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### Inherency/Solvency

Contention one is inherency:

The Court is about to rule against the Ralls Corporation’s challenge to national security restrictions on wind production.

Daily Journal of Commerce (Portland, OR) 12/19/12

December 19, 2012 Wednesday SECTION: COMMENTARY LENGTH: 932 words HEADLINE: Commentary: Butter Creek wind energy projects BYLINE: Jeanne Chamberlain BODY: The court battles continue concerning development of the Butter Creek wind farm projects in Morrow County. The unusual case stems from President Obama’s Sept. 28 order requiring that Ralls Corp., owned by two Chinese nationals, divest its ownership in the projects. This is the first time in several decades that a president has used his authority to block such an investment. Now, the projects’ owner has sued Obama in the United States District Court for the District of Columbia. A decision on the government’s effort to bring the case to a quick end is expected shortly. This case presents several cautions for wind farm developers, not the least of which is that national security interests may be raised in seemingly unlikely circumstances. More importantly, significant hurdles can arise when foreign investors proceed without prior approval from the Committee on Foreign Investment in the United States and it later determines that it has jurisdiction. In 2009, Oregon Wind Farms LLC initiated development of four separate wind farm projects south of Boardman in Morrow County. The companies had easements with local landowners to access and construct the projects, power purchase agreements with PacifiCorp, interconnection agreements permitting connection to PacifiCorp’s grid, transmission interconnection agreements and various necessary permits and approvals. In 2010 and 2011, the Federal Aviation Administration issued a “Determination of No Hazard” for each of the 20 planned turbines in the Butter Creek development. The FAA review process includes review by the Department of Defense. The United States Navy maintains a restricted airspace and bombing zone in the general vicinity of the Butter Creek development. That zone is used by a military aircraft base out of Naval Air Station Whidbey Island, over 200 miles northwest of the restricted airspace. It has been reported that the military uses the area to test drones and electronic warfare aircraft that jams radar. Only one of the four Butter Creek projects is inside the restricted airspace. Shortly after Ralls acquired the projects in December 2010, the U.S. Navy expressed concerns regarding the location of the Butter Creek development within restricted airspace, and advocated moving the wind farm to reduce airspace conflicts with military aircraft training in the area. Ralls agreed, and moved the wind farm to a new location. Construction of the turbines began in April 2012. Ralls provided CFIUS with notice of its acquisition of the wind farms on June 28. CFIUS, an interagency executive branch committee created by the Defense Production Act of 1950, is empowered to review and consider the impact of foreign investments in U.S. companies on national security. In a July 25 order, CFIUS determined there were national security risks to the United States as a result of the transaction. In compliance with the CFIUS order, Ralls suspended construction and informed CFIUS that it was considering sale of the projects. CFIUS issued a second order that prohibited any sale without prior notice and approval. On Sept. 12, Ralls filed suit, arguing that the orders issued by CFIUS exceeded its authority. After considering the CFIUS assessment of the matter, President Obama issued the Sept. 28 order finding credible evidence that Ralls, exercising control of the project companies, might take action that threatens to impair the national security of the United States. The president ordered Ralls to divest within 90 days all interests in the project companies, their assets and operations. On Oct. 1, Ralls added President Obama as a defendant in its lawsuit. The government promptly moved to dismiss the lawsuit, alleging that the court lacks jurisdiction. Ralls alleges that CFIUS’ recommendation, and the president’s subsequent order, led to an unconstitutional deprivation of Ralls’ property. It also claims that the government discriminatorily singled out the company because it is owned by Chinese nationals. In support of its position, Ralls points out that several other wind farms exist nearby. Oregon Wind Farms itself developed nine other wind farms in the vicinity of Butter Creek, known collectively as the Echo projects. Their development has been completed and they are in commercial operation, using turbines manufactured by RE Power, a German company owned by an Indian conglomerate, and Vestas, a Danish company. Two of the Echo wind farms include turbines located inside the restricted air space. On Nov. 28, District Court Judge Amy Berman Jackson heard oral argument on the government’s motion to dismiss. Though the president’s authority to issue divestiture orders is generally not subject to judicial review, Ralls argues that the president’s order goes too far. Instead of simply prohibiting Ralls’ acquisition, the order restricts future sales related to the project and equipment on site. In addition, the order authorizes CFIUS to require Ralls to give the government access to the premises, its equipment and various business records. Most commentators anticipate that Ralls’ efforts to challenge the divestiture order will be unsuccessful and that the court will likely rule that it has no authority to second-guess President Obama on a matter concerning national security. If that happens, Ralls has said it will appeal, and the court battles will continue.

#### And, the plan solves- a judicial ruling limiting the application of CFIUS review regarding national security and energy production assets would set a precedent for all foreign investment deals. The international business community is closely watching the court on this issue.

Vigdor et al-Vinson and Elkins LLP-10/22/12

Blocking Ore. Wind Farms: Overstepping Authority?

http://www.velaw.com/uploadedFiles/VEsite/Resources/BlockingOreWindFarmsOversteppingAuthority.pdf

The Ralls Corporation, a Chinese-owned wind farm developer, has sued President Obama and the Committee on Foreign Investment in the United States, raising statutory and constitutional challenges to recent orders by the president of the United States and CFIUS that effectively require Ralls to unwind its acquisition of four wind farm projects in Oregon. This appears to be only the second order issued by a sitting U.S. president since CFIUS was established in 1975. Ordinarily, parties abandon transactions when CFIUS appears ready to recommend that the president issue a blocking order. Thus, this suit is a rarity. Although the plaintiffs face threshold barriers to having their claims heard on the merits, even a partial success could have broad significance for the review of foreign direct investment across all sectors of the economy because CFIUS approval is frequently a major concern for transactions involving foreign acquisitions of, or joint ventures with, U.S. businesses. The Ralls lawsuit challenges not only the lack of transparency in CFIUS’ procedures and decision making, but also the president’s and CFIUS’ authority to prevent or unwind a transaction involving a foreign person based on national security concerns. Further, the lawsuit indicates that CFIUS can have national security concerns regarding foreign acquisitions of even small wind turbine projects, particularly where a project site is located near a U.S. military base or other sensitive national security installation. Background on CFIUS Review Since the 1970s, Congress has authorized the president “to suspend or prohibit any covered transaction that threatens to impair the national security of the United States.” National security reviews of foreign acquisitions of U.S. businesses are conducted through CFIUS, an interagency committee with jurisdiction to review “covered transactions,” a term defined to include transactions “by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States.” Under the CFIUS authorizing statute, the parties to a transaction may, but are not required to, submit a joint written notice to the committee. If CFIUS determines that a notice involves a “covered transaction,” it must determine “the effects of the transaction on the national security of the United States.”If CFIUS identifies a national security concern, the parties will often agree to take measures to resolve the concern, including entering into formal, contractual “mitigation agreements” with the government. If CFIUS and the parties are unable to negotiate mitigation measures or otherwise address the concern, the committee has statutory authority to refer the matter to the president. The authorizing statute requires the president to make certain findings and to announce his decision about whether to take action in 15 days. The statute further authorizes the president to “take such action for such time as [he] considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States” and provides that the president’s findings and actions “shall not be subject to judicial review.” CFIUS Review of the Ralls Wind Farm Project Ralls is a Delaware company owned by two Chinese businessmen (Dawei Duan and Jialiang Wu, the chief financial officer and vice president of Sany Group, a Chinese manufacturer); it is named for the Texas town where they built their first wind farm. According to Ralls, its primary business purpose is to develop wind energy products for which wind turbines manufactured by Sany could be used. The Ralls complaint alleged that in early 2012, Ralls bought four small Oregon companies whose assets consisted of wind farm development rights, land rights to construct wind farms, power purchase agreements and government permits. The projects — which collectively would produce a mere 40 megawatts of power — allegedly had received other federal regulatory approvals, such as a determination by the Federal Aviation Administration that the turbine towers presented no hazard to aviation. The U.S. Navy had initially requested that Ralls voluntarily relocate one of the turbines, apparently due to proximity to certain restricted military airspace. The complaint contended that after Ralls complied with the request, the Navy recommended that Oregon issue the necessary state regulatory approvals. In response to a request from the committee in June of this year, Ralls submitted a notice to CFIUS of its (by-then-consummated) acquisition of the Oregon projects. In late July, CFIUS allegedly issued an order purporting to require Ralls to cease construction, remove all materials from the location and “immediately cease all access” to the properties. Under the order, U.S. citizens contracted by the companies were permitted to access the site “solely for purposes of removing any items from the Properties in compliance with” the order. After Ralls informed CFIUS that it was considering selling the project companies, potentially to a U.S. buyer, CFIUS issued an amended order. In addition to restating each of the previous directives, the amended order prohibited Ralls from transferring to any third party for installation at the project site, any item made by the Sany Group. The amended order also prohibited Ralls from transferring the properties themselves until all items on the properties had been removed, and Ralls gave CFIUS notice and opportunity to object to the potential buyer.The Ralls Lawsuit and the President’s order Unwinding the Transaction On Sept. 12, Ralls filed a complaint in the U.S. District Court for the District of Columbia challenging the CFIUS actions as a violation of the federal Administrative Procedure Act (APA) and an unconstitutional deprivation of property without due process. The complaint specified the CFIUS review process in some detail. The suit raised a host of challenges, asserting that CFIUS exceeded its authority by failing to give reasons for its actions; prohibiting the transaction outright, rather than imposing conditions to mitigate national security risks; and prohibiting Ralls from selling items produced by Sany even to U.S. buyers and wind farm projects without CFIUS approval, even to a U.S. buyer. The suit also alleged that the order deprived Ralls of property without due process by prohibiting further construction, use of (or even access to) the property and sale of assets on the property to which Ralls holds project development land rights. On Sept. 28, President Obama issued an executive order directing Ralls to divest its interest in the wind farm projects within 90 days (by Dec. 27). The order is an unusual event — the first time since 1990 that a U.S. president has exercised authority under the CFIUS statute to prohibit a foreign transaction on national security grounds. The president’s order revokes the interim CFIUS measures but imposes even broader restrictions. It first finds, without additional details, that Ralls and its affiliates and subsidiaries, through their control of the wind farm projects, “might take action that threatens to impair the national security of the United States.” Although the order does not specify the precise national security risk, a press release from the U.S. Department of the Treasury (the CFIUS chair agency) suggests one possibility: “The wind farm sites are all within or in the vicinity of restricted air space at Naval Weapons Systems Training Facility Boardman.” (As noted above, Ralls had initially relocated one project at the Navy’s request to avoid that airspace. Although the Navy recommended that Oregon regulators issue the necessary approvals, it cautioned that even the new location “may have negative national security implications.”) Ralls’ court filings also suggested that proximity to the naval air station was the only national security concern. The order prohibits Ralls’ already-completed acquisition of the four projects and their assets and orders Ralls to divest them within 90 days (with a possible three-month extension on such terms as CFIUS may require). The order further requires Ralls to divest all interests in the projects’ “intellectual property [and] technology.” Ralls has just 14 days to remove “all items, structures, or other physical objects (including concrete foundations),” from the four sites, and, other than CFIUS-cleared U.S.-citizen contractors performing the removal, Ralls and its employees “shall cease all access.” Ralls cannot sell the four projects if CFIUS objects.The president’s order also supplements the interim CFIUS order by providing for inspections: “[O]n reasonable notice,” the order states, U.S. government employees “shall be permitted access, for purposes of verifying compliance with this order, to all premises and facilities” of the four project companies, as well as those of Ralls, its subsidiaries, and even those of Sany Group: “(i) to inspect and copy any books, ledgers, accounts, correspondence, memoranda, and other records and documents ... that concern any matter relating to this order” and “(ii) to inspect any equipment and technical data (including software) in the possession or under the control of the Companies.” Ralls promptly amended its complaint to add the president as an additional defendant and to challenge the Sept. 28 order and moved for expedited consideration, arguing that it needed a decision on its claims before the Dec. 27 divestment deadline. Ralls also submitted discovery requests seeking all documents in the government’s possession “relating to Ralls, Sany, or the [wind farm] Project Companies,” as well as details about the president’s evidence of a national security threat and what “actions” the U.S. government believes Ralls “might take” to threaten U.S. national security. The government argued that the court lacks power to hear the claims because, under the CFIUS statute, the president’s actions are not subject to judicial review. On Oct. 3, the district court set an expedited schedule for the government’s motion to dismiss, with the first brief due on Oct. 29 and a hearing scheduled for Nov. 28. The court put all discovery on hold (including Ralls’ requests described above) until it decides the motion. Looking Forward If successful, the lawsuit could have broad implications on a number of different grounds. First, the plaintiffs challenge the president’s and CFIUS’ procedures for reviewing transactions. Ralls objects to the president and CFIUS’ failure to provide any “evidence or explanation for its determination[s]” that the transaction was a “covered transaction” (and thus under CFIUS jurisdiction), that the transaction poses national security risks and that those risks cannot be mitigated by less restrictive means than the overbroad (in Ralls’ view) measures in the amended order. The challenges should be understood in the context that CFIUS review is generally confidential (CFIUS does not disclose even the fact that a review was requested). When CFIUS has a national security concern, the committee will often explain to parties that there is evidence of a national security concern but, in the interest of national security, the committee often will not share the reasoning or evidence with the parties. Here, Ralls is complaining about the inability to hear or understand the issues and seeking additional information in court through (now-stayed) discovery. If successful, the suit could increase the transparency of the review — such as a requirement that the committee articulate for the parties a justification for orders or recommendations to the president, beyond a bare finding of “national security risk.” If this were to come to pass, such disclosure could open the door to fruitful mitigation discussions. Second, and more fundamentally, the possibility that CFIUS actions could be subject to even a limited form of judicial review would reflect a sea change in CFIUS practice. As a practical matter, lawsuits seeking to challenge actions by CFIUS are rarely brought.[1] CFIUS’ authorizing statute, the Foreign Investment and National Security Act of 2007, gives the president authority to suspend or prohibit any covered transaction based on his finding of national security risks and states that his actions and supporting findings “shall not be subject to judicial review.” The Ralls complaint is based, in part, on the notion that CFIUS can be subject to judicial review through the APA even after the president has acted — particularly where, as here, CFIUS purported to issue an order under its own authority. Ralls also seeks review of the president’s actions on the ground that they exceed his statutory authority. Whether any aspects of this suit can proceed in a federal court will be the central issue presented by the government’s motion to dismiss. The plaintiffs will likely draw support from the background presumption that “final” agency actions are subject to judicial review. Finally, Ralls challenged the scope of CFIUS’ and the president’s remedial authority. The company asserts that only the president, not CFIUS, may suspend or prohibit a transaction and that CFIUS exceeded its authority to “mitigate” threats to U.S. national security in issuing the various restrictions in the interim orders. Ralls also argued that the president overstepped his authority to “suspend or prohibit” a transaction by ordering removal of equipment from the site and prohibiting access and by prohibiting Ralls from selling “to any third party” any items produced by the Sany Group. Such an order, Ralls asserted, oversteps both the limitation that CFIUS and the president may review only transactions that involve acquisition of control by a foreign person (as the order covers purchases by U.S. buyers) and the limitation that such review applies only to acquisition of a U.S. business (since the order applies to “items” produced by Sany Group). Ralls also challenged the president’s authority to authorize broad searches of Ralls, the Sany Group and affiliated entities. The challenge reflects the unusual posture of this case, in which CFIUS — and then the president — issued unilateral orders rather than negotiating “consensual” mitigation with the parties upon threat that CFIUS would recommend that the president take action to block the transaction. Any judicial decision that limited CFIUS or the president’s remedial power to impose national security related mitigation conditions would be of great interest to the investment community. CFIUS practitioners and the business community should watch this case closely. The plaintiffs will face significant threshold arguments from the government that the actions are nonreviewable and that the case should be dismissed. But if even one of Ralls’ claims survives dismissal, it could have significant economic and legal effects for U.S. national security review of foreign investment. Remarkably, this important development arises in the context of a CFIUS challenge to the acquisition of a nascent alternative energy project. CFIUS is charged with reviewing and investigating foreign acquisitions of critical infrastructure, including major energy assets. Small wind turbines are unlikely to fall into that category, but it is clear that CFIUS believes that foreign ownership of wind turbines could threaten national security, particularly where the assets are located near U.S. military or other sensitive installations. We believe that the case has momentous import to the U.S. business community seeking to attract capital for investment and foreign persons seeking to invest in the United States. We expect there to be opportunities for interested parties to express their views through amicus filings with the court. While we do not believe that this matter reflects a broad policy statement prohibiting foreign direct investment by Chinese companies in the U.S., it does suggest the importance of parties seeking strategic advice in advance about the full range of CFIUS risk that may be associated with a contemplated transaction and of appropriate engagement with CFIUS early in the process before a transaction is consummated. We expect further activity in this matter in late November when the court holds a hearing on the government’s motion to dismiss.

### Advantage 1- Grid Investment

#### The Ralls wind restriction makes Chinese energy investment uncertainty inevitable. Removing national security restrictions is critical to increasing Chinese energy investment in the US.

Hart American Progress Policy Analyst 13 (Melanie Hart, Policy Analyst for Chinese Energy and Climate Policy at American Progress. She focuses on China’s science and technology development policies for energy innovation as well as its domestic energy efficiency program, environmental regulatory regime, and domestic and international responses to global climate change. Before joining American Progress, Melanie was a project consultant for the Aspen Institute. She also worked on Qualcomm’s Asia Pacific business development team, where she provided technology market and regulatory analysis to guide Qualcomm operations in Greater China, “Increasing Opportunities for Chinese Direct Investment in U.S. Clean Energy,” Feb 11, http://www.americanprogress.org/issues/china/report/2013/02/11/52576/increasing-opportunities-for-chinese-direct-investment-in-u-s-clean-energy/)

In President Barack Obama’s first term, economic issues were often a source of friction between the United States and China, particularly regarding clean energy. But things started off relatively well a few years ago: President Obama made his first trip to China as president of the United States in November 2009, and energy cooperation was high on the agenda. President Obama and Chinese President Hu Jintao signed multiple agreements pledging to cooperate on a range of important energy initiatives such as the U.S.-China Clean Energy Research Center and a U.S.-China renewable-energy partnership. These initiatives are important. The United States and China are the world’s biggest energy consumers and biggest greenhouse gas emitters. Our two nations have similar energy and climate problems but different comparative advantages for addressing those problems. The United States leads in cutting-edge clean energy innovation, and China leads in the rapid commercialization and deployment of those technologies. Working together on clean energy just makes sense. If U.S. and Chinese clean energy enterprises can have open access to both markets, that access will improve their abilities to achieve good economies of scale and drive down costs. If both markets are competitive, that will give enterprises in both countries strong incentives to innovate, and innovation will lead to new technologies and new business models that should speed our transition to a clean energy economy. That would be good for U.S. and Chinese consumers, good for our economies, and good for the planet as a whole. Despite those macro-level incentives to cooperate, however, things can get a bit more complicated when we actually delve into the details. Although we want to cooperate at a macro level, the United States and China are also big competitors at a market level. Both countries want to see their own companies dominate in critical industries such as solar and wind. Neither Washington nor Beijing is happy about being too reliant on energy products or services provided by foreign enterprises. Balancing cooperation with competition and our respective national ambitions is always difficult, and clean energy is no exception. Although the United States and China expanded bilateral cooperation with critical projects such as the Clean Energy Research Center, throughout President Obama’s first term we increasingly butted heads in the trade realm. U.S. steel workers filed a World Trade Organization petition against China’s wind-power equipment subsidies in 2010; U.S. solar panel and wind turbine manufacturers filed U.S. Department of Commerce countervailing duty petitions and antidumping petitions against Chinese manufacturers producing those same products in 2011; and the American Superconductor Corporation is still engaged in an ongoing legal battle with China’s Sinovel Wind Group over alleged intellectual property theft. These U.S.-China clean energy trade frictions are serious, and unfortunately they are unlikely to disappear anytime soon. China’s regime to protect intellectual property rights is still developing. Some local officials in China are still more interested in protecting local companies than in adhering to international trade laws, and China’s relative lack of administrative transparency can make the resultant trade complaints very hard to resolve. One area in which the Obama administration has proven especially adept, however, is approaching the U.S.-China relationship issue by issue without letting frustrations on one issue spill over and impede cooperation elsewhere. As my colleague Nina Hachigian recently wrote, President Obama has taken a “clear-eyed, nuanced and effective approach” toward China. Where cooperation makes sense, the president has been ready to deal. Where he feels American interests are being harmed, he has not hesitated to get tough. This is exactly what we will need more of in U.S.-China relations in the clean energy sector. We need to continue to keep an eye on clean energy trade to ensure that American companies have a level playing field, but trade frictions should not hold us back from pursuing promising opportunities with China in other areas. One of our most promising opportunities for U.S.-China clean energy cooperation is inward Chinese direct investment. Many Chinese companies want to come to the United States, directly invest in this country, and create jobs here. That is exactly what our economy needs, particularly in sectors such as renewable energy generation that generally do not pose national security concerns and will require large amounts of investment capital to develop. The problem is, however, that we do not have a good policy framework in place to encourage these investments. In President Obama’s first term, the White House signaled general support for increasing Chinese direct investment. During Vice President Joe Biden’s August 2011 China trip, for example, the vice president stated: President Obama and I, we welcome, encourage and see nothing but positive benefits flowing from direct investment in the United States from Chinese businesses and Chinese entities. It means jobs. It means American jobs. From the perspective of most potential Chinese investors, however, those general statements of welcome are not enough to make the U.S. market look like a good bet. These investors need to be able to predict how the U.S. government will respond to particular foreign-invested business models—and that requires actual policies. The only policies we have at present are the national security review policies of the Committee on Foreign Investment in the United States, which are designed to block foreign direct investments that could pose national security concerns. National security protections are very important, but we should pair those protections with additional policies designed to encourage foreign investment in the sectors where security is not an issue. In this era of economic difficulty, we should not let those opportunities go by the wayside. This issue brief will outline the opportunities and current problems in attracting Chinese direct investment and offer policy recommendations for how the United States can make the most of Chinese capital and knowledge in the clean energy sector.¶ Why encouraging inward Chinese direct investment in clean energy makes sense for the United States¶ President Obama’s administration made great strides in his first term toward building a sustainable U.S. clean energy economy that will provide jobs for middle-class Americans and reduce our nation’s dependence on foreign oil and fossil fuels. But more work is needed. Moving toward a clean energy economy in the United States will require more than $1 trillion of investment in the electricity grid, new fuels, mass transit, power generation, and manufacturing. An investment of this size will require the United States to mobilize every possible source of capital, including foreign direct investment.¶ While the United States has a sizeable investment need, Chinese investors are eager for new opportunities in foreign markets—and the U.S. market in particular. Their goals are not always perfectly aligned with ours, nor do U.S. market opportunities always perfectly meet their needs. That said, however, there are times when Chinese direct investment in the U.S. clean energy economy would be mutually beneficial.¶ Chinese enterprises would like to invest in the United States for many reasons, including:¶ Some potential investors are seeking infrastructure investments with stable returns.¶ Others are seeking access to innovative technology and processes or high-yield opportunities in manufacturing.¶ Directly investing in the United States can give Chinese enterprises a local presence and a closer relationship with U.S. consumers—two critical prerequisites for building and promoting Chinese name-brand goods and services.¶ All of these possible reasons for Chinese investment in the United States are supported by the fact that the Chinese government has amassed more than $3 trillion in foreign-exchange reserves. They cannot convert those reserve holdings into Chinese renminbi—the official currency of China—and invest them domestically without triggering inflation, so Chinese banks and enterprises are constantly looking for good investment opportunities abroad. Over the past 5 to 10 years, Chinese enterprises have grown more adept at operating in foreign markets, and that has triggered a shift from lower-yield portfolio investments—where Chinese entities buy minority shares in foreign assets—to higher-yield direct investments—where Chinese entities actually play an operational role by building and operating manufacturing plants abroad.¶ China’s total cumulative outward foreign direct investment now amounts to around $230 billion worldwide. Annual Chinese direct investments in overseas markets grew from less than $2 billion in 2004 to more than $40 billion in 2009, and some analysts predict that China’s total global stock in outward foreign direct investment could reach $2 trillion by 2020. If handled correctly, these investments could play a large role in revitalizing economies worldwide, including the U.S. economy. Overall Chinese direct investments increasing, but clean energy lags behind Chinese direct investment in the United States is already rising steadily. Annual investment has surged in recent years—from $375 million in 2004 to more than $6.5 billion in 2012, which is the largest annual total so far. As of the end of 2012, Chinese enterprises have directly invested a cumulative total of more than $22 billion in the U.S. economy. And more than 27,000 American workers are currently employed by firms in which a majority of investments come from the Chinese.¶ Among China’s current U.S. direct investments, energy is a primary focus. Energy projects accounted for about 45 percent of total inward Chinese investments in 2012. Most of these energy investments, however, are minority-share fossil-fuel acquisitions by China’s state-owned energy companies. The China National Offshore Oil Corporation, for example, has invested more than $3 billion in U.S. shale gas fields since 2010, and the China Petroleum and Chemical Corporation, or Sinopec, has invested another $2.5 billion over the same time period. Comparatively, however, Chinese investment in clean energy is very low. (see Figure 1) More work is needed to open up comparable investment opportunities in renewable energy sources, utilities, and energy efficiency. The interest is there: Chinese investments in U.S. clean energy sectors have increased significantly in recent years, from $4 million in 2006 to $264 million in 2011.¶ When you compare those investment numbers to the investment numbers for fossil fuels, however, clean energy is still just a drop in the bucket.¶ Federal policy is a problem for foreign direct investment in U.S. clean energy sectors¶ One reason Chinese direct investment in U.S. clean energy sectors still lags behind Chinese investment in U.S. fossil-fuel sectors is because our investment incentives for clean energy still do not measure up to the tax breaks and other policies supporting oil and natural gas. Leveling the playing field for clean energy technologies is still a work in progress in this nation, and that impacts foreign direct investment just as it impacts domestic investment. Additionally, the clean energy incentives that we do have are hard for most foreign companies to utilize.¶ The three main national-level U.S. clean energy incentives are the Department of Energy loan guarantee program, the production tax credit, and the investment tax credit. The U.S. Department of Energy loan guarantee program—section 1703 of the loan program—supports pre-commercial clean energy technologies by guaranteeing bank loans issued to companies pursuing those technology development projects. Department of Energy loan guarantees lower the otherwise-high investment risks associated with these companies, making them more attractive to private lenders.¶ Legally, Chinese and other foreign enterprises are eligible to receive clean energy loan guarantees from the Department of Energy as long as the project itself is located in the United States. In reality, though, in the current political climate it would be a serious liability for the Department of Energy to provide loan guarantees to a foreign company, particularly a Chinese company. U.S. politicians routinely attack clean energy deals that appear to allow Chinese companies to benefit from U.S. government funding. In 2010, for example, some U.S. senators protested a clean energy program that provided stimulus funding to U.S. wind farms that were importing their wind turbines from China. Similar protests arose last year when China’s Wanxiang Group moved to acquire A123, a U.S. battery company that had received federal clean energy funding before going bankrupt. Even when Chinese companies are not involved, the Department of Energy already has its hands full defending clean energy loan guarantees from fossil-fuel lobbying efforts. Adding Chinese companies into the mix would make that difficult job even harder. In addition to the loan guarantee program, the United States also has two renewable energy tax credits: a production tax credit and an investment tax credit. The production tax credit provides a per-kilowatt-hour tax refund for companies that generate electricity using wind, biomass, hydropower, and other renewable sources. That tax credit can substantially reduce the costs of some renewable generation projects—particularly for wind, closed-loop biomass, and geothermal projects, which can receive a tax credit of 2.2 cents per 1 kilowatt hour.¶ The investment tax credit provides a 30 percent tax credit for residential solar systems, commercial solar systems, fuel cells and small wind systems, and a 10-percent tax credit for geothermal energy, small wind turbines (those with below 2 megawatts of power), and combined heat and power systems.¶ These two tax credits are great programs for electric utilities and other companies considering investing in renewable energy. The problem is, however, that tax rebates primarily benefit big companies that are already established in the United States, that already have big tax bills, and that can pay all project costs up front and wait until the end of the year to get a rebate. That is not the case for most foreign investors. Those companies generally do not have large existing operations in the United States looking for tax breaks, and they often have limited operating capital. What those companies are looking for is incentive programs that can reduce project costs from day one.¶ China’s ENN Group, for example, recently negotiated with the Clark County Commission in Nevada to purchase 9,000 acres of public land along the Nevada/California border to build a large solar project. The land was appraised at around $3,000 to $4,000 per acre, but Clark County sold the land to ENN at $500 per acre, thus substantially lowering ENN’s cost to construct the solar facility. In exchange, in addition to constructing the new facility, ENN promised to hire local labor, buy building materials locally, and create at least 1,000 jobs for the state of Nevada. That project appears to be a win-win: The land discount enabled ENN to save money at the outset, and Nevada got a new job-creating project.¶ Similar local-level investment incentives exist across the United States. They vary by locality depending on what the individual state and local governments have to offer and what types of investments they want to attract. But it can be difficult for state and local governments to connect with Chinese investors interested in building the types of projects that make sense for their regions. Even when local governments can make those connections, the Chinese companies are often scared off by what they perceive to be a relatively high risk that their projects will be blocked for national security reasons.¶ National security reviews add another layer of uncertainty

