”, January 9, 2013, *Proceedings of the Royal Society of Biological Sciences*)

But today, for the first time, humanity's global civilization—the worldwide, increasingly interconnected, highly technological society in which we all are to one degree or another, embedded—is threatened with collapse by an array of environmental problems. Humankind finds itself engaged in what Prince Charles described as ‘an act of suicide on a grand scale’ [4], facing what the UK's Chief Scientific Advisor John Beddington called a ‘perfect storm’ of environmental problems [5]. The most serious of these problems show signs of rapidly escalating severity, especially climate disruption. But other elements could potentially also contribute to a collapse: an accelerating extinction of animal and plant populations and species, which could lead to a loss of ecosystem services essential for human survival; land degradation and land-use change; a pole-to-pole spread of toxic compounds; ocean acidification and eutrophication (dead zones); worsening of some aspects of the epidemiological environment (factors that make human populations susceptible to infectious diseases); depletion of increasingly scarce resources [6,7], including especially groundwater, which is being overexploited in many key agricultural areas [8]; and resource wars [9]. These are not separate problems; rather they interact in two gigantic complex adaptive systems: the biosphere system and the human socio-economic system. The negative manifestations of these interactions are often referred to as ‘the human predicament’ [10], and determining how to prevent it from generating a global collapse is perhaps the foremost challenge confronting humanity. The human predicament is driven by overpopulation, overconsumption of natural resources and the use of unnecessarily environmentally damaging technologies and socio-economic-political arrangements to service Homo sapiens’ aggregate consumption [11–17]. How far the human population size now is above the planet's long-term carrying capacity is suggested (conservatively) by ecological footprint analysis [18–20]. It shows that to support today's population of seven billion sustainably (i.e. with business as usual, including current technologies and standards of living) would require roughly half an additional planet; to do so, if all citizens of Earth consumed resources at the US level would take four to five more Earths. Adding the projected 2.5 billion more people by 2050 would make the human assault on civilization's life-support systems disproportionately worse, because almost everywhere people face systems with nonlinear responses [11,21–23], in which environmental damage increases at a rate that becomes faster with each additional person. Of course, the claim is often made that humanity will expand Earth's carrying capacity dramatically with technological innovation [24], but it is widely recognized that technologies can both add and subtract from carrying capacity. The plough evidently first expanded it and now appears to be reducing it [3]. Overall, careful analysis of the prospects does not provide much confidence that technology will save us [25] or that gross domestic product can be disengaged from resource use [26].

Our alternative is to reject the politics of technological production

Rather than focusing on production of technology, we should embrace our ability to shape and transform our subjectivity as consumers, embracing voluntary simplicity – this debate offers a crucial moment to produce alternative knowledge about everyday living practices

Alexander ‘11

(Samuel, University of Melbourne; Office for Environmental Programs/Simplicity Institute, “

Voluntary Simplicity as an Aesthetics of Existence”, Social Sciences Research Network, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1941087)

The aim of this paper, however, is not to present a thorough analysis of Foucault’s notion of an aesthetics of existence. Several such analyses have appeared in recent times (after years of unfortunate scholarly neglect), and much of this emerging commentary is very probing and insightful.12 But this is not the time to focus on furthering that critical discussion or even providing a comprehensive literature review of it. Instead, after providing a brief exposition of Foucault’s ethics, this paper will undertake to actually apply the idea of an aesthetics of existence to a particular subject of ethical concern, namely, to our role as ‘consumers’ in the context of First World overconsumption. This is an area that raises ethical questions concerning how we ought to live for two main reasons: firstly, due to the impact Western--‐style consumers are having on the natural environment; and secondly, due to the continued existence of poverty amidst plenty. There is, however, another perspective to consider also. A large body of sociological and psychological literature now exists indicating that Western--‐style consumption practices are often failing to provide meaning and fulfillment, even to those who have ‘succeeded’ in attaining a high material standard of living.13 These three consumption--‐related issues – ecological degradation, poverty amidst plenty, and consumer malaise – provide ample grounds for thinking that consumption is a proper subject for ethical engagement, in the Foucauldian sense of ethics as ‘the self enfgaging the self.’ If it is the case that our individual identities have been shaped, insidiously perhaps, by a social system that celebrates and encourages consumption without apparent limit – and it would not be unfair to describe consumer societies in these terms14 – then it may be that ethical practice today calls for a rethinking of our assumptions and attitudes concerning consumption, which might involve a deliberate reshaping of the self by the self. This paper will explore the possibility of such an ethics of consumption in the following ways. First, by explaining how neoclassical economics, which is arguably the most influential paradigm of thought in the world today, conceptualizes consumption as something that benefits both ‘self’ and ‘other’ and, therefore, as something that should be maximized. To the extent that modern consumers have internalized this conception of consumption, an ethics of consumption might involve engaging the self for the purpose of changing the self and creating something new. The second way an ethics of consumption will be explored will be through an examination of the theory and practice of ‘voluntary simplicity,’ a term that refers to an oppositional living strategy or ‘way of life’ with which people, somewhat paradoxically, perhaps, seek an increased quality of life through a reduction and restraint of one’s level of consumption.15 The paradox, so-­‐ called, consists in the attempt to live ‘more with less.’ Since voluntarily living simply means heading in the opposite direction to where most people in consumer societies (and increasingly elsewhere) seem to want to go, one would expect living simply to require a fundamentally creative engagement with life and culture, especially in contemporary consumer societies that seem to be predicated on the assumption that ‘more consumption is always better.’ This need for a fundamentally creative engagement with life is what prompted the present attempt to elucidate the idea of ‘voluntary simplicity as aesthetics of existence,’ and it is this attempt to infuse Foucauldian ethics with an emerging post-­‐consumerist philosophy of life that constitutes the original contribution of this paper. It is hoped that this practical application of Foucault’s ethics might also prompt others to consider how ethical engagement might produce new ways of being that are freer, more fulfilling, and yet less resource-­‐intensive and damaging than the modes of being which are dominant in consumer societies today. Could it be, for example, that the ‘Death of Man,’ to use Foucault’s phrase, was actually the first (and a necessary) phase in the demise of what one might call ‘homo consumicus’? And what forms of life, what modes of being, would or could materialize with the voluntary emergence of ‘homo post-­‐consumicus’? These are the large questions that motivated this study and in the following pages a preliminary attempt is made to grapple with them. The aim, however, is not to legitimate ‘what is already known,’16 since that would not be a very Foucauldian endeavor; rather, the aim is to explore whether or to what extent it is possible to ‘free thought from what it silently thinks,’17 in the hope that this might open up space to ‘think differently,’18 to think otherwise.

## Solvency

### General

#### There are zero cards that talk about the plan – be skeptical of their advantages

#### Lots of states don’t want to regulate methane and alt cause – cattle

The Rural Blog 2009 - A digest of events, trends, issues, ideas and journalism from and about rural America, from the Institute for Rural Journalism and Community Issues, based at the University of Kentucky (April 27, “Cattle-state senators seek to block regulation of methane emissions from large cattle operations” <http://irjci.blogspot.com/2009/04/cattle-state-senators-seek-to-block.html>)

The Environmental Protection Agency said April 17 that it is closer to declaring greenhouse-pgas emissions a threat to public health. The announcement heated the debate over what types of emissions should be regulated, including large cattle-feeding operations. " EPA estimates that U.S. cattle emit about 5.5 million metric tons of methane per year into the atmosphere, accounting for 20 percent of U.S. methane emissions," reports Lisa Hare of the Yankton Press & Dakotan.¶ If methane emissions from large cattle operations are regulated, the operators will have to participate in the cap-and-trade program to offset their greenhouse gas emissions. Sens. John Thune, R-S.D., and Mike Johannas, R-Neb., are pushing legislation to stop that. South Dakota and Nebraska are big cattle producers. "According to Thune, the EPA’s new declaration could set the government down a 'slippery slope' toward a permit process for methane emissions of cattle and other livestock," writes Hare.

#### States are regulating now

Russell 2012 - President, Independent Petroleum Association of America (April 28, Barry, “Duplicative & Unnecessary Regulations” <http://energy.nationaljournal.com/2012/04/regulating-natural-gas-whats-t.php>)

Most of these proposals are either un-necessary, duplicative or both. Two examples include the EPA’s promulgation of regulations governing pre-treatment standards for produced fluids and the agency’s new source performance standards for hydraulically fractured wells. In its rush to regulate, the EPA missed that industry and state regulators are already addressing these issues. Specifically, independent operators are using water recycling and disposal wells for water and brine waste management. They are also using green completion techniques, and other measures, to significantly reduce emissions from development operations.

#### Obama will succeed with a wave of judicial nominations now

McCarter, Senior Political Writer for Daily Kos, 3/4

(13, Obama picks up steam on judicial nominations, www.dailykos.com/story/2013/03/04/1191497/-Obama-picks-up-steam-on-judicial-nominations)

Obama picks up steam on judicial nominations The Senate Republican obstruction gambit is responsible, in part, for the fact that President Obama ended his first term in office with more vacancies and judicial emergencies than when he was inaugurated and with far fewer confirmations than his two predecessors had at the end of their first terms. But there's another part of the story, and that's been that filling vacancies—making nominations—hasn't seemed to be a high priority for the president. But he's now closing the gap. Reelected with strong support from women, ethnic minorities and gays, Obama is moving quickly to change the face of the federal judiciary by the end of his second term, setting the stage for another series of drawn-out confrontations with Republicans in Congress. The president has named three dozen judicial candidates since January and is expected to nominate scores more over the next few months, aides said. The push marks a significant departure from the sluggish pace of appointments throughout much of his first term, when both Republicans and some Democrats complained that Obama had not tried hard enough to fill vacancies on federal courts. [...] The diversity of Obama’s judicial nominees stands in contrast to staff selections at the start of his second term that have been dominated by white men, including White House Chief of Staff Denis McDonough, Secretary of State John F. Kerry, Defense Secretary Chuck Hagel and Treasury Secretary Jack Lew. [...] Liberal groups have been pressuring the White House to look for diversity not just in race, gender or sexual orientation, but also in professional experience. They want fewer corporate lawyers from white-shoe firms and more public defenders and lawyers from outside what is sometimes called the “judicial monastery.” It's a very smart fight for President Obama to take on right now, and one that could be made even smarter if he does follow the advice of progressives and look beyond corporate law for his nominees. His record on demographic diversity on nominees is impressive: 37 percent of his confirmed judges are people of color, compared to 19 percent for Bush, and 42 percent of Obama’s first-term judges are women, compared with 21 percent for Bush. He can make the judiciary look even more like the rest of America by drawing from those who deal with the issues of the 99 percent in their legal careers. It's well past time that Obama takes the Republicans head on over the judiciary because it's a clear-cut political winner for him. Republican obstruction on judges has been extraordinarily political and without basis because Obama hasn't been nominating unqualified liberal firebrands. Putting a raft of nominees before them will keep a spotlight on the GOP's tactics.

#### Constitutional avoidance key to prevent interbranch conflict

Hooper, Associate at [Lightfoot, Franklin & White LLC](http://www.lightfootlaw.com/), 02

59 Wash & Lee L. Rev. 975

Although legal scholars typically regard the Ashwander and Crowell opinions as the foundational cases of the avoidance doctrine, the notion that courts should sidestep constitutional questions when possible can be traced back to Chief Justice John Marshall's opinion in Murray v. Schooner Charming Betsy. **[61](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7" \l "n61" \t "_self)** In Charming Betsy, Marshall warned that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." **[62](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7" \l "n62" \t "_self)** The message in Justice Marshall's admonition and the avoidance principle that later followed was that courts should respect the powers and discretion of the other branches. **[63](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7" \l "n63" \t "_self)** This principle of deference rests in part on Congress's supremacy in legislative matters. With this recognition, the judiciary assumes "its proper role in construing statutes, which is to interpret them so as to give effect to congressional intention." **[65](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7" \l "n65" \t "_self)** When the judiciary fulfills this role and sidesteps serious constitutional questions, several advantages result. First, avoidance minimizes the friction between Congress and the courts concerning the institution of judicial review. **[66](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7" \l "n66" \t "_self)** Second, avoidance prevents the nullification of a congressional statute, thus saving Congress both the time necessary to amend the legislation to render the legislation constitutional and the aggravation caused by the Court's invalidation of one of its statutes. Finally, judicial avoidance of constitutional questions supports the separation of powers within the federal   government because it preserves Congress's supremacy in the legislative sphere.

#### A threatened Congress will strike back at the judiciary through the appointments process

Geyh, Chair of Law Department @ Indiana, 06

(Charles Gardner. When courts & congress collide: the struggle for control of America’s Judicial System. P. 208)

The rise of customary judicial independence has been accompanied by a corresponding decline in judicial accountability, which resulted from the gradual rejection of various means of congressional control over judicial decision making—such as impeachment, court packing and unpacking, and jurisdictional manipulation. The appointments process, by virtue of its highly partisan tradition, its unique interbranch dynamic, and the relative ease with which partisan, ideologically motivated rejections can be accomplished, has evolved separately, unencumbered by the same judicial independent norms. As more draconian methods for controlling the courts - their decisions fell into disrepute, the confirmation process became the last best hope for legislators seeking to preserve some measure judicial accountability. Moreover, as the movement toward holding judges prospect' accountable for their decisions by means of the confirmation process took root, it may have diminished further still the perceived need hold judges accountable in other ways. To the extent that appointments process is calculated to select mainstream justices think, more or less, like those who appoint them (and to reject Tiers who do not), the occasions in which the decisions of those justices will so alienate the political branches and their constituencies to prompt retaliation may be fewer. And regardless of the extent which presidents and senators can in fact reduce the future incidence of unacceptable decisions via the appointments process, the emerging perception that they can do so has meant that when unacceptable decisions occur, the political response of first resort is increasingly address the problem with new appointments rather than by other, discredited means of court control.

#### Blocking judicial appointments ensures rollback of abortion rights domestically and abroad

Clark 11

Winter, Grassroots Organizer, Ms, Abortion Rights ON THE Line, Lexis

ON THE DOWNSIDE, ANTI-ABORTION LEADERS ARE already attempting to dictate who should head up congressional committees and are hunting up even more radical candidates for future races. At the federal level, we can expect more attacks on the rights of women seeking abortions and family planning here and globally. Expect a move to try to defund domestic family-planning clinics that also provide abortion services, such as Planned Parenthood. At the state level, we should first expect severe restrictions on abortion coverage in the state insurance exchanges set up under the new federal health-insurance reform law. Five states already passed such laws in 2010 and dozens more introduced bills to do so. Some 34 other sorts of restrictions became state law last year. And don't be shocked to see family-planning funds cut from state budgets, as has already happened in New Jersey (they were later restored, but cut by nearly a third). But can't we then turn to the cushion of the courts? Well, yes, if bans on abortion or restrictions on birth control are passed into law, we can appeal. But over the years, ideologically driven Republican presidents have successfully appointed anti-abortion judges, often with little notice or opposition by Congress. Democratic presidents, meanwhile, have experienced blocking tactics in the Senate - often by a single senator - that have kept Democratic judicial nominees from being appointed. Fewer than half of Obama's nominees have been confirmed - the lowest percentage of any U.S. president since Nixon at this point in his term. The number of vacancies in the federal courts is now more than 10 percent, and the Administrative Office of the U.S. Courts, which tracks such statistics, has declared the situation an emergency in several levels of the court system. As of November 2010, most federal courts (including the Supreme Court) have a majority of Republican appointees, which does not bode well for women's rights.

#### Access to safe abortions key to prevent overpopulation

Tucker, Senior editor of The Futurist, 06

Strategies for Containing Population Growth, http://patricktucker.com/2010/04/01/strategies-for-containing-population-growth/

The progress that humanity has made in curbing population growth could be undone in the years ahead as people lose sight of the essential link between family planning, women’s health, and the environment, according to Joseph Speidel of the University of California, “Unfortunately,” he writes “Unlike general health, which everybody is for, a lot of people are against population work, against family planning, and especially against critical areas like making safe abortions available. This puts us under enormous handicaps, but if one thinks it through and considers the big picture-how we can assure social and economic welfare around the planet-then you have no choice but to remain engaged with population. The links between population and environment are so strong, I’m surprised more environmental organizations and people who care about the environment don’t get involved in the population issue.” The contributors are careful to point out that population growth to 12 billion is far from a foregone conclusion; in fact, the United Nations is projecting population growth to level off at 8.9 billion people. But many demographers concede that, in order for the world to reach that lower target, fertility rates in many countries would have to drop from where they are now. Greater availability of family-planning services, increased sex education, and the empowerment of the world’s women are all essential to keeping the earth’s population within reasonable limits.

