V. 2 SSRA

Aff and Terrorism Disadvantage

Topic – Resolved: The United States federal government should substantially curtail its domestic surveillance.

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How To

What Is Policy Debate?

Policy debate is a type of debate competition in which teams of two advocate for and against a resolution that typically calls for policy change by the United States federal government, this format tests a student's research, analytical, and delivery skills.

It involves the proposal of a plan by the affirmative team to enact a policy, while the negative team offers reasons to reject that proposal. Throughout the debate, students have the opportunity to cross-examine one another. A judge or panel of judges determines the winner based on the arguments presented.

Speeches and Speech Order

There are eight total speeches in a debate round. Each debater gives two speeches: one "constructive" and one "rebuttal." The speech order looks like this:

Speech Cheat Sheet

Speech Order and Responsibilities

(all speech times in minutes)

CONSTRUCTIVE SPEECHES	Jr. High	H.S.	College
1AC – Read the case and plan.	4/5	8	9
CX – 2NC asks the questions	2	3	3
1NC – Makes all the major negative arguments (disadvantages, case arguments, etc.)	4	8	9
CX – 1AC asks the questions	2	3	3
2AC – Answer ALL negative arguments. Rebuild and strengthen the case. Point out arguments that the negative has not attacked.	4	8	9
CX – 1NC asks the questions	2	3	3
2NC – Present any additional case arguments not covered by 1NC. Remember to take only part of the negative arguments – leave some for the 1NR speech	4	8	9

REBUTTAL SPEECHES	Jr. High	H.S.	College
1NR – Present all other negative arguments not covered in the 2NC. Do not present the same arguments as your partner. Decide ahead of time who will cover which arguments.	2	5	6
1AR – Answer ALL of the negative arguments from both the 2NC and the 1NR. Any dropped argument could mean a negative victory.	2	5	6
2NR – Pick a few arguments that you think the negative side is winning and concentrate on those. Tell the judge exactly why to vote for you. Tell the judge why the negative arguments outweigh the arguments of the affirmative	2	5	6
2AR – Respond to negative arguments. Point out any arguments that have been dropped by the negative team. Tell the judge why you win. Tell the judge why the affirmative	2	5	6

The debater who gives the 1AC also gives the 1AR, and the debater who gives the 1NC gives the 1NR. So, each debater can think of themselves as the 1A (the person who gives the 1AC and 1AR), the 1N, the 2A, or the 2N, depending on their position in the debate.

Because the 2nd speaker (2A or 2N) gives the last speech, they're generally considered to be the "expert" for their side. Most teams have one partner give the 2A and the other partner give the 2N, so that each debater can focus on becoming an expert on one side of the debate.

For more information on speech order and responsibilities, read on, or check out pages 8 and 9 of the Policy Debate Manual at http://atlantadebate.org/wp-content/uploads/2012/01/AUDL-2k8-Policy-Debate-Manual-ver-1.1.pdf

The Constructive Speeches

Why have constructives?

At the end of the debate, the judge makes a decision based on which of the final speeches are more persuasive: the 2NR and the 2AR. So you might ask: if only the last two speeches matter, why have the other six? There are at least three answers to this question.

First, for an argument to be made in the 2NR or 2AR, it must have been present in the previous speeches (judges will discount 2NR or 2AR arguments that are "new.")

Second, the constructives are an opportunity to read evidence that can then be referenced in later speeches. While it isn't always necessary to cite evidence, doing so can often increase the credibility of your arguments.

Third, debaters can use the constructives to make a wide variety of arguments. To understand why this is valuable, consider the different approaches of two hypothetical affirmative teams: Team Horford and Team LeBron.

In the 2AC, Team Horford makes six arguments against the disadvantage. The negative answers four of these arguments very well, but answers two of the arguments poorly. In the rebuttals, Team Rondo takes advantage of this mistake by only talking about the arguments that were answered poorly.

In the 2AC, Team LeBron makes two arguments against the disadvantage. Because the negative has less arguments to worry about, they answer both very well; and since only two arguments were made in the 2AC, Team Lebron is only able to talk about these two arguments in the rebuttals.

Team Rondo and Team LeBron may end up talking about the same two arguments in the 2AR, but because Team Rondo made diverse arguments in the constructives, they've put the negative in a more difficult position, and their 2AR arguments are likely to be much more persuasive to the judge.

Roles of debaters during constructive speeches

The 1AC

The primary job of the 1AC is to read the entire affirmative case. That means reading he plan, harms, inherency, and solvency in your first speech. This also includes having the first speech highlighted so you know what and where to read.

The 1NC

Read all off-case positions and make arguments directly against the case (the affirmative read in the 1AC). All parts of every off-case positions should be read. For example- If you are reading the terrorism DA you should read the uniqueness, link, (internal link if applicable) and impact. The 1NC should have analytical arguments (arguments without cards) for the case debate and should have highlighted all off case positions. The 1NC sets the format for how arguments will be addressed on the case. For example- the 1NC makes 1 argument that says Derrick Rose is not a top five player because he does not average 30 points per game. The 2AC will reference that argument first before making their own arguments (off 1NC #1: etc etc etc)

The 2AC

The 2AC's job begins before the debate. All 2AC's should have some prepared speeches against commonly heard arguments both on and off case. This is call a block or writing blocks. (see the section "how to write a block") The 2AC sets the structure for how arguments are for off case positions. For example the 2NC will say off 2AC #1 when respond to arguments. Offer point by point refutation of your opponent's arguments (line by line debating).

The 2NC

The 2NC extend your teams arguments made in the 1NC. You should be making 1 to 2 point answers to your opponent's arguments they made in the 2AC. You can use the 3 point style of referencing arguments (they said, we said, why we win). For example (off 2AC #1 Derrick Rose won an MVP award. 1st- That was a long time again and 2nd- he hasn't played a full season in years the top NBA players don't miss time). The 2NC should have prepared blocks to the most common types of affirmative arguments. 2NC's should also point out any and all dropped arguments extend them and tell the judge why this means they win this part of the debate. (For example- They have conceded that terrorism is on the rise therefore we only have to win that our impact is true to win the debate.)

The Rebuttal Speeches

Debating is Clashing

What's the difference between *giving a speech* and *debating?* Giving a speech is mostly about building a relationship between you and your audience: being likable, clear, and persuasive to the person or people who you're speaking to. Debate's about that, too, but it also adds a third term: the other team. Good debaters engage with, or "clash," with what the other team says.

In day-to-day life "clash" is often viewed as a bad thing: directly criticizing another person's ideas can seem rude or inconsiderate. In debate, though – where both sides usually have an okay point – clash is better viewed as a sign of respect. Clashing with another team's argument means that you've listened to it, understood it, and made an attempt to respond to it. For example, consider two ways for a negative team to make the argument that surveillance is necessary to stop terrorism:

1. "If you vote for the affirmative, terrorists are going to attack the United States. Do you want another 9/11? The affirmative is basically letting Americans die. Why would you make it easier for terrorists to attack us? Surveillance is there to keep us safe, no surveillance, no safety."

2. "The affirmative says that we need to stop surveillance to preserve liberty. And we can all agree that liberty is important. But what good is liberty if you can't feel safe when you're at work, or getting on the train, or going to the grocery store? If you vote affirmative, it will be much harder for the government to prevent terrorist attacks, and thousands of Americans will be at risk. Liberty is important, but it can't truly exist unless you also have security, which is why you should vote negative to strike the right balance between them."