Chinese enterprises report that one of their biggest concerns with direct investments in the United States is the national security review. The Committee on Foreign Investment in the United States includes the secretaries of treasury, homeland security, commerce, defense, state, and energy; the U.S. attorney general; the secretary of labor; and the director of national intelligence. (The latter two are nonvoting members.) The committee is tasked with reviewing foreign business acquisitions in the United States to determine if those acquisitions create any national security risks. If the committee does find a security risk, they pass those findings on to the U.S. president, who can then block or reverse the business deal. This review process has created a problem for some foreign investors in the United States, as it is difficult to predict what the committee will consider to be a national security threat. The governing regulations give the committee wide leeway to make that determination, and that makes it hard for foreign enterprises to foresee which deals will trigger security concerns. Recent regulatory reforms have expanded the committee’s focus to specifically target U.S. energy sectors, particularly the electric grid and other critical infrastructure. The committee generally considers foreign government ownership to be a red flag, so a Chinese state-owned enterprise investment in U.S. utility infrastructure, for example, would likely trigger committee review. Recent high-profile national security review cases involving Chinese enterprises include the CNOOC deal in 2005, the Huawei deals in 2007 and 2011, and the Ralls Wind Corporation deal in 2012. In 2005 CNOOC issued an unsolicited $18.5 billion bid for Unocal, a California oil company; this high bid created a political firestorm in Washington. Many U.S. policymakers questioned whether the acquisition would threaten U.S. energy security by transferring critical oil assets to the Chinese government, and the U.S. House of Representatives passed a bill calling on then-President George W. Bush to review the transaction. It became clear to CNOOC that the deal would require an extensive committee review and that the likelihood of passing that review was almost zero, so the organization dropped the offer. Chinese telecommunications equipment provider Huawei ran into similar difficulties in 2007 when it tried to acquire—with help from private equity firm Bain Capital—a minority interest in electronics manufacturer 3Com for $2.2 billion. 3Com provided Internet security software to the U.S. military, and the committee blocked the transaction due to concerns that Huawei could give the Chinese military access to U.S. defense software. Huawei ran afoul of the committee again when the company acquired cloud computing technology and 15 employees from U.S. server firm 3Leaf LLC in 2010. The U.S. Department of Defense raised concerns that Huawei might transfer 3Leaf technology secrets to the Chinese military for cyberattacks against the United States. That triggered a review of the deal, and the committee eventually forced 3Leaf and Huawei to unwind the transaction. More recently, in September 2012 President Obama issued an order forcing China’s Ralls Wind Corporation to divest a wind farm that the company had purchased in Oregon. According to the U.S. Treasury Department, which chairs the committee, the purchase of the wind farm was deemed a national security risk because the site overlooked a U.S. Navy weapons-training facility. The Committee on Foreign Investment in the United States system is designed to target and block potentially problematic foreign investment projects while letting the vast majority go forward. And in general, that is how the process works. Many foreign companies directly invest in the U.S. economy without triggering any national security concerns whatsoever, including many Chinese companies. The ENN Energy case mentioned above is one example of a Chinese direct investment project that went forward without any committee blocks. And the projects that do trigger the review process can still win approval. Wanxiang Group, a Chinese auto parts company, recently underwent a review for its planned acquisition of A123 Systems, a U.S. company that specializes in lithium-ion battery technology. Wanxiang came out of the review process with official U.S. government approval for the acquisition. Although there are plenty of success cases, however, when most potential Chinese investors see big state-owned enterprises such as CNOOC and state champions such as Huawei get tangled up in the committee’s red tape, they assume that if those giants cannot get through to the U.S. market, then smaller Chinese companies definitely would not have a chance. But the reality is that the opposite is true. Smaller, privately owned companies that do not have strong connections to the Chinese government are much less likely to trigger security concerns than their state-owned counterparts. Foreign government control is one of the key issues the committee process tries to detect. The more independent the investor, the less likely foreign government control will be a problem. Of course, nonstate investors run into problems too, just as China’s Ralls Corporation did with the Oregon wind farm project. That is where foreign firms start to get a bit confused. From the Chinese perspective, it can be hard to anticipate which projects will trigger security concerns. The end result is that many potential Chinese direct investors view the U.S. market as extremely high risk, and that deters them from launching projects that would be a win-win for both nations.

#### Increasing US-China energy cooperative investment is key to future grid investment.

Hart same quals 13 (Melanie Hart, Policy Analyst for Chinese Energy and Climate Policy at American Progress. She focuses on China’s science and technology development policies for energy innovation as well as its domestic energy efficiency program, environmental regulatory regime, and domestic and international responses to global climate change. Before joining American Progress, Melanie was a project consultant for the Aspen Institute. She also worked on Qualcomm’s Asia Pacific business development team, where she provided technology market and regulatory analysis to guide Qualcomm operations in Greater China, “Increasing Opportunities for Chinese Direct Investment in U.S. Clean Energy,” Feb 11, http://www.americanprogress.org/issues/china/report/2013/02/11/52576/increasing-opportunities-for-chinese-direct-investment-in-u-s-clean-energy/)

Why encouraging inward Chinese direct investment in clean energy makes sense for the United States President Obama’s administration made great strides in his first term toward building a sustainable U.S. clean energy economy that will provide jobs for middle-class Americans and reduce our nation’s dependence on foreign oil and fossil fuels. But more work is needed. Moving toward a clean energy economy in the United States will require more than $1 trillion of investment in the electricity grid, new fuels, mass transit, power generation, and manufacturing. An investment of this size will require the United States to mobilize every possible source of capital, including foreign direct investment. While the United States has a sizeable investment need, Chinese investors are eager for new opportunities in foreign markets—and the U.S. market in particular. Their goals are not always perfectly aligned with ours, nor do U.S. market opportunities always perfectly meet their needs. That said, however, there are times when Chinese direct investment in the U.S. clean energy economy would be mutually beneficial. Chinese enterprises would like to invest in the United States for many reasons, including: Some potential investors are seeking infrastructure investments with stable returns. Others are seeking access to innovative technology and processes or high-yield opportunities in manufacturing. Directly investing in the United States can give Chinese enterprises a local presence and a closer relationship with U.S. consumers—two critical prerequisites for building and promoting Chinese name-brand goods and services.

#### Increasing grid investment is critical to avoid massive nuclear meltdowns that risk extinction- outweighs the risk of nuclear war

Goldes, founder Aesop Institute, 11 (Mark Goldes, Former Research Fellow at Brandeis University, is Founder of the Aesop Institute, served as a consultant on economic development to Senator Robert F. Kennedy’s New York office. He later became Chief of Housing and Economic Development for Oakland, California, Formerly Senior Director of the Berlin Corridor control radar in Germanyfor US Air Force, “SOLAR MEGASTORMS can GENERATE a GLOBAL NUCLEAR NIGHTMARE” <http://www.opednews.com/articles/SOLAR-MEGASTORMS-can-GENER-by-Mark-Goldes-111119-448.html>)

We are unprepared and are playing Russian roulette with the sun. The NOAA sees the peak peril during the next 2 to 5 years. They state the maximum threat may occur in 2013.¶ 3 million people lost power in the recent snowstorm. 130 million could suffer long-term, life-threatening, blackouts in the USA -- and China, India, Japan, most of Europe and much of the remainder of the planet.¶ N.Y., Washington, Boston, Baltimore, Philadelphia, Atlanta, Seattle, and many other heavily populated communities could be in great peril. A similar threat to major cities and large populations exists worldwide.¶ To prevent the worst requires a massive 24/7 effort - similar to the optimum response to a major military attack on the entire earth.¶ The big problem is solar induced destruction of huge electrical transformers that take years to replace. The loss of those transformers and the long time required to restore them could black out large areas of the planet for several years.¶ Preventing this nightmare is urgent.¶ In the USA there are 5,500 of these transformers. 350 are critical. Over 20,000 such transformers may exist worldwide. New technology might protect them all.¶ Survival of millions, and numerous nations, possibly including our own, may depend on safeguarding critical grids, providing sufficient standby power to nuclear plants, and rapidly decentralizing energy! ¶ This almost unimaginable tragedy might be prevented if we quickly install newly developed technology to protect the grid and safeguard nuclear facilities. It would also be wise to decentralize electric power generation as fast as is humanly possible.¶ A map of the USA on the Aesop Institute website reflects a NASA study based on the 1921 solar storm. There are two huge areas that NASA warns can experience a total loss of the electrical grid for years. After one month without grid power nuclear plants and many other nuclear installations are in danger of life-threatening meltdowns.¶ The NASA map shows the possible effect, if one of the powerful solar emissions that may strike in this decade, smashes into our geomagnetic field. Far worse than any terror attack, the entire world is totally unprepared for such an event. Based on this NASA map 71 nuclear plants in the USA are at direct risk from a solar megastorm. These nuclear plants could be without grid electricity necessary for cooling their fuel pools. Imagine 71 Fukushima meltdowns in this country. More than 400 facilities are at risk worldwide.¶ Without including probable nuclear plant meltdowns, NASA estimated the price tag in the USA could reach $2 Trillion the first year, with 4 to 10 years required for full recovery. ¶ NOAA Assistant Secretary Kathryn Sullivan says countries should prepare for "potentially devastating effects." Sullivan, a former NASA astronaut who in 1984 became the first woman to walk in space, said in Geneva that "it is not a question of if, but really a matter of when a major solar event could hit our planet." ¶ "Widespread disruption of electric service can quickly ... endanger millions." Joseph McClelland Director, Reliability, Federal Energy Regulatory Commission.¶ This is a little publicized multi-trillion dollar, planet wide nightmare! Preventative steps could minimize the damage.¶ Radiation experts recently estimated that more than 1 million people will die from Fukushima radiation. According to Dr. Tatsuhiko Kodama, the director of the Radioisotope Center at the University of Tokyo, the amount of radiation released thus far is equivalent to more than 29 Hiroshima-type atomic bombs. "While the remaining radiation from atomic bombs decreases to one-thousandth of the original level after a year, radioactive materials from the nuclear power plant only decrease to one-tenth the original level."¶ The massive program needed would directly and indirectly provide millions of jobs and boost the staggering global economy far beyond current expectations.¶ PREVENTING THE WORST MAY MAKE THE IMPOSSIBLE POSSIBLE!¶ Cheap green electricity to supersede fossil fuels is in the birth canal - development and production might be sharply accelerated. $50 per barrel diesel from sunlight, water, CO2 and bacteria, is in pilot plant production today! Heat and eventually electricity might begin to be fueled by miniscule amounts of Nickel powder and Hydrogen from water.¶ These and other surprising positive Black Swans -- highly improbable energy innovations with huge potential implications - are being born. See MOVING BEYOND OIL and CHEAP GREEN on this website to learn more.¶ After one month without grid power, a nuclear plant poses a grave problem. Once the water has evaporated in the stored fuel ponds, meltdowns become likely, spewing deadly radiation. Unless quickly prevented by sensible action, a solar megastorm can cause this nightmare to occur at a very large number of nuclear plants and other nuclear facilities . ¶ There were huge solar flares in each of the last five months. A strong geomagnetic storm and a severe solar flare were experienced in September. The June flare covered half of the sun. An X Class flare occurred this month. Mobilizing to minimize the damage can stimulate broad support for decentralized energy production and emerging cheap green electricity. ¶ An advisor to the Japanese government reported that as a result of the Fukushima catastrophe, millions of people will have to be monitored indefinitely for radiation sickness.¶ Will a Solar Megastorm create 71 U.S. Fukushimas?¶ We face a severe potential emergency. External threats serve to unite. The world faces an unrecognized nuclear peril! Uniting to confront it can generate the missing popular and government support to generate millions of jobs and revitalize the global economy.¶ A THREAT GREATER THAN ANY TERROR ATTACK!¶ A NASA funded study by the National Academy of Sciences was titled Severe Space Weather Events--Understanding Societal and Economic Impacts. The resulting Report detailed what might happen in the event of a solar megastorm launching a powerful Coronal Mass Ejection (CME) that strikes our geomagnetic field. The study predicts blackouts that may last for years. As the map above indicates, highly vulnerable areas include most of the Eastern and Northwestern parts of the nation.¶ The NOAA estimates each 11 year sunspot cycle is capable of launching 4 "extreme" (X class) CMEs and 100 "severe" CMEs at the earth. More X class events than were anticipated have occurred in the current cycle. The most dangerous period is the next 5 years. The peak peril is predicted by some to occur in May, 2013.¶ So far, neither NASA nor NOAA have publicly acknowledged the mortal threat these events may cause as the result of multiple meltdowns of nuclear plants worldwide. To date, there is no indication that the White House, Congress, Homeland Security, the Department of Defense and/or the Nuclear Regulatory Commission have adequately prepared to prevent the horrendous effects of such a solar megastorm.¶ The recent statement by a NASA scientist that human life would not end as the result of the direct effects of a solar storm during 2012 is misleading. A solar megastorm that causes widespread meltdowns of numerous nuclear power plants can seriously end millions, if not hundreds of millions, or even billions, of lives from radioactivity. This event could very well parallel the aftermath of a nuclear weapons exchange had there been war between the USA and the USSR -- massive amounts of radioactivity carried on prevailing winds all over the planet. The issue is not the specific year. This entire 11 year sunspot cycle should be of concern.

#### More investment is key to grid resiliency- all of their impact defense assumes we can fund grid improvements.

Carson Editor Intelligent Utility Daily 13 (Phil, Editor-in-chief of Intelligent Utility Daily at Energy Central, “Politics, power and grid investments,” Jan 9, http://www.intelligentutility.com/article/13/01/politics-power-and-grid-investments)

I've been raving about infrastructure investment and the need for public/private partnerships, which are intimately tied together, yet don't need to be. And I'd like to acknowledge that several of the engineers in my readership routinely object when I inject politics into the discussion of grid modernization. Again, in my view, they are intimately tied together, yet needn't be. Let me suggest that we bury the term "smart grid," which is inherently part of the hype cycle we're struggling to escape, while turning to the more prosaic terms "grid modernization" and "infrastructure investment." Maybe we can conjure a more appropriate, yet still handy and glib handle for what we're discussing. (How about "Grid 2.0"? Okay, too geeky.) I raise these points because we really are at a crossroads in the United States. The power sector, drinking water sector and communications sector all require upgrading and cyber security. These are critical systems if we simply wish to stand in place. As for triumphing amid global economic competition, we need a whole new mindset. Where do the politics come in? Please read Thomas Friedman's column, "The Market and Mother Nature," in The New York Times yesterday, which juxtaposes one U.S. political party's devotion to issues around climate change, while acting as if immediate action can wait on the national debt-to-G.D.P. ratio. The other party appears totally focused on returning that ratio to rational footing, while completely denying the urgency around greenhouse gas emissions that contribute to climate change. Friedman argues that the two priorities are downplayed by the other side because, arguably, no crushing consequences have come back to bite us. Yes, yes, I know that that's "arguable" because both sides have terrific arguments. Hurricane Sandy demonstrated that extreme weather is likely to cost more to deal with post-event recovery than it would cost to address fundamentals, including infrastructure hardening and resilience. The volatility of the global and U.S. economies is likely to continue and a sudden surprise in terms of interest rates or the stock market is going to bring a chorus of "I told you sos." Addressing either issue or both is not "sexy," as the idiotic phrase goes. Yet nothing is going to be sexy if we refuse to raise and spend the funds to renew critical infrastructure and pay down the debt. My personal view is that Big Money is responsible for the Congressional impasse and that actually moving important national priorities is taking a backseat to noisy skirmishing that serves some interests via policy paralysis. Meanwhile, the American people look on, disgusted at the inaction and recriminations. Enter: the power industry. Where are the leaders who will provide the basis for an adult conversation about public/private partnerships that avoid the mistakes of the past and repeat the documented successes? The time is ripe for the argument that links economic growth and infrastructure renewal. Note that Congress right now is poised to return to pass legislation appropriating some $50 billion for recovery work, post-Sandy. Language under consideration, I'm told, spells out that the money should not be spent in a business-as-usual manner, but that projects relating, say, to the power grid, need to implement grid modernization to maximize hardening and resiliency. In other words, we shouldn't turn this event and its response into a scene from "Groundhog Day," where we're doomed to repeat ourselves at great cost. I'm not advocating another stimulus spend, nor a top-down command-and-control scenario. As a people, however, we need highly visible leadership with a cogent argument that our destiny cannot abide crumbling infrastructure. Nothing spectacular here, certainly, in these meager remarks. I'm not even hammering readers with a variety of numbers to illustrate the point. Just reiterating the logic: we're living on our laurels and they've withered. Perhaps it's a sign of our times that articulating the simplest role of government—acting for the people where no market force or other entity can do the job—and the call for rational investment stands out like a cry in the wilderness. But the fact remains today that shenanigans in politics and a seemingly universal popular desire to avoid the simplest conclusions about our direction and economic vitality are in fact derailing our future greatness. I see no reason why power sector leaders shouldn't muster a clear message that getting smart about the grid and the needed investments to modernize it are the keys to our American future.

#### More private investment will be critical for grid modernization- public stimulus spending wont cut it

Kovacs Chamber of Commerce 10 (William L. Kovacs, senior vice president of the U.S. Chamber of Commerce’s Environment, Technology, and Regulatory Affairs Division., Jan 21, “Smartgrid Modernization Requires Regulatory Reform,” http://news.heartland.org/newspaper-article/2010/01/21/smartgrid-modernization-requires-regulatory-reform)

The fledgling smartgrid for electricity got some feathers on its wings in October 2009 with the federal government’s investment in projects covering a wide variety of areas, including advanced metering infrastructure; customer systems such as demand-response capabilities; electric distribution systems, transmission systems, and equipment manufacturing; and integrated and crosscutting systems. In all, a hundred private companies, utilities, manufacturers, cities, and other partners were recipients of the $3.4 billion government investment, which together with matching private support amounts to a funding initiative of more than $8 billion to get the grid modernization effort underway. This is laudable, but far more investment will be needed--perhaps trillions of dollars, the bulk of it coming from the private sector--to fully modernize the nation’s grid system, and the undertaking will take decades. If there is a sensible regulatory structure, business and industry stand ready to make the needed investments.

### Adv 2 – Investment

#### advantage two is investment:

And, this ruling against Ralls will send a massive signal against ALL foreign investment, rippling through the entire economy—CFIUS and the President would have the authority to essentially block any investment without having to prove its national security effects.

Abassi, chief counsel-Cause of Action, 12 (Amber, Chief Counsel for Regulatory Affairs-Cause of Action, BRIEF OF OREGON WINDFARMS, LLC,KENT MADISON, WILLIAM J. DOHERTY, AND IVAR CHRISTENSENAS AMICI CURIAE IN SUPPORT OF PLAINTIFF, Nov 12, http://www.scribd.com/doc/113087608/Ralls-v-CFIUS-Brief-in-Support-of-Motion-to-Participate-as-Amici-Curiae)

B. The absence of judicial review of Executive Branch actions under 50 U.S.C.Appx. § 2170 would have serious consequences for American citizens and businesses. The orders have inflicted real-world, concrete harms on the economic interests of American citizens and businesses, whose property rights and economic interests have been adversely affected by Defendants actions. When CFIUS and the President prohibited Rallss construction and operation of four small Oregon wind farms, it eliminated the construction, consulting, and green-energy jobs that the Project Companies had created and would create. For example, the local utilities who had signed power-purchase agreements for affordable wind energy lost access to the power they had contracted for when the sale to Ralls was blocked and the entire wind-generation project was delayed by months or more. The private landowners who leased their property to Ralls to build the wind farms also suffered substantial direct monetary harm as a result of CFIUSs actions. More broadly, if this Court concludes that CFIUSs and the Presidents actions are unreviewable, this case may have substantial ramifications for the American economy. For the Court will, by implication, effectively cede to the President and CFIUS unfettered authority to arbitrarily deprive American citizens and businesses of their property interests without any meaningful procedural safeguards, whenever they engage in transactions with foreign nationals that the Executive Branch unilaterally determines constitute covered transactions within the ambit of 50 U.S.C. Appx. § 2170 (another determination that would accordingly be unreviewable). This will have grave, long-term adverse collateral consequences for American-owned companies with American employees that depend on foreign investment to thrive or, in some cases, even sustain their operations. As this case illustrates, without judicially enforceable limits on CFIUSs and the Presidents authority under 50 U.S.C. Appx. § 2170, the Executive Branch may take ultra vires actions in excess of its statutory authority with complete impunity. Under subsection (d)(1), the President may only act to suspend or prohibit [a] covered transaction that threatens to impair the national security of the United States. 50 U.S.C. Appx. § 2170(d)(1). And as broadly as subsection (a)(3) defines covered transaction, the statute, as a definitional matter, limits the scope of this key phrase to only encompass transactions by or with any foreign person which could result in the foreign control of any person. 50 U.S.C. Appx. § 2170(d)(1); see 31 C.F.R. §800.204(a) (defining control). Notwithstanding this clear limitation on presidential authority under the statute, the Presidential Order prohibits Ralls from selling the four wind farms and all items and structures on those wind farms to willing buyers including American buyers. See Presidential Order, § 2(d)-(f), 77 Fed. Reg. at 60,282. CFIUSs Amended Interim Order contained an identical provision. (Am. Compl. ¶ 85.) Logically, a transaction that transfers property to an American buyer cannot result in the foreign control of any person quite the opposite. A bar on Ralls selling the Project Companies to an American firm is thus outside any reasonable definition of the Defendants authority, and yet the orders prohibit an American buyer from purchasing and making productive use of the wind farms without CFIUSs approval.(Am. Compl. ¶¶ 82-85.) In the absence of judicial review of CFIUSs and the Presidents actions, what, if any, enforceable limits on the Executive Branchs actions in cases such as this exist? The Executive Branchs assertion of the power to arbitrarily deprive foreign and American businesses of their property will chill much-needed foreign investment and cause ripple effects through the economy. Even an American company that does not deal directly with a foreign company, but only with another company that does so, might find that its ability to buy and sell property interests, and to form and carry out contracts, has been indirectly impaired by CFIUS or the President.

#### And, Foreign investment is critical to the US economy:

#### First- capital flight- investment chilling causes China to put their investments in other countries, which dooms the US economy.

Cekerevac Senior Editor Lombardi Financial 12 (Sasha, Sasha Cekerevac, Senior Editor at Lombardi Financial; He worked for CIBC World Markets for several years before moving to a top hedge fund, with assets under management of over $1.0 billion, “China Moves Funds Out of the U.S. Markets,” May 29, 2012

Recently, news broke that the Chinese Investment Corporation has announced that it will be moving some of its invested funds out of the U.S. and into emerging markets. This is an interesting move by China regarding its viewpoint of the future for the U.S. economy. The U.S. economy has obviously encountered significant setbacks over the last few years, but it appears this is only the beginning. Once nations like China decide that the future is less bright when looking at the U.S. economy compared to other nations, that’s when we have real issues. The sustainability of the U.S. economy is built on foreign investments; fresh money coming into the nation continuing its growth path. Once we lose the interest of other nations in investing in the U.S. economy, we lose our edge. The U.S. economy has become the largest in the world out because of our ability to attract capital and people to come to this country to develop new technologies and innovations. This is yet another sign by a major country—China—that foreign investors are losing faith in the ability of the U.S. economy to deliver strong growth over the long term. This is a not a positive sign for our children who will inherit a U.S. economy that appears to be slipping back when compared to the rest of the world. The China Investment Corporation stated that part of the reason was increased scrutiny from regulators, as many are worried that, as the organization is backed by the Chinese government. While everyone should be aware of keeping our best companies within the U.S. economy, shutting the door to foreign investment is not the answer. Don’t forget; the government in China owns trillions of our bonds. The U.S. economy needs continued foreign inflow of funds, not just from China, but also the rest of the world. We need to change our ways and get back to a time when the U.S. economy was a pillar in the world, a beacon of light to which other nations looked up to and tried to emulate. The sovereign wealth fund from China is looking at emerging markets, because it believes those countries will grow much faster and have a better long-term potential for profits than the U.S. economy. The U.S. economy, while still suffering from a slow recovery, would benefit from an increased flow of dollars into the nation. Closing the door to foreign investments, whether it is from China or any other nation, is not the best interest for the long-term growth of the U.S. economy.

#### Second- Jobs- foreign investment causes insourcing, creating millions of jobs in the US- loss of subsidiaries threatens economic recovery

McLernon COE for Organization for International investment 11 (Nancy McLernon, President and CEO of the Organization for International Investment, Here’s Why the U.S. is the Best Host of Foreign Investment, March 2, http://wallstcheatsheet.com/trading-markets/heres-why-the-u-s-is-the-best-host-of-foreign-investment.html/)

U.S. Subsidaries play an important role in the U.S. economy, some five percent of all jobs are created by them. I decided to ask Nancy McLernon President and CEO of the Organization for International Investment which represents U.S. subsidiaries, about her outlook on this merger and why U.S. Subsidaries are kicking up more cash to have a slice of American business. LL: When it comes to foreign investment in a U.S. “institution” it is often met with criticism and even protectionism when it comes from Congress. Why is it important to have foreign direct investment for the U.S. economy? NM: Foreign direct investment is a substantial source for job growth in the U.S. and is tremendously important—particularly now as America continues to rebuild our economy. It’s important to remember the economy we live in and operate today is a global one. Setting aside for a moment this latest high profile merger, think back to some of the many iconic U.S. institutions that received a capital infusion from abroad—and how that’s been a reliable source of U.S. economic growth. For instance, American Alka-Seltzer known for its popular “plop plop fizz fizz” campaign, which was founded in 1931, and was purchased by Germany-based Bayer AG in 1979. You can now find Alka-Seltzer on grocery and drug-store shelves worldwide. Same goes for Ben & Jerry’s Ice cream, which was purchased by British-Dutch Unilever (NYSE:UN) a decade ago and today has streamlined production and expanded internationally. Without the investment, Ben & Jerry’s may have been no longer. And in 1989 Japan-based Sony (NYSE:SNE) acquired the American film and television production company Columbia Pictures Entertainment Inc. from the Coca Cola Company (NYSE:KO). Today Sony Pictures Entertainment (NYSE:SNE) is one of the largest film production and distribution units in the world. LL: We always here about the outsourcing of jobs. Let’s talk about insourcing. How many jobs do U.S. subsidiaries of global companies create? NM: Insourcing is when a non-U.S. company invests in the United States and employs American workers. Global companies have been investing in the U.S. for decades, some for more than a century. According to the Commerce Department’s most recent data, 5.6 million Americans—close to 5 percent of all private sector workers are employed by the U.S. operations of global companies. In fact, these companies support an annual payroll of more than $400 billion with the average compensation per worker 33 percent higher than compensation at all U.S. companies. LL: What are the leading technologies/sectors you see popping in foreign investment? NM: Global companies are leading the way in many sectors—in green energy, pharmaceuticals, auto manufacturing, and infrastructure. These companies continue to invest in the U.S. and each year create thousands of American jobs. It’s important for us to make sure these companies know and understand the value of investing in the United States. In today’s world, global companies can take their operations anywhere. It’s up to us to make sure we let them know the U.S. is open for business.