Nuclear annihilation

Ehrlich and Ehrlich 90

Paul Ehrlich & Anne Ehrlich, Stanford Biologists, The Population Explosion, 1990 p. 174-175

The population explosion contributes to international tensions and therefore makes a nuclear holocaust more likely. Most people in our society can visualize the horrors of a large-scale nuclear war followed by a nuclear winter.' We call that possible end to our civilization "the Bang." Hundreds of millions of people would be killed outright, and billions more would follow from the disruption of agricultural systems and other indirect effects largely caused by the disruption of ecosystem services. it would be the ultimate "death-rate solution" to the population problem-a stunning contrast to the humane solution of lowering the global birthrate to slightly below the death rate for a few centuries. As this is written (mid-1989), it fortunately seems that the chances of the Bang have lessened. New-minded leadership in the Soviet Union is for the moment in the ascendancy. President Mikhail Gorbachev, along with a few other world leaders, seems to be aware that environmental security is at least as important as military strength in providing security to nations, and appears to be doing everything possible to damp down the arms race between the United States and the Soviet Union. An apparently more pragmatic government also is in place in the United States, although it is still too soon to tell whether the superpowers are on the road toward massive nuclear-arms reduction and true reconciliation. What is certain is that the structure of military forces around the world still provides plenty of chances for local conflicts to escalate into Armageddon even in the face of growing East-West rapprochement. There remains the problem that, as the world gets further and further out of control, crazies on both the left and the right may exert increasingly xenophobic pressures on national governments. The rise of fundamentalism in both East and West is a completely understandable but not at all encouraging sample of what the future may hold in terms of conflict. Those struggling to achieve a permanently peaceful world still have much work to do, especially as growing and already overpopulated nations struggle to divide up dwindling resources in a deteriorating global environment.

## Methane Advantage

### Warming

#### Developing countries, lax regulation, and profit maximization means warming is inevitable

Porter 2013 - writes the Economic Scene column for the Wednesday Business section (March 19, Eduardo, “A Model for Reducing Emissions” <http://www.nytimes.com/2013/03/20/business/us-example-offers-hope-for-cutting-carbon-emissions.html?_r=1&>)

Even if every American coal-fired power plant were to close, that would not make up for the coal-based generators being built in developing countries like India and China. “Since 2000, the growth in coal has been 10 times that of renewables,” said Daniel Yergin, chairman of IHS Cambridge Energy Research Associates.¶ Fatih Birol, chief economist of the International Energy Agency in Paris, points out that if civilization is to avoid catastrophic climate change, only about one third of the 3,000 gigatons of CO2 contained in the world’s known reserves of oil, gas and coal can be released into the atmosphere.¶ But the world economy does not work as if this were the case — not governments, nor businesses, nor consumers.¶ “In all my experience as an oil company manager, not a single oil company took into the picture the problem of CO2,” said Leonardo Maugeri, an energy expert at Harvard who until 2010 was head of strategy and development for Italy’s state-owned oil company, Eni. “They are all totally devoted to replacing the reserves they consume every year.”

#### No impact – empirics

Willis et. al, ’10 [Kathy J. Willis, Keith D. Bennett, Shonil A. Bhagwat & H. John B. Birks (2010): 4 °C and beyond: what did this mean for biodiversity in the past?, Systematics and Biodiversity, 8:1, 3-9, <http://www.tandfonline.com/doi/pdf/10.1080/14772000903495833>, ]

The most recent climate models and fossil evidence for the early Eocene Climatic Optimum (53–51 million years ago) indicate that during this time interval atmospheric CO2 would have exceeded 1200 ppmv and tropical temperatures were between 5–10 ◦ C warmer than modern values (Zachos et al., 2008). There is also evidence for relatively rapid intervals of extreme global warmth and massive carbon addition when global temperatures increased by 5 ◦ C in less than 10 000 years (Zachos et al., 2001). So what was the response of biota to these ‘climate extremes’ and do we see the large-scale extinctions (especially in the Neotropics) predicted by some of the most recent models associated with future climate changes (Huntingford et al., 2008)? In fact the fossil record for the early Eocene Climatic Optimum demonstrates the very opposite. All the evidence from low-latitude records indicates that, at least in the plant fossil record, this was one of the most biodiverse intervals of time in the Neotropics (Jaramillo et al., 2006). It was also a time when the tropical forest biome was the most extensive in Earth’s history, extending to mid-latitudes in both the northern and southern hemispheres – and there was also no ice at the Poles and Antarctica was covered by needle-leaved forest (Morley, 2007). There were certainly novel ecosystems, and an increase in community turnover with a mixture of tropical and temperate species in mid latitudes and plants persisting in areas that are currently polar deserts. [It should be noted; however, that at the earlier Palaeocene–Eocene Thermal Maximum (PETM) at 55.8 million years ago in the US Gulf Coast, there was a rapid vegetation response to climate change. There was major compositional turnover, palynological richness decreased, and regional extinctions occurred (Harrington & Jaramillo, 2007). Reasons for these changes are unclear, but they may have resulted from continental drying, negative feedbacks on vegetation to changing CO2 (assuming that CO2 changed during the PETM), rapid cooling immediately after the PETM, or subtle changes in plant–animal interactions (Harrington & Jaramillo, 2007).]

## Federalism Advantage

### Chem Industry

#### No impact to the Chemical industry—

#### a. Egregious author bias- their impact evidence is from the International Council of Chemical Associations and doesn’t cite any distinct studies to prove the argument.

#### b. No internal link- their evidence doesn’t predict price hikes will utterly destroy the industry- at worst growth is stalled, no brink to industry-wide collapse – at worst growth is slowed which is a far cry from collapse

#### Worst case scenario we buy the chemical products from other states- US isn’t key

NASDAQ, 2012

9-6. Subset of Ameritrade, stock market exchange. “Chemical Industry Stock Outlook - Sept. 2012 - Zacks Analyst Interviews,” http://community.nasdaq.com/News/2012-09/chemical-industry-stock-outlook-sept-2012-zacks-analyst-interviews.aspx?storyid=170806#ixzz28UcPva8c

The chemical industry, a nearly $3 trillion global business, has grown at a brisk pace for more than five decades. The fastest growing areas have involved the manufacture of synthetic organic polymers used as plastics, fibers and elastomers. The chemical industry is mainly concentrated in three areas of the world: Western Europe, North America and Japan. Europe is the largest producer, followed by the U.S. and Japan. ¶ The U.S. chemical industry represents roughly 19% of the global chemical output and employs more than 800,000 people. It is responsible for 10% of the nation's merchandise exports, aggregating $145 billion annually. Roughly 5.5 million additional jobs are backed by the purchasing activity of the chemical industry.

#### Chemical industry hurting now- commodity prices, global downturn, housing, currency exchange

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The global nature of the industry puts competitive issues into sharp focus. The U.S. producers have responded to competitive pressures by streamlining operations, relocating manufacturing facilities to low-cost regions closer to end-markets, and being overall more nimble and flexible in responding to market opportunities. And it is not always easy to pull this off. ¶ Commodity price hikes, though subsiding lately, is adding to feedstock costs for many of these producers. Their ability to pass these costs on to end consumers is not always easy, given the competitive pressures at play. As a result, margins for a number of producers will continue to be under pressure. ¶ Given the industry's sensitivity to the global economy, any negative current in the macro economy would be reflected in the prospects of the chemical companies. The turmoil in Europe and its impact on global growth remain sources of near-term uncertainty. Western Europe continues to pose challenges on chemical stocks due to weak demand (particularly in the construction industry) and the lingering impact of debt crisis. ¶ Moreover, the U.S. housing sector remains a weak end-market. The domestic housing sector, a key consumer of chemicals, is likely to remain soft through the remainder of 2012. Weakness in the electronics and construction end-markets may weigh on the results in the back half of the year. ¶ Chemical companies generate a considerable amount of revenues outside the U.S., and therefore are exposed to foreign exchange fluctuations. Unfavorable currency exchange translation (stemming from a stronger dollar) dented most of these companies' results in the most recent quarter. ¶ Chemical titan The Dow Chemical Company ( DOW ) was pummeled by several headwinds in the June quarter. The company's results were hurt by the beleaguered economic conditions in Europe. Softness across electronics and construction markets may continue to impinge its results in the second half. Moreover, Dow is facing challenges in Western Europe due to the recessionary conditions and expects currency headwinds to continue given the weak euro.

### Federalism

#### Energy decentralization fails – leads to dominance of special interest groups – cooperative federalism fails

Pursley ’12 - Assistant Professor, The University of Toledo College of Law (date from most recent cite, Garrick B., “Unblocking Cooperative Energy Governance” <http://www.law.northwestern.edu/searlecenter/papers/Pursley_Unblocking.pdf>)

The potential pathologies of full decentralization of regulatory authority should give ¶ us pause. First, the scalability problem persists—there still will be variation in the ¶ preferences of sub-state locations to which statewide measures cannot fully respond18¶ —¶ “the most populous states are very large in size and . . . [t]heir decision making largely ¶ sacrifices the benefits of decentralization[] because these states are seeking to govern a ¶ diverse population that will have very heterogeneous preferences.”19 Second, with the ¶ smaller scale of state-level politics comes a more constrained vision, likely, tailoring ¶ state policy to a narrower and more parochial set of interests that may exclude important ¶ priorities that would be on the table in nation-wide political negotiations. The classical ¶ objection is that interest groups that favor lax environmental regulation and have high ¶ individual stakes in regulatory outcomes—paradigmatically industry groups—tend to be ¶ small and cohesive, but groups favoring stricter environmental regulation tend to be ¶ more diffuse and less organized.20 This disparity in political power, from the ¶ perspective of economies of scale in political organization and advocacy of the two ¶ camps, is exacerbated at the state and local government levels.21 Diffuse environmental ¶ interests may muster the resources to organize and act within a single political forum, ¶ but organizing at multiple state or government locations would be too taxing upon their ¶ relatively undisciplined and typically under-funded infrastructures.22 Interests favoring ¶ laxer regulation, by contrast, are thought to possess relatively greater capacity to ¶ organize and advocate in multiple government forums and thus enjoy a comparative ¶ advantage.23 Comparative institutional analysis thus suggests that federal ¶ environmental authority is preferable to state or local authority because the federal level ¶ is the most efficient receiver of broadly shared but often under-organized public ¶ interests in environmental protection, which are needed to counterbalance industrial ¶ interests that would otherwise dominate the political process and impose their narrow ¶ interests on the unwitting public.24 In addition, some states may lack the political will to enact new energy¶ regulation—while state-level renewable portfolio standards have been around for years, ¶ 20 or so states still haven’t adopted comprehensive energy modernization policies.¶ 25¶ State governments also may be easier for opposition or industry interests to capture ¶ compared to both federal and local governments; the potential to resist capture created ¶ by dispersing power among 50 different governments is offset by the states’ narrower ¶ policy portfolios and varying barriers to industry influence, making states a ¶ comparatively bad bet for institutional resistance to capture. While public choice theory¶ suggests that subnational governments are forums in which industry and environmental ¶ interests are more evenly matched than they are at the federal level;¶ 26 there are also ¶ reasons to think that state governments may prove particularly responsive to entrenched ¶ conventional energy interests.27 This problem is enhanced in the energy field by state ¶ leadership on renewable energy, which has galvanized and enhanced the focus of ¶ traditional fuel interests on the state governments.¶ 28 There may be sufficient discipline, coordination, and resources in opposition interests to work effectively even in all 50 ¶ states to prevent or water-down enactment of progressive energy measures. Generally ¶ speaking, competition for residents and the possibility of resident exit—residents’ ¶ power to “vote with their feet”—offset to some extent the motivation for subnational ¶ governments to bow to industry pressure and loosen regulations.29 This disciplining ¶ force, however, diminishes as the transaction costs of resident relocation increase—as ¶ they do when considering out of state relocation rather than just moving from one city ¶ or town to another.30 From the perspective of interest group alignment and other ¶ political considerations, local governments are preferable to states.¶ Thus, without some sort of unifying nationwide policy guideline, there likely will be both geographic and substantive gaps in a patchwork of sub-national initiatives. The ¶ third problem is a conceptual but consistent critique of decentralization: With the ¶ mobility of capital, strong economic incentives exist and may drive states to engage in a ¶ “race to the bottom”—competing to enact regulations that will draw business and ¶ citizens—which, in theory, could involve diminishing environmental, consumerprotection, and perhaps energy-efficiency standards.¶ 31 Thus, while decentralization ¶ remains an important component of modern theory on optimizing environmental and ¶ energy regulation32, the current consensus for cooperative federalism arrangements in¶ which the federal government plays a coordinating or floor-setting role.¶ 33 A regime ¶ involving both federal regulatory discipline and corresponding empowerment of state ¶ policy experimentation above a baseline may provide the benefits of decentralization ¶ without the possibly negative consequences of state competition, free riding, and ¶ potential regulatory failure.¶ 34 Indeed, federal cooperation with state governments is an ¶ important part of the implementation strategy built into the Clean Air and Clean Water acts.35¶ The focus of most of these cooperative or integrative governance proposals on ¶ partnering the federal government with state governments on energy and environmental¶ issues, while perhaps a natural impulse in the light of state-centric public debates about ¶ federalism, may actually undermine cooperative regulation’s capacity to capture the ¶ benefits of decentralization. First, state governments may exercise what Professor ¶ Gerken has called the “power of the servant” to advance their own agendas even within ¶ cooperative, federally led regulatory programs, by over-enforcing, under-enforcing, ¶ resisting and otherwise indirectly reshaping the system.¶ 36 The focus of judicial ¶ federalism doctrine and federalism-related political rhetoric on “states rights” and “state ¶ sovereignty” may motivate state governments to push for a counter-productive degree ¶ of autonomy even when participating in cooperative regulation. Of course, state ¶ government autonomy might be desirable if the goal of federal-state cooperation is to ¶ foster varying policy initiatives; but there is little reason to think that autonomous state ¶ action contrary to the goals of the arrangement will create beneficial diversity. ¶ Therefore, the second problem with focusing cooperative regulation proposals on the ¶ state governments—“the false conflation of federalism with decentralization”37¶ —is that ¶ there are reasons to think that state governments will “be less amenable to decentralized ¶ localism with all of its benefits.”38 Large governments—the national government and the larger states like New York, Texas and California—face significant information ¶ deficits in tailoring regulation to local conditions and, as a result, recognize the benefits ¶ of decentralizing policymaking authority and tend to delegate real power to sub-units. ¶ Smaller state governments, however, decentralize less as an empirical matter; this likely ¶ results at least in part from the potentially significant differences between statewide ¶ policy interests and those of individual localities.39 Thus, theory suggests that states on ¶ net are less likely to delegate discretionary authority to local governments even where ¶ that would best serve policy goals and, indeed, that where “local preferences [do not] ¶ cleave closely to [those] of the state as a whole . . . states will interfere with ¶ decentralization.40 And because states possess generally limitless control over local ¶ governments, they have the capacity to interfere a great deal. If the goal is to promote ¶ regulatory diversity, state governments might be counterproductive partners for the ¶ federal government.

#### Cooperative federalism is inevitable – interest groups

Greve 2000 - John G. Searle Scholar, American Enterprise Institute; Ph.D. Cornell University (Winter, Michael S., “AGAINST COOPERATIVE FEDERALISM” 70 Miss. L.J. 557, Lexis)

#### In practice, however, American federalism has become an administrative, "cooperative federalism": state and local governments administer and implement federal programs. n4 Many state administered programs are funded by the federal government, in whole or, more often, in part. Others take the form of conditional preemption, meaning that the states may choose to administer the federal program or else, cede the regulatory field to the federal government. Cooperative federalism covers an enormous array of regulatory fields, from the environment to education to welfare and, lately, crime control. In its horizontal dimension, cooperative federalism replaces dual federalism's competition with state policy cartels and uniform regulatory baselines. n5 [\*559] ¶ This article argues that cooperative federalism is a rotten idea, its political popularity notwithstanding. Cooperative federalism undermines political transparency and accountability, thereby heightening civic disaffection and cynicism; diminishes policy competition among the states; and erodes self-government and liberty. The sooner we can think of viable means to curtail cooperative programs and to disentangle government functions, the better off we shall be.¶ We may not be able to think of such means, much less to put them to work, any time soon. Dual, competitive (or, in modern public choice parlance, "market-preserving") federalism n6 is unstable, principally because it frustrates political and interest group demands. Under realistic conditions, dual federalism's legal institutional structures will crumble and accommodate anticompetitive, cooperative entanglements. n7 The corollary proposition is that cooperative federalism, unlike [\*560] its virtuous but frail competitive cousin, is stable.