The second example, by responding directly the the affirmative's argument about liberty, manages to be more respectful and more effective at the same time.

Clash is important in every speech, but especially in the rebuttal speeches, which are primarily about **extending** your best arguments and comparing them to arguments the other team has made.

Extending arguments

When you make a good argument early in the debate, chances are you'll want to bring it back up again later in the debate. An "extended" argument is an argument made earlier in a debate that's made again in a team's next speech. An argument can be extended from the 1AC to the 2AC, the 2AC to the 1AR, the 1AR to the 2AR, the 1NC to the 2NC/1NR, or the 2NC/1NR to the 2NR.

How is extending an argument different from repeating yourself? **Good extensions contain three elements: an explanation, an impact, and a rebuttal of the other team's arguments.**

Explanations are a summary of a previous argument you've made. The best explanations include both a claim (what is our argument?) and a warrant (how do we know that argument is true?)

The Rebuttal Speeches

"Impacting" an argument means explaining how that argument affects the debate as a whole. When impacting an argument, ask yourself: if we're right about this argument, how does it tie back to our central point?

Rebutting the other team's arguments can take several forms. If the other team reads a piece of evidence to answer your piece of evidence, you should compare evidence, either by explaining why your evidence is good or why the other team's evidence is flawed (or, ideally, both). At other points, you may want to argue that the other team's argument or evidence doesn't apply to your original argument.

Here's what a 2NC extension of the Yoo article might look like:

"Extend our Yoo evidence from the 1NC – the plan encourages terrorist attacks by stopping intelligence agencies from "connecting the dots" necessary to find terrorists. **[explanation]**

This is important because the risk of terrorism is incredibly high, and threatens another 9/11-style catastrophe **[impact]**.

They say that mass surveillance makes it harder to sort through all the innocent people to find terrorists, but Yoo's point is that once we've found a possible terrorist, mass surveillance allows us to sort through the haystack to find other people who are in on the plot. **[rebuttal]**

Impact analysis

"Impact analysis," also known as "impact comparison," is the process of comparing reasons why the plan is good with reasons why the plan is bad. For instance, the affirmative might argue that the plan security a right to privacy. At the same time, the negative might argue that the plan would cause terrorism. Which is more important: privacy or stopping terrorism? Since whoever wins this argument will have a big advantage in the debate, impact analysis is a vital part of rebuttals.

There are four general reasons why one impact might be more important than other:

1. Magnitude – how big is an impact? This includes both how many people an impact affects and the way in which it affects them.

2. Risk – how likely is the impact to occur? Do we know that the impact is going to happen (maybe because it's already happening), or is a hypothetical future problem?

3. Timeframe – in how long will the impact occur? Impacts that happen farther into the future may be less likely to occur, since it's often more difficult to make predictions over the long term.

4. Turns the impact/solves the impact – how does your impact interact with the other team's impact? For instance: the affirmative might say: "without liberty, prioritizing security is almost pointless, since there's nothing to protect."

The acronym Mr.T can help you to remember impact analysis: magnitude, risk, and timeframe.

Role of debaters during Rebuttal Speeches

The 1AR

The primary jobs of the 1AR are to extend the best arguments from the 2AC and to rebut the negative's responses. As the most time pressured speech in the debate, the 1AR must quickly and efficiently make a variety of arguments.

The best way to deal with time pressure in the 1AR is to narrow the debate wherever possible. On disadvantages and off-case arguments, it isn't necessary to extend more than 1-3 2AC arguments into the 1AR. The 1AR should answer every negative argument on the advantages they plan to win, but the 1AR can choose to "kick" an advantage if they want to save time.

The 2NR

The primary jobs of the 2NR are:

First- "write the ballot for the judge." Writing the ballot for the judge means explaining, in a big-picture way, why you win the debate. One way to force yourself to do this is to start every 2NR with the words "the most important thing in the debate is..." and then to explain which issues the judge should look to first in deciding the debate. Impact analysis is often the best place to direct a judge's attention in the 2NR.

Second- to answer the 1AR's arguments. Make sure you not only answer the 1AR arguments but also think about what arguments the 2AR could make and answer those arguments too. Below is a brief example of what a 2NR would look like say on the Terrorism DA.

2NR EXAMPLE:
Terrorism is "the most important thing in the debate". It outweighs the affirmative on magnitude….A nuclear terrorist attack would kill millions and possibly risk extinction. The affirmative claims that the biggest impact is a reduction in rights. You can't use your rights if you do not exist. Also, if a terrorist attack happens rights will be crack down even further thus out DA solves any reduction of rights.

Now, the line by line debate- The 1AR says there is no link. First extend the Yoo evidence NSA mass surveillance is key to finding terrorist. Terrorist communicate via the internet and phone if we can deter that we can stop most terrorist attacks you're never heard of. The Aff ends mass surveillance how can they not link?

Lastly, they will say that affirming human rights matters. But if human rights matter what's a worse human rights infraction… letting terrorist kill innocent civilians or limiting some privacy that no one will notice unless they are engaging in terrorist activities.

The 2AR

As in the 2NR, the 2AR should attempt to "write the ballot for the judge." The 2AR should start by explaining the most important issues in the debate and then proceed to explaining other important arguments and answering 2NR arguments.

How to write a block and why?

What are blocks? Are they really, really, really important?

To answer the second question: yes, blocks are really, really really, important.

To answer the first question: blocks are pre-written and pre-organized responses to common arguments. Since there are only a few big arguments in the packet, you'll be debating the same arguments again and again: and since you'll be debating the same arguments again and again, it's important to think through how you'll respond to them.

Good blocks include both evidence from articles and analytical arguments. For instance: a 1NC block against the right to privacy advantage in the SSRA aff might include evidence from two articles in the packet, along with several analytical arguments that you come up with on your own. Similarly, a 2AC block against the Terrorism disadvantage might include several articles and several analytics.

Once a block is written, you can use it in every debate where you face a given argument. Every time the 1NC reads a Terrorism disadvantage, you can read your 2AC Terrorism block in response. This saves preparation time in the debate, ensures that you know your arguments well, and gives you time to choose the best arguments against the disadvantage.

Blocks are most important for the 1NC and 2AC, but you can make blocks for any speech other than the 1AC. For instance, there are only so many possible affirmative answers to the Economy disadvantage, so it's reasonable to write out a 2NC/1NR block to each in advance to each argument.

Finally, blocks can make it easy to adapt and improve your arguments based on experience and judge commentary. If a judge has a comment about a particular argument you made, it's easy to adjust that argument in the block so that it can be made more effectively in future debates.

What would a block look like?

Let's say the 1AC argues that schools should devote more time and resources to gym class, because more time in gym would improve students' health. The 1NC responds with a Math Disadvantage that says that more gym class would trade off with time in math class, decreasing how much students learn.

On the next page, there's a sample 2AC block that could be used to respond to the disadvantage. Then, any time the affirmative team hears the Math Disadvantage, they can pull out their block and immediately have access to their best arguments. Later, if they think of new or better arguments, they can add them to the block in the future.

Sample 2AC block- Math Block

Here let's assume that the negative has made an argument that Math class is more important Health class below is a 2AC block to that argument.