#### Economic decline increases the propensity for conventional and nuclear conflict

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Mathew, and Jennifer “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an unintended escalation and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to escalating crises. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

#### And, studies conclude that diversionary war theory is true.

Royal Director at DOD 2010

Jedediah, Director of Cooperative Threat Reduction at the U.S. Department of Defense, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, pg. 213-215

Less intuitive is how periods of economic decline may increase the likelihood of extern conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defense behavior of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson’s (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crisis could usher in a redistribution of relative power (see also Gilpin, 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Fearon, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner, 1999). Seperately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland’s (1996, 2000) theory of trade expectations suggests that ‘future expectation of trade’ is a significant variable in understanding economic conditions and security behavious of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations, However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crisis could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states. Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favor. Moreover, the presence of a recession tends to amplify the extent to which international and external conflict self-reinforce each other. (Blomberg & Hess, 2002. P. 89) Economic decline has been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. ‘Diversionary theory’ suggests that, when facing unpopularity arising from economic decline, sitting governments have increase incentives to fabricate external military conflicts to create a ‘rally around the flag’ effect. Wang (1996), DeRouen (1995), and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force. In summary, recent economic scholarship positively correlated economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict at systemic, dyadic and national levels. This implied connection between integration, crisis and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

### Adv 3 – Treasury

#### In the status quo, the District Court is unlikely to grant judicial review of CFIUS decisions in the Ralls case.

Biehn, Chair-White/Williams China Business Group, 12 (Gary, Partner at White&Williams LLP and Chair, China Business Group and International Group, What Foreign Investors Can Learn from President Obama’s Prohibition of Ralls Corporation’s Acquisition, Dec 19, http://www.whiteandwilliams.com/resources-alerts-What-Foreign-Investors-can-Learn-from-President-Obamas-Prohibition-of-Ralls-Corporations-Acquisition.html)

THE UNCERTAIN JUDICIAL REVIEW OF CFIUS’ DECISIONS In general, parties who are not satisfied with a ruling by a federal administrative agency may appeal to U.S. courts for judicial review under the Administrative Procedure Act. Using the same mechanism, Ralls is hoping to overturn the decision by CFIUS and the President through direct intervention of the U.S. District Court. However, considering the fact that Ralls’ challenge is the first in history to bring the CFIUS process under judicial review and that the case involves highly sensitive political issues of national security and foreign policy—areas that courts prefer to defer to the decisions of the executive branch, it remains unclear what role the judicial review will play in future CFIUS decisions.

#### CFIUS is a key test case for the scope of judicial review of the Treasury’s Department’s actions—an unlimited view of the Treasury’s national security duties risks more reckless and aggressive actions

Zaring, Legal Prof @ Penn, 10 (David, Assistant Professor-Legal Studies Department @ the Wharton School of Business, University of Pennsylvania, “Administration by Treasury,” 95 Minn. L. Rev. 187 )

Treasury's new focus on national security is not restricted to FinCEN and OFAC. As the head of CFIUS, Treasury works with a number of national security-and international commerce-related departments to supervise foreign acquisitions of American assets. 190 Treasury occasionally regulates as a member of interagency committees in the executive branch in other ways as well, 191 but CFIUS may be its most notable (and therefore exemplary) institution. These committees enjoy plenty of discretion, are not subject to judicial review, and, because they do not themselves promulgate rules, are not subject to OMB oversight. 192 But, as we will see, the legislature can provide a great deal of oversight in this area and does in the case of CFIUS. Indeed, generally speaking, it is the prospect of better legislative oversight that might provide the most relief to good governance worriers when confronted with the discretion the Department now enjoys. CFIUS is perhaps the Treasury outfit most on the minds of Wall Street investment bankers and Washington deal lawyers, for it can impose the death penalty on deals that involve foreign acquirers. 193 The justification for CFIUS's role is that the government should be able to nix assets acquisitions that would threaten U.S. security. It monitors, for example, the purchasing of property near sensitive military bases and recently rejected a [\*225] proposed acquisition of a gold mine by a Chinese firm that ventured too close to a U.S. air force base in Nevada. 194 Like Treasury's other security-focused pursuits, however, CFIUS does not follow traditional administrative procedure. Although OFAC and FinCEN are subject to some judicial review, CFIUS operates secretly and is not subject to judicial review of any sort. 195 If OFAC illustrates a rights problem of civil tools being repurposed for law enforcement, and FinCEN is an example of how this uneasy repurposing can burden regulated industry, CFIUS represents a different kind of law enforcement; it is law enforcement as a congressional notification service. That is, rather than rejecting many foreign transactions in its own right, it keeps Congress apprised of potential acquisitions, which in turn prompts the legislature to raise a fuss when it deems any particular acquisition to be problematic. 196 This role is more evident from the Committee's practice than its mandate. Like that of many of Treasury's enterprises, CFIUS's legal authority is replete with discretion. 197 For example, the Committee is charged with reviewing proposed foreign acquisitions to determine whether they will impair "national security," a term "interpreted broadly and without regard for particular industries," its scope lying entirely "within the President's discretion." 198 Thus, even if CFIUS were subject to judicial review, there would likely be no law to apply that would render reviewable CFIUS's interpretations of its broad jurisdictional mandate. 199 How would a court review an agency's interpretation [\*226] of what constitutes "critical infrastructure" or what threatens U.S. national security? This observation might lead some to conclude that if the United States had a vibrant nondelegation doctrine, CFIUS would probably violate it. 200 In a sense, the Committee's broad remit seems to be constrained only by its deadlines in reviewing foreign acquisitions. Potential foreign acquirers submit their deals for evaluation over a thirty-day period, and, if CFIUS decides to investigate further, a subsequent forty-five day window. 201 The Committee then sends a recommendation to the President, who either blocks the transaction or permits it. 202 CFIUS may also recommend that the President impose - in the form of "mitigation agreements" 203 - a variety of conditions on the acquiring company, such as preventing foreigners' access to the operations of the target asset and guaranteeing U.S. law enforcement access to the firm's resources. 204 CFIUS concludes any such agreements, and it seems that the great majority of them are modest forms of boilerplate. 205 If CFIUS is not subject to robust constraints by the courts or the Executive, the real locus of its restraint is the increasing supervision exercised by Congress. Congress has regularly objected to foreign acquisitions ever since the Committee was founded, to the point where some foreign acquirers consult with Congress before embarking on mergers. 206 CFIUS itself rarely [\*227] gets in the way of foreign acquisitions, and indeed, has nixed less than a handful of them since its founding in the mid-1970s. 207 Instead, its main role is to bring mergers to the attention of Congress, where given the right level of outrage, the transactions are more likely to be challenged, through a variety of committee-oriented legal and political means. 208 With CFIUS, we see that some of Treasury's operation is supervised in a different way than are other agencies, rather than not supervised at all. Indeed, congressional oversight of CFIUS is representative of how Congress, rather than the courts, can exercise restraint over Treasury. d. Conclusion Everything Treasury does in relation to national security is interesting, and little of it is obviously within the traditional expertise of an agency whose raison d'etre used to be getting and spending money. 209 Nonetheless, as the de facto regulator of the financial system, Treasury's authority over banks and thrifts has positioned it to play a role in antiterrorism and mergers and acquisitions, two of the subjects of many a newspaper headline over the last decade. 210 The Department did not used to do these things, but now it does, and in each of them it enjoys less judicial review than would criminal law enforcers, or, for example, domestic antitrust regulators evaluating a proposed merger. In this way, the Department expanded its turf and moved away from the tough judicial oversight presented by criminal procedure, though such toughness is occasionally debated, 211 and from the APA. [\*228] Treasury's increasingly important national security role, in other words, affects a great deal of daily economic operations. Nevertheless, Treasury enjoys a vast amount of discretion in overseeing those operations because of its national security claims. In this sense, its new remit poses not only a case study in how bureaucratic authority can fill the interstices of oversight, but also a question about the appropriate limits of unreviewable national security claims. 212 As Treasury continues to grow its operations in this area, the importance of this question will likely grow as well.

#### Specifically, an unchecked Treasury will test the bounds of their national security powers—causes them to over-enforce terrorist financing laws

Zaring 10 (David, Assistant Professor-Legal Studies Department @ the Wharton School of Business, “Administration by Treasury,” 95 Minn. L. Rev. 187 )

Finally, Treasury is increasingly playing a national security role, which three of its policymaking offices exemplify: the Office of Foreign Asset Control (OFAC), the Financial Crimes Enforcement Network (FinCEN), and the Committee on Foreign Investments in the United States (CFIUS). The purpose of these offices is to starve terrorists and other potential adversaries and undesirables of funding and to ensure that adverse foreign governments do not obtain critical U.S. assets. 145 Here again, the supervision is light, probably too light. And once again, it comes through Congress, not the APA and the courts. Through these offices, Treasury uses civil administrative tools to pursue a security (be it anticriminal or national) enterprise, an odd combination of methods and goals. With its new powers, such as those granted in the USA PATRIOT Act, 146 Treasury has imposed broad new regulations [\*216] on banks, made decisions about which foreign purchases of American assets will be permitted (the grounds for denial are that they put national security at risk or critical infrastructure in the hands of non-Americans) and, perhaps most troublingly, is empowered to visit severe sanctions on individuals, groups, and institutions without complying with Fourth Amendment limits on the ability to seize property without obtaining a warrant. 147 These efforts are coordinated through the Department's third undersecretariat, the Undersecretariat for Terrorism and Financial Intelligence. 148 This national security role is not entirely new. But it has expanded vastly in the past two decades in response to, first, the war on drugs, and second, the war on terror. These wars have prompted Congress to give Treasury new powers to address national security threats. 149 And Treasury has interpreted those powers aggressively. These new powers are another facet of the modern Treasury Department's exemption from ordinary administrative procedure (or criminal procedure, for that matter) in matters that increasingly occupy much of the Department's attention. The Undersecretary oversees OFAC and FinCEN, two of the offices that exemplify Treasury's national security role. 150 Treasury's role in CFIUS, as the head of an interagency committee, is related to the national security work of the other two offices. However, while those offices seek to freeze the assets of wrongdoers, CFIUS oversees a process that turns away the assets of disfavored foreign investors before they may be de-ployed. 151 [\*217] Although this section will describe and analyze this administrative regime as it exists, it is not a regime that normatively does the Department much justice. Treasury's national security powers sweep extraordinarily broadly, but inexpertly balance rights and national interests. Its power over foreign investment, for example, is frighteningly uncabined in theory, but in fact is a rather toothless congressional notification service. Its power over other perceived national security threats constitute a combination of undesirable turf-building and an exploitation of civil means to do criminal work that poses its own set of problems. If this Article ultimately suggests that much of what Treasury does is positive, if unorthodox, its national security functions present a cautionary side of the coin - perhaps the strongest counterargument to the cautious embrace of Treasury's approach to administrative procedure is taken here.

#### 2 internal links:

#### First—international terrorist financing cooperation—the Treasury’s current approach undermines international cooperation on terrorist financing by tarnishing our reputation with critical allies.

Turner 09 (Jennifer, Human Rights Researcher for the ACLU’s Human Rights Program, for the

American Civil Liberties Union, Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the “War on Terrorism Financing”, June, http://www.aclu.org/files/pdfs/humanrights/blockingfaith.pdf)

Reports suggest that there are high diplomatic costs for federal government actions against U.S.based Muslim organizations. Treasury Department closures of Muslim organizations undermine international cooperation with the United States on terrorism financing issues, may derail President Barack Obama’s diplomatic efforts in Muslim countries, and tarnish U.S. reputation in the Muslim world. While a Treasury Department report notes that, “International alliances against terrorism are crucial because the overwhelming majority of terrorists’ assets, cash flow, and evidence lies outside our borders,”540 evidence suggests that in some cases the Treasury Department’s actions have threatened vital international alliances to stem terrorism financing. The Department of State generally pressures other countries to freeze the assets of organizations designated by the Treasury Department. This backfired in the cases of U.K.-based Muslim charity Interpal and Somali remittance agency AlBarakaat. In these cases, government or court review in the United Kingdom, Canada, Luxembourg, and Sweden found a lack of evidence to support U.S. actions. According to terrorism financing policy experts, both cases exhausted international goodwill and hampered further international cooperation on terrorism financing issues. According to Ibrahim Warde, an expert on Islamic banking and finance, Middle Eastern politics, and international political economy, the Al-Barakaat case “proved that the U.S. was often playing fast and loose with facts and evidence.”541 Warde found that the case “generated great cynicism towards the process of terrorist designation and asset seizure.”542 He told the ACLU, “This was when many countries stopped cooperating with the U.S., because the U.S. had said it had evidence of supporting terrorism…but all the ‘secret’ evidence the U.S. had was press clippings. That was when many became suspicious that the U.S. didn’t actually have evidence despite claims it had secret evidence it couldn’t disclose. At that time it became more complicated to convince the UN to include groups on the terrorism financing blacklist as well.”543 Furthermore, Treasury Department closures of Muslim charities may undermine President Barack Obama’s diplomatic efforts in Muslim countries. Warde told the ACLU, “It is certainly counterproductive to the effort of winning the hearts and minds of Muslims, in that there has been a big outreach effort in many respects and when this specific aspect of equating Islamic charities with terrorist financing becomes known, this in and of itself creates a lot of suspicion.”544 He added, “It makes it difficult to justify that, in the words of President Obama, the U.S. is not at war with Islam—given the attack on Muslim charities…. One word we hear a lot in terms of the U.S. relationship to the Muslim world is respect and Obama is good at using it, but when we see the smearing of Muslim charities, it complicates things if the U.S. government is trying to project a policy of respect…. Many big diplomatic initiatives of the Obama administration, especially in the Islamic world, could be derailed by these policies.”545 According to Shereef Akeel, an attorney for Michigan-based Muslim charity Life for Relief and Development (LIFE), “LIFE is now the largest Muslim charity in America. If LIFE is closed down and it is announced on Al Jazeera, that will undermine Obama’s agenda to mend fences. If we target the largest Muslim charity and shut it down based on a scintilla of evidence, based only on conduct in the 1980s far-removed from terrorism—just nothing—the effect could damage our [national] interests further.”546 According to the Executive Director of the Michigan office of the Council on American Islamic Relations (CAIR), “CAIR is the most recognized U.S. Muslim organization in the Muslim world—when CAIR executive directors travel in the Muslim world people know who we are. The relationship between this government and the American Muslim community has a direct relationship to the perception in the Muslim world of the U.S. government, especially among intellectuals…. Smearing CAIR as an unindicted co-conspirator sabotages the new president’s outreach with the Muslim world.”547 Many interviewees told the ACLU they had personally observed that the targeting of American Muslim charities and donors tarnishes U.S. reputation in Muslim countries. Islamic banking and finance expert Ibrahim Warde noted, [T]he policies on Muslim charities have an enormous impact on reputation abroad. If you look at the media in Muslim countries, the closures of Muslim charities are played up in a big way in the media. So the issue of winning hearts and minds, whenever there are unwarranted attacks on Muslim charities, it does weaken the U.S. position in Afghanistan, Iraq, and among Palestinians, and it complicates the task of the U.S. government. I travel a lot in the Middle East and I was struck by the high profile of these kinds of prosecutions, anything to do with Islamic charities. Here in the U.S. you occasionally hear stories but by and large people aren’t aware of this, whereas in Muslim countries everyone is aware of these stories and actions against Muslim charities.548 In interviews with the ACLU, American Muslims repeatedly emphasized that Muslims abroad are keenly aware of U.S. policies towards Muslim charities. One Michigan Muslim community leader noted, “This is reinforcing the perception that the government has a problem with Islam, not just with terrorism…. It plays in the media overseas bigtime. There is a keen interest abroad in the welfare of Muslims in this country, and the treatment of Muslim charities is seen as evidence that the U.S. government is against Islam.”549 According to the regional director of the American-Arab Anti-Discrimination Committee (ADC) of Michigan, “Our American goodwill is the best ambassador of America. These cases set back the effort to counter terrorism and promote democracy and promote goodwill toward America. It tarnishes our image abroad. It goes directly to the hearts and minds of people across the globe—these selective prosecutions portray the wrong image to the people who depend on this goodwill.”550 In testimony before the Senate Judiciary Committee, executive director of the Muslim Public Affairs Council (MPAC) Salam al-Marayati similarly said, “In an ideal setting, American Muslim charities serve a national security interest by promoting a positive image of America throughout the Muslim world. Unfortunately, the view that American Muslims are a harassed or persecuted religious minority is gaining ground overseas partially because of the blockage of the Muslim charities.”551

#### And, Effective terror financing controls are key to prevent attacks.

Kiser 05 (Steve, Financing Terror An Analysis and Simulation for Affecting Al Qaeda's Financial Infrastructure, http://www.rand.org/content/dam/rand/pubs/rgs\_dissertations/2005/RAND\_RGSD185.pdf)

Money is Perceived as Important to Terrorist Organizations Many policymakers and analysts believe quite strongly that money is important for a terrorist organization to survive and especially to operate. Conventional wisdom suggests that a deprivation of funds will bring some corresponding decrease in a given terrorist group’s ability to operate, and, specifically its latitude to carry out attacks. Less money means fewer weapons, reduced recruiting, training and reconnoitering capabilities, less capacity, and a diminished ability to purchase technology or pay specialists to provide needed expertise. All these inputs are needed to conduct terrorist attacks; should a group have less money to acquire them, conventional wisdom suggests it will be able to mount fewer attacks. Indeed, in a series of 28 interviews with various analysts, professors and policymakers, 17 rated money as “highly important”, eight rated money as “somewhat important”, while only three rated money as “not very important” for a global terrorist organization to function.8 Furthermore, a review of statements by prominent policymakers belies a conviction that financial deprivation can deliver a mortal blow to Al Qaeda. President Bush, Secretary of State Powell, former Secretary of the Treasure Paul O’Neil, Secretary of Homeland Security Ridge, other cabinet officials, and several Congresspersons have all indicated a belief that the United States and the international community has the capability to “succeed in starving the terrorists of funding,”9 that “starving terrorists of funding remains a priority and a success in the war on terrorists,”10 and “we will dismantle terrorist financial networks.”11 Furthermore, these same officials reflect a belief that without financial support, terrorist organizations will be unable to function effectively. For example, US Secretary of State Colin Powell flatly claimed “For money is the oxygen of terrorism. Without the means to raise and move money around the world, terrorists cannot function.”12

#### Second, Muslim American law enforcement cooperation- Treasury crackdown on Muslim charities is the primary reason that Muslim communities won’t cooperate with the FBI- this cooperation is critical to counter-terrorism efforts.

Turner 09 (Jennifer, Human Rights Researcher for the ACLU’s Human Rights Program, for the

American Civil Liberties Union, Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the “War on Terrorism Financing”, June, http://www.aclu.org/files/pdfs/humanrights/blockingfaith.pdf)

The ACLU’s research showed that the federal government’s actions towards Muslim charities and donors have alienated Muslim Americans and created mistrust of law enforcement, potentially undermining counterterrorism efforts.523 A report by the Illinois Advisory Committee to the U.S. Commission on Civil Rights found that Arab-Americans and Muslim Americans were far more concerned by the closure of Muslim charities, the use of secret evidence, and the government’s national interview program of Arab and Muslim men, than by hate crimes.524 The ACLU’s own research found that American Muslims identified the government’s actions against Muslim donors and Muslim charities as a primary reason for their sense of alienation and mistrust of law enforcement and the federal government. According to one community activist in Texas, “A fissure has opened up between the government and our community, and this wound is not healing.”525 A Chinese-American Muslim told the ACLU, “Day by day I lose trust and faith in the U.S. government doing what’s right. We never saw any major proof of allegations leveled against charitable organizations or individuals involved with those charities. You start to lose confidence in the government because whatever allegations it presents can’t withstand the test of the courts.”526 An African-American Muslim similarly said, “The government lost a lot of trust, especially after seeing how they handled things in the courtroom [in the HLF case]—especially since this was the higher-ups, not just the FBI agents who have Iftar [the meal to break fast during Ramadan] with you. I wonder how the relationship is supposed to be after this.”527 The president of a Detroit mosque told the ACLU, “We want to help in building the U.S.A., and we want to work with the Department of Homeland Security as trusted partners, but we feel they treat us as guilty until proven innocent. They want us as spies, not as partners. Bridges are not being built, no—they are being torn down.”528 A 9/11 Commission staff report on terrorism financing cautioned that the crackdown on Muslim charities under terrorism financing laws “can undermine support in the very communities where the government needs it most,” and “risks a substantial backlash.”529 In its analysis of OFAC’s designation of Benevolence International Foundation (BIF) and Global Relief Foundation (GRF), the 9/11 Commission staff concluded, “Although the OFAC action shut down BIF and GRF, that victory came at considerable cost of negative public opinion in the Muslim and Arab communities, who contend that the government’s destruction of these charities reflects bias and injustice with no measurable gain to national security.”530 A former Department of Treasury official who served during George W. Bush’s administration observed that the Treasury Department’s actions have alienated American Muslims. He told the ACLU, “I think that it has certainly created a sense of alienation among Muslims. I don’t think there’s any doubt about it. The Muslim community continues to allege that this is Islamophobia on the part of the U.S. government and it has treated the U.S. Muslim community unfairly and made it harder for Muslims to donate.”531 He added, “It causes endless public relations issues that cannot be rectified with a simple statement. The continued policies continue to create the perception among Muslims that they are being persecuted.”532 Some experts have suggested that alienation of American Muslims may hamper Treasury Department and law enforcement efforts to combat terrorism financing. Terrorism financing policy expert Ibrahim Warde told the ACLU that the U.S. government’s actions against U.S.-based Muslim charities has “created ill will with respect to the Islamic community, and the chilling effect on Zakat donations in many respects harms the outreach effort and the effort to have genuine cooperation of Muslims on the issue of terrorism financing and the war on terror.”533 He added, “There can be extremists, but that is not the way to get at them, to antagonize the entire community through broad-brush policies. Instead, the U.S. government must buy the support and allegiance of the potential support system, in this case the Muslim community in the U.S., by getting their good-faith cooperation by demonstrating that the government is treating them fairly.”534 Warde also noted, “The government has everything to gain by having the vast majority of Muslims dealing with the government on the basis of full trust and cooperation, but this becomes very difficult when there is a mainstream feeling among Muslims that they are under attack by the government. For the government to identify who are the extremists it is important for the government to have a good relationship with Muslims and mosques, but because of the attack on Muslim charities it is difficult to achieve this.”535 A former Department of Treasury official similarly told the ACLU, “[Alienation of Muslims] hampers financial counterterrorism efforts. The more Muslims feel alienated the less they are going to feel compelled or amenable to assist the U.S. government. The more this happens, the more impositions placed on their charitable sector, the more they see this as unfair strictures, the less they are going to cooperate.”536 In February 2009, FBI Director Robert Mueller acknowledged in a speech at the Council on Foreign Relations that the FBI requires cooperation from trusting populations and therefore must increase its efforts to work in cooperation with communities that distrust law enforcement. Mueller noted, “Too often, we run up against a wall between law enforcement and the community.... Oftentimes, the communities from which we need the most help are those who trust us the least. But it is in these communities that we must re-double our efforts. The simple truth is that we cannot do our jobs without the trust of the American people.”537 Former FBI street agent and supervisor James Wedick told Frontline that it is possible for law enforcement to reverse course and rebuild trust with the Muslim community: “[R]ight now [the Muslim community] distrust[s] the bureau…. The damage has been done, but it’s not too late—it’s not. They can reverse course. We are interested in locating and finding terrorists. Even the Muslim community, they’re not interested in seeing fundamentalists come into their neighborhood and preach ideas of jihad. It’s imperative upon the bureau to get with the community leaders. If they do, I guarantee you it will be productive.”538

#### And, this cooperation is key to beat terrorism- military power alone will fail.

Ramirez et al, 2k4 (Deborah, professor at Northwestern University School of Law. Sasha Cohen O’Connell, Northeastern University. Rabia Zafer, Northeastern University. “Developing Partnerships Between Law Enforcement and American Muslim, Arab, and Sikh Communities: A Promising Practices Guide” http://www.ace.neu.edu/pfp/downloads/Guide\_Final5.4.04.pdf)

After September 11th, it became increasingly clear that community input and assistance is even more critical to counterterrorism investigations then it was to traditional investigations focused on guns, drugs and violent crime. In traditional investigations, law enforcement is aided in its work by the existence of a crime scene and/or a focus on a specific criminal object, e.g. a weapon or narcotics. In contrast, terrorism investigations focus on information and the nuanced analysis of that information. Further, the primary goal of a counterterrorism investigation is to prevent, detect, and deter crime before it occurs. Both the relevant cultural information and the linguistic expertise needed for accurate analysis reside predominantly in the Arab, Muslim, and Sikh communities in this country; therefore, a community-based approach is not only beneficial to counterterrorism investigations, it is an essential component for success. The Global Perspective The war on terrorism cannot be won with military might alone. The most dangerous threats in this war are rooted in the successful propagation of anger and fear directed at unfamiliar cultures and people. The only way to ultimately counter this type of threat is to address the anger and fear through the presentation and demonstration of alternative paradigms. Currently, extremists – both those abroad who spread anti-American propaganda and those at home who tout anti-Arab and Islamophopic messages of hate - are propagating a series of ideas that are based on the notion that Islam is ultimately incompatible with American ideals. Partnerships between American Arab and Muslim communities and law enforcement have the potential to offer an ideological counterweight to this idea. Specifically, the very existence of such partnerships explicitly demonstrates the desire of these communities to actively participate in American life. Additionally these partnerships demonstrate the American government’s need for assistance from these communities. Further, the partnerships envisioned in this Guide may facilitate discussions that would better inform U.S. policies, both domestic and foreign, by including the perspectives of communities who have a unique understanding of international concerns.

#### And, the plan solves by setting a precedent of judicial review of CFIUS and the Treasury.

Bracken 12 (Len, Suit Filed Against CFIUS Order Seen As Trial Balloon in National Security Law, Oct 25, http://www.bartsfisher.com/pdf/040.pdf)

The civil complaint recently filed by the Chinese-owned Ralls Corp. against the president, the Committee on Foreign Investment in the United States (CFIUS), and the secretary of the treasury involving the purchase of four wind farms in Oregon can be seen as a "well-picked trial balloon" to test whether a CFIUS order is subject to judicial review, Bart Fisher, a professor and practitioner of international trade law, told BNA Oct 9. CFIUS conducts national security reviews of foreign investment in the United States. The Treasury Department Sept. 28 announced a presidential order prohibiting the acquisition and ownership of four wind farm project companies by Ralls Corp., its owners, its subsidiaries, and its affiliates following CFIUS reviews. A related presidential order directed Ralls to divest its interest in the wind farm project companies (189ITD, 10/1/12). Treasury said the president took this action pursuant to Section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007, because wind farm sites are all within or in the vicinity of restricted air space at Naval Weapons Systems Training Facility Boardman in Oregon. The Oct 1 complaint challenges the issuance of an order by CFIUS as violating the Administrative Procedure Act and the United States Constitution, and the issuance of an order by President Obama as violating Section 721 of the Defense Production Act of 1950, as amended, and the United States Constitution (Ralls Corp. v Obama, D.D.C., Case No. l:12-cv-01513-ABJ, 10/1/12). The statute governing CFIUS states that actions and findings of the president are not subject to judicial review, but this part of the statute has not been tested in court. Fisher noted that case filed in the U.S. District Court for the District of Colombia raises the profile of the CFIUS order and the contention that Chinese investors are discriminated against in the United States. He said the second count of the four counts, alleging violation of the Administrative Procedure Act, stands the best chance if arbitrary and capricious agency action can be proven. "The courts are reluctant to side against the executive branch in cases like this that raise issues of national security and executive discretion," Fisher said, citing the political-question doctrine and the Curtiss-Wright doctrine. The political -question doctrine is the judicial principle that a court should refuse to decide issues involving the discretionary powers by the executive or legislative branch of government. The CurtissWright doctrine stems from the 1936 Supreme Court case United States v. Curtiss-Wright Export Corp.in which the court established in its decision the principle of executive supremacy in national security and foreign affairs. "The case is, however, winnable if Ralls can prove the decision is without any rational basis," Fisher said. He added that proving there is no rational basis for the decision is difficult because a bureaucrat can usually find some rationale, but the case is being closely watched for a potential precedent-setting effect.