#### It accommodates the political and interest group demands that dual federalism frustrates, thus giving organized groups a stake in the system. "Stable" does not mean static: cooperative federalism periodically accommodates new demands, at a higher level of aggregate government spending. The moving political equilibrium point is the next circle of hellish entanglement. n8 "Stable" simply means that fundamental institutional challenges, and especially attempts to re-introduce competitive structures, will usually founder on cooperative federalism's political economy.¶ We have nothing resembling a political theory that would explain how dual, market-preserving federalism might preserve itself, n9 or how it might re-emerge from a cesspool of cooperation. The difficulty of the task may help explain why thoughtful scholars have acknowledged and conceded potent arguments against cooperative arrangements, and then dismissed those arguments on the grounds that cooperative federalism is real and therefore rational, or at any rate inevitable. n10 Before we succumb to Hegelian insouciance, though, cooperative federalism's manifest failures and dysfunctionalities compel another look at the problem of moving from cooperation to competition.

#### Turn – cooperative federalism means the federal government bows to the states

Reisinger et al. 2010 - Staff Attorney for the Ohio Environmental Council and Member of its Ohio ¶ Environmental Law Center. J.D (Winter, Will, Trent A. Doherty, and Nolan Moser, Director of Legal Affairs for the Ohio Environmental Council and Director of the ¶ Ohio Environmental Law Center. J.D AND Director of Clean Air & Energy Programs, the Ohio Environmental Council. J.D, DUKE ENVIRONMENTAL LAW & POLICY FORUM Vol. 20:1, “ENVIRONMENTAL ENFORCEMENT AND THE ¶ LIMITS OF COOPERATIVE FEDERALISM: ¶ WILL COURTS ALLOW CITIZEN SUITS TO ¶ PICK UP THE SLACK?” <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1048&context=delpf>)

The primary goal of federal environmental statutes was to ¶ empower states to enforce national standards. With the passage of ¶ the CWA, for example, Congress’ intent was to “recognize, preserve, ¶ and protect the primary responsibilities of States to prevent, reduce, ¶ and eliminate pollution.”86 Each of the other environmental statutes ¶ envisions a similar state function.87 The theory was that, by ¶ outsourcing federal programs to state agencies, national laws could be ¶ carried out without bankrupting the federal government, while at the ¶ same time allowing states the autonomy to implement their own ¶ plans.88 Consequently, the decentralized enforcement model places a ¶ great deal of power and trust in state governments. ¶ Unfortunately, there are fundamental flaws with the cooperative ¶ approach that hamper regulation and enforcement. At the same time ¶ that states have taken on more responsibility, their own regulatory ¶ agencies have been simultaneously hindered by political resistance to ¶ increased regulation and fewer dollars for enforcement. ¶ Furthermore, in cases where state regulation has failed, the federal ¶ backup enforcement has been lacking. When combined, these ¶ complicating factors create the potential for a “perfect storm” that ¶ threatens the effectiveness of every major environmental program. ¶ 1. Increasing State Oversight¶ Today, states oversee almost every delegable environmental ¶ program, and state agencies account for the vast majority of¶ inspections and enforcement actions.89 Over the last two decades, ¶ states have taken on an increasingly large role in enforcement. In ¶ 1994, only forty percent of delegable environmental programs had ¶ been delegated to state agencies.90 In 2000, states were in charge of ¶ implementing seventy percent of delegable programs.91 By 2007, the ¶ percentage had risen to over ninety.92¶ As states have gradually taken on more responsibility for ¶ environmental programs, there has been a corresponding decrease in ¶ federal funding for state agency programs. In 1986, federal EPA ¶ funds accounted for fifty-eight percent of state budgets for the ¶ enforcement of federal laws.93 By 2008, federal appropriations had ¶ been reduced to twenty-three percent of state environmental ¶ budgets.94¶ On one hand, the decrease in federal funding makes sense in a ¶ decentralized system. One purpose of a federalist approach is, in fact, ¶ to reduce the financial burden on the federal government by ¶ delegating programs. At the same time, however, the loss of federal ¶ funding removes one of the incentives, or “carrots,” used to ¶ encourage state enforcement of national standards.95 And when the ¶ federal government reduces spending on oversight and enforcement, ¶ states must increase their own spending to make up the balance of ¶ enforcement funding.

#### Cooperative federalism is inevitable – Reagan administration proves

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The first Reagan Administration undertook a serious effort to disentangle cooperative federalism. n73 One of its first initiatives [\*580] was to consolidate seventy-seven federal programs into nine block grants in the Omnibus Budget Reconciliation Act of 1981. This consolidation, according to the OMB, reduced the paperwork imposed on state and local governments by 91 percent. n74 While these block grants merely modified, instead of eradicating, existing cooperative arrangements, the Administration subsequently embarked upon a more serious "decongestion" initiative. Its centerpiece was a 1982 proposal for a so-called welfare "swap": the federal government would assume full funding responsibility for Medicaid and the foodstamps program, in exchange for the states' assumption of full responsibility--including revenue responsibility--for other welfare programs (principally, what was then Aid to Families with Dependent Children). n75 While the terms of the swap were financially quite attractive to the states (since Medicaid payments were growing much faster than AFDC obligations), the proposal died an ignominious death. Neither the welfare lobby nor state and local officials were prepared to entertain the proposed segregation and separation of program responsibilities, principally for the porkbarrel and public-choice reasons discussed below. n76¶ In the end, the New Federalism fell victim to the electoral interests of federal legislators, resistance of an entrenched intergovernmental bureaucracy, and the lack of Republican [\*581] control over the Congress. n77 By some measures, national control actually increased. The number of national regulatory provisions enacted during the 1980s--addressing everything from alcohol consumption to underground storage tanks to the asbestos removal--exceeded those of any other ten year period. n78 While these laws "had virtually no intelligible rationale for turning local concerns into a federal preoccupations," n79 they were enacted without sustained White House objection. In addition, Congress re-categorized block grants and imposed new restrictions on federal funding programs.¶

In the face of centralizing pressures, the Reagan Administration abandoned its decongestion objectives and instead endeavored to stem the flow of federal money to state and local governments, with a fair measure of success. In constant dollars, federal grants-in-aid to state and local governments ceased to grow during the second Reagan administration and, net of ballooning Medicaid payments, actually declined. n80 Over the course of the Reagan era, federal funds as a percentage of state and local outlays dropped from 25.8% in 1980 to a low of 17.3% in 1989. n81 C. Resumed Growth After its consolidation during the Reagan years, cooperative federalism resumed its growth. Federalism reform ceased to be an important element of the executive agenda, and what little had been achieved under Reagan was quickly undone by drift and effort. Six major new statutory mandates were enacted between 1990 and 1994, n82 as was a substantial expansion [\*582] of the states' obligations under Medicaid. Along with new requirements came more federal money. "Federal aid as a percentage of total state and local spending increased from 20% to 23% between 1990 and 1996." n83 The renewed growth of cooperative programs was accompanied by a lively political debate. In contrast to the early 1980s, however, the more recent, still-continuing debate extends only to the forms of cooperative programs, not to the broader question of their legitimacy or desirability. The relative fiscal discipline of the Reagan years, coupled with a gradual tightening of the regulatory screws under many federal programs (especially Medicaid), produced a furor among state and local governments over "unfunded federal mandates." Washington, D.C. proved receptive to those complaints. The Republican Party in Congress settled on a political program of "devolution," which calls for the transfer of regulatory functions and program administration to the states, while leaving policy guidance and fiscal responsibility in Washington, D.C. Devolution's watchwords, in other words, are more administrative autonomy, and more federal money, for state and local governments.

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## Case

### Coop Fed

#### Cooperative federalism is inevitable – interest groups

Greve 2000 - John G. Searle Scholar, American Enterprise Institute; Ph.D. Cornell University (Winter, Michael S., “AGAINST COOPERATIVE FEDERALISM” 70 Miss. L.J. 557, Lexis)

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Greve 2000 - John G. Searle Scholar, American Enterprise Institute; Ph.D. Cornell University (Winter, Michael S., “AGAINST COOPERATIVE FEDERALISM” 70 Miss. L.J. 557, Lexis)

The first Reagan Administration undertook a serious effort to disentangle cooperative federalism. n73 One of its first initiatives [\*580] was to consolidate seventy-seven federal programs into nine block grants in the Omnibus Budget Reconciliation Act of 1981. This consolidation, according to the OMB, reduced the paperwork imposed on state and local governments by 91 percent. n74 While these block grants merely modified, instead of eradicating, existing cooperative arrangements, the Administration subsequently embarked upon a more serious "decongestion" initiative. Its centerpiece was a 1982 proposal for a so-called welfare "swap": the federal government would assume full funding responsibility for Medicaid and the foodstamps program, in exchange for the states' assumption of full responsibility--including revenue responsibility--for other welfare programs (principally, what was then Aid to Families with Dependent Children). n75 While the terms of the swap were financially quite attractive to the states (since Medicaid payments were growing much faster than AFDC obligations), the proposal died an ignominious death. Neither the welfare lobby nor state and local officials were prepared to entertain the proposed segregation and separation of program responsibilities, principally for the porkbarrel and public-choice reasons discussed below. n76¶ In the end, the New Federalism fell victim to the electoral interests of federal legislators, resistance of an entrenched intergovernmental bureaucracy, and the lack of Republican [\*581] control over the Congress. n77 By some measures, national control actually increased. The number of national regulatory provisions enacted during the 1980s--addressing everything from alcohol consumption to underground storage tanks to the asbestos removal--exceeded those of any other ten year period. n78 While these laws "had virtually no intelligible rationale for turning local concerns into a federal preoccupations," n79 they were enacted without sustained White House objection. In addition, Congress re-categorized block grants and imposed new restrictions on federal funding programs.¶

In the face of centralizing pressures, the Reagan Administration abandoned its decongestion objectives and instead endeavored to stem the flow of federal money to state and local governments, with a fair measure of success. In constant dollars, federal grants-in-aid to state and local governments ceased to grow during the second Reagan administration and, net of ballooning Medicaid payments, actually declined. n80 Over the course of the Reagan era, federal funds as a percentage of state and local outlays dropped from 25.8% in 1980 to a low of 17.3% in 1989. n81 C. Resumed Growth After its consolidation during the Reagan years, cooperative federalism resumed its growth. Federalism reform ceased to be an important element of the executive agenda, and what little had been achieved under Reagan was quickly undone by drift and effort. Six major new statutory mandates were enacted between 1990 and 1994, n82 as was a substantial expansion [\*582] of the states' obligations under Medicaid. Along with new requirements came more federal money. "Federal aid as a percentage of total state and local spending increased from 20% to 23% between 1990 and 1996." n83 The renewed growth of cooperative programs was accompanied by a lively political debate. In contrast to the early 1980s, however, the more recent, still-continuing debate extends only to the forms of cooperative programs, not to the broader question of their legitimacy or desirability. The relative fiscal discipline of the Reagan years, coupled with a gradual tightening of the regulatory screws under many federal programs (especially Medicaid), produced a furor among state and local governments over "unfunded federal mandates." Washington, D.C. proved receptive to those complaints. The Republican Party in Congress settled on a political program of "devolution," which calls for the transfer of regulatory functions and program administration to the states, while leaving policy guidance and fiscal responsibility in Washington, D.C. Devolution's watchwords, in other words, are more administrative autonomy, and more federal money, for state and local governments.

### Warming 2NC

#### Warming inevitable and there’s nothing you can do about it

Solomon et al, IPCC Climate Science Co-Chair, ‘09 (Susan- member of the US National Academy of Sciences, the European Academy of Sciences, and the Academy of Sciences of France, Nobel Peace Prize Winner, Chairwoman of the IPCC, February 10, “Irreversible climate change due to carbon dioxide emissions” PNAS, Vol 106, http://www.pnas.org/content/early/2009/01/28/0812721106.full.pdf)