Sample 2AC block

1. Our advantage is more important than their disadvantage, because better health means that students live longer and better lives.

2. You have to be healthy before you can learn – more gym class means that students will do more with the limited time they have in math class. They'll have more of an opportunity to clear their minds and more energy in general.

3. Quality over quantity – high-quality math instruction is far more impactful than just spending a few more minutes in class. According to Elena Silver, a senior policy analyst at Education Sector, "Research reveals a complicated relationship between time and learning and suggests that improving the quality of instructional time is at least as important as increasing the quantity of time in school." They haven't proven that there's any relationship between spending more time in class and students performing better in math.

4. Math's boring, anyway. Who uses that stuff in the real world?

5. [More arguments, or evidence]

6. [More arguments, or evidence]

Now let's write a 2NC block to one of the arguments.

Sample 2NC block

AT: 2AC- Math is boring

AT (meaning answer to): 2AC- Math is boring (so at the top of the page write this so you know what you are answering)

1. Math is not boring. It is the cornerstone of our economy if we cannot do math we can never properly balance budgets and then we'd run out of money.

2. Math is fun. You can play games on your laptop, computer, or phone. Trivia games on facebook about math prove this is true.

See that easy!!

Judge Adaptation

Some of your judges may have coached debate for many years, or debated themselves in high school or college. Other judges may be at their first-ever debate tournament. Still other judges may have been judging debates casually for several months, but never coached or participated in the activity themselves.

Whatever judge you have, it's up to you to make your case in a way that's persuasive to *them*. Keep in mind that everyone has different ideas about what counts as a good or bad argument. As a debater, your goal isn't to make the argument that's most persuasive to *you* (although believing that your arguments are good ones is important). The real goal is to make the argument that's most persuasive to your *audience*: in this case, your judge.

Here's a few ideas for adapting to your judge:

1. Talk to your judge. Before the debate, it's fine to ask the judge how much experience they have with debate, and if they have any strong feelings about what you do or shouldn't or do in-round. Most judges will be happy to answer you: you're demonstrating that you respect their time, and that you want to debate in a way they'll enjoy.

2. Watch your judge. Some judges will smile, frown, nod or shake their head, look bored or engaged, or give you other non-verbal signals that they like or don't like the argument you're making. If it seems like they like your argument – remember to watch the judge and have your partner watch the judge to see what they like and dislike. Focus on that argument in later speeches, and you'll have a good chance to win the debate. If it seems like they don't like your argument, it's not a big deal – now you can be pretty sure that particular argument won't win you the debate, and you can move onto another argument that might be more effective.

3. Work on your argument skills *and* your speaking skills. All judges appreciate a good, logical argument, and all judges appreciate polished speaking skills. How much they care about each, though, might depend on their approach to the activity. The easiest solution is to get good at both: otherwise, you'll find yourself able to win debates only in front of certain kinds of judges.to win debates only in front of certain kinds of judges.

4. Be respectful to your opponents. Again, all judges want this, but some might care so much about it that they'll decide the debate on that alone. As in the rest of life,

5. Ask how you can do better. After the debate, ask the judge what you could work on for next time. Whether you won or lost, chances are that your judge will have some ideas on how you can improve. And, if you end up debating in front of that judge again, you can keep their comments in mind to build a case that's uniquely appealing to them.

Cutting Cards

Why do we care about cards?

We're not experts! When we have experts supporting our claims we look more creditable… You can talk about why they are creditable and why your opponent's cards are not creditable… It gives us a way to have different forms of clash and adds to the clash that already exists.

So what makes a card good???

3 things are needed to make a card a good card

1st- It must have good warrants. It should explain why your claims are true. It can do this either with empirical evidence (historical reasons) or logical reason (A is correct because of B and B is correct because of C etc etc) If the reason is logical then the card should go into detail about why. It can give statistical reasons for example – global warming is real because the top 100 scientist have don't over 100 years of analysis determine that the earth is warming at an accelerated rate.

2nd- The qualifications of the author must be good. If you find the greatest nuclear war impact card ever and its written by James Smith 3rd grade dropout and future alien test subject this person is probably not creditable enough to be talk about the effects of nuclear war. Make sure the person talking about the truth claims are creditable. Wikipedia is NOT a credible source it may not be peer reviewed instead use it to find the work referenced on the page.

3rd- date of publication- If your argument is time sensitive then having the most up to date information is very important. If you are running terrorism DA and you are using a uniqueness card from the 90's that isn't as good as a card from this month.

So what makes a bad card????

So there are a couple of things we can try to avoid

1st- try to avoid cards that say "sometimes," "occasionally," "can," "might," "it is conceivable that…," and "has the potential to…"

2nd- power tagging or over-tagging your cards- if your tag has more words that you read in the card… it is not a good card.

3rd- it is out of context- meaning that's not what the author intended to say. If you only use the part of the card that supports what you want to say but ignore where she says "however, I disagree with the above argument." That is taking the card out of context and it should not be done.

There are 3 parts to an evidence card:

1) The Tag/Claim—a brief statement summarizing the point of the evidence. The tag must be a complete idea (subject and verb). You write the tag after reading the evidence. (see “Evidence Citations” below).

2) The source citation (see “Tags” below)

3) The exact passage as copied from the article (cut and paste) and placed in a document to be copied and shared. (see “Handing in Your Evidence” below)

Sample Card

Offshore wind is too expensive and won't work – the Netherlands have already tried the plan and failed-TAG
Nelson, 11 (D. Brady Nelson, an economist, writing for The Heartland Institute, a think tank advocating for free markets. Published December 30, 2011. Available at http://news.heartland.org/newspaper-article/2011/12/30/dutch-pull-plug-offshore-wind-subsidies)- CITATION

The nation known for its iconic windmills is throwing in the towel on offshore wind power, as Dutch officials have determined the Netherlands can no longer afford large-scale subsidies for expensive wind turbines that cannot produce electricity at economically competitive prices.
The decision is a powerful blow against renewable power advocates who have long asserted Holland proves renewable power can be practical and economical. PASSAGE

Using Articles

Reading, understanding, and deploying the articles in this packet is probably the single most important thing you can do to win debates. The articles are drawn from many different perspectives on surveillance, and make a variety of arguments on both sides. If you ever think to yourself: "how do I answer this argument?" - there's a pretty good chance you'll be able to find the answer in one of the affirmative or negative articles. The articles also allow you to use evidence to support your claims, which – when used effectively – can make your arguments much more credible than the other team's arguments.

More Resources

Articles

America's "Big Brother": A Century of U.S. Domestic Surveillance by DAVID P. HADLEY-
http://origins.osu.edu/article/americas-big-brother-century-us-domestic-surveillance

The Electronic Frontier Foundation- https://www.eff.org/nsa-spying/timeline

Books

No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State
By Glenn Greenwald

Videos

Practice Debate on this year's topic
https://www.youtube.com/watch?v=Id6Ga6DCnP0

Chomsky on Snowden & Why NSA Surveillance Doesn't Stop Terror While the U.S. Drone War Creates It (4:53)
https://www.youtube.com/watch?v=h-gjxVwyjgg

Glenn Greenwald VS Alan Dershowitz (2014) "State Surveillance" (1:33:37)
https://www.youtube.com/watch?v=QWuCIWLKurg

Explanation of the Plan

The plan prohibits federal intelligence agencies like NSA from engaging in bulk searches and/or seizures of Americans' electronic communications without a warrant. This is the major provision of the Surveillance State Repeal Act, a broad legislative proposal that eliminates surveillance authorities derived from the USA PATRIOT Act, the FISA Amendments Act of 2008, and Executive Order 12333. This would substantially constrain the NSA's mass surveillance programs including Upstream, PRISM, and X-KEYSCORE by requiring that collection occur only pursuant to an individualized warrant.