#### And, the impacts---

#### Al-Qaeda is still alive and well- planning attacks on the US.

Byman, Brookings Fellow, 13 (Daniel, professor in the Security Studies Program of Georgetown University's School of Foreign Service and the research director of the Saban Center for Middle East Policy at the Brookings Institution, “Al Qaeda Is Alive in Africa,” Jan 17, http://www.foreignpolicy.com/articles/2013/01/17/al\_qaeda\_is\_alive\_in\_africa)

It has been over a year and a half since Osama bin Laden was killed in Abbottabad, Pakistan, but now it seems like al Qaeda is everywhere: from Algeria to Somalia, from Mali to Yemen, from Pakistan to Iraq. In July 2011, arriving in Afghanistan on his first trip as U.S. defense secretary, Leon Panetta said, "We're within reach of strategically defeating al Qaeda." But on Wednesday, Jan. 16, Panetta seemed to express a good deal less optimism, making clear that the Algerian hostage crisis currently unfolding was "an al Qaeda operation." So has al Qaeda really become this web of linked groups around the world pursuing a common jihad against the West? And what is the relationship between the al Qaeda core and its affiliate organizations? These are important questions; the debate about whether the United States should join the French and step up involvement against jihadi groups in Mali centers on these complicated ties. For while al Qaeda leader Ayman al-Zawahiri and his lieutenants in the Afghanistan-Pakistan area consume much of our thinking on al Qaeda, the United States is also fighting al Qaeda affiliates like al Qaeda in Iraq (AQI), the Yemen-based al Qaeda in the Arabian Peninsula (AQAP), and al-Shabab in Somalia, which is also linked to al Qaeda. In 2012, the United States conducted more drone strikes on AQAP targets than it did against al Qaeda core targets in Pakistan. In Mali, U.S. concern is heightened by reports that some among the wide range of local jihadi groups like Ansar Dine have ties to al Qaeda in the Islamic Maghreb (AQIM). If groups in Mali and other local fighters are best thought of as part of al Qaeda, then an aggressive effort is warranted. But if these groups, however brutal -- and despite the allegiances to the mother ship they claim -- are really only fighting to advance local or regional ambitions, then the case for direct U.S. involvement is weak. The reality is that affiliation does advance al Qaeda's agenda, but the relationship is often frayed and the whole is frequently far less than the sum of its parts. Al Qaeda has always sought to be a vanguard that would lead the jihadi struggle against the United States. Abdullah Azzam, one of the most influential jihadi thinkers and a companion of bin Laden, wrote, "Every principle needs a vanguard to carry it forward" and that this vanguard is a "solid base" -- a phrase from which al Qaeda draws its very name. At the same time, al Qaeda sought to support and unify local Muslim groups as they warred against apostate governments such as the House of Saud in Saudi Arabia and Hosni Mubarak's Egypt. Convincing local groups to fight under the al Qaeda banner seems to neatly combine these goals, demonstrating that the mother organization -- now under Zawahiri -- remains in charge, while advancing the local and regional agendas that the core supports. More practically, in the past, the al Qaeda core has offered affiliates money and safe haven. In Afghanistan, and to a lesser degree in Pakistan, jihadists from affiliated groups came to train and learn and proved far more formidable when they returned to their home war zones. They also returned with a more global agenda, advancing the core's mission of shaping the jihadi movement. It also gave the core a new zone of operational access to conduct terrorist attacks in other places. Perhaps most importantly, the core al Qaeda managed to change the nature of the affiliates' attacks, so that in addition to continuing to strike at local regime forces, they also select targets more in keeping with the core's anti-Western goals. AQIM's attack this week on Western tourists and foreign oil workers in Algeria mimics the change in strategy. AQAP has taken this one step further and gone after the United States outside its region, twice launching sophisticated attacks on U.S. civil aviation.

#### And, the risk of nuclear and biological terrorism is high

Allison, IR Director @ Harvard, 12 (Graham, Director, Belfer Center for Science and International Affairs; Douglas Dillon Professor of Government, Harvard Kennedy School, "Living in the Era of Megaterror", Sept 7, http://belfercenter.ksg.harvard.edu/publication/22302/living\_in\_the\_era\_of\_megaterror.html)

Forty years ago this week at the Munich Olympics of 1972, Palestinian terrorists conducted one of the most dramatic terrorist attacks of the 20th century. The kidnapping and massacre of 11 Israeli athletes attracted days of around-the-clock global news coverage of Black September’s anti-Israel message. Three decades later, on 9/11, Al Qaeda killed nearly 3,000 individuals at the World Trade Center and the Pentagon, announcing a new era of megaterror. In an act that killed more people than Japan’s attack on Pearl Harbor, a band of terrorists headquartered in ungoverned Afghanistan demonstrated that individuals and small groups can kill on a scale previously the exclusive preserve of states. Today, how many people can a small group of terrorists kill in a single blow? Had Bruce Ivins, the U.S. government microbiologist responsible for the 2001 anthrax attacks, distributed his deadly agent with sprayers he could have purchased off the shelf, tens of thousands of Americans would have died. Had the 2001 “Dragonfire” report that Al Qaeda had a small nuclear weapon (from the former Soviet arsenal) in New York City proved correct, and not a false alarm, detonation of that bomb in Times Square could have incinerated a half million Americans. In this electoral season, President Obama is claiming credit, rightly, for actions he and U.S. Special Forces took in killing Osama bin Laden. Similarly, at last week’s Republican convention in Tampa, Jeb Bush praised his brother for making the United States safer after 9/11. There can be no doubt that the thousands of actions taken at federal, state and local levels have made people safer from terrorist attacks. Many are therefore attracted to the chorus of officials and experts claiming that the “strategic defeat” of Al Qaeda means the end of this chapter of history. But we should remember a deeper and more profound truth. While applauding actions that have made us safer from future terrorist attacks, we must recognize that they have not reversed an inescapable reality: The relentless advance of science and technology is making it possible for smaller and smaller groups to kill larger and larger numbers of people. If a Qaeda affiliate, or some terrorist group in Pakistan whose name readers have never heard, acquires highly enriched uranium or plutonium made by a state, they can construct an elementary nuclear bomb capable of killing hundreds of thousands of people. At biotech labs across the United States and around the world, research scientists making medicines that advance human well-being are also capable of making pathogens, like anthrax, that can produce massive casualties. What to do? Sherlock Holmes examined crime scenes using a method he called M.M.O.: motive, means and opportunity. In a society where citizens gather in unprotected movie theaters, churches, shopping centers and stadiums, opportunities for attack abound. Free societies are inherently “target rich.” Motive to commit such atrocities poses a more difficult challenge. In all societies, a percentage of the population will be homicidal. No one can examine the mounting number of cases of mass murder in schools, movie theaters and elsewhere without worrying about a society’s mental health. Additionally, actions we take abroad unquestionably impact others’ motivation to attack us. As Faisal Shahzad, the 2010 would-be “Times Square bomber,” testified at his trial: “Until the hour the U.S. ... stops the occupation of Muslim lands, and stops killing the Muslims ... we will be attacking U.S., and I plead guilty to that.” Fortunately, it is more difficult for a terrorist to acquire the “means” to cause mass casualties. Producing highly enriched uranium or plutonium requires expensive industrial-scale investments that only states will make. If all fissile material can be secured to a gold standard beyond the reach of thieves or terrorists, aspirations to become the world’s first nuclear terrorist can be thwarted. Capabilities for producing bioterrorist agents are not so easily secured or policed. While more has been done, and much more could be done to further raise the technological barrier, as knowledge advances and technological capabilities to make pathogens become more accessible, the means for bioterrorism will come within the reach of terrorists. One of the hardest truths about modern life is that the same advances in science and technology that enrich our lives also empower potential killers to achieve their deadliest ambitions. To imagine that we can escape this reality and return to a world in which we are invulnerable to future 9/11s or worse is an illusion. For as far as the eye can see, we will live in an era of megaterror.

#### Bioterror attacks risk extinction

Steinbruner ’97

(Senior Fellow @ the Brookings Institution, ’97 (John, Foreign Policy, 12/22, Lexis)

More than 70 years later, revulsion persists and the Geneva Protocol has been strengthened, but the sense of threat of biological warfare has intensified. It is widely recognized that, as potential instruments of destruction, biological agents are inexpensive, readily accessible, and unusually dangerous. Of the thousands of pathogens that prey upon human beings, a few are now known to have the potential for causing truly massive devastation, with mortality levels conceivably exceeding what chemical or even nuclear weapons could produce. Nature provides the prototypes without requiring any design bureau or manufacturing facility. Medical science provides increasingly useful information, which by its very nature is conveyed in open literature. A small home-brewery is all that would be required to produce a potent threat of major proportions. At least 17 countries are suspected of conducting biological weapons research - including several, such as Iran and Iraq, that are especially hostile to the United States. CONTINUES Although human pathogens are often lumped with nuclear explosives and lethal chemicals as potential weapons of mass destruction, there is an obvious, fundamentally important difference: Pathogens are alive, weapons are not. Nuclear and chemical weapons do not reproduce themselves and do not independently engage in adaptive behavior; pathogens do both of these things. That deceptively simple observation has immense implications. The use of a manufactured weapon is a singular event. Most of the damage occurs immediately. The aftereffects, whatever they may be, decay rapidly over time and distance in a reasonably predictable manner. Even before a nuclear warhead is detonated, for instance, it is possible to estimate the extent of the subsequent damage and the likely level of radioactive fallout. Such predictability is an essential component for tactical military planning. The use of a pathogen, by contrast, is an extended process whose scope and timing cannot be precisely controlled. For most potential biological agents, the predominant drawback is that they would not act swiftly or decisively enough to be an effective weapon. But for a few pathogens - ones most likely to have a decisive effect and therefore the ones most likely to be contemplated for deliberately hostile use - the risk runs in the other direction. A lethal pathogen that could efficiently spread from one victim to another would be capable of initiating an intensifying cascade of disease that might ultimately threaten the entire world population. The 1918 influenza epidemic demonstrated the potential for a global contagion of this sort but not necessarily its outer limit.

#### Nuclear terrorist attack causes miscalculation, risks extinction

Robert **Ayson**, **Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington**, **2010** (“After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

**Washington’s early response to a terrorist nuclear attack** on its own soil **might** also **raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China**. For example, **in the noise and confusion during the immediate aftermath** of the terrorist nuclear attack, **the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment**, when careful planning runs up against the friction of reality, **it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow**, although it must be admitted that **any preemption would probably still meet with a devastating response**. **As part of its initial response** to the act of nuclear terrorism (as discussed earlier) **Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group**. Depending on the identity and especially the location of these targets, **Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty**. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. **There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club**. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability? If Washington decided to use, or decided to threaten the use of, nuclear weapons, the responses of Russia and China would be crucial to the chances of avoiding a more serious nuclear exchange. They might surmise, for example, that while the act of nuclear terrorism was especially heinous and demanded a strong response, the response simply had to remain below the nuclear threshold. It would be one thing for a non-state actor to have broken the nuclear use taboo, but an entirely different thing for a state actor, and indeed the leading state in the international system, to do so. If Russia and China felt sufficiently strongly about that prospect, there is then the question of what options would lie open to them to dissuade the United States from such action: and as has been seen over the last several decades, the central dissuader of the use of nuclear weapons by states has been the threat of nuclear retaliation. **If some** readers **find this simply too fanciful**, and perhaps even offensive to contemplate, **it may be informative to reverse the tables. Russia**, which possesses an arsenal of thousands of nuclear warheads and that has been one of the two most important trustees of the non-use taboo, **is subjected to an attack of nuclear terrorism. In response, Moscow places its nuclear forces very visibly on a higher state of alert and declares that it is considering the use of nuclear retaliation against the group and any of its state supporters. How would Washington view such a possibility?** Would it really be keen to support Russia’s use of nuclear weapons, including outside Russia’s traditional sphere of influence? And if not, which seems quite plausible, what options would Washington have to communicate that displeasure? **If China had been the victim of the nuclear terrorism and seemed likely to retaliate in kind, would the United States and Russia be happy to sit back and let this occur? In the charged atmosphere immediately after a nuclear terrorist attack, how would the attacked country respond to pressure from other major nuclear powers not to respond in kind? The phrase “how dare they tell us what to do” immediately springs to mind. Some might even go so far as to interpret this concern as a tacit form of sympathy or support for the terrorists. This might not help the chances of nuclear restraint.**

Consensus goes aff---terrorism risk is high enough, timeframe is 5 years

Cole 12 (Dr. Leonard A. Cole teaches at Rutgers University and the University of Medicine and Dentistry of New Jersey. He has written extensively on bioterrorism issues and on terror medicine. “Bioterrorism: Still a Threat to the United States” http://www.ctc.usma.edu/posts/bioterrorism-still-a-threat-to-the-united-states)

Contention #5: The threat of bioterrorism has been exaggerated and does not warrant expanded support. A 2011 assessment in Science magazine of the “biodefense boom” noted that critics questioned its justification, “especially because no new attacks have occurred.”[19] If the validity of a threat depends primarily on when it was last actualized, the threat of a nuclear attack would be deemed negligible. After all, the last (and only) use of a nuclear weapon occurred nearly 70 years ago when the United States dropped two atomic bombs on Japan to end World War II. Iran’s current quest for nuclear arms, and the West’s alarmed reaction, demonstrates the thinness of the “when-last-used” prescription. Yet even disregarding recency of occurrence, alleged exaggeration of the biothreat remains an issue. William Clark, a professor and chair emeritus of immunology at UCLA, has written that: “It is almost inconceivable that any terrorist organization we know of [could develop] a bioweapon capable of causing mass casualties on American soil.”[20] Others have stated, more cynically, that the threat of bioterrorism “has been systematically and deliberately exaggerated.”[21] The WMD Commission holds a contrary view. After interviewing more than 250 government officials and non-governmental experts, the commission issued a report in December 2008. Its chilling conclusion found that a weapon of mass destruction will probably be used in a terrorist attack within five years, and that weapon will likely be a biological agent.[22] Despite skepticism by some about the commission’s calculation, it nonetheless highlighted the particular concern afforded to the biological threat. The commission’s conclusion was influenced by the low cost of the 2001 anthrax attacks, the ease with which they were launched (via the mail), the fact that al-Qa`ida and other terrorist groups have sought to develop biological weapons, and the rapid advances in biotechnology that could be used to develop new and more deadly biological weapons. In disputing the commission’s judgments, a group of scientists at the Center for Arms Control and Non-Proliferation contended that the commission’s threat assessments were speculative and relied on unjustified assumptions.[23] Yet the tide of concern about bioterrorism remains high, as reflected in U.S. funding levels and statements of support by numerous government officials. Descriptions of possible bioterrorism scenarios are often hyperbolic, but they contain enough substance to warrant thoughtful programs for preparedness.

#### And, even a failed attack would crash the global economy, cause retaliation, and won’t deter terrorists from trying—this answers all their defense

Allison, IR Director at Harvard, 07 (Graham, Director of the Belfer Center for Science and International Affairs, Harvard Kennedy School, How Likely is a Nuclear Terrorist Attack on the United States?, April 18, http://www.cfr.org/weapons-of-mass-destruction/likely-nuclear-terrorist-attack-united-states/p13097)

Let’s run a little with Michael Levi’s numbers. Imagine that he is correct, and terrorists have “a 90 percent chance of failure” if they attempt a nuclear 9/11. On the flip side, that would mean a 10 percent chance of success. What should a 10 percent possibility of success mean in terms of U.S. policy? Remember, risk equals probability times consequences. On a normal workday, half a million people crowd the area within a half-mile radius of New York City’s Times Square. If, in the heart of midtown Manhattan, terrorists detonated a ten-kiloton nuclear bomb (the yield of the bomb an intelligence source codenamed “Dragonfire” claimed was in New York one month after 9/11), the blast would kill them all instantly. Hundreds of thousands of others would die from collapsing buildings, fire, and fallout in the hours and days thereafter. Multiply the consequence of such an attack (five-hundred thousand souls) by a 10 percent probability, and one would conclude that the U.S. government should mobilize an effort to prevent nuclear terrorism equivalent to saving fifty thousand Americans lives. Furthermore, the effect of a nuclear terrorist attack would reverberate beyond U.S. shores. After a nuclear detonation, the immediate reaction would be to block all entry points to prevent another bomb from reaching its target. Vital markets for international products would disappear, and closely linked financial markets would crash. Researchers at RAND, a U.S. government-funded think tank, estimated that a nuclear explosion at the Port of Los Angeles would cause immediate costs worldwide of more than $1 trillion and that shutting down U.S. ports would cut world trade by 7.5 percent. But Dr. Levi raises the possibility that, were terrorists to get their hands on enough nuclear weapons material to make a bomb, their design might fail. If a terrorist’s ten-kiloton nuclear warhead were to misfire (known to nuclear scientists as a “fizzle”) and produce a one-kiloton blast, bystanders near ground zero would not know the difference. Such an explosion would torch anyone one-tenth of a mile from the epicenter, and topple buildings up to one-third of a mile out. Does the real possibility of a fizzle or failure mean that terrorists won’t attempt a nuclear attack? Not necessarily. If terrorists pursued only fool-proof plans, they would have begun suicide bombing attacks on U.S. public transportation by now. But from a terrorist’s point of view, why pursue a course of action with a 95 percent chance of success, but at most forty victims, if you have a 10 percent chance at killing five-hundred thousand? The most important takeaway from this debate is that we must do everything technically feasible on the fastest possible time line to prevent terrorists from getting their hands on nuclear materials.[1] Whether nuclear explosion, fizzle, or total dud, the repercussions of such materials in jihadist clutches are unacceptable.

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#### If time—Yes acquisition, North Korea will sell terrorists a nuclear weapon.

Allison 13 (Graham, Director, Belfer Center for Science and International Affairs; Douglas Dillon Professor of Government, Harvard Kennedy School, "North Korea's Lesson: Nukes for Sale", NYT, Feb 12, http://belfercenter.ksg.harvard.edu/publication/22753/north\_koreas\_lesson.html)

THE most dangerous message North Korea sent Tuesday with its third nuclear weapon test is: nukes are for sale. The significance of this test is not the defiance by the North Korean leader, Kim Jong-un, of demands from the international community. In the circles of power in Pyongyang, red lines drawn by others make the provocation of violating them only more attractive. The real significance is that this test was, in the estimation of American officials, most likely fueled by highly enriched uranium, not the plutonium that served as the core of North Korea’s earlier tests. Testing a uranium-based bomb would announce to the world — including potential buyers — that North Korea is now operating a new, undiscovered production line for weapons-usable material. North Korea’s latest provocation should also remind us of the limits of Western policies, led by the United States, that focus on “isolating” the hermit kingdom. Such policies do not isolate us from the consequences of North Korea’s actions. For a decade, American policy makers’ attention has been consumed by Iran’s attempt to build its first nuclear weapon. During those years, American officials believe, North Korea has acquired enough plutonium to make an arsenal of 6 to 10 nuclear bombs, depending on the size, and is now most likely producing enough highly enriched uranium for several more bombs every year. Nuclear weapons can be made from only two elements: uranium that has been highly enriched, and plutonium. Neither occurs in nature. Producing enough of either fuel for a bomb requires a significant industrial plant. North Korea produced its stock of plutonium at its Yongbyon reactor, but that plant was shuttered in 2007 during a hopeful period in international talks about curbing its nuclear arms program. By then, Pyongyang had reduced its arsenal by one bomb, with its 2006 test, and in 2009 it used up a second bomb in another test. We should only hope that it continues conducting plutonium-fueled tests until this stockpile is eliminated. Those numbers figure heavily in the more realistic American assumption that North Korea would most likely use uranium fuel in a third test, rather than further deplete its limited stock of plutonium. Two years ago, North Korea unveiled a showcase uranium enrichment plant at Yongbyon capable of producing enough highly enriched uranium for several bombs annually. There is no evidence, however, that this showcase has become operational. American experts therefore believe that Pyongyang must have another still-undiscovered parallel plant that has been operating for several years. That plant by now could have produced several bombs’ worth of highly enriched uranium. Hence the grim conclusion that North Korea now has a new cash crop — one that is easier to market than plutonium. Highly enriched uranium is harder to detect and therefore easier to export — and it is also simpler to build a bomb from it. The model of uranium-fueled bomb dropped on Hiroshima in 1945 was so elementary, and its design so reliable, that the United States never bothered to test one before using it. Yet it killed more than 100,000 people. As the former secretary of defense Robert M. Gates put it, history shows that the North Koreans will “sell anything they have to anybody who has the cash to buy it.” In intelligence circles, North Korea is known as “Missiles ‘R’ Us,” having sold and delivered missiles to Iran, Syria and Pakistan, among others. Who could be interested in buying a weapon for several hundred millions of dollars? Iran is currently investing billions of dollars annually in its nuclear quest. While Al Qaeda’s core is greatly diminished and its resources depleted, the man who succeeded Osama bin Laden, Ayman al-Zawahiri, has been seeking nuclear weapons for more than a decade. And then there are Israel’s enemies, including wealthy individuals in some Arab countries, who might buy a bomb for the militant groups Hezbollah or Hamas. President Obama has rightly identified nuclear terrorism as “the single biggest threat to U.S. security.” If terrorists explode a single nuclear bomb in an American city in the near future, there is a serious possibility that the core of the weapon will have come from North Korea. The Bush and Obama administrations have repeatedly warned the North Korean regime that it could not sell nuclear weapons, materials or technologies without being held “fully accountable.” But the United States used precisely these words before Pyongyang’s sale of a nuclear reactor to Syria — which by now would have produced enough plutonium for Syria’s first nuclear bomb had it not been destroyed by an Israeli airstrike in 2007. With what consequences for North Korea? Pyongyang got paid; Syria got bombed; and the United States was soon back at the negotiating table in the six-party talks. Given America’s failure to hold Kim Jong-un’s father, Kim Jong-il, accountable when he sold Syria’s president, Bashar al-Assad, the technology from which to make a bomb, could the younger Mr. Kim imagine that he could get away with selling a nuclear weapon or bomb-making material? The urgent challenge is to convince him and his regime’s lifeline, China, that North Korea will be held accountable for every nuclear weapon of North Korean origin.

And, Lack of judicial review of Treasury decisions on terror financing is the key problem.

Turner, Researcher-ACLU, 09 (Jennifer, Human Rights Researcher for the ACLU’s Human Rights Program, for the American Civil Liberties Union, Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the “War on Terrorism Financing”, June, http://www.aclu.org/files/pdfs/humanrights/blockingfaith.pdf)

In a study on terrorism financing, the 9/11 Commission staff reported that the application of U.S. terrorism financing laws and policies to charities raises “substantial civil liberty concerns.”95 Indeed, the counterterrorism laws deny charities due process, exposing charities to mistake and abuse. The laws prohibiting material support for terrorism provide federal officials with wide discretion in choosing groups or individuals for designation, empower the Department of Treasury to seize the assets of charitable organizations with no notice or hearing and on the basis of secret evidence, and contain inadequate procedures for challenging designations. The laws also allow the seizure and indefinite freezing of a charitable organization’s assets “pending investigation,” without notice, charges, opportunity to respond, or meaningful judicial review. The counterterrorism legal framework is inherently vulnerable to mistake and abuse, and charities run the risk of irreversible harm on the basis of unsubstantiated evidence and without even basic due process protections. In fact, criminal prosecutions of Muslim charity leaders and associates, and government oversight review of some cases, have exposed flaws in evidence used to designate and shut down Muslim charities.

### Plan

#### Plan: The federal judiciary should substantially reduce restrictions on wind production on the grounds that economic security should be excluded from the definition of national security in Exon Florio.

## \*\*\*2AC

### 2AC Reduce

#### ---The plan limits the scope of FINSA to exclude wind – their definition doesn’t apply since it’s about striking down law not interpreting one

Jackson-Congressional Research Service-9/26/12

The Committee on Foreign Investment in the United States (CFIUS)

<http://www.fas.org/sgp/crs/natsec/RL33388.pdf>

Factors for Consideration

The Exon-Florio provision includes a list of twelve factors the President must consider in deciding to block a foreign acquisition. These factors are also considered by the individual members of CFIUS as part of their own review process to determine if a particular transaction threatens to impair the national security. This list includes the following elements: (1) domestic production needed for projected national defense requirements; (2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services; (3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the U.S. to meet the requirements of national security; (4) the potential effects of the transactions on the sales of military goods, equipment, or technology to a country that supports terrorism or proliferates missile technology or chemical and biological weapons; and transactions identified by the Secretary of Defense as “posing a regional military threat” to the interests of the United States; (5) the potential effects of the transaction on U.S. technological leadership in areas affecting U.S. national security; (6) whether the transaction has a security-related impact on critical infrastructure in the United States: (7) the potential effects on United States critical infrastructure, including major energy assets; (8) the potential effects on United States critical technologies; (9) whether the transaction is a foreign government-controlled transaction; (10) in those cases involving a government-controlled transaction, a review of (A) the adherence of the foreign country to nonproliferation control regimes, (B) the foreign country’s record on cooperating in counter-terrorism efforts, (C) the potential for transshipment or diversion of technologies with military applications,; (11) the long-term projection of the United States requirements for sources of energy and other critical resources and materials; and (12) such other factors as the President or the Committee determine to be appropriate.36 Factors 6-12 that were added through P.L.-110-49 potentially broaden significantly the scope of CFIUS’ reviews and investigations. Previously, CFIUS had been directed by Treasury Department regulations to focus its activities primarily on investments that had an impact on U.S. national defense security. The additional factors, however, incorporate economic considerations into the Exon-Florio process in a way that was specifically rejected when the measure initially was adopted and refocuses CFIUS’s reviews and investigations to consider the broader rubric of economic security. In particular, CFIUS is now required to consider the impact of an investment on critical infrastructure as a factor for considering recommending that the President block or postpone a transaction. Critical infrastructure is defined in broad terms within the measure as: “any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems or assets would have a debilitating impact on national security, including national economic security and national public health or safety.”

#### ---Counter-interpretation – the courts can make law and narrow the scope of statutes

West's Encyclopedia of American Law, edition 2. Copyright 2008

http://legal-dictionary.thefreedictionary.com/statute

Laws created through judicial opinion stand in contradistinction to laws created in statutes. Case law has the same legally binding effect as statutory law, but there are important distinctions between statutes and case law. Case law is written by judges, not by elected lawmakers, and it is written in response to a specific case before the court. A judicial opinion may be used as precedent for similar cases, however. This means that the judicial opinion in the case will guide the result in similar cases. In this sense a judicial opinion can constitute the law on certain issues within a particular jurisdiction. Courts can establish law in this way when no statute exists to govern a case, or when the court interprets a statute. Judicial opinions also provide legal authority in cases that are not covered by statute. Legislatures have not passed statutes that govern every conceivable dispute. Furthermore, the language contained in statutes does not cover every possible situation. Statutes may be written in broad terms, and judicial opinions must interpret the language of relevant statutes according to the facts of the case at hand. Regulations passed by administrative agencies also fill in statutory gaps, and courts occasionally are called on to interpret regulations as well as statutes. Courts tend to follow a few general rules in determining the meaning or scope of a statute. If a statute does not provide satisfactory definitions of ambiguous terms, courts must interpret the words or phrases according to ordinary rules of grammar and dictionary definitions. If a word or phrase is technical or legal, it is interpreted within the context of the statute. For example, the term interest can refer to a monetary charge or ownership of property. If the term interest appears in the context of a statute on real estate ownership, a court will construe the word to mean property ownership. Previous interpretations of similar statutes are also helpful in determining a statute's meaning. Statutes are not static and irreversible. A statute may be changed or repealed by the lawmaking body that enacted it, or it may be overturned by a court. A statute may lapse, or terminate, under the terms of the statute itself or under legislative rules that automatically terminate statutes unless they are reapproved before a certain amount of time has passed.

#### ---We meet---the Court can “reduce restrictions”- contextual evidence

Shim 96 (Yumee, Mountain States Legal Foundation v. Glickman: When a Tree Falls in the Forest, is Anything Left (Of) Standing?, Fall, 1996, 15 Temp. Envtl. L. & Tech. J. 277)

Specifically, plaintiffs alleged that the implementation of the Guidelines would drive up the price of available timber, which would damage their economic well-being as well as the "quality of life of lumber-dependent communities." Additionally, plaintiffs claimed that the Guidelines were environmentally unsound because they would increase the risk of disease and wildfire. Finally, plaintiffs "argued that a favorable ruling by [the] Court [would] redress their injuries because striking down the Guidelines [would] reduce restrictions on timber harvesting, do less damage to the environment, and force the agency to comply with the procedural commands of NFMA and NEPA ...." Id.