Over the 20th century, the atmospheric concentrations of key greenhouse gases increased due to human activities. The stated objective (Article 2) of the United Nations Framework Convention on Climate Change (UNFCCC) is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a low enough level to prevent ‘‘dangerous anthropogenic interference with the climate system.’’ Many studies have focused on projections of possible 21st century dangers (1–3). However, the principles (Article 3) of the UNFCCC specifically emphasize ‘‘threats of serious or irreversible damage,’’ underscoring the importance of the longer term. While some irreversible climate changes such as ice sheet collapse are possible but highly uncertain (1, 4), others can now be identified with greater confidence, and examples among the latter are presented in this paper. It is not generally appreciated that the atmospheric temperature increases caused by rising carbon dioxide concentrations are not expected to decrease significantly even if carbon emissions were to completely cease (5–7) (see Fig. 1). Future carbon dioxide emissions in the 21st century will hence lead to adverse climate changes on both short and long time scales that would be essentially irreversible (where irreversible is defined here as a time scale exceeding the end of the millennium in year 3000; note that we do not consider geo-engineering measures that might be able to remove gases already in the atmosphere or to introduce active cooling to counteract warming). For the same reason, the physical climate changes that are due to anthropogenic carbon dioxide already in the atmosphere today are expected to be largely irreversible. Such climate changes will lead to a range of damaging impacts in different regions and sectors, some of which occur promptly in association with warming, while others build up under sustained warming because of the time lags of the processes involved. Here we illustrate 2 such aspects of the irreversibly altered world that should be expected. These aspects are among reasons for concern but are not comprehensive; other possible climate impacts include Arctic sea ice retreat, increases in heavy rainfall and flooding, permafrost melt, loss of glaciers and snowpack with attendant changes in water supply, increased intensity of hurricanes, etc. A complete climate impacts review is presented elsewhere (8) and is beyond the scope of this paper. We focus on illustrative adverse and irreversible climate impacts for which 3 criteria are met: (i) observed changes are already occurring and there is evidence for anthropogenic contributions to these changes, (ii) the phenomenon is based upon physical principles thought to be well understood, and (iii) projections are available and are broadly robust across models. Advances in modeling have led not only to improvements in complex Atmosphere–Ocean General Circulation Models (AOGCMs) for projecting 21st century climate, but also to the implementation of Earth System Models of Intermediate Complexity (EMICs) for millennial time scales. These 2 types of models are used in this paper to show how different peak carbon dioxide concentrations that could be attained in the 21st century are expected to lead to substantial and irreversible decreases in dry-season rainfall in a number of already-dry subtropical areas and lower limits to eventual sea level rise of the order of meters, implying unavoidable inundation of many small islands and low-lying coastal areas. Results Longevity of an Atmospheric CO2 Perturbation. As has long been known, the removal of carbon dioxide from the atmosphere involves multiple processes including rapid exchange with the land biosphere and the surface layer of the ocean through air–sea exchange and much slower penetration to the ocean interior that is dependent upon the buffering effect of ocean chemistry along with vertical transport (9–12). On the time scale of a millennium addressed here, the CO2 equilibrates largely between the atmosphere and the ocean and, depending on associated increases in acidity and in ocean warming (i.e., an increase in the Revelle or ‘‘buffer’’ factor, see below), typically 20% of the added tonnes of CO2 remain in the atmosphere while 80% are mixed into the ocean. Carbon isotope studies provide important observational constraints on these processes and time constants. On multimil- lenium and longer time scales, geochemical and geological processes could restore atmospheric carbon dioxide to its pre- industrial values (10, 11), but are not included here. Fig. 1 illustrates how the concentrations of carbon dioxide would be expected to fall off through the coming millennium if manmade emissions were to cease immediately following an illustrative future rate of emission increase of 2% per year [comparable to observations over the past decade (ref. 13)] up to peak concentrations of 450, 550, 650, 750, 850, or 1,200 ppmv; similar results were obtained across a range of EMICs that were assessed in the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report (5, 7). This is not intended to be a realistic scenario but rather to represent a test case whose purpose is to probe physical climate system changes. A more gradual reduction of carbon dioxide emission (as is more likely), or a faster or slower adopted rate of emissions in the growth period, would lead to long-term behavior qualitatively similar to that illustrated in Fig. 1 (see also Fig. S1). The example of a sudden cessation of emissions provides an upper bound to how much reversibility is possible, if, for example, unexpectedly damaging climate changes were to be observed. Carbon dioxide is the only greenhouse gas whose falloff displays multiple rather than single time constants (see Fig. S2). Current emissions of major non-CO2 greenhouse gases such as methane or nitrous oxide are significant for climate change in the next few decades or century, but these gases do not persist over time in the same way as carbon dioxide (14). Fig. 1 shows that a quasi-equilibrium amount of CO2 is expected to be retained in the atmosphere by the end of the millennium that is surprisingly large: typically 40% of the peak concentration enhancement over preindustrial values ( 280 ppmv). This can be easily understood on the basis of the observed instantaneous airborne fraction (AFpeak) of 50% of anthropogenic carbon emissions retained during their buildup in the atmosphere, together with well-established ocean chemistry and physics that require 20% of the emitted carbon to remain in the atmosphere on thousand-year timescales [quasi- equilibrium airborne fraction (AFequi), determined largely by the Revelle factor governing the long-term partitioning of carbon between the ocean and atmosphere/biosphere system] (9–11). Assuming given cumulative emissions, EMI, the peak concen- tration, CO2peak (increase over the preindustrial value CO20), and the resulting 1,000-year quasi-equilibrium concentration, CO2equi can be expressed as COpeak 2 = CO02 + AFpeak EMI [1] COequi 2 = CO02 + AFequi EMI [2] so that COequi2 – CO0 2 = AFequi/AFpeak (COpeak 2 – CO02) [3] Given an instantaneous airborne fraction (AFpeak) of 50% during the period of rising CO2, and a quasi-equilbrium airborne factor (AFequi) of 20%, it follows that the quasi-equilibrium enhancement of CO2 concentration above its preindustrial value is 40% of the peak enhancement. For example, if the CO2 concentration were to peak at 800 ppmv followed by zero emissions, the quasi-equilibrium CO2 concentration would still be far above the preindustrial value at 500 ppmv. Additional carbon cycle feedbacks could reduce the efficiency of the ocean and biosphere to remove the anthropogenic CO2 and thereby increase these CO2 values (15, 16). Further, a longer decay time and increased CO2 concentrations at year 1000 are expected for large total carbon emissions (17). Irreversible Climate Change: Atmospheric Warming. Global average temperatures increase while CO2 is increasing and then remain approximately constant (within 0.5 °C) until the end of the millennium despite zero further emissions in all of the test cases shown in Fig. 1. This important result is due to a near balance between the long-term decrease of radiative forcing due to CO2 concentration decay and reduced cooling through heat loss to the oceans. It arises because long-term carbon dioxide removal and ocean heat uptake are both dependent on the same physics of deep-ocean mixing. Sea level rise due to thermal expansion accompanies mixing of heat into the ocean long after carbon dioxide emissions have stopped. For larger carbon dioxide concentrations, warming and thermal sea level rise show greater increases and display transient changes that can be very rapid (i.e., the rapid changes in Fig. 1 Middle), mainly because of changes in ocean circulation (18). Paleoclimatic evidence suggests that additional contributions from melting of glaciers and ice sheets may be comparable to or greater than thermal expansion (discussed further below), but these are not included in Fig. 1. Fig. 2 explores how close the modeled temperature changes are to thermal equilibrium with respect to the changing carbon dioxide concentration over time, sometimes called the realized warming fraction (19) (shown for the different peak CO2 cases). Fig. 2 Left shows how the calculated warmings compare to those expected if temperatures were in equilibrium with the carbon dioxide concentrations vs. time, while Fig. 2 Right shows the ratio of these calculated time-dependent and equilibrium tempera- tures. During the period when carbon dioxide is increasing, the realized global warming fraction is 50–60% of the equilibrium warming, close to values obtained in other models (5, 19). After emissions cease, the temperature change approaches equilib- rium with respect to the slowly decreasing carbon dioxide concentrations (cyan lines in Fig. 2 Right). The continuing warming through year 3000 is maintained at 40–60% of the equilibrium warming corresponding to the peak CO2 concentration (magenta lines in Fig. 2 Right). Related changes in fast-responding atmospheric climate variables such as precipitation, water vapor, heat waves, cloudiness, etc., are expected to occur largely simultaneously with the temperature changes. Irreversible Climate Change: Precipitation Changes. Warming is expected to be linked to changes in rainfall (20), which can adversely affect the supply of water for humans, agriculture, and ecosystems. Precipitation is highly variable but long-term rainfall decreases have been observed in some large regions including, e.g., the Mediterranean, southern Africa, and parts of south- western North America (21–25). Confident projection of future changes remains elusive over many parts of the globe and at small scales. However, well-known physics (the Clausius–Clapeyron law) implies that increased temperature causes increased atmospheric water vapor concentrations, and changes in water vapor transport and the hydrologic cycle can hence be expected (26–28). Further, advances in modeling show that a robust characteristic of anthropogenic climate change is poleward expansion of the Hadley cell and shifting of the pattern of precipitation minus evaporation (P–E) and the storm tracks (22, 26), and hence a pattern of drying over much of the already-dry subtropics in a warmer world ( 15°-40° latitude in each hemi- sphere) (5, 26). Attribution studies suggest that such a drying pattern is already occurring in a manner consistent with models including anthropogenic forcing (23), particularly in the south- western United States (22) and Mediterranean basin (24, 25). We use a suite of 22 available AOGCM projections based upon the evaluation in the IPCC 2007 report (5, 29) to characterize precipitation changes. Changes in precipitation are expected (5, 20, 30) to scale approximately linearly with increasing warming (see Fig. S3). The equilibrium relationship between precipitation and temperature may be slightly smaller (by 15%) than the transient values, due to changes in the land/ ocean thermal contrast (31). On the other hand, the observed 20th century changes follow a similar latitudinal pattern but presently exceed those calculated by AOGCMs (23). Models that include more complex representations of the land surface, soil, and vegetation interactively are likely to display additional feedbacks so that larger precipitation responses are possible. Here we evaluate the relationship between temperature and precipitation averaged for each month and over a decade at each grid point. One ensemble member is used for each model so that all AOGCMs are equally weighted in the multimodel ensemble; results are nearly identical if all available model ensemble members are used. Fig. 3 presents a map of the expected dry-season (3 driest consecutive months at each grid point) precipitation trends per degree of global warming. Fig. 3 shows that large uncertainties remain in the projections for many regions (white areas). How- ever, it also shows that there are some subtropical locations on every inhabited continent where dry seasons are expected to become drier in the decadal average by up to 10% per degree of warming. Some of these grid points occur in desert regions that are already very dry, but many occur in currently more temperate and semiarid locations. We find that model results are more robust over land across the available models over wider areas for drying of the dry season than for the annual mean or wet season (see Fig. S4). The Insets in Fig. 3 show the monthly mean projected precipitation changes averaged over several large regions as delineated on the map. Increased drying of respective dry seasons is projected by 90% of the models averaged over the indicated regions of southern Europe, northern Africa, southern Africa, and southwestern North America and by 80% of the models for eastern South America and western Australia (see Fig. S3). Although given particular years would show exceptions, the long-term irreversible warming and mean rainfall changes as suggested by Figs. 1 and 3 would have important consequences in many regions. While some relief can be expected in the wet season for some regions (Fig. S4), changes in dry-season precipitation in northern Africa, southern Europe, and western Australia are expected to be near 20% for 2 °C warming, and those of southwestern North America, eastern South America, and southern Africa would be 10% for 2 °C of global mean warming. For comparison, the American ‘‘dust bowl’’ was associated with averaged rainfall decreases of 10% over 10–20 years, similar to major droughts in Europe and western Australia in the 1940s and 1950s (22, 32). The spatial changes in precipitation as shown in Fig. 3 imply greater challenges in the distribution of food and water supplies than those with which the world has had difficulty coping in the past. Such changes occurring not just for a few decades but over centuries are expected to have a range of impacts that differ by region. These include, e.g., human water supplies (25), effects on dry-season wheat and maize agriculture in certain regions of rain-fed farming such as Africa (33, 34), increased fire frequency, ecosystem change, and desertification (24, 35–38). Fig. 4 Upper relates the expected irreversible changes in regional dry-season precipitation shown in Fig. 3 to best estimates of the corresponding peak and long-term CO2 concentrations. We use 3 °C as the best estimate of climate sensitivity across the suite of AOGCMs for a doubling of carbon dioxide from preindustrial values (5) along with the regional drying values depicted in Fig. 3 and assuming that 40% of the carbon dioxide peak concentration is retained after 1000 years. Fig. 4 shows that if carbon dioxide were to peak at levels of 450 ppmv, irreversible decreases of 8–10% in dry-season precipitation would be expected on average over each of the indicated large regions of southern Europe, western Australia, and northern Africa, while a carbon dioxide peak value near 600 ppmv would be expected to lead to sustained rainfall decreases of 13–16% in the dry seasons in these areas; smaller but statistically significant irreversible changes would also be expected for southwestern North America, eastern South America, and Southern Africa. Irreversible Climate Change: Sea Level Rise. Anthropogenic carbon dioxide will cause irrevocable sea level rise. There are 2 relatively well-understood processes that contribute to this and a third that may be much more important but is also very uncertain. Warm- ing causes the ocean to expand and sea levels to rise as shown in Fig. 1; this has been the dominant source of sea level rise in the past decade at least (39). Loss of land ice also makes important contributions to sea level rise as the world warms. Mountain glaciers in many locations are observed to be retreating due to warming, and this contribution to sea level rise is also relatively well understood. Warming may also lead to large losses of the Greenland and/or Antarctic ice sheets. Additional rapid ice losses from particular parts of the ice sheets of Greenland and Antarctica have recently been observed (40–42). One recent study uses current ice discharge data to suggest ice sheet contributions of up to 1–2 m to sea level rise by 2100 (42), but other studies suggest that changes in winds rather than warming may account for currently observed rapid ice sheet flow (43), rendering quantitative extrapolation into the future uncertain. In addition to rapid ice flow, slow ice sheet mass balance processes are another mechanism for potential large sea level rise. Paleoclimatic data demonstrate large contributions of ice sheet loss to sea level rise (1, 4) but provide limited constraints on the rate of such processes. Some recent studies suggest that ice sheet surface mass balance loss for peak CO2 concentrations of 400–800 ppmv may be even slower than the removal of manmade carbon dioxide following cessation of emis- sions, so that this loss could contribute less than a meter to irreversible sea level rise even after many thousands of years (44, 45). It is evident that the contribution from the ice sheets could be large in the future, but the dependence upon carbon dioxide levels is extremely uncertain not only over the coming century but also in the millennial time scale. An assessed range of models suggests that the eventual contribution to sea level rise from thermal expansion of the ocean is expected to be 0.2–0.6 m per degree of global warming (5). Fig. 4 uses this range together with a best estimate for climate sensitivity of 3 °C (5) to estimate lower limits to eventual sea level rise due to thermal expansion alone. Fig. 4 shows that even with zero emissions after reaching a peak concentration, irreversible global average sea level rise of at least 0.4–1.0 m is expected if 21st century CO2 concentrations exceed 600 ppmv and as much as 1.9 m for a peak CO2 concentration exceeding 1,000 ppmv. Loss of glaciers and small ice caps is relatively well understood and is expected to be largely complete under sustained warming of, for example, 4 °C within 500 years (46). For lower values of warming, partial remnants of glaciers might be retained, but this has not been examined in detail for realistic representations of glacier shrinkage and is not quantified here. Complete losses of glaciers and small ice caps have the potential to raise future sea level by 0.2–0.7 m (46, 47) in addition to thermal expansion. Further contributions due to partial loss of the great ice sheets of Antarctica and/or Greenland could add several meters or more to these values but for what warming levels and on what time scales are still poorly characterized. Sea level rise can be expected to affect many coastal regions (48). While sea walls and other adaptation measures might combat some of this sea level rise, Fig. 4 shows that carbon dioxide peak concentrations that could be reached in the future for the conservative lower limit defined by thermal expansion alone can be expected to be associated with substantial irreversible commitments to future changes in the geography of the Earth because many coastal and island features would ultimately become submerged. Discussion: Some Policy Implications It is sometimes imagined that slow processes such as climate changes pose small risks, on the basis of the assumption that a choice can always be made to quickly reduce emissions and thereby reverse any harm within a few years or decades. We have shown that this assumption is incorrect for carbon dioxide emissions, because of the longevity of the atmospheric CO2 perturbation and ocean warming. Irreversible climate changes due to carbon dioxide emissions have already taken place, and future carbon dioxide emissions would imply further irreversible effects on the planet, with attendant long legacies for choices made by contemporary society. Discount rates used in some estimates of economic trade-offs assume that more efficient climate mitigation can occur in a future richer world, but neglect the irreversibility shown here. Similarly, understanding of irreversibility reveals limitations in trading of greenhouse gases on the basis of 100-year estimated climate changes (global warming potentials, GWPs), because this metric neglects carbon dioxide’s unique long-term effects. In this paper we have quantified how societal decisions regarding carbon dioxide concentrations that have already occurred or could occur in the coming century imply irreversible dangers relating to climate change for some illustrative populations and regions. These and other dangers pose substantial challenges to humanity and nature, with a magnitude that is directly linked to the peak level of carbon dioxide reached.

### Uniqueness – Appointments Succeed Now

#### Obama judicial appointments will be successfully pushed through now

Washington Post 3/3

(13, Obama pushing to diversify federal judiciary amid GOP delays, articles.washingtonpost.com/2013-03-03/politics/37418000\_1\_president-obama-house-counsel-kathryn-ruemmler-judicial-confirmation-votes

The president has named three dozen judicial candidates since January and is expected to nominate scores more over the next few months, aides said. The push marks a significant departure from the sluggish pace of appointments throughout much of his first term, when both Republicans and some Democrats complained that Obama had not tried hard enough to fill vacancies on federal courts. The new wave of nominations is part of an effort by Obama to cement a legacy that long outlives his presidency and makes the court system more closely resemble the changing society it governs, administration officials said. “Diversity in and of itself is a thing that is strengthening the judicial system,” White House Counsel Kathryn Ruemmler said. “It enhances the bench and the performance of the bench and the quality of the discussion . . . to have different perspectives, different life experiences, different professional experiences, coming from a different station in life, if you will.” But Obama’s biggest obstacle is the Senate, where Republicans have frequently blocked judicial confirmation votes for months or, in some cases, years. Obama has 35 nominees currently awaiting votes by the Senate — including several holdovers from 2012 who have been renominated this year — and there are more than 50 additional vacancies awaiting nominees, according to the Federal Judicial Center. Some conservatives are skeptical of the push to name more women and minorities to the bench, arguing that it amounts to unjustified affirmative action. Curt Levey, an outspoken Obama critic who runs the advocacy group Committee for Justice, said the White House may be “lowering their standards” to nominate more nonwhite judges. “If they’re talking about achieving [diversity] through aggressive identification of minority candidates, then that’s their prerogative,” Levey said. “If they’re talking about doing it through preferences, having a lower threshold of qualifications for minorities, then I don’t approve. And it’s hard to know which they’re doing. Unlike a college admissions system, where it’s easy to quantify, this is difficult.” During Obama’s first term, judicial nominations often fell by the wayside in the face of the economic crisis and other policy priorities at the White House. Many liberal allies complained that the president did little to champion nominees once they were named. “Republicans will throw up every roadblock they can,” said Nan Aron, president of the liberal Alliance for Justice. “We’re counting on the White House and Senate leadership to be more assertive in getting nominees confirmed.” The White House said it intends to aggressively push for more judicial nominees during Obama’s second term and is hopeful that changes in filibuster rules will help speed up the process. The Senate decided in January to limit debate for district court nominees from 30 hours to two hours, although the restrictions do not apply to nominees for the Supreme Court or federal appeals courts.

### Avoidance Avoids Fight With Congress

#### Constitutional Avoidance key to sustain minimalism and reduce inter branch conflict

Hooper, Associate at [Lightfoot, Franklin & White LLC](http://www.lightfootlaw.com/), 02

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On the other side of the equation, commentators who support the judiciary's use of the avoidance canon argue that it **helps guarantee judicial minimalism rather than judicial activism**. Professor Cass Sunstein, a defender of judicial minimalism, argues that use of the constitutional avoidance doctrine can reduce conflict between the different branches of government and lead to validation, rather than invalidation, of congressional statutes. Additionally, minimalism promotes democracy and "reason-giving" because it ensures that important decisions are made by politicians, who are accountable to the electorate. [**99**](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7#n99) Professor William N. Eskridge, who has written extensively on the values of statutory interpretation, concludes that the constitutional avoidance canon allows the judiciary to "update" statutes by construing them to comport with society's constitutional values.