Explanation of the Tech Leadership Advantage

The affirmative argues that NSA surveillance is undermining the global competitiveness of the U.S. tech industry because it is undermining international trust in American companies like Google, Apple, Microsoft, and Cisco. These companies are losing billions of dollars in revenue as their global market share shrinks. America's overall tech leadership depends on the strength of these companies because they form the industrial base that produces innovative products and services upon which our national security depends. Without tech leadership, America will be unable to maintain its hegemony. The affirmative argues that this loss of leadership will create a dangerous power vacuum that exacerbates security threats and risks conflict.

Affirmative Updates

New Tech Leadership Advantage for Novices

Contention __ is our Advantage – Tech Leadership

First, NSA surveillance is decimating the U.S. tech industry. The fallout will be large and long-term unless confidence in U.S. companies is restored.

Donohue 15 — Laura K. Donohue, Associate Professor of Law, Director of the Center on National Security and the Law, and Director of the Center on Privacy and Technology at Georgetown University, has held fellowships at Stanford Law School's Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard University's John F. Kennedy School of Government, holds a Ph.D. in History from the University of Cambridge and a J.D. from Harvard Law School, 2015 ("High Technology, Consumer Privacy, and U.S. National Security," Forthcoming http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2469&context=facpub Accessed 08-08-2015)

II. Economic Impact of NSA Programs

The NSA programs, and public awareness of them, have had *an immediate and detrimental impact* on the U.S. economy. They have cost U.S. companies *billions of dollars* in lost sales, even as companies have seen their *market shares decline*. American multinational corporations have had to develop new products and programs to offset the revelations and to build consumer confidence. At the same time, foreign entities have seen revenues increase. Beyond the immediate impact, the revelation of the programs, and the extent to which the NSA has penetrated foreign data flows, has undermined U.S. trade agreement negotiations. It has spurred data localization efforts around the world, and it has raised the spectre of the future role of the United States in Internet governance. Even if opportunistic, these shifts signal *an immediate and long-term impact* of the NSA programs, and public knowledge about them, on the U.S. economy.

A. Lost Revenues and Declining Market Share

Billions of dollars are on the line because of worldwide concern that the services provided by U.S. information technology companies are neither secure nor private.13 Perhaps nowhere is this more apparent than in cloud computing. [end page 3]

Previously, approximately 50% of the worldwide cloud computing revenues derived from the United States.14 The domestic market thrived: between 2008 and 2014, it more than tripled in value. 15 But within weeks of the Snowden leaks, reports had emerged that U.S. companies such as Dropbox, Amazon Web Services, and Microsoft's Azure were losing business. 16 By December 2013, ten percent of the Cloud Security Alliance had cancelled U.S. cloud services projects as a result of the Snowden information.17 In January 2014 a survey of Canadian and British businesses found that one quarter of the respondents were moving their data outside the United States.18

The Information Technology and Innovation Foundation estimates that declining revenues of corporations that focus on cloud computing and data storage *alone* could reach *$35 billion* over the next three years.19 Other commentators, such as Forrester Research analyst James Staten, have put actual losses *as high as $180 billion* by 2016, unless something is done to *restore confidence in data held by U.S. companies*.20

The monetary impact of the NSA programs extends *beyond cloud computing to the high technology industry*. Cisco, Qualcomm, IBM, Microsoft, and Hewlett-Packard have *all* reported declining sales *as a direct result* of the NSA programs.21 Servint, a webhosting company based in Virginia, reported in June 2014 that its international clients had dropped by *50%* since the leaks began.22 Also in June, the German government announced that because of Verizon's complicity in the NSA program, it would end its contract with the company, which had previously [end page 4] provided services to a number of government departments.23 As a senior analyst at the Information Technology and Innovation Foundation explained, "It's clear to *every single tech company* that this is affecting their bottom line."24 The European commissioner for digital affairs, Neelie Kroes, predicts that the fallout for U.S. businesses in the EU alone will amount to *billions of Euros*.25

Not only are U.S. companies losing customers, but they have been forced to *spend billions* to add encryption features to their services. IBM has invested more than a billion dollars to build data centers in London, Hong Kong, Sydney, and elsewhere, in an effort to reassure consumers outside the United States that their information is protected from U.S. government surveillance. 26 Salesforce.com made a similar announcement in March 2014.27 Google moved to encrypt terms entered into its browser. 28 In June 2014 it took the additional step of releasing the source code for End-to-End, its newly-developed browser plugin that allows users to encrypt email prior to it being sent across the Internet.29 The following month Microsoft announced Transport Layer Security for inbound and outbound email, and Perfect Forward Secrecy encryption for access to OneDrive.30 Together with the establishment of a Transparency Center, where foreign governments could review source code to assure themselves of the integrity of Microsoft software, the company sought to put an end to both NSA back door surveillance and doubt about the integrity of Microsoft products. 31
Foreign technology companies, in turn, are seeing revenues *increase*. Runbox, for instance, an email service based in Norway and a direct competitor to Gmail and Yahoo, almost immediately made it publicly clear that it does not comply with foreign court requests for its customers' personal information. 32 Its customer base increased 34% in the aftermath of the Snowden leaks. 33 Mateo Meier, CEO of Artmotion, Switzerland's biggest offshore data hosting company, reported that within the first month of the leaks, the company saw a 45% rise in revenue.34 Because Switzerland is not a member of the EU, the only way to access data in a Swiss data center is through an official court order demonstrating guilt or liability; there are no exceptions for the United States.35 In April 2014, Brazil and the EU, which previously used U.S. firms to supply undersea cables for transoceanic [end page 5] communications, decided to build their own cables between Brazil and Portugal, using Spanish and Brazilian companies in the process. 36 OpenText, Canada's largest software company, now guarantees customers that their data remains outside the United States. Deutsche Telekom, a cloud computing provider, is similarly gaining more customers.37 Numerous foreign companies are marketing their products as "*NSA proof*" or "*safer alternatives*" to those offered by U.S. firms, *gaining market share* in the process. 38

Second, this jeopardizes national security. A strong U.S. tech sector is the lynchpin of U.S. global power.