#### ---Reducing restrictions can mean not enforcing them

Berger 1 Justice Opinion, INDUSTRIAL RENTALS, INC., ISAAC BUDOVITCH and FLORENCE BUDOVITCH, Appellants Below, Appellants, v. NEW CASTLE COUNTY BOARD OF ADJUSTMENT and NEW CASTLE COUNTY DEPARTMENT OF LAND USE, Appellees Below, Appellees. No. 233, 2000SUPREME COURT OF DELAWARE776 A.2d 528; 2001 Del. LEXIS 300April 10, 2001, Submitted July 17, 2001, Decided lexis

We disagree. Statutes must be read as a whole and all the words must be given effect. 3 The word "restriction" means "a limitation (esp. in a deed) placed on the use or enjoyment of property." 4 If a deed restriction has been satisfied, and no longer limits the use or enjoyment of the property, then it no longer is a deed restriction -- even though the paper on which it was written remains. [\*\*6] Thus, the phrase "projects containing deed restrictions requiring phasing…," in Section 11.130(A)(7) means presently existing deed restrictions. As of June 1988, the Acierno/Marta Declaration contained no remaining deed restrictions requiring phasing to coincide with improvements to the transportation system.

### 2AC T – Restrictions on Production

---We meet-statutory restriction it is a control or limit

Business Dictionary ‘13

http://www.businessdictionary.com/definition/statutory-restriction.html

statutory restriction

Control or limits imposed on an activity under its ruling legislation.

The plan removes a statutory restriction on wind production

Greguras-KLgates LLP-3/1/13

What Chinese Cleantech Companies Need to Know about CFIUS Review in 2013

<http://www.klgates.com/files/Publication/0f625ea6-f867-4aad-9915-acc67e789c40/Presentation/PublicationAttachment/1fb6f0da-9bcd-4776-9aa6-8f88476219f1/Corporate_Alert_03012013.pdf>

The third question is very open-ended and subject to the changing political climate. While “national security” is not defined, FINSA explicitly interpreted it to include issues related to critical infrastructure and critical technology. In addition to the traditional concerns about defense technologies, experience since enactment of FINSA suggests that transactions involving major energy production assets, telecommunications infrastructure, and cutting-edge information technologies receive high levels of scrutiny. CFIUS is not only attentive to directly relevant factors such as the industry of the transaction, but also the ownership background. Even geographical proximity to sensitive facilities may trigger CFIUS concerns. In 2009, Northwest Non-ferrous International Investment Company, a subsidiary of China's largest aluminum producer, Aluminum Corp of China Co., abandoned its proposed $26.5 million acquisition of 51% ownership of Firstgold, a Nevada-based mining company, after complaints that the four ore fields were located too close to the Fallon Naval Air Station and other sensitive security and military facilities. Another example is the denial of Sany/Ralls’s wind farm projects. CFIUS determined that one of the construction sites was in restricted airspace used by the U.S. Navy while the other three sites were within 5 miles of it. CFIUS’ decisions are based on a multifactor balancing test, rather than a bright-line rule. It is susceptible to changing political and public policy concerns and is more stringent towards acquirers from countries that historically are at odds with U.S. national security interests, such as China. In the Sany/Ralls’s complaint, it argued that “numerous other wind farms using foreign-made turbines and with foreign ownership are located in or near the Navy’s restricted airspace. At least seven foreign made turbines are located within the restricted airspace, like one of Ralls’ planned wind farms. At least thirty foreign-made turbines are located near the restricted airspace, the same distance from the restricted airspace (if not closer) than Ralls’ three other planned wind farms…. The federal government has not imposed on these similarly situated turbines or wind farms, or their owners or developers—including foreign-made turbines and foreign owners or developers—any prohibitions or restrictions similar to those imposed on Ralls……”7

#### **---The plan removes a prohibitory access restriction ON WIND PRODUCTION**

Clement et al-Ralls Complaint-‘12

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ‘12

<http://online.wsj.com/public/resources/documents/RallsFiledAmendedComplaint.pdf>

C. Ralls’s Acquisition and Development of the Butter Creek Projects 58. Plaintiff Ralls is in the business of identifying market opportunities throughout the United States for the development and construction of windfarms in which the wind turbines of Sany Electric, its affiliate, can be used. Through such actions, Ralls seeks to demonstrate the quality and reliability of Sany turbines to the U.S. wind industry, particularly with respect to important features like turbine run time. The Butter Creek Projects are ideal for this purpose given the existence of numerous other nearby windfarms using competitor turbines, thus providing for a direct and immediate comparison to competitor products. For that reason, Ralls decided to include the Butter Creek Projects within the portfolio of windfarm projects it intends to develop at locations throughout the United States. 59. In December 2010, Oregon Windfarms sold its interests in the Project Companies to Terna Energy USA Holding Corporation (“Terna”), a Delaware corporation owned by Terna Energy SA, a publicly traded Greek company. 60. In March 2012, Terna sold its membership interests in the Project Companies to Intelligent Wind Energy, LLC (“IWE”), a Delaware limited liability company that was owned by U.S. Innovative Renewable Energy, LLC (“USIRE”), a Delaware limited liability company owned by a U.S. citizen. USIRE then sold IWE to Ralls. 61. At the time Ralls purchased the Project Companies from Terna, the companies’ assets continued to consist solely of easements with local landowners to access their property and construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp’s grid; transmission interconnection agreements and agreements for the management and use of shared facilities with other nearby windfarms; and necessary government permits and approvals to construct windfarm turbines at particular locations. There was no on-going business concern associated with the Project Companies; they were essentially “greenfield” development projects. 62. Shortly after Ralls acquired the Project Companies, the United States Navy expressed concerns regarding the location of the Lower Ridge windfarm, the sole Butter Creek project located within the restricted airspace. 63. The Navy advocated moving the Lower Ridge windfarm to “reduce airspace conflicts between the Lower Ridge wind turbines and low-level military aircraft training.” 64. Although the Navy indicated that it had no authority to require such a move, Ralls agreed, at significant expense and effort, to move the Lower Ridge Windfarm to a new location. 65. Moving the Lower Ridge Windfarm to its new location required Ralls to obtain additional approvals from the Oregon Public Utility Commission. The Navy wrote to the Oregon Public Utility Commission on Ralls’s behalf, emphasizing its concern that the placement of the wind turbines at either location “may have negative security implications” but recommending that the requested approvals issue. The Navy added that it “appreciat[ed]” Ralls’s “cooperation and consideration” in agreeing to move the Lower Ridge windfarm. 66. The Navy did not express concerns to Ralls about any of the three other windfarms, all of which are located outside the restricted airspace. 67. Construction of the turbines at the Butter Creek Projects began on April 23, 2012. 68. Once completed, the Butter Creek projects will consist of four separate windfarms—Pine City, Mule Hollow, High Plateau, and Lower Ridge—each with five turbines. Each turbine will generate 2.0 megawatts (“MW”) of power, for a total of ten MW per windfarm, or a modest 40 MW from all windfarms combined. Each windfarm will also include related systems to allow for power production and interconnection to the PacifiCorp transmission grid in the western United States under long-term contracts with PacifiCorp. 69. Neither Ralls nor the Project Companies will control or have access to PacifiCorp’s transmission grid. 70. PacifiCorp itself owns thousands of MWs of wind energy generating facilities, and nearly 10,600 MW of total generating assets. Once constructed, Ralls’s 40 MW of wind generated power will comprise approximately 0.37% of PacifiCorp’s total generating capacity, and approximately 2.3% of its wind energy generating capacity. 71. Ralls intends to continue pursuing windfarm development opportunities in the United States and acquiring existing windfarm greenfield companies to do so, in the manner of its acquisitions of the Project Companies. III. THE CFIUS AND PRESIDENTIAL ORDERS REGARDING THE TERNARALLS TRANSACTION A. The CFIUS Orders 72. On June 28, 2012, Ralls and Terna submitted a voluntary notice to CFIUS informing CFIUS of Ralls’s recent acquisition of the Project Companies. Ralls included all of the information required by 31 C.F.R. § 800.402(c), including facts set forth above. 73. In the weeks that followed submission of the voluntary notice, CFIUS asked Ralls and Terna a number of follow-up questions, as to all of which Ralls and Terna timely provided responses. 74. Ralls was provided one opportunity to meet with CFIUS during this period; a meeting was held on June 29, 2012. During that meeting, CFIUS did not provide or discuss with Ralls any evidence it had obtained or was reviewing in connection with any supposed national security risks purportedly raised by Ralls’s acquisition of the Project Companies. 75. On July 25, 2012, CFIUS issued an Order Establishing Interim Mitigation Measures regarding the Terna-Ralls transaction on July 25, 2012 (“July Order”). See Ex. 4. 76. The July Order stated that CFIUS had determined that the Terna-Ralls transaction was a “covered transaction” and that “there are national security risks to the United States that arise as a result of the Transaction.” Id. at 1. 77. The July Order stated that, as a result of the CFIUS determination, the “Companies,” which the July Order defined as Ralls and the Project Companies: “Shall immediately cease all Construction and Operations, and shall not undertake any further Construction and Operations, at the Properties” (defined as any of the sites on which the Project Companies proposed to construct windfarms); “Shall remove all stockpiled or stored items from the Properties no later than July 30, 2012, and shall not deposit, stockpile, or store any new items at the Properties”; and “Shall immediately cease all access, and shall not have any access, to the Properties.” Id. 78. The July Order added that “[n]otwithstanding the foregoing, U.S. citizens contracted by the Companies and approved by CFIUS may access the site until July 30, 2012, solely for the purposes of removing any items from the Properties in compliance with” the July Order. Id. at 1-2. 79. As authority for its action, CFIUS cited “Section 721, and Executive Order 11858 of May 7, 1975, as amended by Executive Order 13456, 73 Fed. Reg. 4677 (Jan. 23, 2008).” Id. at 1. CFIUS cited no other authority for its action. 80. The July Order provided that it “is enforceable, through injunctive relief, criminal or civil penalty, or otherwise, pursuant to section 721, the Executive Order, the CFIUS regulations, 18 U.S.C. § 1001, or any other applicable law.” Id. at 2. 81. In compliance with the July Order, Ralls immediately suspended construction at the windfarms. By that point, Ralls had completed installation of all five turbine foundations at the Upper Plateau windfarm, had partially installed all five turbine foundations at the Pine City windfarm, and had partially installed two turbine foundations at the Lower Ridge windfarm. All foundations were designed and installed to fit Sany turbines. 82. On July 26, 2012, in a good-faith effort to address CFIUS’s concerns, Ralls informed CFIUS that it was considering selling the Project Companies, with several American buyers having expressed interest. Ralls believed that a sale of the Project Companies would address CFIUS’s concerns in issuing the July Order, and it requested CFIUS’s guidance on the matter. On July 31, 2012, Ralls informed CFIUS that it intended to complete transfer of the Project Companies to a U.S. buyer as early as the end of that week. 83. After being advised of Ralls’s good-faith effort, on August 2, 2012, CFIUS issued an Amended Order Establishing Interim Mitigation Measures (the “August Order”). See Ex. 5. 84. The August Order expanded the definition of “Companies” to include the Project Companies, Ralls and its subsidiaries, and the Sany Group (including Sany Electric and Sany Heavy Industries). Id. at 1. 85. The August Order also added more prohibitions to the previous Order, stating that in addition to the prior prohibitions, the Companies: “[S]hall not deposit, stockpile, or store any new items at the Properties, any lay down site identified by the Companies in any information or communication submitted to CFIUS, or at any location that is closer to the R5701 Restricted Airspace than the lay down site that is farthest from the R5701 Restricted Airspace”; “Shall not sell or otherwise transfer or propose, or otherwise facilitate the sale or transfer to any third party for use or installation at the Properties of any items made or otherwise produced by the Sany Group”; and “Shall not complete a sale or transfer of the Project Companies or their assets to any third party until: (i) All items deposited, installed, or affixed (including concrete foundations) on the Properties subsequent to the acquisition by Ralls of the Project Companies have been removed from the Properties; (ii) the Companies notify CFIUS of the intended recipient or buyer; and (iii) the Companies have not received an objection from CFIUS within 10 business days of notification.” Id. at 2. 86. As with the previous July Order, the August Order cited as authority for its directives “Section 721, and Executive Order 11858 of May 7, 1975, as amended by Executive Order 13456, 73 Fed. Reg. 4677 (Jan. 23, 2008).” Id. at 1. As before, the August Order cited no other authority for its directives. 87. Also as with the previous July Order, the August Order provided that it “is enforceable, through injunctive relief, criminal or civil penalty, or otherwise, pursuant to section 721, the Executive Order, the CFIUS regulations, 18 U.S.C. § 1001, or any other applicable law.” Id. at 3. 88. At no point has CFIUS ever provided or discussed with Ralls any evidence it obtained or reviewed in connection with the supposed national security risks raised by Ralls’s acquisition of the four windfarms. Nor has Ralls had any opportunity to review or rebut such evidence, the conclusions CFIUS has drawn from that evidence (aside from its general conclusion regarding supposed “national security risks”), or the reasoning CFIUS has used to reach such conclusions. 89. On July 30, 2012, pursuant to Section 721(b)(2), CFIUS commenced an investigation of the Terna-Ralls transaction. 90. On September 13, 2012, at the end of the 45-day investigation phase, CFIUS transmitted a report to the President describing CFIUS’s assessment of the purported risks to national security posed by the transaction. Ralls has never seen this report, nor has it had any opportunity to rebut its allegations or the supposed facts on which its conclusions are premised. B. The Presidential Order 91. On September 28, 2012, President Barack H. Obama issued an order entitled, “Order Regarding the Acquisition of Four U.S. Wind Farm Project Companies by Ralls Corporation” (the “September Order”). See Ex. 6. 92. In Section 1 of the September Order, entitled “Findings,” the President identified the Sany Group as “a Chinese company affiliated with Ralls” and Messrs. Duan and Wu as “citizens of the People’s Republic of China and senior executives of the Sany Group, who together own Ralls.” He defined Ralls and the Sany Group (including Sany Electric and Sany Heavy Industries) as the “Companies.” Id. § 1(a). 93. The President then stated that “[t]here is credible evidence” that “leads [him] to believe” that Ralls, Sany, and Messrs. Duan and Wu, “through exercising control of” the Project Companies, “might take action” that “threatens to impair the national security of the United States.” Id. The President further stated that “[p]rovisions of law,” aside from Section 721 and the International Emergency Economic Powers Act, “do not … provide adequate and appropriate authority for [the President] to protect the national security in this matter.” Id. § 1(b). The Order provided no further findings. 94. In Section 2 of the September Order, entitled “Actions Ordered and Authorized,” the President ordered a litany of actions to be taken against the Companies and Messrs. Duan and Wu. 95. The President ordered that “[t]he transaction resulting in the acquisition of the Project Companies and their assets by the Companies or Mr. Wu or Mr. Duan is hereby prohibited,” as was “ownership by the Companies or Mr. Wu or Mr. Duan of any interest in the Project Companies and their assets, whether directly or indirectly.” Ex. 6 § 2(a). To “effectuate this order,” the President ordered Ralls to divest “all interests” in (i) the Project Companies; (ii) the Project Companies’ “assets, intellectual property, technology, personnel, and customer contracts”; and (iii) “any operations developed, held, or controlled … by the Project Companies at the time of, or since, their acquisition.” Id. § 2(b). Such divestment is required to occur not later than 90 days of the order’s issuance. Id. 96. In addition to prohibiting Ralls’s acquisition of the Project Companies, the President ordered that the Companies: “shall … remove from the properties … all items, structures, or other physical objects or installations of any kind (including concrete foundations) that the Companies or persons on behalf of the Companies have stockpiled, stored, deposited, installed, or affixed thereon,” within 14 days of the order’s issuance, id. § 2(c); “shall cease all access, and will not have any access, to the Properties,” except for U.S. citizens contracted by the Companies and approved by CFIUS who could access the properties “solely for the purposes of” removing items, id. § 2(d); “shall not sell or otherwise transfer, or propose to sell or otherwise transfer, or otherwise facilitate the transfer of, any items made or otherwise produced by the Sany Group to any third party for use or installation at the Properties,” id. § 2(e); and “shall not complete a sale or transfer of the Project Companies or their assets to any third party until: (i) all items, structures, or other physical objects or installations of any kind (including concrete foundations) that the Companies or persons on behalf of the Companies have stockpiled, stored, deposited, installed, or affixed on the Properties have been removed from the Properties and the Department of Defense has notified the Companies that it has verified the Companies’ certification of such removal … (ii) Ralls notifies CFIUS in writing of the intended recipient or buyer; and (iii) Ralls has not received a provisional or final objection from CFIUS to the intended recipient or buyer within 10 business days of the [preceding] notification,” id. § 2(f). 97. Finally, the President also ordered that “until such time as the divestment is completed,” CFIUS is “authorized to implement measures it deems necessary and appropriate to verify that operations of the Project Companies are carried out in such a manner as to ensure protection of the national security interests of the United States.” Id. § 2(h). Such measures “include but are not limited” to requiring the Companies and the Project Companies to permit government employees to “access … all premises and facilities of the Project Companies and the Companies located in the United States” so as to: “inspect and copy any books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Companies or the Project Companies that concern any matter relating to this order”; “inspect any equipment and technical data (including software) in the possession or under the control of the Companies or the Project Companies”; and “interview officers, employees, or agents of the Companies or the Project Companies concerning any matter relating to this order.” Id. 98. The President further provided in the September Order that “[t]he Attorney General is authorized to take any steps necessary to enforce this order.” Id. § 2(i). 99. The President also stated that CFIUS’s previous July Order and August Order “are hereby revoked.” Id. § 3. 100. At no point between September 13, 2012—the date CFIUS transmitted its report to the President—and September 28, 2012—the date the President issued the September Order— did CFIUS, the President, or any person or entity acting on behalf of CFIUS or the President provide or discuss with Ralls any evidence that CFIUS, the President, or any person or entity acting on their behalf obtained or reviewed in connection with the supposed national security risks that Ralls’s acquisition of the four windfarms purportedly raises. In addition, Ralls had no opportunity during that period to review or rebut any such evidence. 101. At no point has Ralls ever had any opportunity to view, review, respond to, or rebut the “credible evidence” identified in the September Order that led the President to conclude that the Companies, Mr. Duan, or Mr. Wu “might” take action that “threatens to impair” the national security of the United States. 102. At no point since voluntarily filing its notice of the Terna-Ralls transaction with CFIUS on June 28, 2012, has Ralls ever had any opportunity to view, review, respond to, or rebut any evidence obtained or reviewed by any individual or entity acting on behalf of the federal government concerning supposed “national security risks” raised by Ralls’s acquisition of the four windfarms. At no point has Ralls had any opportunity to view, review, respond to, or rebut any reasoning offered by the federal government for its actions or the conclusions reached by the federal government, aside from the government’s general, vague, and unsupported determination that the acquisition raises “national security risks.” 103. Ralls emphatically denies that its acquisition of the Project Companies was intended to or will have or raise any risks or threats regarding the national security of the United States, and it denies that any credible evidence of such intent or effect exists. The sole purpose and effect of Ralls’s acquisition of the Project Companies was to provide a means for the demonstration of Sany turbines as superior in quality and reliability to competitor products, particularly with respect to important features like turbine run time. The Butter Creek Projects are ideal for this purpose given the existence of numerous other nearby windfarms using competitor turbines, thus providing for a direct and immediate comparison to competitor products. In so doing, Ralls also intended to provide an economically viable commercial project that provides clean, renewable energy for the American market and creates jobs for American workers in support of the American economy. The unlawful and unauthorized actions of the federal government eviscerate these innocuous—indeed, laudable—goals. 104. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 105. The Declaratory Judgment Act provides that, in a case of actual controversy within its jurisdiction, a United States court may declare the rights and other legal relations of any interested party seeking such declaration. 28 U.S.C. § 2201(a). 106. The Administrative Procedure Act (“APA”) provides that “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702. 107. The APA also provides that “final agency action for which there is no other adequate remedy in a court” is “subject to judicial review.” Id. § 704. 108. The APA further provides that a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions” found to be, inter alia, “(A) arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” Id. § 706(2). 109. CFIUS constitutes an “agency” whose final actions are reviewable under the APA. 110. The August Order constitutes “final agency action” that is subject to judicial review. CFIUS consummated its decisionmaking process by determining that the Terna-Ralls transaction is a “covered transaction,” that there are national security risks to the United States that arise as a result of the transaction, and that severe, prohibitive, and immediate restrictions are necessary to prevent these purported national security risks. Furthermore, the August Order determined Ralls’s rights and obligations, and legal consequences flow from the August Order: it expressly provided for its enforcement in court, and violating its terms could have exposed Ralls to significant penalties. 111. Ralls suffered legal wrong as a result of the August Order because CFIUS lacked statutory authority to prohibit the Terna-Ralls transaction, versus proposing measures that mitigate any national security risks. 112. CFIUS’s powers under Section 721 are limited; it may only “negotiate, enter into or impose, and enforce” an agreement or condition “in order to mitigate any threat to the national security of the United States that arises as a result of the covered transaction.” Id. § 2170(l)(1)(A). 113. By ordering Ralls immediately to cease all construction at the project sites, remove all equipment from the sites, and cease all access to the sites (including communications with persons at the sites), CFIUS in the August Order did not merely mitigate any national security risks associated with the transaction; its actions were tantamount to prohibiting the transaction entirely, a power CFIUS does not possess under statute or regulation. 114. Section 721 purports to provide only the President with the extraordinary authority to suspend or prohibit a transaction, not CFIUS. By issuing the August Order, CFIUS improperly arrogated this extraordinary power to itself. 115. CFIUS also exceeded its statutory authority by purporting to restrict transactions not within its purview. Section 1(d) of the August Order barred Ralls from “sell[ing] or otherwise transfer[ring] … to any third party for use or installation at” the windfarms “any items made or otherwise produced by the Sany Group.” Ex. C, at 2. Under Section 721, however, CFIUS’s oversight is limited to transactions “by or with any foreign person which could result in foreign control of any person.” 50 U.S.C. app. § 2170(a)(3). Because future transactions in which Ralls sells or transfers “any items made or otherwise produced by the Sany Group” would not “result in foreign control of any person,” CFIUS lacks the authority to impose restrictions on (much less outright bar) such transactions. 116. Similarly, Section 1(e) of the August Order barred Ralls from “complet[ing] a sale or transfer of the Project Companies or their assets to any third party” absent CFIUS approval. Ex. C, at 2. But CFIUS lacks the authority to impose restrictions regarding the future sale or transfer of the Project Companies or their assets “to any third party.” CFIUS’s jurisdiction extends only to transactions “which could result in foreign control.” 117. The September Order issued by the President does not prevent judicial review of the lawfulness of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation. 118. The physical and regulatory takings of Ralls’s property interests constitute unconstitutional takings in violation of the U.S. Constitution, deprive Ralls of its property interests absent due process, and violate Ralls’s constitutional right to equal protection, or at a minimum raise grave doubts about the constitutionality of the government action, though this constitutional question is avoided by a judicial determination that CFIUS violated the APA in issuing the August Order. 119. Likewise, just as federal courts will construe statutes where possible to avoid serious doubt of their constitutionality, so too CFIUS has an obligation to exercise its powers in a way that does not raise serious constitutional concerns. CFIUS’s actions in violation of its statutory authority resulted in a constitutionally problematic prohibition that is avoided by finding CFIUS’s conduct in violation of the APA 120. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 121. Ralls suffered legal wrong as a result of the August Order because the August Order arbitrarily and capriciously offered no evidence or explanation for its determination that the Terna-Ralls transaction is a “covered transaction,” its determination that national security risks to the United States arise as a result of the transaction, its determination to impose prohibitive restrictions on the Terna-Ralls transaction tantamount to barring it outright, or its determination to impose categorical restrictions when less burdensome alternatives were available under existing provisions of law that adequately and appropriately protect national security. 122. The August Order instead simply recited, in a conclusory manner, that Ralls’s acquisition of the Project Companies “constitutes a ‘covered transaction’ for purposes of Section 721,” and that “there are national security risks to the United States that arise as a result of the Transaction,” and imposed a list of draconian obligations. 123. This failure to provide any explanation or evidence for CFIUS’s conclusions is a violation of the APA’s requirement of reasoned decisionmaking, particularly given the lengthy and detailed list of factors that CFIUS must consider when determining whether a transaction could harm national security. See 50 U.S.C. app. § 2170(b)(1)(A)(ii), (f). 124. The August Order also constituted arbitrary and capricious action because it provided no explanation why CFIUS ignored readily available, adequate, and appropriate alternative measures short of outright prohibiting the transaction. Among such measures would have been invocation of 10 U.S.C. § 2663(d), which provides the Secretary of the Navy with authority to acquire interests in land, such as the interests in the properties on which the windfarms would be located, when the need is urgent, the acquisition is needed in the interest of national defense, and the acquisition is required to maintain the operational integrity of a military installation. 125. The August Order further constituted arbitrary and capricious action because it prohibitively restricted Ralls’s acquisition of the Project Companies after the federal government previously assented to the transaction. Prior to Ralls’s acquisition, the FAA provided “Determinations of No Hazard” (which included Department of Defense review), and shortly after Ralls’s acquisition, the Navy objected to the location of one windfarm (and stated no objections concerning the other three) but assented after Ralls relocated it at its own cost. The August Order rescinded the Navy’s prior assent and invalidated the FAA’s prior approval, without offering any explanation for this sudden shift in course. 126. The August Order was further arbitrary and capricious in prohibiting Ralls’s future sale of “any items made or otherwise produced by the Sany Group” that would be used at the properties and in prohibiting Ralls’s future sale of the Project Companies or their assets to any third party absent CFIUS approval. These restrictions and remedies concerning future transactions were entirely unrelated to CFIUS’s limited power to review covered transactions and mitigate purported national security risks. 127. The September Order issued by the President does not prevent judicial review of the lawfulness of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation. 128. Moreover, because CFIUS is responsible for providing a factual analysis and recommendation for action to the President, the arbitrary and capricious nature of CFIUS’s analysis, decisionmaking, and recommendation fatally infected the President’s own decisionmaking, findings, and order. 129. As a result of this and all other legal wrongs wrought by the August Order, Ralls incurred significant injury. Ralls was prohibited from undertaking any further construction or operations on its property, it was required to remove all of its belongings from the property, it was unable to use the property for storage, it was prohibited from accessing the property, it was prohibited from selling or transferring the primary goods to be used in erecting the windfarms, and it was not permitted to sell or transfer the other assets of the Project Companies to any third party until all items were removed (including the concrete foundations that it has expended funds to install), the companies notified CFIUS, and CFIUS did not object. Accordingly, the August Order eviscerated Ralls’s property rights, including, inter alia, its easements with local landowners to access their property and construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp’s grid; transmission interconnection agreements and agreements for the management and use of shared facilities with other nearby windfarms; and necessary government permits and approvals. 130. The physical and regulatory takings of Ralls’s property interests constitute unconstitutional takings in violation of the U.S. Constitution, deprive Ralls of its property interests absent due process, and violate Ralls’s constitutional right to equal protection, or at a minimum raise grave doubts about the constitutionality of the government action, though this constitutional question is avoided by a judicial determination that CFIUS violated the APA in issuing the August Order. 131. Likewise, just as federal courts will construe statutes where possible to avoid serious doubt of their constitutionality, so too CFIUS has an obligation to exercise its powers in a way that does not raise serious constitutional concerns. It is arbitrary and capricious for CFIUS to fail to consider adequate and available alternatives that would accommodate the government’s security concerns without raising problems under the Constitution, and for CFIUS to give no explanation or provide any factual support for its decision to reject these alternatives in favor of a constitutionally problematic prohibition. 132. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 133. In Section 721, Congress conferred upon the President limited authority. The President may only “take such action for such time as the President considers appropriate to suspend or prohibit any covered transaction.” Neither any other provision of Section 721, nor the implementing regulations, nor any Executive Order grants the President any powers beyond “suspend[ing] or prohibit[ing]” a “covered transaction.” 134. In the September Order, the President ordered that the “transaction resulting in the acquisition of the Project Companies and their assets” is “prohibited.” To “effectuate” this order, the President ordered Ralls to divest “all interests” in the Project Companies. 135. The September Order went much further than “prohibit[ing]” the pertinent covered transaction, however. The President also ordered Ralls to remove from the relevant properties all items, including concrete foundations, and prohibited any access to the properties except to remove items. That order thus exceeds the President’s conferred authority to “suspend or prohibit” a “covered transaction.” 136. The President also prohibited Ralls from selling or transferring any items made by the Sany Group to any third party—even an American party—for use at the properties. That order not only is unrelated to “suspend[ing] or prohibit[ing]” the pertinent “covered transaction”—Ralls’s acquisition of the Project Companies—but is unrelated to any “covered transaction.” Neither Section 721 nor any regulation or Executive Order gives the President the power to dictate the terms of (much less prohibit) future transactions, particularly those that are not “covered transactions” as defined by Section 721 or those that are merely sales of individual items. That order thus exceeds the President’s conferred authority to “suspend or prohibit” a “covered transaction.” 137. The President also prohibited Ralls from selling the Project Companies or their assets to “any third party”—even an American party—until it removed all items from the properties and it obtained approval by CFIUS of the proposed buyer. Neither Section 721 nor any regulation or Executive Order gives the President the power to dictate the terms of future transactions, particularly those that are not “covered transactions” as defined by Section 721 or those that are merely sales of assets. That order thus exceeds the President’s conferred authority to “suspend or prohibit” a “covered transaction.” 138. The President also authorized CFIUS to “implement measures it deems necessary and appropriate to verify that operations of the Project Companies are carried out in such a manner as to ensure protection of the national security interests of the United States.” Specifically, the President authorized CFIUS to require the Companies and Project Companies to allow government employees to access their premises to inspect and copy books, accounts, documents; inspect any equipment and technical data, including software; and interview officers, employees, or agents of the Companies or Project Companies, anywhere within the United States. Neither Section 721 nor any regulation or Executive Order gives the President the power to impose, directly or indirectly, future restrictions on or future oversight of the everyday business activities of entities that previously engaged in a covered transaction. That order thus exceeds the President’s power to “suspend or prohibit” a “covered transaction,” in addition to purporting to authorize searches and seizures in violation of the Fourth Amendment of the Constitution. 139. The foregoing ultra vires actions exceed the limited power that Congress conferred upon the President in Section 721, that the Department of the Treasury has promulgated in implementing regulations, or that even prior Executive Orders have recognized. The President’s ultra vires actions facially violate Section 721, related regulations, and related executive orders. 140. The President’s unlawful ultra vires actions have caused and will cause injury to Ralls. As a result of the President’s ultra vires actions, Ralls is prohibited from accessing and developing real property that it is otherwise legally entitled to access and develop; it must expend substantial sums of money to remove items from the windfarm sites, including concrete foundations; it is prohibited from selling Sany products to any future purchaser for use at the properties; it cannot freely convey the Project Companies to a third party; and it must provide government employees unfettered access to its books, documents, equipment, technical data, software, and officers, employees, and agents anywhere within the United States. 141. The President’s ultra vires actions are a direct and proximate cause of these injuries. 142. The foregoing ultra vires actions and resulting injuries will also occur if and when Defendants CFIUS or Timothy F. Geithner, or any persons acting on their behalf or on behalf of the President, implement or enforce any ultra vires actions of the President set forth in the September Order, as the September Order expressly contemplates. 143. Judicial review of this claim is available notwithstanding Section 721(e) because the President’s ultra vires actions exceed the authority conferred to him by Congress and the United States Constitution. 144. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 145. The Fifth Amendment to the United States Constitution states that “[n]o person shall be … deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. 146. Ralls possesses numerous valid property interests and property rights by virtue of its acquisition of the Project Companies, including but not limited to the Project Companies themselves; easements with local landowners to access their property and construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp’s grid; transmission interconnection agreements and agreements for the management and use of shared facilities with other nearby windfarms; and necessary government permits and approvals to construct windfarm turbines at particular locations 147. CFIUS’s issuance of the August Order eviscerated these property rights. The August Order required Ralls to remove all items from the properties and prohibited Ralls from physically accessing the property, undertaking any further construction or operations on the property, selling or transferring the primary goods to be used in constructing the windfarms, and selling or transferring the other assets of the Project Companies to any third party until all items are removed, the companies notify CFIUS, and CFIUS does not object. 148. The President’s issuance of the even broader September Order has further eviscerated these property rights. The September Order prohibits Ralls’s acquisition of the Project Companies entirely and forces Ralls to divest “all interests” in (1) the Project Companies; (2) the Project Companies’ assets, intellectual property, technology, personnel, and customer contracts; and (3) any operations developed, held, or controlled, whether directly or indirectly, by the Project Companies at the time of, or since, Ralls’s acquisition. Like the August Order, the September Order also requires Ralls to remove all items from the properties and prohibits Ralls from physically accessing the property, undertaking any further construction or operations on the property, selling or transferring the primary goods to be used in constructing the windfarms, and selling or transferring the other assets of the Project Companies to any third party until all items are removed, the companies notify CFIUS, and CFIUS does not object. The September Order further requires Ralls to give government employees physical access to its premises and those of the Project Companies for the purposes of inspecting documents, inspecting equipment and technical data (including software), and interviewing personnel anywhere within the United States. 149. The August Order and September Order entirely extinguish Ralls’s valid property rights and property interests. As a direct and proximate result of the orders, Ralls cannot use its property for the purpose for which it was acquired; in fact, it cannot use its property for any purpose whatsoever, nor may it benefit from the various rights it has acquired. Instead, it must divest all such property, forgo all benefits of the property, and submit to invasions of its property. 150. Ralls was not afforded due process prior to the issuance of the August Order or September Order and the resulting deprivation of its property interests. At no point prior to the issuance of the August Order or September Order did CFIUS, the President, any individual or entity acting on their behalf, or any individual or entity acting on behalf of the federal government ever disclose to Ralls any of the evidence obtained or reviewed during CFIUS’s or the President’s review. At no point has Ralls ever had an opportunity to view, review, respond to, or rebut any evidence any such individual or entity has obtained or reviewed in reaching their determinations that Ralls’s acquisition of the Project Companies raises “national security risks,” nor has Ralls been given meaningful notice or hearing prior to those determinations. 151. Neither the August Order nor the September Order identifies any of the evidence upon which either CFIUS or the President relied in reaching their determinations, nor do they provide any explanation for those determinations or any opportunity for Ralls to respond to or rebut those determinations. 152. Neither order, moreover, explains why existing provisions of law do not provide adequate and appropriate authority to protect the national security, nor do they provide Ralls an opportunity to respond to or rebut the reasons why such provisions of law are purportedly insufficient. 153. The issuance of the August Order and September Order has directly and proximately deprived Ralls of its property absent due process of law, in violation of the Fifth Amendment to the U.S. Constitution. 154. The foregoing deprivation of Ralls’s property absent due process will also occur if and when Defendants CFIUS or Timothy F. Geithner, or any persons acting on their behalf or on behalf of the President, implement or enforce any actions of the President set forth in the September Order, as the September Order expressly contemplates. 155. The September Order issued by the President does not prevent judicial review of the constitutionality of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation. 156. Judicial review of this claim is available notwithstanding Section 721(e) because the President’s actions resulting in the deprivation of Ralls’s property absent due process violate the United States Constitution. 157. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 158. The Due Process Clause of the Fifth Amendment to the United States Constitution forbids the federal government to deny equal protection of the law. 159. The constitutional guarantee of equal protection requires that persons who are similarly situated receive equal treatment from the federal government. 160. The August Order and September Order constitute unconstitutional violations of Ralls’s right to equal protection of the law because Ralls and its affiliates and executives have unfairly and unjustly been treated differently from similarly situated persons. 161. Numerous other windfarms using foreign-made turbines and with foreign ownership are located in or near the Navy’s restricted airspace. At least seven foreign-made turbines are located within the restricted airspace, like one of Ralls’s planned windfarms. At least thirty foreign-made turbines are located near the restricted airspace, the same distance from the restricted airspace (if not closer) than Ralls’s three other planned windfarms. At least five of these foreign-made turbines are part of a windfarm (Pacific Canyon) that was foreign-owned at the time of construction and is currently foreign-owned. 162. Nearly 900 additional turbines, moreover, are located within 11 miles of the restricted airspace, like Ralls’s proposed turbines. Upon information and belief, dozens if not hundreds of these turbines are foreign-made and foreign-owned. 163. The federal government has not imposed on these similarly situated turbines or windfarms, or their owners or developers—including foreign-made turbines and foreign owners or developers—any prohibitions or restrictions similar to those imposed on Ralls by the August Order and September Order. The federal government has only imposed such prohibitions and restrictions on Ralls. 164. Because the August Order and September Order impose different treatment on Ralls compared to similarly situated persons, they violate Ralls’s constitutional right to equal protection under the law. 165. The foregoing violation of Ralls’s right to equal protection will also occur if and when Defendants CFIUS or Timothy F. Geithner, or any persons acting on their behalf or on behalf of the President, implement or enforce any actions of the President set forth in the September Order, as the September Order expressly contemplates. 166. The September Order issued by the President does not prevent judicial review of the constitutionality of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation. 167. Judicial review of this claim is available notwithstanding Section 721(e) because the President’s actions resulting in the violation of Ralls’s right to equal protection violate the United States Constitution