#### Statutory interpretation of immigration law key to avoid controversy

Hooper, Associate at [Lightfoot, Franklin & White LLC](http://www.lightfootlaw.com/), 02

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The following subpart analyzes the discussion of immigration policy in Congress, American society, and the Department of Justice following the September 11, 2001 terrorist attacks and will demonstrate how the Zadvydas Court's decision to avoid a constitutional question resulted in a surprisingly rich, more robust debate of immigration policy. One advantage of the avoidance doctrine is that it allows judges, who are sensitive to the limitations of their own constitutional authority, to refrain from issuing a broad ruling on the nation or from trenching on the province of the political branches of government. In some cases, courts simply will not want to act, even when they have the authority, if the ruling is likely to spark an adverse public reaction. Although Zadvydas was decided several months before the September 11, 2001 terrorist attacks, immigration policy was nevertheless critically important to American society before the attacks, given the role of immigrants in the high-tech, agriculture, and service sectors of the economy. [144](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7#n144) It is not implausible to think that even prior to September 11, the Court preferred that Congress carry the burden of deciding important immigration issues, such as the government's power to detain deportable aliens indefinitely.
The Court's decision in Zadvydas was unquestionably a significant victory for immigrant rights in the United States. [145](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7#n145) While a declaration by the Court that the detention statute was unconstitutional would have been even more cause for celebration, the Court's decision to avoid the constitutional question was an acknowledgment of immigrant rights under the Fifth Amendment Due Process Clause. [146](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7#n146) Although this was not the first time that the Court acknowledged that immigrants enjoy constitutional protections, [147](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7#n147) it was eerily  [\*999]  prophetic for the Court to invoke this principle just months prior to the September 11 terrorist attacks and the vigorous debateover immigrant rights that has followed. Indeed, the Zadvydas Court's statements on immigrants' rights have not gone unnoticed in lower courts in cases heard since September 11. [148](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7#n148) Nor was the Court's mention of terrorists as a possible exception to its holding lost on those who favor stricter immigration policy. [149](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7#n149) In short, the Court's decision to avoid the constitutional question in Zadvydas informed, but did not decide, the subsequent immigrant-rights debate - a proposition supported by the fact that both immigration proponents and national security hawks rely on the Zadvydas opinion to support their respective positions. **This type of cautious approach to socially-sensitive issues is exactly the role that the Court plays so masterfully**, according to Sunstein, [151](http://www.lexis.com/research/retrieve?_m=425d6d98e5f4fdbf9d5308244b236975&docnum=21&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=3ed5cd189cfa1cdc1a8c4de338bdade7#n151) and so frustratingly, according to Kloppenberg.
Furthermore, the Zadvydas Court's decision to abstain from determining whether indefinite detention of aliens violated due process vindicated one of the avoidance doctrine's underlying purposes by allowing the Court to decide only the case at hand and not to decide the law for the future. [**153**](http://www.lexis.com/research/retrieve?_m=f78a6ffe2a40a69d03a60e8fcd53e2da&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=52aa047f6f9c02e9dd1ea4d5d1fef376#n153) Given that  [\*1000]  immigration policy soon became the central focus for lawmakers and for much of the American public after September 11, [**154**](http://www.lexis.com/research/retrieve?_m=f78a6ffe2a40a69d03a60e8fcd53e2da&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=52aa047f6f9c02e9dd1ea4d5d1fef376#n154) the narrow decision in Zadvydas likely helped to create an atmosphere for a freer and fuller discussion of immigrant rights because the Court had kept open important questions relating to the extent of such rights. [**155**](http://www.lexis.com/research/retrieve?_m=f78a6ffe2a40a69d03a60e8fcd53e2da&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=52aa047f6f9c02e9dd1ea4d5d1fef376#n155)
Sunstein has noted two major advantages of judicial minimalism, both of which arguably are on display in Zadvydas. One advantage, writes Sunstein, is that "certain forms of minimalism are democracy promoting, not only in the sense that they leave issues open for democratic deliberation, but also and more fundamentally in the sense that they promote reason-giving and ensure that certain important decisions are made by democratically accountable actors." [**156**](http://www.lexis.com/research/retrieve?_m=f78a6ffe2a40a69d03a60e8fcd53e2da&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=52aa047f6f9c02e9dd1ea4d5d1fef376#n156) Justice Breyer may have referenced these same concerns in Zadvydas when he noted that "if Congress had meant to authorize long-term detention of unremovable aliens, it certainly could have spoken in clearer terms." [**157**](http://www.lexis.com/research/retrieve?_m=f78a6ffe2a40a69d03a60e8fcd53e2da&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=52aa047f6f9c02e9dd1ea4d5d1fef376#n157)
Sunstein suggests that a second justification for taking the minimalist path exists "when the Court is dealing with a constitutional issue of high complexity about which many people feel deeply and on which the nation is divided." [**158**](http://www.lexis.com/research/retrieve?_m=f78a6ffe2a40a69d03a60e8fcd53e2da&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=52aa047f6f9c02e9dd1ea4d5d1fef376#n158) In Zadvydas, the complex constitutional issue at stake was the liberty interest of aliens, the scope of which the Court clearly struggled with throughout the opinion, stating that "the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary." [**159**](http://www.lexis.com/research/retrieve?_m=f78a6ffe2a40a69d03a60e8fcd53e2da&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=52aa047f6f9c02e9dd1ea4d5d1fef376#n159) The Court continued, "[w]e believe that an alien's liberty interest is, at the least, strong enough to raise a serious question as to whether . . . the Constitution permits detention that is indefinite." [**160**](http://www.lexis.com/research/retrieve?_m=f78a6ffe2a40a69d03a60e8fcd53e2da&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=52aa047f6f9c02e9dd1ea4d5d1fef376#n160) The Court's refusal to provide a definitive rule about the scope of an alien's interest proved to be a harbinger of American society's own uncertainty about immigrants and the extent of their rights, as the debate following the terrorist attacks of September 11 aptly displayed. [**161**](http://www.lexis.com/research/retrieve?_m=f78a6ffe2a40a69d03a60e8fcd53e2da&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAl&_md5=52aa047f6f9c02e9dd1ea4d5d1fef376#n161)

#### The counterplan solves while avoiding backlash

Motomura, Law Prof at Colorado, 90

100 Yale L.J. 545

The principal decisions that have contributed to this expansion of judicial review in immigration cases have not been decisions of constitutional immigration law. Instead, they reached results favorable to aliens by interpreting statutes, regulations, or other forms of subconstitutional immigration law. Of course, there is nothing remarkable about a court decision that relies on a subconstitutional rather than constitutional ground. A time-honored canon of statutory interpretation, often invoked by citing Justice Brandeis' 1936 concurrence in *Ashwander v. Tennessee Valley Authority,* [**73**](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97#n73) says that judges should interpret statutes to avoid constitutional doubt. **[74](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97" \l "n74" \t "_self)** While this canon is not uncontroversial, **[75](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97" \l "n75" \t "_self)** and its predictive value is open to question, **[76](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97" \l "n76" \t "_self)** reliance on the canon, whether stated or unstated, seems to be a fact of everyday judicial life. The canon largely reflects the fact that constitutional norms usually manifest themselves in our law both directly and indirectly. First, constitutional norms may directly govern decisions that are expressly constitutional; this is the intuitive definition of "constitutional." In a less intuitive but equally correct use of the term "constitutional," these norms operate indirectly, by serving as the unstated background context that informs our interpretation of statutes and other subconstitutional texts. In other words, contemporary constitutional law is a significant element of the legal culture that judges inevitably, if often subconsciously, absorb and rely upon when acting in their judicial capacity, including those instances in which they engage in statutory interpretation. **[77](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97" \l "n77" \t "_self)** *Bob Jones University v. United States* **[78](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97" \l "n78" \t "_self)** illustrates how constitutional norms inform statutory interpretation. A nearly unanimous Court held that a nonprofit private school with racially discriminatory admissions standards did not qualify for a federal income tax exemption for institutions "organized and operated exclusively for religious, charitable, . . . or educational purposes." **[79](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97" \l "n79" \t "_self)** Reaching beyond the statutory text itself, the Court reasoned that the exemption was based on public services of value to society. It found that this purpose required denying the exemption to any organizations whose activities were "contrary to a fundamental public policy." [**80**](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97#n80) Citing *Brown v. Board of Education,* [**81**](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97#n81) the Court noted that "racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals." [**82**](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97#n82) Even though the Congress that passed the original tax exemption statute probably did not contemplate future developments in the law against racial segregation, the Court's interpretation of the statute was intended to mirror standards of nondiscrimination embedded in the contemporary legal culture. [**83**](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97#n83) If *Bob Jones* illustrates how constitutional norms act as background norms when judges interpret statutes, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* [**84**](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97#n84) a 1984 Supreme Court decision, illustrates how constitutional norms can perform an analogous function for statutory interpretation by administrative agencies. *Chevron* endorsed substantial deference to agency interpretation of statutes by holding that, absent discernible congressional intent, judges may decide only whether the agency's view is reasonable, not whether it is "appropriate." [**85**](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97#n85) And when judges defer to agencies, they defer to interpretations [\*563] that are very likely to reflect, even if at an unspoken level, the contemporary legal culture, which inevitably includes its constitutional law. [**86**](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97#n86) An outwardly different understanding of the canon -- but one that is just the flip side of the view that constitutional norms serve as the background for subconstitutional interpretation -- is to characterize its application as the "underenforcement" of constitutional norms for prudential reasons. Institutional constraints, especially the judiciary's sensitivity to its limited fact finding capability and attenuated electoral responsibility, make courts reluctant to issue a constitutional command to the political branches of government. Even if such a command clearly would reflect an established constitutional norm, **courts can** sometimes **vindicate that norm less intrusively, and** thus perhaps **more justifiably**, **through the indirect route of statutory interpretation**. [**88**](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97#n88) Many such prudential considerations defy generalization, while others can be collected in bodies of doctrine -- the political question **[89](http://www.lexis.com/research/retrieve?_m=416b5c3b0e0edefdc05435e5b275b2d8&csvc=le&cform=&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=cbf83f55c439f4fbf4ec702b77651a97" \l "n89" \t "_self)** and standing doctrines come to mind -- that tend to limit judicial review.

### Abortion Impacts

#### Abortion rights key to gender equality – solves global conflict

Morgantaler 96

Henry Morgentaler. President of the Humanist Association of Canada, “The moral case for abortion.” Free Inquiry, Summer 1996 v16 n3 p17(5)

The right to legal abortion is a relatively new achievement, only about twenty-five years old in most countries. It is part of the growing movement of women toward emancipation, toward achieving equal status with men, toward being recognized as full, responsible, equal members of society. We are living in an era where women, especially in the Western world, are being recognized as equal, where the enormous human potential of womankind is finally being acknowledged and accepted as a valuable reservoir of talent. However, women cannot achieve their full potential unless they have freedom to control their bodies, to control their reproductive capacity. Unless they have access to safe abortions to correct the vagaries of biological accidents, they cannot pursue careers, they cannot be equal to men, they cannot avail themselves of the various opportunities theoretically open to all members of our species. The emancipation of women is not possible without reproductive freedom. The full acceptance of women might have the enormous consequence of humanizing our species, possibly eliminating war and conflict, and adding a new dimension to the adventure of mankind.

## Regulations CP

### Bio D

#### 99.9% biodiversity loss has no impact on humanity

Sagoff- Sr researcher, U Maryland - ’97 (Mark, Senior Research Scholar @ Institute for Philosophy and Public policy in School of Public Affairs @ U. Maryland, William and Mary Law Review, “INSTITUTE OF BILL OF RIGHTS LAW SYMPOSIUM DEFINING TAKINGS: PRIVATE PROPERTY AND THE FUTURE OF GOVERNMENT REGULATION: MUDDLE OR MUDDLE THROUGH? TAKINGS JURISPRUDENCE MEETS THE ENDANGERED SPECIES ACT”, 38 Wm and Mary L. Rev. 825, March, L/N)

Although one may agree with ecologists such as Ehrlich and Raven that the earth stands on the brink of an episode of massive extinction, it may not follow from this grim fact that human beings will suffer as a result. On the contrary, skeptics such as science writer Colin Tudge have challenged biologists to explain why we need more than a tenth of the 10 to 100 million species that grace the earth. Noting that "cultivated systems often out-produce wild systems by 100-fold or more," Tudge declared that "the argument that humans need the variety of other species is, when you think about it, a theological one." n343 Tudge observed that "the elimination of all but a tiny minority of our fellow creatures does not affect the material well-being of humans one iota." n344 This skeptic challenged ecologists to list more than 10,000 species (other than unthreatened microbes) that are essential to ecosystem productivity or functioning. n345 "The human species could survive just as well if 99.9% of our fellow creatures went extinct**,** provided only that we retained the appropriate 0.1% that we need." n346 [\*906] The monumental Global Biodiversity Assessment ("the Assessment") identified two positions with respect to redundancy of species. "At one extreme is the idea that each species is unique and important, such that its removal or loss will have demonstrable consequences to the functioning of the community or ecosystem." n347 The authors of the Assessment, a panel of eminent ecologists, endorsed this position, saying it is "unlikely that there is much, if any, ecological redundancy in communities over time scales of decades to centuries, the time period over which environmental policy should operate." n348 These eminent ecologists rejected the opposing view, "the notion that species overlap in function to a sufficient degree that removal or loss of a species will be compensated by others, with negligible overall consequences to the community or ecosystem." n349 Other biologists believe, however, that species are so fabulously redundant in the ecological functions they perform that the life-support systems and processes of the planet and ecological processes in general will function perfectly well with fewer of them, certainly fewer than the millions and millions we can expect to remain even if every threatened organism becomes extinct. n350 Even the kind of sparse and miserable world depicted in the movie Blade Runner could provide a "sustainable" context for the human economy as long as people forgot their aesthetic and moral commitment to the glory and beauty of the natural world. n351 The Assessment makes this point. "Although any ecosystem contains hundreds to thousands of species interacting among themselves and their physical environment, the emerging consensus is that the system is driven by a small number of . . . biotic variables on whose interactions the balance of species are, in a sense, carried along." n352 [\*907] To make up your mind on the question of the functional redundancy of species, consider an endangered species of bird, plant, or insect and ask how the ecosystem would fare in its absence. The fact that the creature is endangered suggests an answer: it is already in limbo as far as ecosystem processes are concerned. What crucial ecological services does the black-capped vireo, for example, serve? Are any of the species threatened with extinction necessary to the provision of any ecosystem service on which humans depend? If so, which ones are they? Ecosystems and the species that compose them have changed, dramatically, continually, and totally in virtually every part of the United States. There is little ecological similarity, for example, between New England today and the land where the Pilgrims died. n353 In view of the constant reconfiguration of the biota, one may wonder why Americans have not suffered more as a result of ecological catastrophes. The cast of species in nearly every environment changes constantly-local extinction is commonplace in nature-but the crops still grow. Somehow, it seems, property values keep going up on Martha's Vineyard in spite of the tragic disappearance of the heath hen. One might argue that the sheer number and variety of creatures available to any ecosystem buffers that system against stress. Accordingly, we should be concerned if the "library" of creatures ready, willing, and able to colonize ecosystems gets too small. (Advances in genetic engineering may well permit us to write a large number of additions to that "library.") In the United States as in many other parts of the world, however, the number of species has been increasing dramatically, not decreasing, as a result of human activity. This is because the hordes of exotic species coming into ecosystems in the United States far exceed the number of species that are becoming extinct. Indeed, introductions may outnumber extinctions by more than ten to one, so that the United States is becoming more and more species-rich all the time largely as a result of human action. n354 [\*908] Peter Vitousek and colleagues estimate that over 1000 non-native plants grow in California alone; in Hawaii there are 861; in Florida, 1210. n355 In Florida more than 1000 non-native insects, 23 species of mammals, and about 11 exotic birds have established themselves. n356 Anyone who waters a lawn or hoes a garden knows how many weeds desire to grow there, how many birds and bugs visit the yard, and how many fungi, creepy-crawlies, and other odd life forms show forth when it rains. All belong to nature, from wherever they might hail, but not many homeowners would claim that there are too few of them. Now, not all exotic species provide ecosystem services; indeed, some may be disruptive or have no instrumental value. n357 This also may be true, of course, of native species as well, especially because all exotics are native somewhere. Certain exotic species, however, such as Kentucky blue grass, establish an area's sense of identity and place; others, such as the green crabs showing up around Martha's Vineyard, are nuisances. n358 Consider an analogy [\*909] with human migration. Everyone knows that after a generation or two, immigrants to this country are hard to distinguish from everyone else. The vast majority of Americans did not evolve here, as it were, from hominids; most of us "came over" at one time or another. This is true of many of our fellow species as well, and they may fit in here just as well as we do. It is possible to distinguish exotic species from native ones for a period of time, just as we can distinguish immigrants from native-born Americans, but as the centuries roll by, species, like people, fit into the landscape or the society, changing and often enriching it. Shall we have a rule that a species had to come over on the Mayflower, as so many did, to count as "truly" American? Plainly not. When, then, is the cutoff date? Insofar as we are concerned with the absolute numbers of "rivets" holding ecosystems together, extinction seems not to pose a general problem because a far greater number of kinds of mammals, insects, fish, plants, and other creatures thrive on land and in water in America today than in prelapsarian times. n359 The Ecological Society of America has urged managers to maintain biological diversity as a critical component in strengthening ecosystems against disturbance. n360 Yet as Simon Levin observed, "much of the detail about species composition will be irrelevant in terms of influences on ecosystem properties." n361 [\*910] He added: "For net primary productivity, as is likely to be the case for any system property, biodiversity matters only up to a point; above a certain level, increasing biodiversity is likely to make little difference." n362 What about the use of plants and animals in agriculture? There is no scarcity foreseeable. "Of an estimated 80,000 types of plants [we] know to be edible," a U.S. Department of the Interior document says, "only about 150 are extensively cultivated." n363 About twenty species, not one of which is endangered, provide ninety percent of the food the world takes from plants. n364 Any new food has to take "shelf space" or "market share" from one that is now produced. Corporations also find it difficult to create demand for a new product; for example, people are not inclined to eat paw-paws, even though they are delicious. It is hard enough to get people to eat their broccoli and lima beans. It is harder still to develop consumer demand for new foods. This may be the reason the Kraft Corporation does not prospect in remote places for rare and unusual plants and animals to add to the world's diet.