Donohue 15 — Laura K. Donohue, Associate Professor of Law, Director of the Center on National Security and the Law, and Director of the Center on Privacy and Technology at Georgetown University, has held fellowships at Stanford Law School's Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard University's John F. Kennedy School of Government, holds a Ph.D. in History from the University of Cambridge and a J.D. from Harvard Law School, 2015 ("High Technology, Consumer Privacy, and U.S. National Security," Forthcoming http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2469&context=facpub Accessed 08-08-2015)

To the extent that the NSA programs, and public knowledge of them, has harmed the U.S. economy, they have harmed *U.S. national security*. The country's economic strength is part of what enables the United States to *respond to external and internal threats*. The ability to defend the country against would-be aggressors requires *resources*—e.g., to build and equip a military force, to move troops, to [end page 14] respond to attacks in whatever form they may materialize. Many of the supplies needed to fend off overreaching by either states or non-state actors derive not from government production, but from *the private sector*. To the extent that a weak private sector emerges, the government's ability to respond is *harmed*.
Beyond this, economic security allows the country the freedom to determine its international and domestic policies *on the merits, not on need*. Where the United States is in a strong economic position, it is *less vulnerable in international negotiations*, such as those related to trade. It is also in a politically superior position, where it can *use its wealth to accomplish the desired ends*.
A strong economy also ensures that citizens have their needs met, with sufficient income levels for housing, food, clothing, and

education. This, in turn, generates *social and political stability*, which allows for the development of communities, which creates greater cohesion among citizens. It also contributes to the evolution of democratic deliberations, reinforcing the rule of law. Economic security allows for *growth and innovation*, which is fed by education and opportunity. Innovation, in turn, allows the country to continue to *adapt to the evolving environment and international context*. There are further considerations. But these suffice to illustrate the importance of economic strength to U.S. national security writ large.

Finally, U.S. leadership resolves a myriad of catastrophic global impacts. The right policies will prevent decline.

Lieber 13 — Robert J. Lieber, Professor of Government and International Affairs at Georgetown University, has held fellowships from the Guggenheim, Rockefeller and Ford Foundations, the Council on Foreign Relations, and the Woodrow Wilson International Center for Scholars, holds a Ph.D. from the Department of Government at Harvard University, 2013 ("Against the Idea of American Decline," inFocus Quarterly—the Jewish Policy Center's journal, Volume VII, Number 2, Summer, Available Online at http://www.jewishpolicycenter.org/4398/american-decline, Accessed 08-17-2013)

The stakes are *immense*, and not only for America itself. Since World War II, the United States has been the world's *principal provider* of collective goods. The leading international institutions of today and much of the existing international order have been *a product of American leadership*. Evidence from recent decades suggests that the alternative is *not* that some other institution or major power (the UN, the EU, China, India, Russia, or Japan) will take its place, but that *none will*. Some have argued that the effects of globalization are leading the world toward greater cooperation and even collective security. This may be a comforting view about the implications or even desirability of American disengagement, but practical experience suggests otherwise. In dealing with *failed states*, *ethnic cleansing*, *human rights*, the *environment*, *trade liberalization*, *regional conflict*, and *nuclear proliferation*, emerging powers such as the BRICS (Brazil, Russia, India, China, and South Africa) have been *largely unhelpful*, and others in Europe, Asia, Africa, or Latin America have more often than not *lacked the will or capacity to act collectively* on common tasks.
For the United States, the maintenance of its leading role *matters greatly*. The alternative would not only be a *more disorderly and dangerous world* in which its own *economic and national security* would be adversely affected, but also *regional conflicts* and *the spread of nuclear weapons* would be more likely. In addition, allies and those sharing common values, especially liberal democracy and the market economy, would *increasingly be at risk*. Ultimately, America's ability to avoid long-term decline—and the significant international retrenchment that would be a result of severely reduced resources—becomes *a matter of policy and political will*. There is *nothing inevitable or fated* about decline. Both past experience and national attributes matter greatly. Flexibility, adaptability, and the capacity for course correction provide the United States with a *resilience* that has proved invaluable in the past and is likely to do so in the future.

New Cards for Solvency

The plan dramatically curtails domestic surveillance under all relevant legal authorities.

Williams 15 — Lauren C. Williams, Technology Reporter for *ThinkProgress* who covers consumer privacy, cybersecurity, tech culture, and the intersection of civil liberties and tech policy, holds a master's in journalism from the University of Maryland, 2015 ("House Members Move To Repeal The Patriot Act With Strongest Anti-Surveillance Bill To Date," *ThinkProgress*, March 24th, Available Online at http://thinkprogress.org/election/2015/03/24/3638234/house-members-move-repeal-patriot-act-strongest-anti-surveillance-bill-date/, Accessed 06-29-2015)

Overshadowed by congressional budget talks, Reps. Mark Pocan (D-WI) and Thomas Massie (R-KY) quietly introduced *the strongest anti-surveillance bill* to date that would strip the government of much of its spying power.
"This isn't just tinkering around the edges, it's a *meaningful overhaul* that makes sure the meaningless surveillance of emails and cell phones are *done away with*," Pocan said in a briefing for congressional staffers Tuesday.
The Surveillance State Repeal Act, or HR 1466, aims to repeal the Patriot Act, including the controversial telephony metadata collection program, and strip many of the surveillance permissions granted under the Foreign Intelligence Surveillance Act amendments passed under President George W. Bush in 2008.
Reps. Alan Grayson (D-FL), James McGovern (D-MA), and Lloyd Doggett (D-TX) are original co-sponsors on the bill, which was ushered in March 19.
Surveillance has been a prominent in public debate since former National Security Agency contractor Edward Snowden's massive document leak exposed several government intelligence programs, namely the NSA's dragnet telephone metadata collection.
But despite public outrage over civil liberties violations and calls for immediate reform, little has been done since Snowden's 2013 revelations.
The controversial phone metadata surveillance program was reauthorized for the fifth time under Section 215 of the Patriot Act extended until June. Other sections of the Patriot Act are also expected to sunset this summer.
In 2014, President Barack Obama announced a scaled-back surveillance program that would permit intelligence agencies to collect phone records without storing them, and agencies could only query the data stored by a third party after getting a warrant except in true emergencies. Those queries were limited to people who have called or been called by suspected terrorists.
Revised versions of the USA Freedom Act, a counter bill to the Patriot Act introduced after the Snowden leaks, have stalled, and only offered smaller changes.
But with continued bipartisan support, HR 1466 could rekindle hope for *sweeping changes* in surveillance laws.
"All mass surveillance does is violate the rights and put a chilling effect on the American people," causing people to change their behavior because they're afraid of government spying, said Patrick Eddington, national security and civil liberties policy analyst for the libertarian think tank CATO Institute, at Tuesday's meeting.
The Patriot Act, as written, is heavily contingent on Executive Order 12333, signed by President Ronald Reagan more than 30 years ago. The order has been since used as the legal justification for some of the NSA's surveillance programs including backdoor access to internet companies' data centers.
If passed, the Surveillance State Repeal Act would *ban the use of order 12333* and close those data access loopholes built in to software and devices' encryption. It would also extend greater protections to whistleblowers, such as making it illegal to fire or retaliate against them.
"This is not about Edward Snowden. If you want to talk about Edward Snowden, we need better

whistleblower protections so it doesn't happen again," Massie said, indicating the contractor turned whistleblower couldn't legally have disclosed problems with the agency to him or other Congress members." Pocan and Massie's bill would upend that justification by repealing the programs under FISA and the Patriot Act that allow *indiscriminate collection and access to Americans' communications*. For example, HR 1466 would repeal the amendment that permits email harvesting, with few exceptions, and make it illegal to survey individuals *without a warrant and probable cause*. The bill also mandates *domestic surveillance programs* be monitored for compliance by the Government Accountability Office.

Answer to Alt-Cause STEM workers

They Say: "Alternate Causality – STEM"

There is no STEM shortage — consensus of studies.