---Counter-interpretation—restrictions

#### ---Counter-interpretation—restrictions include limiting conditions

Plummer 29 J., Court Justice, MAX ZLOZOWER, Respondent, v. SAM LINDENBAUM et al., Appellants Civ. No. 3724COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT100 Cal. App. 766; 281 P. 102; 1929 Cal. App. LEXIS 404September 26, 1929, Decided, lexis

The word "restriction," when used in connection with the grant of interest in real property, is construed as being the legal equivalent of "condition." Either term may be used to denote a limitation upon the full and unqualified enjoyment of the right or estate granted. The words "terms" and "conditions" are often used synonymously when relating to legal rights. "Conditions and restrictions" are that which limits or modifies the existence or character of something; a restriction or qualification. It is a restriction or limitation modifying or destroying the original act with which it is connected, or defeating, terminating or enlarging an estate granted; something which defeats or qualifies an estate; a modus or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate may be either defeated, enlarged, or created upon an uncertain event; a quality annexed to land whereby an estate may be defeated; a qualification or restriction annexed to a deed or device, by virtue of which an estate is made to vest, to be enlarged or defeated upon the happening or not happening of a particular event, or the performance or nonperformance of a particular act.

### 2AC CP

#### Doesn’t solve national security – the executive will manipulate its interpretation to maintain secrecy

Chapinski 12 (David, Adjunct Professor at Felician College, Executive Privilege. Accountability in Crises and Public Trust in Governing Institutions., Nov 6, http://thealternativepress.com/articles/executive-privilege-accountability-in-crises-an)

In a political system predicted on democratic accountability, many believe that there can be no legitimate basis at all for executive privilege. I am certainly not alone in the view that executive branch secrecy is indefensible. In 1885 future president of the United States Woodrow Wilson argued that representative government must be predicated on openness. He explained that Congress had the high responsibility of investigating administration activities. It is proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. The Wilsonian view is echoed today by those who maintain that executive privilege is a dubious doctrine. These individuals believe that executive privilege cannot be legitimate under a separation of power systems in which the legislative branch has extensive investigating powers. Among the justifications given for withholding information, none is more prominent than national security concerns. Although most would agree that some limits on access to national security information are reasonable. Many argue that because all information is of possible value to an adversary, adopting a standard is not possible. Moreover, national security is a term of political art, which can be defined by a given administration to coincide with its political interests. The men in power tend, sometimes unconsciously, to equate their own personal and partisan interests with the national interest, no matter how noble their motives.

#### Court action is key to check the executive- perception of legal restraint key.

Brust 12 (Richard, assistant managing editor for the ABA Journal , As DC Circuit Weighs the Future of Guantanamo Inmates, Some Say Judicial Review Can Harm Military, Oct 1, http://www.abajournal.com/magazine/article/detention\_dilemma\_as\_d.c.\_circuit\_considers\_guantanamo\_inmates\_can\_judicial)

Ultimately, asked Vladeck: “Why should [we] be so afraid of judicial review”? He posed that question in his essay for the book Patriots Debate: Contemporary Issues in National Security Law, published this summer by the American Bar Association’s Standing Committee on Law and National Security. First, Vladeck wrote, the D.C. Circuit’s jurisprudence has “left the government with far greater detention authority than might otherwise be apparent where non-citizens outside the United States are concerned.”¶ Judicial review has also “added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless,” Vladeck added, referring to the supervision of Guantanamo.¶ “The reality is that until judicial review there was no semblance of legal restraint on detention,” Vladeck says in a phone interview. “It’s easy for folks to look at Guantanamo and say that’s a law-free zone. With judicial review the government can now say what we are doing is endorsed not just by Congress but by the courts as well.”

#### CP links to politics.

Scheir 2011(Steven E., Professor of Political Science at Carleton College, The Contemporary Presidency: The Presidential Authority Problem and the Political Power Trap Presidential Studies Quarterly Volume 41, Issue 4, pages 793–808, December)

So the “presidential authority problem” has several parts. Authority among elites faces limits due to the institutional thickening in national government. Authority among the public and in Congress suffers from the lessening of presidential political capital detailed in this article. Political authority, according to Skowronek, is designated in advance, works through institutions, and has enforceable mandates and perceptions (Orren and Skowronek 2004, 125). The decline in presidential political capital means that nowadays such traits are hard for presidents to come by. Advance designations frequently vanish among American governing elites and the mass public. Institutions are less “workable” for presidents. Mandates and perceptions are now evanescent, much less enforceable. This leads to a “presidential power trap.” Maintaining authority is hard and frustrating work, and in seeking to maintain it, presidents encounter widespread constraints. Yet the modern presidency grants an incumbent many formal powers over executive branch administration, foreign, and national security policy. The power is there, if the authority is not. So why not use the power—via unilateral decisions, signing statements and executive orders—while you have it, if authority is so hard to garner? The risk is that by using such powers, a president effectively destroys his authority. Richard Nixon's presidency, with its constitutional violations, is the signal example of this, but one can find evidence of the authority problem and power trap among other recent presidencies. Carter took his authority for granted, ignoring the maintenance of its elite and mass aspects, and paid the price. Reagan gradually relied more on executive power as authority problems grew, leading to the Iran-Contra imbroglio. George H. W. Bush exerted war powers but never found a stable basis in political authority. Clinton usually suffered an authority shortage and found his use of powers under steady political attack. George W. Bush's use of war powers destroyed his authority during his second term. Presidential efforts to increase their powers have drawn scholarly attention. As William Howell noted regarding these efforts, “almost all the trend lines point upward” (Howell 2005, 417). A recent manifestation of increasing power claims is the theory of the unitary executive introduced during the Reagan presidency and repeatedly asserted by George W. Bush. Exponents Steve Calabresi and John Yoo argue the Constitution “gives presidents the power to control their subordinates by vesting all of the executive power in one, and only one, person: the president of the United States” (Calabresi and Yoo 2008, 4). Thus Congress's power to interfere with executive branch decisions is quite limited, and the president has total control of all executive agencies within limits set by Congress. Several legal and presidential scholars have argued this theory gives too much rein to unilateral presidential action in a way that threatens the constitutional separation of powers and individual liberty (for example, Fisher 2010, Matheson 2009, Rudalevig 2006). Accompanying the unitary executive theory in the second Bush administration was an aggressive use of signing statements, presidential memoranda, and executive orders. Ambitious claims of unilateral presidential power have ominous implications: “The assertion by the executive that it alone has the authority to interpret the law and that it will enforce the law at its own discretion threatens the constitutional balance set up by the Constitution” (Pfiffner 2008, 227). Barack Obama and the Power Trap It is in the context of such controversies that Obama serves as president and continues to use unilateral tools when they prove convenient. Though he has publicly disavowed the theory of the unitary executive, like his recent predecessors he has made unilateral policy via executive order, presidential memoranda, and signing statements (Schier 2011). Upon taking office in 2009, Obama's executive orders reversed his predecessor's policies on U.S. government support for international family planning organizations, union organizing, and terrorist interrogation techniques. Another executive order secured passage of his landmark health care reform in early 2010. The order, banning the use of federal funds for abortion, secured the vital support of a group of antiabortion House Democrats. Obama employed presidential memoranda to order his energy secretary to formulate higher fuel efficiency standards for automobiles and energy efficiency standards for appliances (Schier 2011). In 2009, two of Obama's signing statements drew strong protests from Congress. In the statements, the president indicated he would not enforce certain provisions of the law with which he disagreed (Weisman 2009, Associated Press 2009). This stance echoed the approach of his predecessor, George W. Bush (Schier 2008). The ensuing uproar caused the administration to declare it would no longer issue such policy declarations in signing statements but would instead quietly disregard enforcement of laws it found unconstitutional (Savage 2010). In May 2011, Obama ignored requirements of the War Powers Resolution regarding his military incursion into Libya. The use of force occurred without prior consultation of Congress as required by the resolution. The administration also ignored the resolution's provision that Congress approve the use of the military within 60 days of their initial engagement in conflict until after the deadline had passed (Ackerman and Hathaway 2011). Obama initially enjoyed strong public approval but his job approval gradually sank, in part because of continuing slow economic growth and high unemployment. His impressive successes with Congress in 2009 and 2010 also accompanied a shift in the public mood against him, evident in the rise of the Tea Party movement and the large GOP gains in the 2010 elections. During 2009, James Stimson (2011) calculated the public mood shifted −.88 against Obama's policies. In comparison, the public's notable move against Obama's policy position was greater than that registered during the JFK, LBJ, and the first Bush presidencies. It also exceeded mood shifts during Clinton's second term and during either of the second Bush's two terms. By mid-2011 Obama's job approval had slipped well below its initial levels, and Congress was proving increasingly intransigent. In the face of declining public support and rising congressional opposition, Obama, like his predecessors when faced with similar circumstances, continued to resort to the energetic use of executive power. Declining political capital, rising authority problems, and accompanying assertions of executive power—we have seen this movie before. Obama thus faces an authority problem and a power trap. Only by solving the former is he likely to avoid the latter. Presidents in recent years have been unable to prevent their authority—evident in their political capital—from eroding. When it did, their power assertions often got them into further political trouble. None of his post-1965 predecessors solved the political authority problem. It is the central political challenge confronted by modern presidents, and now by Obama.

#### Not-unique- Court has been violating deference for the past decade.

Maltzman, prof poli sci at George Washington, 07 (Forrest, senior vice provost for academic affairs and planning and professor of political science George Washington University, The Politicized Judiciary: A Threat to Executive Power, http://home.gwu.edu/~forrest/fmpoliticizedjudiciary.pdf)

On June 23, 2003 the United States Supreme Court affirmed a decision of the¶ Sixth Circuit Court of Appeals that upheld the University of Michigan law school’s affirmative action program (Barbara Grutter v. Lee Bollinger, et al). The decision was a stunning defeat for George W. Bush’s administration. After debating the legal and ¶ political merits of the filing a “friend of the Court” (amicus curiae) brief, the Bush administration had taken a clear position against the Michigan programs. Indeed, in a nationally televised press conference, the President himself had described the¶ University’s system as “divisive, unfair and impossible to square with the Constitution”¶ (CNN, January 16th¶ , 2004).¶ 1¶ A year later, the Bush administration’s conduct in the war on terrorism was directly challenged by the Court. In an 8-1 decision, the Court declared ¶ that citizens detained as “enemy combatants” were entitled to due process and access to ¶ an attorney (Hamdi v. Rumsefeld). In another 6-3 decision, the Court ruled that foreign “enemy combatants” held at Guantanamo Bay, Cuba should be given access to U.S. Courts(Rasul et al. v. Bush).¶ These three decisions illustrate the challenge presidents face in using the Courts to ¶ further their policy and political goals. Indeed, the Court dealt the Bush administration major setbacks in two of the policy areas (civil rights and the war on terrorism)that were¶ at the top of the President’s agenda. The assertiveness of the judicial branch in these three cases is in many respects characteristic of the relationship that currently exists between the Courts and the executive branch.

#### Courts don’t defer to the president

Maltzman, prof poli sci at George Washington, 07 (Forrest, senior vice provost for academic affairs and planning and professor of political science George Washington University, The Politicized Judiciary: A Threat to Executive Power, http://home.gwu.edu/~forrest/fmpoliticizedjudiciary.pdf)

The Court’s rejection of several pivotal arguments made by Presidents Bush and ¶ Clinton suggest that the textbook portrait of executive-judicial branch relations is dated.¶ The judicial branch today is an assertive force in the American political system. Its¶ decisions frequently run counter to the goals and preferences of the executive. Although¶ the “textbook” portrait may have been an accurate description during an earlier period in¶ time, it is not an accurate portrait of the past fifty years. Instead, the court is an ¶ independent force that on occasion accommodates the president, but also frequently¶ challenges him. In this chapter, I explore those forces that have reshaped the relationship ¶ between the president and the judiciary. I argue that theses forces have undermined the¶ President’s ability to use the Courts to pursue his policy and political goals.

#### No impact

Mearsheimer 2011

John J., R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, The National Interest, Imperial by Design, lexis

One year later, Charles Krauthammer emphasized in "The Unipolar Moment" that the United States had emerged from the Cold War as by far the most powerful country on the planet.2 He urged American leaders not to be reticent about using that power "to lead a unipolar world, unashamedly laying down the rules of world order and being prepared to enforce them." Krauthammer's advice fit neatly with Fukuyama's vision of the future: the United States should take the lead in bringing democracy to less developed countries the world over. After all, that shouldn't be an especially difficult task given that America had awesome power and the cunning of history on its side. U.S. grand strategy has followed this basic prescription for the past twenty years, mainly because most policy makers inside the Beltway have agreed with the thrust of Fukuyama's and Krauthammer's early analyses. The results, however, have been disastrous. The United States has been at war for a startling two out of every three years since 1989, and there is no end in sight. As anyone with a rudimentary knowledge of world events knows, countries that continuously fight wars invariably build powerful national-security bureaucracies that undermine civil liberties and make it difficult to hold leaders accountable for their behavior; and they invariably end up adopting ruthless policies normally associated with brutal dictators. The Founding Fathers understood this problem, as is clear from James Madison's observation that "no nation can preserve its freedom in the midst of continual warfare." Washington's pursuit of policies like assassination, rendition and torture over the past decade, not to mention the weakening of the rule of law at home, shows that their fears were justified. To make matters worse, the United States is now engaged in protracted wars in Afghanistan and Iraq that have so far cost well over a trillion dollars and resulted in around forty-seven thousand American casualties. The pain and suffering inflicted on Iraq has been enormous. Since the war began in March 2003, more than one hundred thousand Iraqi civilians have been killed, roughly 2 million Iraqis have left the country and 1.7 million more have been internally displaced. Moreover, the American military is not going to win either one of these conflicts, despite all the phony talk about how the "surge" has worked in Iraq and how a similar strategy can produce another miracle in Afghanistan. We may well be stuck in both quagmires for years to come, in fruitless pursuit of victory. The United States has also been unable to solve three other major foreign-policy problems. Washington has worked overtime-with no success-to shut down Iran's uranium-enrichment capability for fear that it might lead to Tehran acquiring nuclear weapons. And the United States, unable to prevent North Korea from acquiring nuclear weapons in the first place, now seems incapable of compelling Pyongyang to give them up. Finally, every post-Cold War administration has tried and failed to settle the Israeli-Palestinian conflict; all indicators are that this problem will deteriorate further as the West Bank and Gaza are incorporated into a Greater Israel. The unpleasant truth is that the United States is in a world of trouble today on the foreign-policy front, and this state of affairs is only likely to get worse in the next few years, as Afghanistan and Iraq unravel and the blame game escalates to poisonous levels. Thus, it is hardly surprising that a recent Chicago Council on Global Affairs survey found that "looking forward 50 years, only 33 percent of Americans think the United States will continue to be the world's leading power." Clearly, the heady days of the early 1990s have given way to a pronounced pessimism.

Russian judiciary models U.S. legal system

Austein-IIP Digital-3/20/08 US EMBASSY

U.S. Legal System Serves as Model for Russian Courts

<http://iipdigital.usembassy.gov/st/english/article/2008/03/20080320125020hmnietsua0.8971521.html#axzz2OiR7vBdr>

Washington – In the years since the end of the Soviet Union, Russia's judicial system continuously has incorporated new democratic reforms, thanks in part to the help of legal professionals in the United States. Since 1988, the Russian American Rule of Law Consortium (RAROLC,) a not-for-profit organization, has sought to help Russia transform its judiciary into a free and transparent system. By arranging partnerships between state judicial professionals in the United States and those working in local judiciaries in parts of Russia, RAROLC has helped Russian legal institutions implement reforms by using the American legal system as a model. These partnerships have encouraged Russian legal institutions to improve their courts and law schools by implementing democratic reforms. As participants in these partnerships, Russian judicial leaders have been able to visit the United States and watch the American judicial system in action and meet with U.S. judges.

#### Weak judicial enforcement of the rule of law and property rights deter foreign investment to Russia---that’s key to overall economic stability

BUREAU OF ECONOMIC AND BUSINESS AFFAIRS REPORT ‘12

2012 Investment Climate Statement – Russia

<http://www.state.gov/e/eb/rls/othr/ics/2012/191223.htm>

Openness to, and Restrictions Upon, Foreign Investment The Russian market presents many promising investment opportunities. Capitalizing on those opportunities, however, requires that firms navigate a complicated and fluid set of challenges ranging from corruption to a weak judiciary to excessive red tape. Russia recognizes foreign investment's critical role in the country's economic development and has encouraged foreign investment by removing administrative barriers and establishing special economic zones, high-technology parks, and investment promotion funds. At the same time, despite the Russian government's stated goals of combating corruption and improving the investment climate, independent organizations continue to rank Russia as one of the most difficult major economies in which to do business. Russia was one of the countries most adversely affected by the 2008-2009 financial crisis, with 2009 GDP dropping by 7.9%. Russia's economy grew 4.0% in 2010 and further picked up in 2011, with annual growth predicted to reach 4.2-4.5%. From 2004-2008, foreign direct investment (FDI) inflows picked up substantially, rising to $75 billion in 2008. In 2009, however, FDI inflows fell by almost half and have remained well below 2008 levels. According to Prime Minister Putin, FDI inflows for the first ten months of 2011 equaled $36 billion, an 11.8% increase from the same period of 2010. The last few years have also seen large amounts of capital leaving the country. Russia experienced a net capital outflow of $133.9 billion in 2008 and $56.9 billion in 2009. In 2010, capital outflow slowed to $33.6 billion, but has accelerated again in 2011, and is expected to reach about $85 billion for the year. These outflows can be attributed to external as well as Russia-specific factors. President Medvedev and Prime Minister Putin have repeatedly emphasized the importance of improving Russia's business climate and attracting foreign capital, particularly in the high technology sector. The country's solid base of expertise in the scientific and mathematics fields, combined with a sizable market and an economy growing faster than most others in the region, have helped entice a series of U.S. firms to make headline acquisitions and investments in Russia. Roughly a dozen U.S. companies and organizations already have announced their intention to invest in the Skolkovo Innovation Center, Russia's initiative to create a high-tech cluster, modeled on the example of Silicon Valley, in Moscow's outskirts. Nevertheless, the investment climate has been undermined by the slow pace of structural reform and the government's leading role in certain sectors of the economy, notably energy. Additionally, past government actions have contributed to a sense of wariness among some foreign investors about the risks of the Russian market, such as the apparently politically-motivated investigations into businesses. Rule of law, corporate governance, transparency, and respect for property rights are gradually improving but remain key concerns for foreign investors. While Russia took significant steps in 2010 and 2011 to improve the legal framework for intellectual property protection, effective enforcement remains a challenge. Possible liabilities associated with existing operations (especially environmental cleanup) and still-developing bankruptcy procedures are additional factors affecting the investment climate. In short, while there is strong interest in the opportunities Russia presents, many U.S. companies, particularly small and medium-sized enterprises, remain cautious about investing. While a legal structure exists to support foreign investors, the laws are not always enforced in practice. The 1991 Investment Code and 1999 Law on Foreign Investment guarantee that foreign investors enjoy rights equal to those of Russian investors, although some industries have limits on foreign ownership (discussed below). Unfortunately, corruption plays a sizeable role in the judicial system (see the Dispute Settlement section). Russia has sought to enhance consultation mechanisms with international businesses, including through the Foreign Investment Advisory Council, regarding the impact of the country's legislation and regulations on the business and investment climate. Still, the country's investment dispute resolution mechanisms remain a work in progress, and at present can result in a non-transparent, unpredictable process. Russian government officials have repeatedly stressed that foreign investment and technology transfer are critical to Russia's economic modernization. At the same time, the government adopted new policies to more effectively control foreign investments in key sectors of the Russian economy. In May 2008, Russia enacted the Strategic Sectors Law – specifying 42 activities that have strategic significance for national defense and state security – and established an approval process for foreign investment in these areas. According to the law, investors wishing to increase or gain ownership above certain thresholds need to seek prior approval from a government commission headed by Russia's Prime Minister. Partly in response to investor criticism, in 2011 Russia amended the law to simplify the approval process and narrow the range of potential investments requiring formal review by the commission. With respect to the extractive industries, previously, government approval was required for foreign ownership above 10% of companies operating subsoil plots of "federal significance." The November reforms raised the threshold to 25%, a move that experts predict will greatly reduce the number of cases considered by the commission. Some foreign investors have raised concerns that the Strategic Sectors Law could be used to restrict foreign investors' access to certain sectors. Since 2008, however, the commission has approved 128 of 136 applications for foreign investment. Between 2004 and 2010, the share of Russia's private sector in GDP decreased from 70% to 65%, according to the European Bank for Reconstruction and Development. The government also continues to hold significant blocks of shares in many privatized enterprises. In an effort to increase market forces in the economy and raise revenue for the federal budget, in 2009 the government began considering more ambitious privatization of strategic enterprises. In October 2010, the Russian Cabinet approved a major Privatization Plan, which Russia is now in the process of expanding, that paves the way for selling an estimated $60 billion of government stakes in about 1000 companies (out of a total of 6,467 companies with some government ownership). The government will retain controlling stakes, however, in major Russian companies such as Rosneft, Russian Railways, and banking giants Sberbank and VTB. The pace of privatization has been slow, however, and Russian officials have signaled that it is unlikely to accelerate in the near-term. To date, treatment of foreign investment in new privatizations has been inconsistent. As with the 2011-2013 Privatization Plan, foreign investors participating in Russian privatization sales are often confined to limited positions. As a result, many have faced problems with minority shareholder rights and corporate governance. Potential foreign investors are advised to work directly and closely with appropriate local, regional, and federal ministries and agencies that exercise ownership and other authority over companies whose shares they may want to acquire.