#### Species extinction won't cause human extinction – humans and the environment are adaptable

Doremus’ 00

(Holly, Professor of Law at UC Davis Washington & Lee Law Review, Winter 57 Wash & Lee L. Rev. 11, lexis)

In recent years, this discourse frequently has taken the form of the ecological horror story. That too is no mystery. The ecological horror story is unquestionably an attention-getter, especially in the hands of skilled writers [\*46] like Carson and the Ehrlichs. The image of the airplane earth, its wings wobbling as rivet after rivet is carelessly popped out, is difficult to ignore. The apocalyptic depiction of an impending crisis of potentially dire proportions is designed to spur the political community to quick action . Furthermore, this story suggests a goal that appeals to many nature lovers: that virtually everything must be protected. To reinforce this suggestion, tellers of the ecological horror story often imply that the relative importance of various rivets to the ecological plane cannot be determined. They offer reams of data and dozens of anecdotes demonstrating the unexpected value of apparently useless parts of nature. The moth that saved Australia from prickly pear invasion, the scrubby Pacific yew, and the downright unattractive leech are among the uncharismatic flora and fauna who star in these anecdotes. n211 The moral is obvious: because we cannot be sure which rivets are holding the plane together, saving them all is the only sensible course. Notwithstanding its attractions, the material discourse in general, and the ecological horror story in particular, are not likely to generate policies that will satisfy nature lovers. The ecological horror story implies that there is no reason to protect nature until catastrophe looms. The Ehrlichs' rivet-popper account, for example, presents species simply as the (fungible) hardware holding together the ecosystem. If we could be reasonably certain that a particular rivet was not needed to prevent a crash, the rivet-popper story suggests that we would lose very little by pulling it out. Many environmentalists, though, would disagree. Reluctant to concede such losses, tellers of the ecological horror story highlight how close a catastrophe might be, and how little we know about what actions might trigger one. But the apocalyptic vision is less credible today than it seemed in the 1970s. Although it is clear that the earth is experiencing a mass wave of extinctions, the complete elimination of life on earth seems unlikely. Life is remarkably robust. Nor is human extinction probable any time soon. Homo sapiens is adaptable to nearly any environment. Even if the world of the future includes far fewer species, it likely will hold people. One response to this credibility problem tones the story down a bit, arguing not that humans will go extinct but that ecological disruption will bring economies, and consequently civilizations, to their knees. But this too may be overstating the case. Most ecosystem functions are performed by multiple species. This functional redundancy means that a high proportion of species can be lost without precipitating a collapse.

## Courts CP

### AT: Perm Do Both

#### The permutation still links to the net benefit because it has the court issue a constitutional ruling which invalidates a restriction

### AT: Perm Do the CP

#### The permutation is severance - reject severance permutations because counterplans become impossible without net benefits and severance perms don’t disprove that inclusion of the plan precludes achieving the maximally beneficial course of action

#### First, their plan text says [something which proves it’s a constitutional ruling or invalidation]

#### Second, topical affs must decrease the number of restrictions on production

#### Restrictions are legal limitations on an activity

Gerald N. Hill and Kathleen T. Hill – 2005, the Free Dictionary, http://legal-dictionary.thefreedictionary.com/Restrictions

restriction n. any limitation on activity, by statute, regulation or contract provision. In multi-unit real estate developments, condominium and cooperative housing projects, managed by homeowners' associations or similar organizations are usually required by state law to impose restrictions on use. Thus, the restrictions are part of the "covenants, conditions and restrictions," intended to enhance the use of common facilities and property, recorded and incorporated into the title of each owner.

That means that

#### Reduce means to make smaller

Merriam-Webster – 12, http://www.merriam-webster.com/dictionary/reduce

a : to draw together or cause to converge : consolidate <reduce all the questions to one>

b (1) : to diminish in size, amount, extent, or number <reduce taxes> <reduce the likelihood of war> (2) : to decrease the volume and concentrate the flavor of by boiling <add the wine and reduce the sauce for two minutes>

c : to narrow down : restrict <the Indians were reduced to small reservations>

d : to make shorter : abridge

#### Constitutional avoidance is fundamentally distinct – it interprets a restriction instead of reducing restrictions by holding a restriction void

Michigan Law Review 09

Constitutional Interpretation and Judicial Review: A Case of the Tail Wagging the Dog

http://www.michiganlawreview.org/articles/constitutional-interpretation-and-judicial-review-a-case-of-the-tail-wagging-the-dog

Manning's myopia-his inability or unwillingness to see the constitutional forest through the legislative trees in pursuit of "commonalities"-is evident throughout his analysis. He fails to distinguish the singular focus of statutory interpretation, where only the meaning of a legislative act is at issue, from the duality of constitutional interpretation, where an act's very existence hangs in the balance. Judicial review is a high stakes game of "included identity or excluded difference:"if the act cannot be incorporated within the Constitution, it is deemed repugnant and held void. The core principle of judicial review is that the Constitution's generality trumps a statute's specificity. As Marshall asserted in Marbury v. Madison,[[8]](http://www.michiganlawreview.org/articles/constitutional-interpretation-and-judicial-review-a-case-of-the-tail-wagging-the-dog%22%20%5Cl%20%228) "[t]he powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." "To what purpose," he asks, "are powers limited, and to what purpose is that limitation committed to writing; if these limits may, at any time, be passed by those intended to be restrained?" If legislation excluded by the Constitution does not confine the legislature, and if what is proscribed nevertheless "bind[s] the courts and oblige[s] them to give it effect," then the Constitution, "established in theory," would be "overthrow[n] in fact . . . an absurdity too gross to be insisted on."

#### The permutation can’t be the counterplan because the counterplan does not invalidate anything – it merely creates resistance to government action

Morrison, Law Prof at Cornell, 06

106 Colum. L. Rev. 1189

Although the most common accounts of modern avoidance proceed along the lines of the judicial restraint theory discussed above, the judicial and scholarly literatures also provide an alternative account. [89](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n89) One of the most detailed elaborations of that account is found in Ernest Young's work on "resistance norms." [90](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n90) According to Professor Young, the avoidance canon should be viewed as "designed not to reflect what Congress might have wanted under particular conditions, but rather to give voice to certain normative values." In any given case implicating the avoidance canon, those values "are simply those embodied in the underlying constitutional provisions that create the constitutional 'doubt.'" When implemented by means of avoidance, those constitutional provisions do not dictate the invalidation of the legislation in the mode of conventional judicial review. Instead, they operate as resistance norms - constitutionally grounded "rules that raise obstacles to particular governmental actions without barring those actions entirely."

#### The permutation severs – the affirmatives invalidation cannot be the counterplans avoidance which merely makes governmental action more difficult

Morrison, Law Prof at Cornell, 06

106 Colum. L. Rev. 1189

To be sure, the mechanism of constitutional enforcement at work in avoidance is not the typical one. Rather than requiring the outright invalidation of unconstitutional statutes, the avoidance canon simply makes it more difficult for Congress to achieve certain results. It obliges Congress to shoulder the institutional and political costs of being clear about its intent to enact constitutionally suspect legislation, and of then pushing that legislation through the gauntlet of bicameralism and presentment. The central claim of the enforcement theory in the courts is that this process counts as a form of constitutional enforcement. My point here is that if one accepts that claim for the judiciary, the same should follow for the executive.

### Solvency – Precedent

#### The counterplan creates effective precedent without making a constitutional ruling

Slocum, Law Prof at Florida Coastal, 07

(5 Geo. J.L. & Pub. Pol'y 509)

The avoidance canon has been particularly important in ensuring judicial review of immigration decisions. Although decisions invoking the avoidance canon ultimately rest on statutory interpretations, **they employ constitutional reasoning that** often **functions as precedent**. In INS v. St. Cyr, [64](http://www.lexis.com/research/retrieve?_m=d2ecbef256dd97949a3724939b03ee02&docnum=22&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAb&_md5=4aa25375bd07846a59ea9eb3963e7ea4#n64) for example, the Court, through the avoidance canon and the Suspension Clause, has ensured a significant level of judicial review via habeas corpus or an "adequate substitute through the courts of appeals." [65](http://www.lexis.com/research/retrieve?_m=d2ecbef256dd97949a3724939b03ee02&docnum=22&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAb&_md5=4aa25375bd07846a59ea9eb3963e7ea4#n65) Following the Court's decision in St. Cyr preserving habeas corpus jurisdiction, Congress enacted the REAL ID Act of 2005, which generally eliminated from courts habeas corpus jurisdiction to review final orders of removal. [66](http://www.lexis.com/research/retrieve?_m=d2ecbef256dd97949a3724939b03ee02&docnum=22&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAb&_md5=4aa25375bd07846a59ea9eb3963e7ea4#n66) Significantly, however, Congress removed many of the bars to judicial review in the federal courts of appeals that caused criminal aliens to file habeas corpus petitions in district courts in order to challenge their removal orders. [67](http://www.lexis.com/research/retrieve?_m=d2ecbef256dd97949a3724939b03ee02&docnum=22&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAb&_md5=4aa25375bd07846a59ea9eb3963e7ea4#n67) As a result of St. Cyr, courts have jurisdiction to review constitutional challenges and other questions of law, including those related to criminal aliens and to discretionary relief from deportation. The judicial decisions preserving judicial review and habeas corpus have been based on statutory rather than constitutional interpretations and are therefore subject to reversal by Congress. They can thus be viewed as a relatively restrained method of blocking congressional reforms. A remarkable aspect of the Supreme Court's statutory interpretation decisions involving the avoidance canon, however, is that such decisions can give aliens as a whole greater rights, at least temporarily, than would decisions that rested on constitutional grounds. In a recent immigration decision, Clark v. Martinez, the Court held that a statutory interpretation made by invoking the avoidance canon must be uniformly applied in subsequent cases even when the later cases do not raise any constitutional issues. [**70**](http://www.lexis.com/research/retrieve?_m=d2ecbef256dd97949a3724939b03ee02&docnum=22&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAb&_md5=4aa25375bd07846a59ea9eb3963e7ea4#n70) Using similar reasoning to that of Martinez, some lower courts held that the Court's statutory decision in St. Cyr compelled a finding that non-criminal aliens could challenge their removal orders through habeas corpus in district courts even though they, unlike criminal aliens, were able to obtain judicial review through the review provisions set forth in the INA. Considering that habeas corpus jurisdiction could have been constitutionally repealed with respect to the non-criminal aliens who had an adequate forum for judicial review in the court of appeals, the statutory decision in St. Cyr was actually more favorable to the non-criminal aliens than a constitutional decision would have been.

#### The counterplan solves better - underenforcement

Slocum, Assistant Professor of Law at Florida Coastal School of Law, 07

34 Fla. St. U.L. Rev. 363

Although the legitimate use of the avoidance canon in immigration cases depends on the scope of the plenary power doctrine, the canon itself is a not a product of the plenary power doctrine. It is a canon of general application that is not specific to immigration law. The Court considers the validity of the canon to be beyond debate and believes that applying it gives effect to congressional intent because Congress would prefer the statutory interpretation that does not raise constitutional doubts. Ending the plenary power doctrine would therefore not render the avoidance canon unnecessary. Rather, it would expand, perhaps greatly, the potential for legitimate application of the avoidance canon because there would be more constitutional issues to avoid. [60](http://www.lexis.com/research/retrieve?_m=81fc34e855ab383cf6ef21c9fdfa383f&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=6dedcf2153c96c7de6e45d0960e7cfb1" \l "n60" \t "_self) Thus, as long as courts are willing to recognize at least some constitutional constraints on Congress's power over immigration, the avoidance canon should be viewed as a permanent member of the collection of substantive canons that courts use to interpret immigration statutes. Furthermore, those advocating for greater constitutional rights for aliens should support the permanent role of the avoidance canon rather than viewing the usefulness of the canon as being tied to the existence of the plenary power doctrine. **Even if new constitutional rights were created, constitutional rights are systematically "underenforced" by the judiciary**. This is especially true in immigration law. The avoidance canon helps offset the underenforcement of constitutional rights by allowing courts to **vindicate constitutional principles** through the narrowing of questionable but not necessarily invalid statutes. Thus, even if aliens enjoyed greater constitutional rights, the avoidance canon would still be needed in order to protect those rights.

#### Norms – creates awareness in future relevant situations

Morrison, Law Prof at Cornell, 06

106 Colum. L. Rev. 1189

On this account, the overarching norm implemented by the avoidance canon is that if Congress wants to legislate to the limits of its constitutional authority or in a manner that otherwise raises serious constitutional concerns, it must be clear about its intent to do so. This "constitutional enforcement theory" of avoidance echoes a description offered by William Eskridge some years earlier. As he explained, the avoidance canon "makes it harder for Congress to enact constitutionally questionable statutes and forces legislators to reflect and deliberate before plunging into constitutionally sensitive issues." Understood in constitutional enforcement terms, the avoidance canon is relatively impervious to the first two criticisms discussed above. [95](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805" \l "n95" \t "_self) First, if the aim of avoidance is to protect constitutional values by effectively "raising the cost of any congressional encroachment within a particular area of constitutional sensitivity," then its failure to track congressional intent is largely irrelevant. [96](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805" \l "n96" \t "_self) The constitutional enforcement theory, in other words, simply does not view the avoidance canon in faithful agent terms. Second, since the enforcement theory views the avoidance canon as reflecting constitutional commitments, [97](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805" \l "n97" \t "_self) Judge Posner's complaint that avoidance creates a penumbral Constitution [98](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805" \l "n98" \t "_self) becomes just a restatement of the canon's point, not an indictment of it. [99](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n99)

### Solvency – Judicial Independence

#### Statutory interpretation key to judicial independence without provoking fights with other branches

Kloppenberg, Professor of Law at Dayton, 06

Symposium: Judicial Independence and Judicial Accountability: Searching for the Right Balance: Does Avoiding Constitutional Questions Promote Judicial Independence? 56 Case W. Res. 1031

Rhetoric about judicial activism abounds in modern political campaigns. Bar associations and judicial organizations regularly voice concern about the need to protect judges from encroachments on judicial independence. Judicial independence is threatened from some quarters, as particular judges are targeted for unpopular decisions with death threats, through email or media campaigns, or by calls for recall or impeachment proceedings. For example, great furor and attention was generated by decisions of Judge Harold Baer in New York for criminal rulings perceived as protecting defendants too extensively. Judge Alfred Goodwin in California was lambasted by public officials and others for authoring the opinion striking "under God" from the Pledge of Allegiance, based on the court's reading of Establishment Clause precedent. Judicial independence is threatened systemically as well, through failure to provide sufficient funding for judicial operations, highly politicized federal judicial confirmation processes, and the increasing cost of judicial campaigns in many states. As both Democrats and Republicans work overtly to elect judges or gain confirmation for judges who share their views, when they charge judges who do not share their views with activism, they demonstrate that both politically "conservative" and "liberal" judges can be labeled activist. One way in which many judges try to deflect political pressure from their courts, and thus promote judicial independence, is by resorting to avoidance techniques. The avoidance doctrine urges judges to avoid decision of "unnecessary" constitutional questions. It encompasses a number of tools, from justiciability barriers and abstention doctrines that bar courts from ruling on the merits of constitutional issues to minimalist approaches to constitutional decision-making if the merits of an issue are reached. Sometimes constitutional rulings are merely delayed; sometimes they are completely avoided. Many judges and scholars have praised avoidance as a way to preserve judicial independence and promote deference to other constitutional decision-makers. The avoidance doctrine is longstanding and has often been praised by the Rehnquist Court as a foundational principle of constitutional adjudication for federal courts. Many state courts employ similar presumptions about avoidance.