Camarota 14 — Steven Camarota, Director of Research for the Center for Immigration Studies, holds a Ph.D. in Public Policy Analysis from the University of Virginia, 2014 ("What STEM Shortage?," *National Review*, May 20th, Available Online at http://www.nationalreview.com/article/378334/what-stem-shortage-steven-camarota, Accessed 08-09-2015)

The idea that we need to allow in more workers with science, technology, engineering, and math ("STEM") background is an article of faith among American business and political elite.

But in a new report, my Center for Immigration Studies colleague Karen Zeigler and I analyze the latest government data and find *what other researchers have found*: The country has well more than twice as many workers with STEM degrees as there are STEM jobs. Also *consistent with other research*, we find only modest levels of wage growth for such workers for more than a decade. Both employment and wage data indicate that such workers are *not in short supply*.

Reports by the Economic Policy Institute (EPI), the RAND Corporation, the Urban Institute, and the National Research Council have all found *no evidence* that STEM workers are in short supply. PBS even published an opinion piece based on the EPI study entitled, "The Bogus High-Tech Worker Shortage: How Guest Workers Lower U.S. Wages." This is PBS, mind you, which is as likely to publish something skeptical of immigration as it is to publish something skeptical of taxpayer subsidies for the Corporation for Public Broadcasting.

RAND's analysis looked backward in time and found, "Despite recurring concerns about potential shortages of STEM personnel . . . we did not find evidence that such shortages have existed *at least since 1990*, nor that they are on the horizon."

The scholarly evidence is overwhelmingly on our side.

Teitelbaum 14 — Michael S. Teitelbaum, Senior Research Associate with the Labor and Worklife Program at Harvard Law School, former Vice President and Program Director at the Alfred P. Sloan Foundation, former faculty member at Princeton University and Oxford University, former Vice Chair and Acting Chair of the U.S. Commission on International Migration, holds a D.Phil. in Demography from Oxford University, 2014 ("The Myth of the Science and Engineering Shortage," *The Atlantic*, March 19th, Available Online at http://www.theatlantic.com/education/archive/2014/03/the-myth-of-the-science-and-engineering-shortage/284359/, Accessed 08-09-2015)

A *compelling body of research* is now available, from *many leading academic researchers* and from *respected research organizations* such as the National Bureau of Economic Research, the RAND Corporation, and the Urban Institute. *No one has been able to find any evidence* indicating current widespread labor market shortages or hiring difficulties in science and engineering occupations that require bachelors degrees or higher, although some are forecasting high growth in occupations that require post-high school training but not a bachelors degree. *All* have concluded that U.S. higher education produces far more science and engineering graduates annually than there are S&E job openings—the only disagreement is whether it is 100 percent or 200 percent more. Were there to be a genuine shortage at present, there would be evidence of employers raising wage offers to attract the scientists and engineers they want. But the evidence points in *the other direction*: Most studies report that real wages in many—but not all—science and engineering occupations have been flat or slow-growing, and unemployment as high or higher than in many comparably-skilled occupations.

Answer to neg solvency argument- Circumvention

They Say: "Plan Gets Circumvented"

The plan *won't* be circumvented — it eliminates all authority for warrantless domestic surveillance.

Kibbe 15 — Matt Kibbe, President of *FreedomWorks*— a conservative and libertarian advocacy group, former Chief of Staff to U.S. Representative Dan Miller (R-FL), former Senior Economist at the Republican National Committee, former Director of Federal Budget Policy at the U.S. Chamber of Commerce, and former Managing Editor of Market Process—an academic economics journal published by the Center for the Study of Market Processes at George Mason University, 2015 ("Letter in Support of the Surveillance State Repeal Act," *FreedomWorks*, March 24th, Available Online at http://www.freedomworks.org/content/letter-support-surveillance-state-repeal-act, Accessed 06-19-2015)

As one of our more than 6.9 million FreedomWorks members nationwide, I urge you to contact your representative today and ask him or her to support H.R. 1466, the Surveillance State Repeal Act. Introduced by Rep. Mark Pocan (D-Wis.) and Rep. Thomas Massie (R-Ky.), the bipartisan bill would restore our civil liberties and *stop unconstitutional domestic spying* on U.S. citizens.

The Surveillance State Repeal Act would repeal the misguided USA PATRIOT Act and the FISA Amendments Act of 2008. The PATRIOT Act, passed in the panicked aftermath of the tragic September 11th attacks, gives the federal government an unprecedented amount of power to monitor the private communications of U.S. citizens without a warrant. The FISA Amendments Act of 2008 expanded the wiretapping program to grant the government more power. Both laws *clearly violate* our 4th Amendment right against unreasonable searches.

The Surveillance State Repeal Act would prohibit the government from collecting information on U.S. citizens obtained through private communications *without a warrant*. It would mandate that the Government Accountability Office (GAO) regularly *monitor domestic surveillance programs* for compliance with the law and issue an annual report. A section of the bill explicitly forbids the government from mandating that electronic manufacturers install "back door" spy software into their products. This is a legitimate concern due to a recently released security report finding government spying software on hard drives in personal computers in the United States.

It's important to note that the Surveillance State Repeal Act saves anti-terrorism tools that are useful to law enforcement. It retains the ability for government surveillance capabilities against *targeted* individuals, regardless of the type of communications methods or devices being used. It would also protect intelligence collection practices involving *foreign targets* for the purpose of investigating weapons of mass destruction.

We urge you to voice your support for the Surveillance State Repeal Act to stop *unconstitutional spying on U.S. citizens*. It is our hope that you will ask your representatives to co-sponsor and otherwise support the bill if they have not already done so.

The plan is a "*hard reset*" of surveillance authority — it can't be circumvented.

Meinrath 15 — Sascha Meinrath, Founder of X-Lab—a future-focused technology policy and innovation project, Fellow and Doctoral Candidate at the Institute of Communications Research at the University of Illinois at Urbana-Champaign, Founder and former Director of the Open Technology Institute, former Vice President and Research Director of the Wireless Futures Program at the New America Foundation, holds an M.A. in Social-Ecological Psychology from the University of Illinois at Urbana-Champaign, 2015 ("Opinion:

Meaningful surveillance reform must prioritize civil liberties," *Passcode*—the *Christian Science Monitor* security and privacy publication, March 24th, Available Online at http://www.csmonitor.com/World/Passcode/Passcode-Voices/2015/0324/Opinion-Meaningful-surveillance-reform-must-prioritize-civil-liberties, Accessed 06-20-2015)

Now is the time for *meaningful* surveillance reform. Across the political spectrum, from the progressive left to libertarian right, there is widespread agreement that mass surveillance has exceeded the bounds of legality, morality, and efficacy. Today, the key ingredients for a successful surveillance reform agenda can be found in the boldly titled Surveillance State Repeal Act.

Among its bold provisions, it repeals the Patriot Act and the excesses of the 2008 amendment to the Foreign Intelligence Surveillance Act. It would also restore our civil liberties by clearing out legislation that even the Patriot Act's main author, Rep. Jim Sensenbrenner (R) of Wisconsin, has stated is extremely troubling.

The Surveillance State Repeal Act begins with the right questions: What parts of these laws, which have proven to be the catalysts for widespread civil liberties violations, should we even keep? What kinds of surveillance actually work?