#### Russian economic decline results in nuclear conflict – political instability and loose nuclear weapons

Filger, 9 [Sheldon, correspondent for the Huffington Post, “Russian Economy Faces Disastrous Free Fall Contraction,” http://www.globaleconomiccrisis.com/blog/archives/356]

In Russia historically, economic health and political stability are intertwined to a degree that is rarely encountered in other major industrialized economies. It was the economic stagnation of the former Soviet Union that led to its political downfall. Similarly, Medvedev and Putin, both intimately acquainted with their nation’s history, are unquestionably alarmed at the prospect that Russia’s economic crisis will endanger the nation’s political stability, achieved at great cost after years of chaos following the demise of the Soviet Union. Already, strikes and protests are occurring among rank and file workers facing unemployment or non-payment of their salaries. Recent polling demonstrates that the once supreme popularity ratings of Putin and Medvedev are eroding rapidly. Beyond the political elites are the financial oligarchs, who have been forced to deleverage, even unloading their yachts and executive jets in a desperate attempt to raise cash. Should the Russian economy deteriorate to the point where economic collapse is not out of the question, the impact will go far beyond the obvious accelerant such an outcome would be for the Global Economic Crisis. There is a geopolitical dimension that is even more relevant then the economic context. Despite its economic vulnerabilities and perceived decline from superpower status, Russia remains one of only two nations on earth with a nuclear arsenal of sufficient scope and capability to destroy the world as we know it. For that reason, it is not only President Medvedev and Prime Minister Putin who will be lying awake at nights over the prospect that a national economic crisis can transform itself into a virulent and destabilizing social and political upheaval. It just may be possible that U.S. President Barack Obama’s national security team has already briefed him about the consequences of a major economic meltdown in Russia for the peace of the world. After all, the most recent national intelligence estimates put out by the U.S. intelligence community have already concluded that the Global Economic Crisis represents the greatest national security threat to the United States, due to its facilitating political instability in the world. During the years Boris Yeltsin ruled Russia, security forces responsible for guarding the nation’s nuclear arsenal went without pay for months at a time, leading to fears that desperate personnel would illicitly sell nuclear weapons to terrorist organizations. If the current economic crisis in Russia were to deteriorate much further, how secure would the Russian nuclear arsenal remain? It may be that the financial impact of the Global Economic Crisis is its least dangerous consequence.

#### The plan solves judicial review of the executive

Abassi, chief counsel-Cause of Action, 12 (Amber, Chief Counsel for Regulatory Affairs-Cause of Action, BRIEF OF OREGON WINDFARMS, LLC,KENT MADISON, WILLIAM J. DOHERTY, AND IVAR CHRISTENSENAS AMICI CURIAE IN SUPPORT OF PLAINTIFF, Nov 12, http://www.scribd.com/doc/113087608/Ralls-v-CFIUS-Brief-in-Support-of-Motion-to-Participate-as-Amici-Curiae)

C. Judicial review is a necessary prophylactic against the Executive Branch asserting extra-constitutional authority in a manner inimical to basic separation of-powers principles. The stakes of this case are high. If this Court concludes that actions taken pursuant to 50 U.S.C. Appx. § 2170 are not subject to judicial review—even to determine whether due process has been honored or whether the Executive Branch’s actions were ultra vires—this will create a dangerous imbalance in our system of checks and balances: taken to its logical conclusion, such a holding would allow the Executive Branch to take literally any action regarding any matter that conceivably involved a transaction that conceivably involved a foreign person. 9 Only meaningful judicial review of the Executive Branch’s actions under the statute can effectively check the broad authority over U.S. citizens’ and businesses’ transactions “by or with” foreign nationals that 50 U.S.C. Appx. § 2170 confers on the Executive Branch and ensure that the statute is applied in a manner that is consistent with the Constitution and federal law. If this Court concludes that it does not have jurisdiction to adjudicate Ralls’s constitutionally based claims, it will not only set a dangerous precedent that threatens to undermine fundamental separation-of-powers principles that are essential to our constitutional scheme but give the Executive Branch tacit authority to ignore inconvenient constitutional and statutory constraints on its ability to deprive persons of property or liberty without due process of law. Such an unprecedented abdication of the judicial role would not only concentrate power in the Executive Branch in the precise manner that the Framers sought to avoid but undermine the property rights protections and confidence in the rule of law that are necessary for American enterprises and their foreign business partners to create a prosperous tomorrow.

#### Judicial review checks rampant unilateralism in national security policy.

Landau 12 (Joseph, Associate Professor, Fordham Law School, CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE, 92 B.U.L. Rev. 1917)

Although certain Chevron-backers in theory call for a statutory, not constitutional, solution to national security problems, they advocate deference even when “there is no interpretation of a statutory term[,] but simply a policy judgment by the executive.”351 This expansive theory of Chevron not only rests on a dubious doctrinal foundation352 but is at times virtually indistinguishable from a theory of unilateral executive power that disregards entirely Youngstown’s centrality to national security law. As Chevron-backers such as Posner and Sunstein explain, “in the domain of foreign relations, the approach signaled in Chevron should apply even if the executive is not exercising delegated authority to make rules or conduct adjudications,” a point that is strengthened by “considerations of constitutional structure [that] argue strongly in favor of deference to the executive”353 and that “makes the argument for deference stronger than in Chevron itself.”354 By advocating a vast policy space for the Executive that supplants congressional legislation whenever statutory authority is absent, their argument comes closer to the brand of pure and unalloyed executive unilateralism that the Court has rejected throughout the post-9/11 decisions.355 Their enthusiasm for single-branch approaches causes them to espouse a theory outside the mainstream understanding of Chevron that undermines the “realistic and middle-ground alternative” that an administrative law approach can bring to the polarized debate between executive unilateralists and civil libertarians.356 Perhaps it should not be surprising, then, that some Chevron-backers also support broader theories of executive unilateralism. For example, John Yoo, who has argued for a model of foreign affairs law based on executive unilateralism,357 also makes the case for Chevron deference in national security jurisprudence.358 While Chevron-backers often resist the comparison of their administrative law theory of national security jurisprudence with executive unilateralism,359 the lack of any strict delegation requirement, and the replacement of that requirement with strong deference to the Executive on functionalist grounds, begs the question Chevron was meant to solve in the first place through legislative delegations. Hence, it seems entirely reasonable to draw parallels between the advocacy of Chevron, at least in its most extreme articulation, with an argument favoring the consolidation of all national security powers into a single branch. The risks are especially apparent when Chevron-backers push their argument for broad deference from the realm of statutory ambiguity – where there is at least plausible (if contested) justification for agency or presidential self-expansion – to cases of legislative silence. Although Chevron-backers argue that “[t]he executive is in the best position to reconcile the competing interests at stake, and in the face of statutory silence or ambiguity, Congress should therefore be presumed to have delegated interpretive power to the executive,”360 this purely functional understanding of Chevron disregards its formal foundation. Given Congress’s apparent disinterest in authorizing, much less reversing, executive national security policy through legislation since 9/11,361 the Chevron-in-national-security argument, as a practical matter, collapses into a theory of single-branch governance.

#### That kills heg- Bush Doctrine proves. Turns their impact

Ikenberry 2005 G John, IR Prof @ Princeton, Why Bush Grand Strategy Fails, 8-10-2005, http://www.princeton.edu/~gji3/ikenberryWhyBushForeign%282%29.pdf

America’s power advantages – massive, useable, and enduring -- are what gave rise to the ambitions of Bush grand strategy. Indeed, extraordinary power is needed if the United States is to simultaneously pursue a strategy of unipolar rule and reduce its exposure to global rules and institutions. To get other countries to bend to American goals, the U.S. must be able to successfully threaten, induce, coerce, and punish other states – and it must be able to go it alone when other states refuse to cooperate. The emergence of the United States as an unrivaled global power did give Bush administration officials confidence that they could lead a global order on their own terms. Washington could do so not by operating within consensual rules and cooperative frameworks but by wielding a big stick.37

But this Bush administration vision is premised on a radical misreading of functional power realities. The flipping of the Westphalian system does give the United States extraordinary global influence. Its military power is without peer or precedent. But in economic and political realms the world is not unipolar at all. The failure of the Bush administration to get Turkey and Russia to cooperate in the run-up to the Iraq war is revealing. In the end, American leverage over Russia and Turkey was extraordinary limited. Both countries have more important trade and economic relationships with the European Union. They are also fledgling democracies that are sensitive to heavy-handed pressure tactics. Even Bush officials must be surprised at how little of America’s unipolar power could be turned into useable diplomatic and political influence.38 More generally, the American overestimation of its own power reinforces the contraction in Bush grand strategy between its unipolar and nationalist visions. In an echo of the classic problem of great power overextension, overconfidence in American power leads to bold imperial-hegemonic ambitions which flounder because that power is not sufficiently great to overcome foreign resistance and dwindling domestic support. These failures, in turn, reinforce American nationalism and global disengagement.39

The rise of unipolar American power is paradoxical: the collapse of the Soviet Union and the end of the Cold War did make the U.S. a superpower without peer but it also eliminated a geopolitical threat that made countries in Europe and East Asia fully dependent on American security protection. To go back to our post-Westphalian town: the U.S. is the town’s only sheriff and the locks are off the doors – but in addition to this, the town’s biggest menace to public safety has disappeared. So the town worries a great deal about the sheriff’s conduct while their dependence on him for protection has decreased. Old bargains and restraints erode. The United States is powerful enough to block, disrupt, and punish. But in the absence of cooperation by other states, Washington is doomed to a cycle of foreign policy failure and declining public approval which further reduces the availability of useable American power – and the entire grand strategic vision is thrown into crisis.

### 2AC Politics

#### No link – the plan goes through the district court – their link evidence is based off supreme court action – that’s Abassi

#### No link – Obama is the defendant in Ralls – the plan rules against him

Zhao 12 (Kun, Update on Ralls Corporation v. CFIUS, et al., Nov 27, http://www.uschinalawblog.com/index.php/2012/11/27/update-on-ralls-corporation-v-cfius-et-al/)

On September 12, 2012, Ralls Corporation (“Ralls”) filed a lawsuit in the United States District Court for the District of Columbia against the Committee on Foreign Investment in the United States (“”CFIUS”) and Timothy F. Geithner, in his official capacity as the Chairperson of CFIUS, alleging that CFIUS’ order which prohibited Ralls from accessing the project site and continuing operations and construction work at acquired properties are in violation of the Administrative Procedure Act and unconstitutional deprivation of private property without due process. In the complaint, Ralls seeks a declaratory judgment enjoining enforcement of the order issued by CFIUS. The case is significant because it is first direct challenge to the validity of an order issued by CFIUS pursuant to the Defense Production Act. The following is an account of recent developments in the case. On September 13, 2012, Ralls filed a motion for a temporary restraining order and preliminary injunction to enjoin the enforcement of CFIUS’ order. On September 19, 2012, Ralls and CFIUS reached an agreement which allows Ralls to conduct limited preliminary activities at the acquired properties. On the same day, Ralls withdrew its motion for a temporary restraining order and preliminary injunction. On September 28, 2012, President Obama issued an order which prohibited Ralls’ acquisition and ordered Ralls to divest all interests acquired in the transaction. The order further directed Ralls to cease all operations at the acquired properties and remove all items, structures or physical objects from the acquired properties. On October 1, 2012, Ralls amended its complaint to add President Obama as a defendant. It continued to pursue its lawsuit on the ground that the actions of CFIUS and President Obama are in violation of Administrative Procedure Act, beyond authority conferred under the Defense Production Act, and unconstitutional deprivation of private property without due process. Defendants’ answer to Ralls’ amended complaint is due by December 8, 2012.

Means Obama doesn’t take the blame

Newsmax 13 (Republicans Upset Over Approval of Chinese Buyout of US Energy Company,

http://www.newsmax.com/Newsfront/chinese-clean-energy-buyout/2013/01/29/id/487957)

Republican anger is growing over the decision to give a Chinese company government approval to buy a U.S. clean-energy corporation. They are worried that Wanxiang America’s takeover of A123 Systems of Waltham, Mass., could affect national security, because of its military contracts. Though A123’s military operations weren’t included in the purchase, Republican congressmen said military information may be inseparable from A123’s commercial work. The Committee on Foreign Investment in the United States (CFIUS) authorized Wanxiang America’s $257 million purchase of A123 Systems’ automotive, energy storage, commercial, and government operations, the Chinese company announced Tuesday, according to The Hill. CFIUS is an interagency panel led by the Treasury Department that has the authority to strike down deals with foreign companies if they threaten national security. Some Republican legislators urged CFIUS to block the buyout for exactly that reason.

#### Court action shields the link

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

#### Future wind fights inevitable

National Journal 13 (Battle Over Wind Subsidy Leaves Industry Bruised, Jan 3, http://www.nationaljournal.com/congress/influence/battle-over-wind-subsidy-leaves-industry-bruised-20130103)

Sen. Mark Udall, D-Colo., who is the most outspoken supporter of the policy in Congress and gave almost 30 floor speeches on the issue over the last several months, said he remains committed on a way forward. “I plan on pushing my colleagues this year to pursue a multiyear extension in conjunction with a well-crafted phase-out,” Udall said to National Journal. “Such a phase-out would need to provide market certainty, and I believe that is the direction we need to head.” Toward the end of last year, Xcel lobbied lawmakers on a proposal that would have replaced the production tax credit with a combination of an investment tax credit and a customer renewable credit. The investment tax credit would be given to renewable-energy developers to help finance projects, and the customer renewable credit would be awarded to utilities that integrate more wind and solar onto the grid in order to incentivize such renewable-energy integration. The two credits combined would cost the government between $6 billion and $7 billion over 10 years. The one-year extension will cost taxpayers about $12 billion over 10 years. “There is some merit to that,” said the wind-energy lobbyist about Xcel’s proposal. “Maybe that is a way to compromise and get utilities more supportive of tax credits for renewable energy.” Udall expressed initial support for the proposal last month, but at that point he—and all other congressional wind backers—was focused chiefly on extending the PTC. Another big problem lurking in the background for the wind industry is what, if any, legislative vehicle they can use to advance their proposal, if and when the industry can agree on a way forward. But that’s a fight for another day.

#### High skilled deal was made yesterday—the plan can’t effect it anymore--- and UQ overwhelms because the deal creates momentum for a larger comprehensive deal.

NYT 3-30 [http://www.nytimes.com/2013/03/31/us/politics/deal-said-to-be-reached-on-guest-worker-program-in-immigration.html?\_r=0]

WASHINGTON — The nation’s top business and labor groups have reached an agreement on a guest worker program for low-skilled immigrants, a person with knowledge of the negotiations said on Saturday. The deal clears the path for broad [immigration](http://topics.nytimes.com/top/reference/timestopics/subjects/i/immigration_and_refugees/index.html?inline=nyt-classifier) legislation to be introduced when Congress returns from its two-week recess in mid-April. ¶ [Guest Workers Are at Crux of Groups’ Deal on Immigration](http://www.nytimes.com/2013/03/30/us/politics/guest-worker-program-low-skilled-immigrants.html?ref=politics) (March 30, 2013) ¶ Senator Charles E. Schumer, a New York Democrat and one of eight senators from both parties who have been negotiating an overhaul of the nation’s immigration laws, convened a conference call on Friday night with Thomas J. Donohue, the president of the U.S. Chamber of Commerce, and Richard L. Trumka, the president of the A.F.L.-C.I.O., the nation’s main federation of labor unions, in which they agreed in principle on a guest worker program for low-skilled, year-round temporary workers. ¶ Pay for guest workers was one of the final sticking points on a broad immigration deal, and one that had stalled the Senate negotiations just before the break. The eight Senate negotiators still need to formally sign off on the deal between the business and labor groups, but they are expected to do so by the end of the weekend, the person with knowledge of the talks said. ¶ The agreement resolved what the pay level should be for low-skilled immigrants — often employed at hotels and restaurants or on construction projects — who could be brought in during labor shortages. ¶ Labor groups wanted to ensure that guest workers would not be paid any less than the median wage in their respective industries, and the two sides compromised by agreeing that guest workers would be paid the higher of the prevailing industry wage as determined by the labor department or the actual employer wage. ¶ Under the deal, guest workers would be allowed to pursue a path to citizenship and to change jobs after they arrived in the United States. ¶ Labor groups wanted to ensure that guest workers would not be paid less than the median wage in their respective industries, and the two sides compromised by agreeing that guest workers would be paid either the prevailing industry wage or the actual employer wage used previously in the guest worker program, whichever was higher. ¶ Another sticking point, involving the specific type of jobs that would be included in the guest worker program, has also been resolved. Though low-skilled construction workers will be included in the visa program, the nation’s construction unions persuaded the negotiators to exclude certain types of more skilled jobs — like crane operators and electricians — from the program, officials involved in the talks said. ¶ The guest worker program, which will start at 20,000 new visas each year, could eventually grant up to 200,000 new visas annually for low-skilled workers. Business groups had long been pushing to allow in 400,000 of such guest workers each year. ¶ Mr. Schumer also spoke on Saturday with Denis McDonough, the White House chief of staff, to update him on the agreement. President Obama is eager for an overhaul of the nation’s immigration system and has threatened to step in with his own plan if Congress does not move quickly with legislation of its own. ¶ Shortly before the conference call on Friday night between Mr. Schumer, Mr. Donohue and Mr. Trumka ended, one of the men suggested that the three of them get together soon for dinner; it had been, they all agreed, a long few weeks.

#### No spillover

Judson Berger 3-4, 2013, “Recurring budget crises could put squeeze on Obama's second-term priorities,” Fox News, <http://www.foxnews.com/politics/2013/03/04/recurring-budget-crises-could-put-squeeze-on-obama-second-term-priorities/#ixzz2OknXmt3G>

Rep. Luis Gutierrez, D-Ill., a vocal advocate for immigration reform, voiced confidence Monday that the administration and Congress could handle the busy agenda. ¶ "The spirit of bipartisan cooperation that is keeping the immigration issue moving forward has not been poisoned by the sequester and budget stalemate, so far," he said in a statement. "The two sets of issues seem to exist in parallel universes where I can disagree with my Republican colleagues strenuously on budget matters, but still work with them effectively to eventually reach an immigration compromise. ... I remain extremely optimistic that immigration reform is going to happen this year." ¶ Immigration reform efforts are still marching along despite the budget drama. Obama met last week on the issue with Sens. John McCain, R-Ariz., and Lindsey Graham, R-S.C., who both are part of a bipartisan group crafting legislation.

#### Political capital not key and push increases opposition

Cook 2/21/13 (Charlie, Editor and Publisher of The Cook Political Report, and political analyst for National Journal, where he writes two weekly columns . He also writes a regular column for Washington Quarterly, published by the Center for Strategic and International Studies, and is a political analyst for NBC News. Widely regarded as one of the nation's leading authorities on U.S. elections and political trends, Cook has appeared on the ABC, CBS and NBC evening news programs, as well as on Good Morning America, “Why Obama Should Sit Down and Keep Quiet” <http://www.nationaljournal.com/columns/cook-report/why-obama-should-sit-down-and-keep-quiet-20130221>)

Sometimes, silence really is golden. In politics, taking the path of highest visibility isn’t always the smartest way to do things. This week presented two good examples of that principle being violated, one by a Democrat and the other by a Republican. As we watch President Obama stumping for comprehensive immigration reform, the question arises: Does his high-visibility association with this issue make reform more or less likely to happen? The challenge of achieving comprehensive immigration legislation is not in winning the votes of House and Senate Democrats; it’s in getting enough Republican votes to pass it in the House and to avoid a filibuster in the Senate. Even after the party’s election debacle in November, and the role of Latino and Asian voters in bringing it about, persuading enough House Republicans and at least five GOP senators to support comprehensive immigration reform is going to be a heavy lift for party leaders, who clearly understand the importance of getting this issue off the table. Every time Obama takes a public stand on immigration, he makes it that much more difficult for Republican members of Congress to support it. Keep in mind that 94 percent of House Republicans are in districts Mitt Romney carried and that 34 of 45 GOP senators represent states Obama lost. As a result, most congressional Republicans are far more afraid of losing a primary to a more conservative challenger than a general election to a Democrat. It is a lot easier for them to support an immigration bill that has broad-based support in the business and farming communities (and that also happens to be supported by Obama and the Democratic leadership) than to back a bill so popularly identified with the other side. If the president really cares about enacting immigration reform, he will get off the campaign trail, depoliticize it, and keep as quiet about it as he can.

#### Timeframe is more than 10 years

Navarrette 2-19 – Ruben Navarrette, CNN Contributor, February 19th, 2013, "Guest worker issue may kill immigration reform" [www.cnn.com/2013/02/19/opinion/navarrette-immigration-reform/index.html](http://www.cnn.com/2013/02/19/opinion/navarrette-immigration-reform/index.html)

How long? The undocumented could immediately apply for a special protective status to avoid deportation, but it would take them about eight years to get legal permanent residency (a green card) and another four or five years to become a U.S. citizen.

#### **Obama will XO immigration reforms**

Lillis 2-16 – Mike Lillis, February 16th, 2013, "Dems: Obama can act unilaterally on immigration reform" thehill.com/blogs/regwatch/administration/283583-dems-recognize-that-obama-can-act-unilaterally-on-immigration-reform

President Obama can – and will – take steps on immigration reform in the event Congress doesn't reach a comprehensive deal this year, according to several House Democratic leaders.¶ While the Democrats are hoping Congress will preclude any executive action by enacting reforms legislatively, they say the administration has the tools to move unilaterally if the bipartisan talks on Capitol Hill break down. Furthermore, they say, **Obama stands poised to use them.**¶ **"I don't think the president will be hands off on immigration for any moment in time**," Rep. Xavier Becerra (D-Calif.), the head of the House Democratic Caucus, told reporters this week. "**He's ready to move forward if we're not**."¶ Rep. Joseph Crowley (N.Y.), vice chairman of the Democratic Caucus, echoed that message, saying Obama is "not just beating the drum," for immigration reform, "he's actually the drum major."¶ "There are limitations as to what he can do with executive order," Crowley said Wednesday, "but he did say that if Congress continued to fail to act that he would take steps and measures to enact common-sense executive orders to move this country forward."¶ Rep. Raul Grijalva (D-Ariz.), who heads the Congressional Progressive Caucus, said there are "plenty" of executive steps Obama could take if Congress fails to pass a reform package. "The huge one," Grijalva said, is "**the waiving of deportation**" in order to keep families together.¶ "Four million of the undocumented [immigrants] are people who overstayed their visas to stay with family," he said Friday. "So that would be, I think, an area in which … there's a great deal of executive authority that he could deal with."¶ The administration **could also waive visa caps**, Grijalva said, to ensure that industries like agriculture have ample access to low-skilled labor.¶ "Everybody's for getting the smart and the talented in, but there's also a labor flow issue," he said.

#### Won’t pass---and gun control and budget takes out the link

Altman 3/20 [Alex Altman, Washington correspondent for TIME, “Four Hurdles That Could Block Immigration Reform,” http://swampland.time.com/2013/03/20/four-hurdles-that-could-block-immigration-reform/]

The next few months offer the best chance in a generation for the two parties to solve a problem that has bedeviled Congress like few others. Both sides agree the U.S. immigration system is broken. Both would seem to gain from a deal that clears a pathway out of legal oblivion for the nation’s 11 million illegal immigrants. Support is building for a landmark pact. But while negotiations are progressing in both the House and Senate, an agreement is a long way off. As the talks grow more detailed, obstacles to a deal may begin to emerge:¶ Problem #1: The Gang of Eight¶ The first snag lurks in the Senate, where the so-called Gang of Eight has huddled privately since the election in hopes of hammering out a bill. Members have crafted a set of measures that would create a pathway to citizenship for the nation’s estimated 11 million undocumented immigrants within about 13 years while requiring them to register with federal authorities, pay back taxes and fines, learn English and undergo background checks. The deal, both sides agree, would also beef up border security and determine how the future flow of immigrants will be regulated to match the needs of the economy.¶ The Gang’s closed conclaves have been marked by Vatican-style secrecy, often a sign of progress in a town where silence is rare. The Gang’s members – Republicans Marco Rubio, Lindsey Graham, John McCain and Jeff Flake, and Democrats Chuck Schumer, Dick Durbin, Bob Menendez and Michael Bennet – have, by all accounts, developed a rapport. “You can tell by the tone of their voices,” says an elected Democrat briefed on the progress of the private talks.¶ But the broad themes are the easy part. The full bill will stretch to hundreds of pages, each peppered with detailed provisions that could spike it. Members bring clashing political imperatives and ideologies to the talks. Rubio, for example, is trying to repair the GOP’s tattered image with Hispanic voters without sparking a backlash among the movement conservatives he’d need in a presidential bid. Graham, who faces a probable primary challenge in 2014, has a habit of basking in the bipartisan spotlight before bolting when negotiations intensify. The measure of the Gang of Eight’s success isn’t whether they are aligned at the start of their talks. It’s whether they are all aligned at the end.¶ Problem #2: The Lobbyists¶ A few years ago, an impasse between the leaders of the Chamber of Commerce and the AFL-CIO helped scupper an immigration-reform bill backed by President George W. Bush. At that time, business and labor could not agree on how many visas to grant low skilled workers who make the construction, agriculture and hotel and restaurant industries hum. The Chamber wanted cheap labor, but didn’t want workers to stay; unions were concerned about protecting citizens’ jobs. Soon after, reform collapsed.¶ This time the two groups have nurtured an unlikely alliance. “There has been a sea change,” says a labor source close to the discussions. Nudged by Graham and Schumer, the two lobbies released a set of shared principles, including one stating that Americans should get “first crack” at available jobs and that businesses should have the flexibility to hire to meet the demands of the market. But history could repeat itself again. The two sides call for a new federal agency charged with setting visa levels, but they have yet to agree on who’s eligible or how the new bureau will work. The issue of future flow has been a stubborn sticking point before. And it is as easy to imagine conservatives balking at efforts to create a new government agency as it is to foresee unions drawing a line at a small number of foreign workers.¶ Problem #3: House Republicans¶ Even if Senate negotiators can come up with a package to get 60 votes in the upper chamber, “the question continues to be, how does it get through the House?” says Frank Sharry, an expert on immigration reform. As in the Senate, a bipartisan cluster of eight representatives from across the ideological spectrum have been secretly meeting for months. Congressman Luis Gutierrez, an Illinois Democrat who has long been a leader on immigration reform, is full of praise for the new tack taken by his Republican counterparts. But, he acknowledges, “You still have to put those votes on the board, and that’s going to be a real, real test in the House of Representatives.”¶ For their part, Republicans say the party’s old dogma, which held that illegal immigrants should self-deport and then go to the back of the line, is not viable policy. Even many immigration hard-liners say they want to help shape comprehensive reform. “It’s time for us to belly up to the bar,” says Ted Poe, the Texas Republican who chairs the House immigration reform caucus. But for conservatives, amnesty remains a dirty word. “A bill that’s basically amnesty, that says you’re here and you’re going to be a citizen — those two things are not going to come out of this conservative House,” says Poe. Even citizenship is charged enough that Republican Senator Rand Paul, who gave a speech March 19 backing a path to legalization for undocumented immigrants, avoided using the term. Many House Republicans, including several in the Judiciary Committee through which a bill must pass, have a long history of antipathy to amnesty, and only a grassroots rebellion to fear as next year’s primaries approach.¶ Then there is the reality that even if Republicans were to be widely supportive of amnesty, very few of those new citizens are likely to abandon the Democratic Party anytime soon. “Republicans face a choice: do they ditch their principles and go all out in a failing attempt to outpander Democrats?” asks Rosemary Jenks, director of government relations at NumbersUSA, which advocates for lower immigration levels. “It’s becoming very clear to Republicans in Congress that this is not going to get them the Hispanic vote.”¶ Problem #4: The Democrats¶ Little discussed but also looming is the possibility that Democrats drag their feet on reform. Liberals will balk if the path to citizenship is too long or too onerous, or if enforcement provisions are too rigid. Many conservatives also suspect that Democratic power brokers, despite their daily hammering of Republicans to get moving on immigration reform, would privately prefer to keep the issue as a cudgel than actually pass a law. Barack Obama “wants to make a bill come out of the Senate that is so far out there that it would never pass, so that he can blame us for not being compassionate and use the issue to take back the House in 2014,” says a House Republican. Even some liberals see this as a plausible scenario. “There’s always a lingering doubt in my mind,” admits one House Democrat. Obama knows that putting his fingerprints on the deal is an easy way to kill it; when a draft of his proposal leaked in the press, he called Republican negotiators individually to apologize. But if negotiations in Congress bog down, he may not be so hands off.¶ By all accounts, negotiators are making genuine progress toward a landmark deal that builds on a foundation laid during its last fumbled attempts. But lawmakers still have to thread a bill through a thicket of obstacles in a bitterly divided Congress. Sources close to the negotiations say they expect both chambers to introduce legislation in early April, giving Congress several months to haggle out a pact before members scatter for their summer recess. It sounds like plenty of time, but it’s not. Immigration will have to jockey for attention this spring with gun control, budgets and a potential grand bargain on tax and entitlement reform. Meanwhile, the human cost of the political stalemate is high. Each day, 1,400 undocumented immigrants are deported.