### Solvency – AT: Constitutional Ruling Key

#### The counterplan allows promotion of constitutional values without making a constitutional ruling

Morrison, Law Prof at Cornell, 06

106 Colum. L. Rev. 1189

Two caveats are in order here, however. First, although the constitutional enforcement theory can be conceived as a means of implementing indirectly certain constitutional norms that the courts tend to underenforce directly, it need not be confined to underenforced norms. **The enforcement theory posits avoidance as a statutory means of implementing constitutional values**. The need for such implementation may be particularly great where the underlying value enjoys little direct enforcement, but the enforcement theory can also support avoidance across the board. Professor Sunstein's above-quoted account of avoidance, for example, does not depend on the constitutional norm being underenforced. Rather, it provides that, in the absence of clear instructions from Congress, courts should not allow agencies to construe statutes to trigger any "constitutionally sensitive questions." [112](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n112) Understood this way, the constitutional enforcement theory contemplates that **every constitutional provision is protected by both whatever direct means are available to the courts and the indirect means of the avoidance canon**. Second, although enforcement-based accounts of avoidance do sometimes depict it as a clear statement rule, [113](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n113) the standard description of avoidance does not require a true clear statement in order to force the doubts-raising construction. [114](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n114) Instead, it instructs that if the conventional [\*1216] tools of statutory interpretation "pretty clearly point to a preferred construction," [115](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n115) the court should adopt that construction and then address any constitutional doubts head-on. Doing so is consistent with the spirit of the Supreme Court's oft-repeated injunction that when employing the canon, courts "cannot press statutory construction 'to the point of disingenuous evasion' even to avoid a constitutional question." [116](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n116) On occasion, however, the Court has described avoidance in more clear statement terms by stating, for example, that a doubts-raising construction should be avoided unless it is compelled by "the affirmative intention of the Congress clearly expressed." [117](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n117) Under such a standard, it is not enough for ordinary tools of statutory interpretation to point steadily in the direction of the doubts-raising interpretation. Only if that interpretation is dictated by a specific and explicit textual statement should it be adopted. Obviously, this version of avoidance is much more robust than the more conventional version. That is, the underlying constitutional value receives much greater protection under the clear statement version than under the conventional version. It is not my goal here to choose between the two versions, but simply to note the difference. The significance of the difference will emerge again in Part IV. [118](http://www.lexis.com/research/retrieve?_m=a8852bf6831026adc9af7efd3f2b9cbb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=8cdf7c71298fbc9e93de7c34a38f0805#n118) With or without a full clear statement requirement, the bottom line is that the constitutional enforcement theory is driven neither by a faithful agent account of statutory interpretation nor by concerns about the institutional limitations of the judiciary. Instead, the constitutional enforcement theory sees avoidance as protecting constitutional values by making it more difficult for Congress to encroach on those values. Put another way, the constitutional enforcement theory sees the avoidance canon as a means of communication between the courts and Congress. By construing a statute to avoid certain constitutional concerns, the courts tell Congress that if it wishes to reach further, it must return to the legislative process and clarify its intended meaning.

### Judicial Restraint Now

#### The court will give a narrow decision on same sex marriage – proves restraint now

Fosters 3/26

(13, Fosters Daily Democrat, Restraint should be in order, [www.fosters.com/apps/pbcs.dll/article?AID=/20130326/GJOPINION\_01/130329534/-1/FOSNEWS](http://www.fosters.com/apps/pbcs.dll/article?AID=/20130326/GJOPINION_01/130329534/-1/FOSNEWS))

This week the high court is scheduled to hear oral arguments in two cases involving another incendiary topic — same-sex marriage. One involves Proposition 8 in California, a state constitutional amendment banning same-sex unions. The other is known as DOMA, the federal Defense of Marriage Act which defines marriage as being between one man and one woman. If justices have learned anything from Roe v. Wade they will issue decisions so narrow in scope they will have little to no effect on the ongoing national debate, which will then be allowed to freely run its course. It is true that there are differences between Roe v. Wade and the debate over same-sex marriage. One is literally a matter of life and death while the other is about lifestyle and to some, morality. But it is another difference that supports the notion the Supreme Court justices should meddle as little as possible. With Roe v. Wade there was not a strong national consensus building that abortion should be legal. Women were dying at the end of coat hangers and there appeared little that would change this unless the high court stepped in. In the case of same sex marriage, just the opposite is true. In state after state, the debate over same-sex marriage is being settled, mostly in favor of the gay and lesbian communities. Where at one time opponents could brag it was only legalized by legislative vote or judicial fiat, that is no longer the case with state’s such as Maine giving approval by popular vote of the electorate. Of course, California with its constitutional ban is the exception, something which makes it one of the two cases to be argued before the court this week. But again, as in Maine where the matter took several petitioned votes to resolve itself, the citizenry finally settled the debate. We have little doubt that should the high court find a way to sidestep a precedent-setting decision voters in California will reignite debate and eventual vote in the direction of same-sex marriage. As for overturning the Defense of Marriage Act, we would argue the high court’s decision will, in the long run, be irrelevant should it uphold the act. Once the vast majority of states have either gone the way of civil unions or same-sex marriage, DOMA will die a natural death.

# 1NR

### AT: Border Security

#### Working to resolve border security issue now

Gaynor, 3/27 (Tim, 3/27/2013, Reuters News, “UPDATE 2-U.S. Senators say they expect to deliver immigration bill,” Factiva))

NOGALES, Ariz, March 27 (Reuters) - Members of a bipartisan group of eight U.S. Senators took their quest for a deal on immigration reform to the Arizona-Mexico border on Wednesday where they said they were on track to deliver a bill when Congress resumes next month. The senators - New York Democrat Charles Schumer, Arizona Republicans John McCain and Jeff Flake and Colorado Democrat Michael Bennet - toured a stretch of the Arizona-Mexico border where many foreigners have entered the United States illegally. The senators are trying to create metrics for defining whether the border is secure as part of a comprehensive immigration bill that would give millions of illegal immigrants a path to citizenship. Speaking at a news conference after meeting with border patrol agents and flying over the international border around the frontier city of Nogales, Schumer said he was hopeful they would present a bill when Congress resumes April 8. "The bottom line is we are very close. I'd say we are 90 percent there. We have a few little problems to work on ... but we're very hopeful that we will meet our deadline," said Schumer, who was speaking at a building that was within sight of the steel border fence. "We hope to have a bill agreed to and done .. the day we come back," he said.

#### Border tour resolving concerns of border security

Silva, 3/27 (Cristina, 3/27/2013, Associated Press Newswires, “Senators promise immigration overhaul bill by April after tour of US-Mexico border,” Factiva))

NOGALES, Ariz. (AP) - A bipartisan group of senators crafting a sweeping immigration bill vowed Wednesday that they would be ready to unveil it when Congress reconvenes in less than two weeks after getting a firsthand look at a crucial component of their legislation: security along the U.S.-Mexico border. The four senators -- Republicans John McCain and Jeff Flake of Arizona and Democrats Chuck Schumer of New York and Michael Bennet of Colorado -- are members of the so-called Gang of Eight, which is close to finalizing a bill aimed at securing the border and putting 11 million illegal immigrants on a path to citizenship The lawmakers' reassurance that their work would be complete by the week of April 8 came after a public feud erupted between the U.S. Chamber of Commerce and the AFL-CIO over a low-skilled worker provision in the bill -- a spat that remained alive Friday as Congress began a two-week recess. But Flake noted Wednesday that negotiations over the worker program had resumed; an AFL-CIO negotiator also confirmed the talks were back on. During the tour, the senators saw border agents apprehend a woman who had climbed an 18-foot-tall bollard fence."You can read and you can study and you can talk but until you see things it doesn't become reality," said Schumer, who toured the border for the first time. "I'll be able to explain this to my colleagues. Many of my colleagues say, `Why do we need to do anything more on the border?' and we do. We should do more." President Barack Obama has urged Congress to pass immigration reform this year. While ceding the details of the negotiations to Congress thus far, the president has stepped to the forefront of the debate this week to prod lawmakers to finish work on the bill. Border security also is critical to McCain, and other Republicans, who contend that some areas along the border are far from secure. The senators' tour Wednesday -- by both ground and air -- allowed them to review manned and unmanned drones and different types of fences. They also watched as vehicles going to and from Mexico were scrutinized by border agents at the checkpoint in Nogales. "In so many ways, whatever your views are on immigration, Arizona is ground zero," Schumer said. "What I learned today is we have adequate manpower, but not adequate technology." With top Republicans and Democrats focused on the issue, immigration reform faces its best odds in years. The proposed legislation will likely install new criteria for border security, allow more high- and low-skilled workers to come to the U.S. and hold businesses to tougher standards on verifying their workers are in the country legally. The bill is expected to be lengthy and cover numerous issues, including limiting family-based immigration to put a greater emphasis on skills and employment ties instead. McCain and Schumer promised the overhaul would pay for itself, while cautioning that their proposed border security package would be costly. "Nobody is going to be totally happy with this legislation, no one will be because we have to make compromises," McCain said. Bennet said the Gang of Eight has agreed to put border security before a path to citizenship, but are opposed to double-sided fences along the length of the U.S.-Mexico border. Some lawmakers in Arizona want more border fences. "There is not one simple solution to the issue of border security," Bennet said. "This isn't as simple as someone on the East Coast saying `We need a fence everywhere or we don't.'"

## Thumper

### 2NC AT: Thumpers (Generic)

#### No thumper – Immigration is the top priority in Congress and will be dealt with right after the Easter Recess

#### \*\*\*Insert Top Priority/Cross-Apply U/Q\*\*\*

#### Obama is shifting back to immigration but taking a behind the scenes approach to prevent backlash

* **This ev also proves that the guns thumper is priced into Obama’s political strategy**

Sink, 3/26 (Justin, 3/26/2013, “After taking hit in the polls, Obama pivots back to immigration reform,” [http://thehill.com/homenews/administration/290249-after-taking-hit-in-the-polls-obama-pivots-back-to-immigration)](http://thehill.com/homenews/administration/290249-after-taking-hit-in-the-polls-obama-pivots-back-to-immigration%29))

The White House hopes to bolster President Obama’s political standing by shifting attention from the bruising budget battles of the last month to immigration reform and gun control.Democrats welcome the pivot after watching Obama’s standing in polls fall amid fights with Congress over the budget and the automatic spending cuts known as the sequester. They see immigration and gun reform as a better playing field for Obama that could provide political wins for the president. “What the public wants to see right now is him achieving things, leading,” said Tad Devine, a former strategist to Secretary of State John Kerry and former Vice President Gore. “For him, there's real opportunity on all these fronts, and… realistically in the next six months, he can have progress he can bring back to the American people.” On gun control, Obama will travel the country to bolster the case for strengthening background checks on gun purchases. Obama is expected to play an active role in the looming Senate fight over what Sen. Charles Schumer (D-N.Y.) has described as the “sweet spot” of legislation. A poll released Friday from Quinnipiac University shows that 88 percent of respondents support an expansion of background checks on new weapons purchases. Other provisions banning straw sales and improving gun research programs and school security funding garner similarly commanding poll advantages. "There actually is a lot of strong support for the proposals that the president has put forward, whether it's universal background checks, whether it is, you know, outlawing gun trafficking or straw purchasers," White House spokesman Josh Earnest said. "There's even some support out there in the public for the assault weapons ban." Yet, the assault weapons ban doesn't have the votes to pass the Senate, and neither does background checks — unless a bipartisan deal is reached. Immigration is a better issue for the president, partly because a growing number of Republicans want to pass a bill in the 113th Congress. While Republicans in Congress had little reason to negotiate with Obama on preventing the sequester, they do have reason to offer concessions on immigration. "Immigration reform in particular is something clearly that Latinos and the American public as a whole signaled they wanted in the last election, and Republicans ought to get on the right side of that issue," said Democratic strategist Jamal Simmons. "It doesn't seem like complicated math, and Republicans are basically deciding, do they want to be a House-based party, or do they want to be a national party that competes for the presidency and competes for the control of the Senate?" Moreover, immigration reform — which failed in the George W. Bush administration — would be Obama's most significant legislative achievement behind healthcare reform. “If the administration were able to get an immigration bill that looked anything like comprehensive immigration reform after President Bush had failed on it, President Clinton had failed on it, every president back to Reagan had failed, it would be a big deal,” said Cal Jillson, a political science professor at Southern Methodist University. Democrats are worried that Obama hasn't had a lot of signing ceremonies in 2013 as unresolved budget battles have hit the president's approval ratings. Obama's healthy post-election advantage on the economy has dwindled into a virtual tie with congressional Republicans. Voters equally blame Obama and the GOP for the sequester, which is expected to hit in full force in the coming weeks. “It goes back to a sense in Washington that things aren't getting done,” Devine said. “No matter whose fault that is, when you're president, the buck stops here.” Obama faces a delicate high-wire act on guns and immigration: Claim too much ownership for an issue, and swing-state Republicans who had been considering working with the White House might buck; Sit too far back, and risk losing steam on policy initiatives — or allowing Republicans to take credit. “In both of those policy areas, the president is involving himself carefully, allowing what appears to be some momentum in Congress to manage the issues,” Jillson said. “The president's involvement is modest, if not behind the scenes, because there is still enough post-election bad blood among the House GOP that direct presidential involvement drives away support.”

### AT: Gun Control

#### Obama not spending capital on guns

Steinhauer, 3/15 (Jennifer, 3/15/2013, NYTimes.com Feed, “Party-Line Vote in Senate Panel for Ban on Assault Weapons,” Factiva))

President Obama has made an emphatic call for new gun regulations, but he so far has not spent extensive political capital on the effort. In visits to Capitol Hill to meet with lawmakers this week, the issue barely came up. “The Senate has now advanced legislation addressing three of the most important elements of my proposal to help reduce the epidemic of gun violence in this country,” he said in a statement.

### AT: Keystone

#### If Obama approves Keystone it will include something to keep both sides happy

Harder, 3/18 (Amy, 3/18/2013, “Approving the Keystone Pipeline Won't Bring Obama Bipartisan Goodwill,” [http://www.nationaljournal.com/daily/approving-the-keystone-pipeline-won-t-bring-obama-bipartisan-goodwill-20130317)](http://www.nationaljournal.com/daily/approving-the-keystone-pipeline-won-t-bring-obama-bipartisan-goodwill-20130317%29))

If President Obama wants to approve the Keystone XL pipeline as a way of extending an olive branch to congressional Republicans, they are likely to see it as one riddled with thorns. Democrats and Republicans alike increasingly think that Obama will approve the 1,700-mile, Alberta-to-Texas pipeline sometime this year. But after years of delay, bitter messaging wars, and even one outright rejection of the project, Republicans would welcome Obama’s approval of the pipeline with subdued optimism that probably wouldn’t create much long-lasting bipartisan goodwill for solving the big fiscal issues dividing Washington. “It would be one step,” Sen. John Hoeven, R-N.D., said in an interview Friday. “It could help in terms of him showing concrete actions that he’s taking, and it’s going to take concrete actions on his part to get a grand bargain with Republicans.” Hoeven, who was one of a dozen Republican senators Obama invited to dinner a couple of weeks ago, added, “I think he’s going to have to do more. I think he’s going to have to lay things out on entitlement reform.” The years-long debate over the politically beleaguered pipeline resumed last week, when congressional Republicans pressed Obama on the issue in two separate meetings on Capitol Hill. According to lawmakers in the meetings and aides familiar with what was said, Obama didn’t show his hand; he instead carefully articulated both sides of the argument and concluded that both were exaggerated. That leaves the substantive debate over the pipeline in about the same spot as it was before the meetings, but the politics have shifted. Republicans are slightly more optimistic that if Obama were to approve the pipeline, it could break some of the stalemate that’s plagued Washington the last few years. “This would be one step toward the president showing that he is willing to work with us to get things done,” Rep. Steve Scalise, R-La., said in an interview with National Journal on Friday. Scalise and other House Republicans maintain that the debate over the pipeline is wholly separate from the spending standoff. “I think it’s a totally separate issue and in no way impacts other issues,” said Rep. Lee Terry, R-Neb., whose state has been at the center of the pipeline controversy. “It’s hard to blend over Keystone into tax or Medicare reform or cutting spending. And some of those big, iconic issues are really the reason behind us not being able to get along.” One potential thorn on the olive branch would be the conventional wisdom emerging that if Obama does approve the pipeline project, it would come with a quid pro quo that Republicans wouldn’t like. “I’m more inclined to say he’s going to support it, but I’m also convinced that there is going to have to be some sort of consolation prize for the environmental community,” said a former senior House Republican aide who would speak only on the condition of anonymity. Democratic strategists familiar with the administration’s position on the project agree that Obama would likely pair approval of the pipeline with some significant action on climate change and clean energy. If this theory is correct, one part of the “consolation prize” came on Friday. According to Bloomberg News, the Obama administration could require all major federal agencies to consider the impact of global warming before approving major infrastructure projects, such as pipelines. According to a draft environmental assessment by the State Department, which is responsible for reviewing international projects like Keystone, the pipeline would not result in a net increase of greenhouse-gas emissions. Translation: It would pass a tough review process that includes global-warming impacts. Other projects could be delayed, however, giving Republicans another gripe. “If the president was serious about getting the economy moving, he wouldn’t do something good and then do something bad at the same time,” Scalise said. “That would show us he was not serious about working with us.” GOP grumbling aside, incorporating climate change into the regulatory review process could provide a bit of solace to environmental groups worrying that Obama will approve Keystone.