While many have made light of Benjamin Franklin's quote, "Those who would give up essential liberty, to purchase a little temporary safety, deserve neither liberty nor safety," few have trivialized the conditions undergirding his missive – namely, that interpretations of law were often "'of an extraordinary nature,' without informing us wherein that extraordinary nature consisted," and rejected participatory democracy for "disagreeing with new discovered meanings, and forced constructions of a clause in the proprietary [secret] commission."

The parallels to the current surveillance state that the proposed repeal act aims to address couldn't be clearer.

Previous reform efforts have floundered because they compromised – attempting to lessen the diminution of our freedoms, rather than prioritizing our inherent and inalienable right to "the preservation of life, liberty and the pursuit of happiness."

Surveillance reform needs grassroots support – same as the millions of people who killed the Stop Online Piracy Act in 2012 by overloading congressional phone lines – in order to pass, and Americans of all stripes are only mobilized by unambiguous and forceful legislation to protect their rights.

The Surveillance repeal act is clear, concise, and accessible (the latest version is less than 10 pages long), and rolls back some of the worst constitutional abuses with *a hard reset* of the US government's surveillance powers.

Answer to Presidential Powers DA

Executive Flexibility Bad — unchecked presidential powers risk nuclear war.

Adler 11 — David Gray Adler, Director of the Andrus Center for Public Policy and Cecil Andrus Professor of Public Affairs at Boise State University, former James A. McClure Professor and Director of the James A. and Louise McClure Center for Public Policy Research at the University of Idaho, former Professor of Political Science and Director of the Center for Constitutional Studies at Idaho State University, holds a Ph.D. from the University of Utah, 2011 ("Presidential Ascendancy in Foreign Affairs and the Subversion of the Constitution," Paper Presented to the German-American Conference on "Comparisons of Parliamentary and Coordinated Power (Presidential) Systems," March, Available Online at http://www.civiced.org/pdfs/GermanAmericanConf2011/Adler.pdf, Accessed 08-13-2015, p. 19-21)

Conclusions

The ascendancy of the president in the area of war and peace finds *no foundation* in the Constitution. It reflects, rather, the tendency among presidents—Republicans and Democrats, conservatives and liberals alike—to aggrandize and abuse power. Usurpation of the war power, particularly in an era that exalts the concept of a personal or Imperial Presidency at the expense of a constitutionally confined presidency, lays bare the paramountcy of a president's personal characteristics. Indeed, it is precisely in the realm of a personal presidency that a decidedly executive perspective, subject to the full measure of the president's talents, strengths and temperament, as well as his judgment, knowledge and self-restraint, will be brought to the policy anvil. The historical portrait may not be pretty. Consider, for example, the arrogance and self-righteousness of Woodrow Wilson, the inclination toward dramatic posturing by Theodore Roosevelt, the inattentiveness of Ronald Reagan, as well as the indiscipline of Bill Clinton and the stunning, yet naïve certainties of George W. Bush. Then, [end page 19] too, there is the question of the president's ambition, political agenda, personal distractions and desire for fame and glory.

A considerable literature urges executive supremacy, and extols the supposed virtues of presidential assertion, domination and control; yet this body of work often ignores the dimensions of executive *flaws, foibles, and frailties*. The electoral process is not infallible; an elected president may lack the *wisdom, temperament and judgment*, not to mention *perception, expertise* and *emotional intelligence* to produce success in matters of war and peace. Those qualities which, to be sure, are attributes of the occupant and not of the office, cannot be conferred by election. 104 Champions of a unilateral executive war power have ignored and, perhaps, forgotten the institutional safeguards of *separation of powers, checks and balances* and *collective decision making* urged by the Framers as protection from the flaws of unilateral judgment and the temptations of power. Among those who have lost their memory of the virtues and values of those institutional safeguards, apparently, are those many members of Congress and dozens of judges over the years, who have acquiesced in the face of presidential usurpation in the realm of national security. Perhaps seduced by the allure of swift, bold military action under the banner of nationalism, patriotism and ideological and political certainty, these representatives, some elected and others appointed, have forgotten their institutional duties and responsibilities. It is not probable, but certain, that the Imperial Presidency would be brought to heel if the other branches duly exercised their powers and responsibilities, but they have lost their way. No less a personage than the late Senator Sam Ervin questioned, in the course of hearings in 1973 on the unchecked executive practice of impoundment, whether the Congress of the United States will remain a viable institution or whether the current trend toward the executive use of legislative power is to continue unabated until we have arrived at a presidential form of government." Senator Ervin justly criticized executive aggrandizement of legislative authority, but he also found Congress culpable for the rise of presidential dominance: "The executive branch has been able to seize power so brazenly only because the Congress has lacked the courage and foresight to maintain its constitutional position." 105 What was true of impoundment, is true of the war power. Only "Congress itself," to borrow from Justice Robert H. Jackson, "can prevent power from slipping through its fingers." 106

The siren song of unilateral presidential war making ignores the tragedies of *Korea, Vietnam* and *Iraq*, and the cost to America of

its precious blood and treasure as well as denied and stolen. The American constitutional system is grounded in the conviction, as James Iredell explained it, that there is "nothing more fallible than human judgment." 107 It is sometimes observed that the intentions of the Framers are outdated and irrelevant. But before we too readily acquiesce in that verdict, we might do well to recall the policy considerations that underlay the decision to vest the war power in Congress and not the president. Painfully aware of the horror and destructive consequences of warfare, the Framers wisely determined that before the very fate of the nation were put to risk that there ought to be some discussion, some deliberation by Congress, the people's representatives. The Founders did not, as James Wilson explained it, want "one man to hurry us into war."108 As things stand in the United States today, however, the president has been exercising that power. The "accretion of dangerous power," Justice Frankfurter has reminded us, occurs when power is freed from institutional restraints, checks and safeguards. The eminently sound rationales that convinced the Framers to vest the war power [end page 20] exclusively in Congress, however, have been ignored and abandoned in recent decades. There is a cost in that, too. It was the artist, Goya, who in one of his etchings, graphically portrayed the consequences of ignoring reason with the inscription: "The sleep of reason brings forth monsters."109 There is no comfort to be found in a practice which permits unilateral executive war making, particularly in the age of *nuclear weapons*, when war might lead to *the incineration of the planet*. When it comes to the constitutional design for war making, it is clear that the Framers' policy concerns are *even more compelling today* than they were two centuries ago.

Next is the Tyranny turn —

A. Yoo's theory of unchecked presidential war powers causes tyranny.

Schneier 5 — Bruce Schneier, Chief Technology Officer for Counterpane Internet Security, Fellow at the Berkman Center for Internet and Society at Harvard Law School, Program Fellow at the New America Foundation's Open Technology Institute, Board Member of the Electronic Frontier Foundation, Advisory Board Member of the Electronic Privacy Information Center, 2005 ("The Security Threat of Unchecked Presidential Power," *Minneapolis Star-Tribune*, December 21st, Available Online at https://www.schneier.com/blog/archives/2005/12/the_security_th_1.html, Accessed 08-13-2015)

In defending this secret spying on Americans, Bush said that he relied on his constitutional powers (Article 2) and the joint resolution passed by Congress after 9/11 that led to the war in Iraq. This rationale was spelled out in a memo written by John Yoo, a White House attorney, less than two weeks after the attacks of 9/11. It's a dense read and a *terrifying piece of legal contortionism*, but it basically says that the president has unlimited powers to fight terrorism. He can *spy on anyone*, *arrest anyone*, and *kidnap anyone* and *ship him to another country* ... merely on the *suspicion* that he might be a terrorist. And according to the memo, this power lasts until there is no more terrorism in the world.