#### Nexen deal triggers the link

Reuters 2/12/13 (“CNOOC-Nexen Deal Wins US Approval, Its Last Hurdle” <http://www.cnbc.com/id/100454779>)

U.S. regulators have approved the $15.1 billion takeover of Canadian oil and gas company Nexen by China's state-owned CNOOC, removing the final obstacle to the Asian country's largest-ever foreign takeover. The deal to buy Calgary, Alberta-based Nexen had already passed regulatory muster in Canada and Europe. But approval from the Committee on Foreign Investment in the United States (CFIUS) was also needed because Nexen has U.S. interests. Nexen said on Tuesday that CFIUS had given the green light and that it expects the deal to close the week of Feb. 25, seven months after China's top offshore oil and gas producer made its bid of $27.50 a share. (Read More: Why the Nexen-CNOOC Deal Will Spur More Energy Deals) The Nexen statement did not indicate whether CFIUS had imposed conditions on the approval, and company officials were not available for comment. Nexen's shares climbed 2 percent to just below the offer price on Tuesday, closing at $27.43, their highest level since CNOOC made its bid for Nexen on July 23 last year. The U.S. approval came even though widespread distrust of U.S. investments by Chinese companies has lingered since CNOOC's 2005 attempt to buy Unocal for $18.5 billion, a deal that foundered on U.S. national security concerns. Late last month, CFIUS cleared a bid by the U.S. unit of China's Wanxiang Group to buy bankrupt A123 Systems, a maker of electric car batteries, although some lawmakers warned the deal would lead to the transfer of sensitive technology developed with U.S. government funding. CNOOC's success in navigating the CFIUS approval process "is likely to be viewed as a positive development," said Joshua Zive, senior counsel at Bracewell & Guiliani, a Washington law and lobbying firm. "That, in the current climate, is a moment of significance." But a U.S. legislator said he planned to introduce legislation to block any future transactions that, like the Nexen deal, involve the transfer of royalty-free leases. "Chinese government-owned oil corporations should not be allowed to drill for American oil in the Gulf of Mexico without paying a dime in royalties to U.S. taxpayers," said Representative Edward Markey, the ranking Democrat of the House Natural Resources Committee. (Read More: Canada OK's Foreign Energy Takeovers, Slams Door On More) Senator John Hoeven, a Republican from North Dakota, said the CFIUS approval did not surprise him. But he was disappointed the Obama administration has not moved to secure Canadian oil supplies by approving TransCanada's Keystone XL pipeline. "It shows that time doesn't stand still," he said in an interview, noting that Canadian oil resources will go to other parts of the world if the United States keeps dragging its heels on pipelines. "We've got to move on projects like Keystone." The Canadian government declined to comment on the U.S. approval. "That's a U.S. decision," Energy Minister Joe Oliver told reporters. "That company will, I'm sure, conduct themselves as good corporate citizens in Canada." Oil Sands Reserves The Nexen acquisition gives CNOOC new offshore production in the North Sea, the Gulf of Mexico and off western Africa, as well as producing properties in the Middle East and Canada. In Canada, CNOOC gains control of Nexen's Long Lake oil sands project in the oil-rich province of Alberta, as well as billions of barrels of reserves in the world's third-largest crude storehouse. Canada approved the takeover late last year even though some members of the governing Conservative Party had misgivings about China's human rights record. But the federal government also insisted that CNOOC-Nexen was the last deal of its kind that it would approve, drawing a line in the sand against state-controlled companies taking majority stakes in Alberta's strategic oil sands. U.S. approvals took longer as legislators examined whether the deal would threaten U.S. national security. The United States has traditionally been more wary than Canada of Chinese investment, prompting some speculation that Washington might want Nexen to dispose of the U.S. assets.

## \*\*\*1AR

### \*\*\*Treasury

### Terrorism Turns Heg

#### Attack causes retrenchment- power projection becomes impossible post attack

Watts 05

[CDR Bob Watts is a 1985 graduate of the U.S. Coast Guard Academy and has served six tours at sea conducting drug/migrant operations, most recently commanding the USCGC STEADFAST (WMEC 623). He is currently assigned as the chief of drug and migrant interdiction at Coast Guard Headquarters, where his responsibilities include drafting migrant policy and strategy, including planning for mass migration. A 2006 graduate of the Naval Postgraduate School’s Center for Homeland Defense and Security, he has advanced degrees from the Naval War College, Old Dominion University, American Military University, and is a doctoral candidate at the Royal Military College of Canada.] Maritime Critical Infrastructure Protection: Multi-Agency Command and Control in an Asymmetric Environment http://www.hsaj.org/?fullarticle=1.2.3

Throughout its history, the United States has been a global maritime nation, dependent upon the oceans for economy, welfare, and defense. In the modern era emphasis on globalization and the world economy has increased this dependence considerably. There are some 95,000 miles of United States’ coastline and 3.4 million square miles of territorial seas and exclusive economic zones in the U.S. maritime domain. 1 Connecting the continental United States to this zone are over 1,000 harbors and ports, 361 of which are cargo capable. Through these ports enter approximately 21,000 containers daily, representing ninety-five percent of the nation’s overseas cargo, including 100 percent of U.S. petroleum imports. 2 In addition to commerce, there are seventy-six million recreational boaters in the United States. Six million cruise ship passengers visit U.S. ports annually. In the strategic/military sense, a substantial portion of U.S. national power relies on the sea, both in the form of traditional Navy Carrier Strike groups that deploy from ports in the continental United States and the subsequent ability to reinforce deployed forces overseas. Without unimpeded access to the sea, the ability of the United States to project national power is extremely limited. Maritime infrastructure is crucial in maintaining this link to the sea. From naval bases to commercial ports, maritime infrastructure is well developed nationwide and is crucial to both the economic sector and military strategy. Maritime infrastructure is critical to the employment of national maritime power and as such is a logical (if not desirable) target for acts of terrorism by our enemies. A successful attack against a port could incur serious economic and military damage, present an enemy with the opportunity to inflict mass casualties, and have serious long-term detrimental effects on our national economy. Maritime Critical Infrastructure Protection (MCIP) presents many challenges in an asymmetric environment. Previous models of maritime defense have focused on protecting ships from traditional naval attack; even when ports and supporting infrastructure have been considered targets, emphasis was on defense against a military threat. The Global War On Terror (GWOT) has created a number of heretofore unconsidered vulnerabilities in this traditional outlook. Many targets that would not be considered legitimate (economic, symbolic, etc.) in a conventional war must now be considered in strategic defensive planning. In conducting these attacks the unimpeded use of the sea is a force multiplier for an enemy dedicated to striking a wide range of potential targets. Possible threats from the sea are wide-ranging and diverse, relying on a combination of asymmetric offensive tactics while exploiting the variety of the littoral. This asymmetric nature of GWOT requires a multi-agency approach to devise effective command and control for modern port defense. The Coast Guard and Navy have made important strides in this area by devising experimental Joint Harbor Operations Centers (JHOCs) as a component of maritime anti-terrorist force protection. The expansion of this concept into multi-agency maritime homeland security is a logical next step in the evolving problem of port security and defense. This is made evident by examining likely terrorist threats to ports and studying the lessons of the past that apply in this environment which can be used to expand the current command and control system to meet the new threat NEW THREAT MATRIX: PORTS AS TARGETS The GWOT threat to ports is a relatively new element in the spectrum of naval warfare. This is largely due to the evolving nature of the shipping industry and the nation’s growing reliance on sea power. Historically, a nation’s maritime strength has been measured by the size and capability of its merchant fleet and Navy; attacks against a nation’s sea power meant the physical destruction of these ships. Ports, until quite recently, were composed of infrastructure that was relatively easy to replace or replicate, making them relatively low priority targets for an enemy dedicated to striking at maritime strength. This has changed in the modern era of containerization and the increased size and technical nature of ships. In modern times ports have become centers of highly technical, well-integrated infrastructure designed for the rapid loading and unloading of cargo, an evolution that has become highly complex in the era of containerization. Commercially efficient, port cargo operations are also highly dependent on networked operations, making the disruption of the process far simpler for a potential attacker. Additionally, the complexity of this evolution, combined with the increasing size of seagoing merchant vessels (and warships), has greatly reduced the number of commercial ports available for use by global shipping. This has the duel effect of making major ports more important economically and strategically while simultaneously making them more attractive targets for offensive action. The attractiveness of ports as targets for terrorists can be summarized as follows: A. Economic Impact: An unprecedented amount of trade — both imports and exports — relies on shipment by sea. A successful attack on maritime infrastructure would affect this trade in far greater proportion than the actual damage. It is likely that an attack on one port would have a cascade effect on others as increased security measures are applied nationwide. The recent impact of the London bombings can be seen as illustrative of this effect; although there was no indication of additional terrorist activity, security measures were increased at transportation hubs worldwide. Increasing security alerts at a train station is one thing; closing a huge economic entity such as a port is quite another. Delay of shipping in loading and offloading cargo is one of the most costly elements of the shipping process. We must also consider the impact to the shipping industry itself. During the Persian Gulf re-flagging operations of the late 1980s, for example, analysis showed the greatest impact to the shipping of oil was not the damage to tankers inflicted by the warring Iraqis and Iranians (which was, in fact, minimal), but the increased insurance costs of operating in that area. 3 An attack on a U.S. port could have a similar, if not larger, effect. B. High visibility/High Casualties: Ports are not isolated areas, but rather major centers of commerce, usually surrounded by large cities and economic centers. An attack on a port could be highly visible and potentially the scene of mass conflagration. As a result of urban development, most major ports are no longer confined to strictly industrial areas, but rather have become well-developed centers of commerce and entertainment, surrounded by built up waterside areas dedicated to tourism and recreation. Many of these facilities are located next to volatile maritime infrastructure (fuel tanks, docks, etc.) that could create mass conflagration if attacked through large explosive force. Sympathetic detonation, fires, and other catastrophic effects would certainly create mass casualties. C. Ease of attack: Commercial ports are not fortresses. The ocean itself presents a number of distinct advantages to a dedicated attacker, especially when employing maritime suicide terrorism or means to rapidly deliver large explosive force. Water is not only a tremendously efficient transport medium (allowing for rapid transit), but the large amount of legitimate commercial and recreational traffic in ports allows for an enemy to mask movements prior to an attack, making effective defense difficult. Given the importance of ports to our economy and military power, the potential for creating mass casualties, and the ease by which an enemy can attack, a strong case can be made that ports will become a target for future terrorist attacks. If this is the case, we can apply the military planning process to meeting this threat. The first step in this process is looking for lessons learned that could be used in the current scenario: have we faced this threat before, and if so, what can we learn from the experience?

### \*\*\*Topicality

### Topicality

### 1AR-“on production”

#### Most Chinese international investments are in the energy production phase.

Ernst&Young 11 (Fueling the dragon: China’s investment in the global oil and gas market, http://www.ey.com/Publication/vwLUAssets/Chinas\_investment\_in\_the\_global-oil\_and\_gas\_market/$FILE/China%20TL%20brochure%20v4.pdf)

However, the historical deal statistics likely understate the Chinese interest in US unconventional gas/liquids development as well as the interest of many US companies in the potential investment in their resources activities as a liquidity source, given the low current and expected gas price levels. The Chinese company oil and gas investments were further dominated by upstream transactions, with deals for upstream reserves and production accounting for 79% of the total deal value, and deals involving upstream acreage accounting for another 3%. Downstream transactions accounted for about 14% of the total reported value, with oilfield services deals accounting for another 3%.

#### ---We meet---the restriction was ON production---not extra-topical

Baker Botts-INTERNATIONAL TRADE UPDATE-10/1/12

President Obama Blocks Chinese-Owned Wind-Farm Development

http://www.bakerbotts.com/file\_upload/Update201210IntlTrade-PresidentObamaBlocksChinese-OwnedWind-FarmDevelopment2.htm

On a more general point, CFIUS has moved to adopt a much more expansive view of what constitutes a U.S. business under FINSA in the Ralls case, and this arguably extends beyond CFIUS’ own guidance issued in 2008. As described in the filings with the court, Ralls acquired the rights to develop several wind-farm installations (permits and some contracts, primarily). The acquisition as described by Ralls does not appear to involve the bundle of tangible assets that would normally constitute a business, such as employees or buildings.

### 1AR-A2: Hurdle not prohibition

#### ---There is no condition to meet other than don’t be a scary foreigner---that’s our Clement evidence that says At no point has CFIUS ever provided or discussed with Ralls any evidence it obtained or reviewed in connection with the supposed national security risks raised by Ralls’s acquisition of the four windfarms. Nor has Ralls had any opportunity to review or rebut such evidence

#### ---The plan removes restrictions on production---It is a prohibition not a condition---Ralls jumped through all necessary regulatory hoops and wind production was still blocked.

Baker Botts-INTERNATIONAL TRADE UPDATE-10/1/12

President Obama Blocks Chinese-Owned Wind-Farm Development

http://www.bakerbotts.com/file\_upload/Update201210IntlTrade-PresidentObamaBlocksChinese-OwnedWind-FarmDevelopment2.htm

On Friday, September 28, 2012, the President issued an order to block the Ralls Corporation (“Ralls”), a Chinese-owned wind-farm developer, from proceeding with the development of four wind farm projects in Oregon.1 The President’s order requires Ralls not only to divest itself of all ownership in the project companies, but also requires the removal of all equipment on the sites, bars access to the sites by employees of the companies, and bars any non-U.S. citizens from carrying on the dismantling of installed equipment. It is exceedingly rare for the President to make such a decision as most foreign investors will abandon their transactions when it appears likely that such an order will be issued. The matter began earlier this year when Ralls bought four small Oregon companies with assets consisting of wind-farm development rights, land rights, power purchase agreements, and government permits. The projects reportedly had received other federal regulatory approvals, including a determination by the Federal Aviation Administration (“FAA”) that the turbine towers presented no hazard to aviation, in particular to nearby airspace used by the U.S. Navy. After learning of the transaction through press accounts and later through a voluntary notice filed by Ralls, the Committee on Foreign Investment in the United States (“CFIUS”) reviewed the transaction and issued two orders, pending approval of the President, to stop the construction and operation of all of Ralls' four wind farms on the grounds of national security, while also requesting that the company remove all its equipment from the site within five days and prohibiting Ralls from divesting any of the assets. The President was given until September 28 to make a determination as to whether to approve CFIUS’ order or allow the project to proceed. In an unprecedented move, the Chinese owners then pursued a legal challenge through U.S. courts by seeking a temporary restraining order to prevent CFIUS from imposing these restrictions on the projects.2 The President’s decision and the developments revealed by Ralls’ legal challenge are noteworthy for several implications specific to ongoing or future acquisitions of U.S. businesses by Chinese companies or nationals.3 Chinese Investors Face Special Scrutiny The U.S. Government maintains that the CFIUS process does not single out Chinese companies for special attention and that the U.S. remains open to Chinese investment.4 While this assertion may be true with respect to economic sectors that have no apparent national security implications, the Ralls matter seems to confirm an apparent emerging trend that CFIUS will subject transactions by Chinese investors to heightened scrutiny. CFIUS’ response also highlights the U.S. Government’s concern that allowing Chinese companies proximity to certain military installations may pose an espionage threat, regardless of the underlying type of business involved. This is evidenced by the fact that CFIUS’ main concern with the Ralls acquisition pertained to the proximity of the project properties to airspace used by the Defense Department—mirroring similar CFIUS reactions to two prior Chinese company efforts to acquire mining operations near a U.S. Navy base in Nevada. The Government’s orders do not appear to implicate any of the general concerns that usually arise in the CFIUS context, such as impact on critical infrastructure, access to energy supplies, and technology transfers — all of which are largely moot in the context of this transaction. Chinese investors in particular therefore appear to face the difficult challenge of anticipating a broad range of U.S. national security concerns specific to them, many of which are challenging to assess because they may be classified or otherwise difficult for an outsider to discern. Taken together with the ongoing controversy over the CNOOC-Nexen transaction that is also pending CFIUS review, and with allegations of espionage by several Chinese telecommunications companies, the political climate of sensitivity around Chinese investment in the United States is at an all-time high. This overall trend will likely continue as it is fueled by bipartisan concerns over cyber-threats, economic espionage, and the trade imbalance. Therefore, any significant Chinese investment in the United States that could implicate the acquisition of control by a foreign person over a U.S. business must be carefully assessed against the FINSA requirements and national security concerns, as well as political dynamics at the state and local level. CFIUS Casts a Wide Net... According to CFIUS’ filings in the Ralls litigation, the acquisition came to the Government’s attention through a report in a wind power trade publication. This statement confirms the practice of CFIUS agencies aggressively monitoring media in the United States to flag deals that have not been voluntarily presented to the Committee. Chinese companies seeking to acquire a company or business in the United States must therefore anticipate that their transactions, regardless of value, are likely to come to CFIUS’ attention. ...But Internal Coordination Can Pose a Challenge The Ralls litigation also has surfaced the unfortunate reality that the U.S. Government does not always coordinate its own activities in areas of interest to CFIUS — in this matter, Ralls reportedly engaged in a long process to secure FAA permits, which included close consultations with the Defense Department to mitigate the impact on U.S. Navy flight operations. Ralls may have assumed that such approvals lessened any need to consult CFIUS. The record suggests instead that neither CFIUS nor the DOD representative on the Committee were made aware of these discussions or the final FAA approval at the time. Further, it does not appear that these approvals carried much weight with CFIUS or even with the Defense Department, as it was a different component of the Defense Department that requested that CFIUS contact Ralls to suggest it initiate a voluntary filing, after the FAA process was completed, and apparently only after being tipped off by the aforementioned press report. This underscores that vetting a transaction with other agencies of the U.S. Government is not a substitute for direct discussions with CFIUS. The parties to a transaction need to assume the burden of ensuring that all of the necessary touch-points with the U.S. Government are covered, including with CFIUS directly.

### 1AR-C/I-Limiting Condition

#### \*---This is the middle ground—their attempt to distinguish is arbitrary and not based in the law

LVM Institute 96, Ludwig Von Mises Institute Original Book by Ludwig Von Mises, Austrian Economist in 1940, fourth edition copyright Bettina B. Greaves, Human Action, http://mises.org/pdf/humanaction/pdf/ha\_29.pdf

Restriction of production means that the government either forbids or makes more difficult or more expensive the production, transportation, or distribution of definite articles, or the application of definite modes of production, transportation, or distribution. The authority thus eliminates some of the means available for the satisfaction of human wants. The effect of its interference is that people are prevented from using their knowledge and abilities, their labor and their material means of production in the way in which they would earn the highest returns and satisfy their needs as much as possible. Such interference makes people poorer and less satisfied.

This is the crux of the matter. All the subtlety and hair-splitting wasted in the effort to invalidate this fundamental thesis are vain. On the unhampered market there prevails an irresistible tendency to employ every factor of production for the best possible satisfaction of the most urgent needs of the consumers. If the government interferes with this process, it can only impair satisfaction; it can never improve it.

The correctness of this thesis has been proved in an excellent and irrefutable manner with regard to the historically most important class of government interference with production, the barriers to international trade. In this field the teaching of the classical economists, especially those of Ricardo, are final and settle the issue forever. All that a tariff can achieve is to divert production from those locations in which the output per unit of input is higher to locations in which it is lower. It does not increase production; it curtails it.

### 1ar---over limit

They have no coherent interpretation of what a prohibition is, its

Google dictionary 13

“A law or regulation forbidding something.”

#### No energy is prohibited---

No OCS restrictions

Kathleen Gramp and Jeff LaFave, CBO Budget Analysis Division, August 2012, http://www.cbo.gov/sites/default/files/cbofiles/attachments/08-09-12\_Oil-and-Gas\_Leasing.pdf

Other than the temporary ban on leasing in the eastern Gulf of Mexico, there currently are no statutory restrictions on OCS leasing. Decisions about leasing are made administratively—in consultation with industry and the states—for five-year periods. Leases cannot be offered for areas that are not included in a five-year plan, but the available regions may change whenever a new plan is adopted. The next plan is expected to go into effect in August 2012 and will extend for five years unless a future Administration chooses to restart the process before that plan expires.

#### No prohibition for solar on public lands---just administrative hurdle

DOE ‘12

Obama Administration Releases Roadmap for Solar Energy Development on Public Lands

http://energy.gov/articles/obama-administration-releases-roadmap-solar-energy-development-public-lands

Today’s announcement builds on the historic progress made in fostering renewable energy development on public lands. When President Obama took office, there were no solar projects permitted on public lands; since 2009, Interior has approved 17 utility-scale solar energy projects that, when built, will produce nearly 5,900 megawatts of energy—enough to power approximately 1.8 million American homes. Thanks to steps already taken by this administration, renewable energy from sources like wind and solar have doubled since the President took office.

#### Not a prohibition

Donnelly-Shores 12 Patrick is a writer at the Berkeley Energy and Resource Collaborative. “OFFSHORE WIND FARMS MAKE POLITICAL HEADWAY IN U.S.,” Feb 16, http://berc.berkeley.edu/offshore-wind-makes-political-headway-in-us/

First, in the most dramatic new renewable energy policy announcement of the year, the Bureau of Ocean Energy Management (BOEM) announced that it had certified an Environmental Impact Statement (EIS) as revealing “no significant environmental or socioeconomic impacts” associated with developing offshore wind farms, paving the way for a set of Wind Energy Areas (WEAs)off of the mid-Atlantic Coast. The WEAs (a map of which can be seen here, courtesy of the Christian Science Monitor) are located off the shores of southern New Jersey, Delaware, Maryland, and Virginia, and would be over a half million acres in total size.¶ The BOEM’s announcement means that future leasing of wind power sites in the area will be informed and streamlined by the existing EIS. While any specific developments within the area will require their own environmental assessments, the process will move along much quicker as a result of this decision. They hope to have wind farm development commencing in the area as soon as the end of 2012.

### \*\*\*Counterplan

### District

#### No Link- normal means is that the plan would be heard by the district court

Bloomberg 3-1-13 (http://www.bloomberg.com/news/2013-03-01/ralls-loses-bid-for-court-order-to-block-wind-farm-sale.html)

U.S. District Judge Amy Berman Jackson in Washington threw out most of that suit on Feb. 22, ruling that the president has the authority to require the sale. Jackson said Ralls can continue arguing a case that it’s entitled to an explanation for the administration’s decision. The case involving the collateral is Ralls Corp. v. Terna Energy USA Holding Corp., 13-cv-739, U.S. District Court, Southern District of New York (Manhattan). The case against the U.S. government is Ralls Corp. v. Committee on Foreign Investment in the U.S., 12-cv-01513, U.S. District Court, District of Columbia (Washington).

#### Muslims don’t trust the executive—protecting the rule of law is key

Rohde 13 (David Rohde is a columnist for Reuters, two-time winner of the Pulitzer Prize,

“The ‘trust me’ administration’,” Feb 6, http://blogs.reuters.com/david-rohde/2013/02/06/the-trust-me-administration/)

If true, that would be a welcome step. But the Obama administration has a long record of promising transparency and then embracing secrecy ‑ from drone strikes to legal memos to unprecedented prosecutions of government officials for leaking to the news media.¶ Accusing Obama’s actions of falling short of his rhetoric is nothing new. His excessive embrace of secrecy, though, is more than a case of inaction. It is a faulty policy that is a flagrant display of American hypocrisy in predominantly Muslim countries, where we need public support. Muslim moderates who yearn for the rule of law are our potential allies. In the end, only they, not U.S. soldiers, have the power to eradicate militancy.

#### Executive control over counter-terrorism fails- empirically true

Huq, Chicago Law, 12 (Aziz Z. Huq∗, Assistant professor of law, University of Chicago Law School, “Structural Constitutionalism as Counterterrorism,” California Law Review, http://www.californialawreview.org/assets/pdfs/100-4/03-Huq.pdf)

Executive primacy has surprising costs. Evidence suggests that analytic failures are common in federal counterterrorism policy.157 Much effort is currently wasted or misdirected, while resources and information are poorly deployed. Consider as illustration the Christmas 2009 attempt by Nigerian national Umar Farouk Abdulmutallab to explode a bomb aboard Northwest Airlines Flight 253 from Amsterdam to Detroit. Two months earlier, Saudi officials had warned U.S. authorities that an attack of the type Abdulmutallab tried was being planned in Yemen.158 Weeks before the attempt, Abdulmutallab’s father approached the CIA in Lagos to warn them of his son’s links to Yemeni terrorist groups.159 Nothing was done. Subsequent presidential and congressional inquiries found an “overall systemic failure”: intelligence agencies had “dots [that] were never connected.”160 Far from an isolated incident, this failure appears symptomatic. Five years beforehand, the National Commission on the Terrorist Attacks upon the United States reached a similar diagnosis respecting 9/11. It found that “no one was firmly in charge of managing [threat information] . . . and able to draw relevant intelligence from anywhere in the government” about the 9/11 attacks.161 A similar failure of analysis preceded the deadly November 5, 2009, shootings at Fort Hood, ¶ Texas,162 where the military intelligence unit tasked with tracking internal ¶ threats focused instead on student associations163 that were more readily ¶ analyzed but ultimately harmless. It is clear, therefore, that the executive branch has not wholly heeded the 9/11 Commission’s warnings. To summarize, the internal architecture of national security institutions ¶ within the executive branch can hinder just as much as it can foster rapid, ¶ informed responses to terrorism. Presidential control through Article II’s assumed unitary hierarchy provides no panacea. There is hence no reason to ¶ believe that executive responses to terrorism will either be optimal or even as ¶ accurate, timely, and efficient as is generally believed. The institutional ¶ competence logic of pro-executive structural constitutional presumptions thus ¶ rests on shaky ground.

## \*\*\*2AR

### A2: Precision

#### We are just as precise and meet the standards of the new evidence in the 2nr

Exxon Mobile no date (“Risk factors,” http://www.exxonmobil.com/Corporate/safety\_climate\_mgmt\_risk.aspx)

Access limitations. A number of countries limit access to their oil and gas resources, or may place resources off-limits from development altogether. Restrictions on foreign investment in the oil and gas sector tend to increase in times of high commodity prices, when national governments may have less need of outside sources of private capital. Many countries also restrict the import or export of certain products based on point of origin.