#### Won’t do it anytime soon – will focus on Immigration first – Sink

### AT: Moniz

#### Appointments empirically don’t drain capital

Hutchison, 12-2 --- author, political analyst and a frequent political commentator on MSNBC and a weekly co-host of the Al Sharpton Show on American Urban Radio Network

(Earl Ofari, 12/2/2012, “Rice Nomination Fight Won’t Drain President Obama’s Political Capital,” www.eurweb.com/2012/12/rice-nomination-fight-wont-drain-president-obamas-political-capital/)

It won’t hurt him. All presidents from time to time face some backlash from real or manufactured controversies by opponents over a potential nominee to the Supreme Court, a cabinet or diplomatic post. In 2008, Obama faced backlash when he nominated Eric Holder as Attorney General. A pack of GOP senators huffed and puffed at Holder for alleged transgressions involving presidential pardons he signed off on as Clinton’s Deputy Attorney General. In the end he was confirmed. The mild tiff over Holder didn’t dampen, diminish, or tarnish Obama in his hard pursuit of his major first term initiative, namely health care reform. This was true three years earlier when then President Bush nominated Condoleezza Rice for Secretary of State. Rice was slammed hard by some Democratic senators for being up to her eyeballs in selling the phony, conniving Bush falsehood on Iraq’s weapons of mass destruction. The threat to delay Rice’s confirmation in the Senate quickly fizzled out, and she was confirmed. This did not distract or dampen Bush in his pursuit of his key initiatives. There was not the slightest inference that in nominating Rice, and standing behind her in the face of Democrats grumbles about her would threaten his push of his administration’s larger agenda items. Susan Rice will continue to be a handy and cynical whipping person for the GOP to hector Obama. But the political reality is that the legislative business that Congress and the White House must do never has been shut down by any political squabble over a presidential appointee. The fiscal cliff is an issue that’s too critical to the fiscal and economic well-being of too many interest groups to think that Rice’s possible nomination will be any kind of impediment to an eventual deal brokered by the GOP and the White House. The Rice flap won’t interfere in any way with other White House pursuits for another reason. By holding Rice hostage to a resolution of the fiscal cliff peril and other crucial legislative issues, the GOP would badly shoot itself in the foot. It would open the gate wide to the blatant politicizing of presidential appointments by subjecting every presidential appointment to a litmus test, not on the fitness of the nominee for the job, but on whether the appointee could be a bargaining chip to oppose a vital piece of legislation or a major White House initiative. This would hopelessly blur the legislative process and ultimately could be turned against a future GOP president. This is a slippery slope that Democrats and the GOP dare not risk going down. Rice will not be Obama’s only appointment at the start of his second term. He will as all presidents see a small revolving door of some cabinet members and agency heads that will leave, and must be replaced. There almost certainly will be another Obama pick that will raise some eyebrows and draw inevitable fire from either the GOP or some interests groups. Just as other presidents, Obama will have to weigh carefully the political fall-out if any from his pick. But as is usually the case the likelihood of any lasting harm to the administration will be minimal to nonexistent.

## Link

### 2NC AT: Plan Popular

#### Link outweighs – areas of disagreement will be highlighted

Metzler, 12 (4/20/2012, Rebekah, “Energy Policy Becoming a Losing Issue for Obama; Republicans have been pounding the president on high gas prices as domestic oil production is at a level not seen in over a decade,” <http://www.usnews.com/news/articles/2012/04/20/energy-policy-becoming-a-losing-issue-for-obama>)

But Paul Bledsoe, senior adviser at the Bipartisan Policy Center, says Obama's actual record on energy lines up pretty closely with what both Republicans and Democrats support. "I kind of find this a little bit ironic, because on many of the major issues, there's actually a lot of agreement," he says. In the last six or so years, Bledsoe says, Republicans have shown support for fuel economy standards and Democrats for offshore oil drilling – a reversal for each party that used to vehemently oppose those policies. The Keystone decision that has become such a flashpoint is really an outlier for Obama, he adds. [See a slideshow of U.S. energy sources.] "Keystone is really an outlier in the administration's approach to energy because, in general, they have been very bullish on domestic production, maybe not as bullish as some in industry would like," Bledsoe says. As far as the increased production, he says the culprit is the high price of oil. "The main reason we're producing more oil is it's been incredibly expensive for five straight years, so everyone wants to produce it to make a lot of money," Bledsoe says. Ultimately, the president's positions on energy seem to self-consciously line up with the views of most Americans, he says. The White House has shown support for increased domestic oil production, renewable and alternative energy and cutting oil industry tax breaks. "It's a very self-consciously populist set of energy position," Bledsoe says. So why is it so easy for Republicans to score points on Obama on energy? "We're in such a hyper-partisan political atmosphere that major areas of agreement are obscured and minor areas of disagreement are highlighted," he says. And the longer gas prices are pinching people's pocketbooks, the steeper Obama's climb to re-election becomes.

#### Passage is contingent on continued bipartisan cooperation

Fabian, 1/30 (Jordan, 1/30/2013, “Obama Confident Immigration Reform Passes This Year,” <http://abcnews.go.com/ABC_Univision/Politics/president-obama-confident-immigration-reform-passes-year/story?id=18358660>))

President Barack Obama expressed confidence on Wednesday that he would sign comprehensive immigration reform into law by the end of this year. In an interview with Univision's Maria Elena Salinas, Obama explained that significant details of a bill still must be worked out by lawmakers, including the structure of a pathway to citizenship for many of the 11 million undocumented immigrants. But Obama said that the progress made by a bipartisan group of lawmakers in the Senate has given him hope that a deal can get done.See Also: Transcript: President Obama's Interview When asked by Salinas if we will have immigration reform by the end of the year, Obama said, "I believe so." "You can tell our audience, 'Sí, se puede?'" Salinas asked. "Sí, se puede," Obama responded. Later in the interview, Obama said that he hopes a bill could be passed as early as this summer. But cognizant of deep divisions a topic like immigration has sewn in the past, Obama said that's contingent on bipartisan negotiations continuing to proceed well. "The only way this is going to get done is if the Republicans continue to work with Democrats in Congress, in both chambers, to get a bill to my desk," he said. "And I'm going to keep on pushing as hard as I can. I believe that the mood is right." Maria Elena Salinas talks to President Obama after his Las Vegas announcement on immigration reform. Univision Maria Elena Salinas talks to President Obama... View Full Size Although the president threatened to introduce his own bill if negotiations in Congress stall during his speech in Las Vegas, Nevada, on Tuesday, he said he is content to let lawmakers hash out the details among themselves for the time being. "If they are on a path as they have already said, where they want to get a bill done by March, then I think that's a reasonable timeline and I think we can get that done. I'm not going to lay down a particular date because I want to give them a little room to debate," he said. "If it slips a week, that's one thing. If it starts slipping three months, that's a problem." The president's principles and the Senate's principles on immigration broadly align with one another, but there are still thorny issues that could spark a division between Obama and Republicans, such as the pathway to citizenship. The Senate's path to citizenship would allow many undocumented immigrants to obtain legal status immediately upon passage of the law. But their ability to then seek legal permanent residency would be contingent upon the U.S.-Mexico border being deemed secure. Sen. Marco Rubio (R-Fla.), a member of the bipartisan "Gang of Eight" on immigration, has been particularly vocal in stating that border security is a precondition for gaining legal permanent residence, and then citizenship.

## I/L

### 2NC AT: Intrinsicness (Short)

#### Link proves DA is intrinsic – plan will affect Obama’s agenda – evaluating politics good for decision-making – willpower is finite and we should learn about making tough choices – teaches us about negotiations which is good for policy advocacy especially on this topic

### 2NC AT: Compartmentalization

#### The plan is the wrong political strategy – it confronts \_\_\_\_\_\_\_\_\_\_ rather than getting them on board

Collinson, 3/7 (Stephen, 3/7/2013, Agence France Presse, “Obama tries new tack -- talking to Republicans,” Factiva)

President Barack Obama has hit on a novel antidote to Washington's endless cycle of political crises: breaking bread with Republicans. Since his re-election triumph in November, Obama has used his political capital to harangue his foes, holding rallies across the country at which he accused rival Republicans of obstructing legislation and serving the rich. His strategy worked up to a point -- securing new higher tax rates for the wealthy as he pocketed a political win in December over the fiscal cliff showdown. But with the glow of his re-election waning, Obama came up short in the sequester clash last week as Republicans refused to bend on raising taxes -- and $85 billion in economy-sapping austerity was set in motion. Two years of incessant budget melodrama between Obama and his foes on Capitol Hill have poisoned the political well but done little to tackle the debt load endangering America's future prosperity. Now, Obama and conservative Republicans in the House of Representatives are left staring across a seemingly unbridgeable ideological divide. Since Obama's ambitious second term agenda must clear a divided Congress, the onus is on the president to plot a way through Washington's dysfunction. So Obama, who disdains the superficiality of backslapping politics, has embarked on a charm offensive -- and on Wednesday night he bought dinner for a dozen Republican senators out of his own pocket. At an expensive hotel, Obama supped with senators John McCain, Lindsey Graham and others, vocal foes who have also expressed frustration at being stuck in the political purgatory of a Washington where nothing gets done. Next week, the president will make a rare foray into enemy territory on Capitol Hill to address Republicans from both the Senate and the House. For now, Obama appears to have dropped the "outside" game of campaigning to move public opinion against Republicans, instead probing whether there is any space for a deal on key issues. Steven Smith, a former congressional staffer who is now a professor of political science at Washington University, St Louis, said the president had little choice but to try to change the political climate in Washington. "If you can't deal with the House Republicans in the current political environment -- see if you can change the political environment," he said. "What (Obama) is hoping is that Republicans in the Senate can start serving almost as opinion leaders for a new way of tackling these fiscal challenges." Obama is courting Republican senators who may be willing to deal on issues like the national debt, the deficit and growing costs threatening entitlement programs like health care for the elderly. "The President is interested in finding the members of the 'caucus of common sense,'" said White House spokesman Jay Carney. A person familiar with Obama's thinking said the White House believes there may be a window for action since -- after the sequester and fiscal cliff dramas -- Washington is finally not on the cusp of an immediate crisis. Obama aides also think some Senate Republicans may be ready to compromise -- a feeling bolstered by Graham's recent comment that he would swap $600 billion in new revenues in return for entitlement reform. It is not the first time that Obama has tried dialogue with Republicans -- he tried unsuccessfully to conclude a grand bargain with House Speaker John Boehner aimed at $4 trillion in deficit reduction during his first term. Obama says that offer is still on the table, but so frayed are his relations with Boehner that it seems doubtful the two of them share the necessary trust to strike a bargain. Should he fare better with Senate Republicans, Obama hopes his new dance partners can build pressure on their brethren in the House to compromise, which might also ease the way for other top initiatives, like immigration reform. Republicans, who have long accused Obama of hectoring them, welcome his change of tone. "Where this goes, I don't know," said Graham, who recently met Obama along with McCain at the White House. "I do believe (in) what the president has been doing lately, getting off the campaign trail (and) back into the normal way of doing business up here, of talking to each other." Moderate Republican Senator Susan Collins agreed. "The important thing is, for the first time in a very long time, the president appears to be doing some outreach to both Republicans and Democrats, and that's long overdue," she said. Wednesday's dinner might have been a good start, but such is the philosophical gulf between Obama and Republicans that any deal still seems a long shot. And with mid-term congressional elections in 2014, the window for bipartisan comity is short. But Wednesday night's dinner did provide an unusual spectacle in Washington these days -- political foes actually talking to one another.

### 2NC AT: House L/T

#### Boehner can move immigration reform through the House --- he empirically suspends the Hastert rule to get controversial legislation passed

Fabian, 3/1 (Jordan, 3/1/2013, “How the GOP Could Break an Unwritten Rule and Pass Immigration Reform,” <http://abcnews.go.com/ABC_Univision/Politics/gop-break-unwritten-rule-pass-immigration-reform/story?id=18622924>))

House Republican leaders eschewed a long-held principle when they held a vote on the Violence Against Women Act on Thursday. Only 87 out of 232 House Republicans backed that bill, but they still chose to bring it to a vote. That decision made all the difference. The bill passed thanks to near-unanimous support from House Democrats and backing from some Republicans. By allowing the bill to come to a vote, Republicans broke the "Hastert Rule" -- named after former House Speaker Dennis Hastert (R-Ill.). The basic idea: don't let something come to a vote unless a majority of the party supports it. If the unofficial Hastert rule is no longer a precedent for House Republicans, that could have a implications for other controversial, bigger pieces of legislation this year, such as immigration reform. The rule has been a guiding convention for House Republicans for years. Hastert coined the phrase in a 2004 speech, in which he said that the House would only bring a bill to the floor if "a majority of the majority" (i.e., a majority of Republicans) backed it. Since then, Republicans have largely operated under that rule when they have controlled the House of Representatives, including under the current speakership of John Boehner (R-Ohio). But Thursday's vote was not the first time this year that House GOP leaders allowed a vote on a bill that did not enjoy support from the majority of their conference. A deal to avert the fiscal cliff at the beginning of the year passed the House with only 85 Republican votes at the tail end of the last Congress. And only 49 Republicans voted for a relief package for victims of Superstorm Sandy, which passed into law. That has led some to believe the rule could be tossed aside again on key issues, a bow to the reality of divided government. "The idea that you're going to do everything just within your party might be a good idea [for the GOP], but it's not going to last very long," said Norman Ornstein, a resident scholar at the American Enterprise Institute and a long-time observer of Congress. Ornstein added that bills that can pass the Democrat-controlled Senate and receive President Barack Obama's signature "are probably going to require more Democrats than Republicans" to vote for them in the House. Boehner's flock of House Republicans is uncompromising, often more so than their GOP colleagues in the Senate. For example, 35 percent of House Republicans voted for the fiscal cliff deal compared to 85 percent of Senate Republicans. Thus Boehner may not be able to follow Hastert's mantra if he wants to ensure that the House does not become mired in gridlock and maintain his conference's credibility, argued John Feehery, a lobbyist and former communications director for Hastert. Feehery would know -- he penned the "majority of the majority" speech. "I think John Boehner won't have much of a choice in these first several months of the 113th Congress. He has to get stuff done," Feehery wrote in a January op-ed column titled, "Rules Are Made to Be Broken." "The Speaker doesn't have much room to maneuver," he added. "His conference is in no mood to compromise, nor in much of a mood to vote for anything that resembles responsible governance." Boehner's office played coy as to how or if the majority-of-the-majority-principle would be applied to future votes. "The current Speaker has never mentioned such a rule," Boehner spokesman Michael Steel said in an e-mail. The weakened Hastert Rule could have an impact on a wide range of pressing fiscal issues, including a fix to replace the $85 billion in mandatory spending cuts this year known as "sequestration." But it has also given Democrats hope that some of their legislative priorities, such as comprehensive immigration reform, could get through the GOP-controlled House. Obama has said that he wants a bill passed as soon as this summer and groups of lawmakers in both chambers have begun to draft legislation. "It's clear that the Hastert Rule isn't as hard and fast as it has appeared to be over the past couple of years," Rep. Luis Gutierrez (D-Ill.), a member of a bipartisan working group in the House drafting immigration reform legislation, told ABC/Univision. "That does provide hope that if we were in a situation where the Senate passed an immigration reform bill and the president and American people were demanding a bill, that Speaker Boehner could find a way to move the legislation toward a sensible outcome if a majority of House Republicans do not support it."

#### Can pass House --- high level GOP support

MacAskill, 3/27 (Ewen, 3/27/2013, Guardian.co.uk, “Latino leaders say 'it is past time' for American immigration reform,” Factiva))

**\*\*\*Janet Murguia is president of the National Council of La Raza**

The House, where the Republicans have a majority, could potentially be more awkward than the Senate. Marguia, speaking after the press conference, was hopeful that the House will go ahead with a bill given that the Speaker John Boehner and other senior Republicans had voiced support, as well as Republican senators close to the Tea Party such as Marco Rubio and Rand Paul.