Yoo starts by arguing that the Constitution gives the president total power during wartime. He also notes that Congress has recently been quiescent when the president takes some military action on his own, citing President Clinton's 1998 strike against Sudan and Afghanistan.

Yoo then says: "The terrorist incidents of September 11, 2001, were surely far graver a threat to the national security of the United States than the 1998 attacks. ... The President's power to respond militarily to the later attacks must be correspondingly broader."

This is novel reasoning. It's as if the police would have greater powers when investigating a murder than a burglary.

More to the point, the congressional resolution of Sept. 14, 2001, specifically refused the White House's initial attempt to seek authority to preempt any future acts of terrorism, and narrowly gave Bush permission to go after those responsible for the attacks on the Pentagon and World Trade Center.

Yoo's memo ignored this. Written 11 days after Congress refused to grant the president wide-ranging powers, it admitted that "the Joint Resolution is somewhat narrower than the President's constitutional authority," but argued "the President's broad constitutional power to use military force ... would allow the President to ... [take] whatever actions he deems appropriate ... to pre-empt or respond to terrorist threats from new quarters."

Even if Congress specifically says no.

The result is that the president's wartime powers, with its armies, battles, victories, and congressional declarations, now extend to the rhetorical "War on Terror": a war with no fronts, no boundaries, no opposing army, and – most ominously – *no knowable "victory."* Investigations, arrests, and trials are not tools of war. But according to the Yoo memo, the president can define war however he chooses, and remain "at war" for as long as he chooses.

This is *indefinite dictatorial power*. And I don't use that term lightly; the very definition of a dictatorship is a system that puts a ruler above the law. In the weeks after 9/11, while America and the world were grieving, Bush built *a legal rationale for a dictatorship*. Then he immediately started using it to avoid the law.

This is, fundamentally, why this issue crossed political lines in Congress. If the president can ignore laws regulating surveillance and wiretapping, why is Congress bothering to debate reauthorizing certain provisions of the Patriot Act? Any debate over laws is predicated on the belief that the executive branch will *follow the law*.

This is not a partisan issue between Democrats and Republicans; it's a president unilaterally overriding the Fourth Amendment, Congress and the Supreme Court. Unchecked presidential power has nothing to do with how much you either love or hate George W. Bush. You have to imagine this power in the hands of the person you most don't want to see as president, whether it be Dick Cheney or Hillary Rodham Clinton, Michael Moore or Ann Coulter.

Laws are what give us security against the actions of the majority and the powerful. If we discard our constitutional protections against *tyranny* in an attempt to protect us from terrorism, *we're all less safe as a result*.

B. Tyranny is an existential risk — unchecked mass surveillance crushes freedom.

Dvorsky 8 — George Dvorsky, Chair of the Board for the Institute for Ethics and Emerging Technologies, co-founder and president of the Toronto Transhumanist Association, 2008 ("Future risks and the challenge to democracy," Institute for Ethics & Emerging Technologies, December 24th, Available Online at http://ieet.org/index.php/IEET/more/2773, Accessed 04-11-2012)

Despite the claims of Fukuyama and Bush, and despite our own collective sensibilities, we cannot take our democracies and civil liberties for granted. When appraising the condition of democracies we must realize that past successes and apparent trajectories are no guarantees of future gain. Indeed, democracy is still the exception around the world and not the rule.

Historically speaking, democracies are an abnormality. As early as 1972 only 38% of the world's population lived in countries that could be classified as free. Today, despite the end of the Cold War, this figure has only crept up to 46%. We may be the victims of *an ideological bias* in which we've *assumed far too much* about democracy's potential, including its correlation with progress and its ability to thrive in drastically different social environments.

Catastrophic and existential risks will put democratic institutions in danger given an unprecedented need for *social control, surveillance* and *compliance*. Liberal democracies will likely regress to *de facto authoritarianism* under the intense strain; tools that will allow democratic governments to do so include *invoking emergency measures, eliminating dissent and protest, censorship*, suspending elections and constitutions, and trampling on *civil liberties* (illegal arrests, *surveillance*, limiting mobility, etc).

Looking further ahead, extreme threats may even *rekindle the totalitarian urge*; this option will appeal to those leaders looking to exert *absolute control* over their citizens. What's particularly frightening is that future technologies will allow for a more intensive and invasive totalitarianism than was ever thought possible in the 20th Century – including *ubiquitous surveillance* (and the monitoring of so-called 'thought crimes'), absolute control over information, and the redesign of humanity itself, namely using genetics and cybernetics to create a more traceable and controllable citizenry. Consequently, as a political mode that utterly undermines humanistic values and the preservation of the autonomous individual, *totalitarianism represents an existential risk unto itself*.

Democracy an historical convenience?

It is possible, of course, that democracies will rise to the challenge and work to create a more resilient civilization *while keeping it free*. Potential solutions have already been proposed, such as strengthening transnational governance, invoking an accountable participatory panopticon, and the relinquishment of nuclear weapons. It is through this type of foresight that we can begin to plan and restructure our systems in such a way that our *civil liberties and freedoms will remain intact*. Democracies (and human civilization) have, after all, survived the first test of our apocalyptic

potential.

That said, existential and catastrophic risks may reveal a dark path that will be all too easy for reactionary and fearful leaders to venture upon. Politicians may distrust seemingly radical and risky solutions to such serious risks. Instead, tried-and-true measures, where the state exerts an iron fist and wages war against its own citizens, may appear more reasonable to panicked politicians.

We may be entering into a period of sociopolitical disequilibrium that will instigate the diminishment of democratic institutions and values. Sadly, we may look back some day and reflect on how democracy was an historical convenience.

Negative Updates

Answer to Tech Leadership Advantage

1. Alternate Causality — STEM worker shortages hamstring the U.S. tech sector.

Tech CEOs 13 — An Open Letter by more than 100 chief executives of major tech companies and trade associations, 2013 (Open Letter to President Obama, Speaker Boehner, Senator Reid, Senator McConnell, and Representative Pelosi, March 14th, Available Online at https://www.scribd.com/doc/130388692/Tech-CEO-letter, Accessed 08-09-2015)

One of the biggest economic challenges facing our nation is the need for more qualified, *highly-skilled professionals*, domestic and foreign, who can create jobs and immediately contribute to and improve our economy. As *leaders of tech*nology *companies* from around the country, we want to thank you for your sincere efforts in addressing high skilled immigration and we urge that you and your colleagues enact reform legislation this year.

As you know, the United States has a long history of welcoming talented, hard-working people to our shores. Immigrant entrepreneurs have gone on to found thousands of companies with household names like eBay, Google, PayPal and Yahoo! to name just a few. These companies provide jobs, drive economic growth and generate tax revenue at all levels of government.

Yet because our current immigration system is *outdated and inefficient*, many high-skilled immigrants who want to stay in America are *forced to leave* because they are unable to obtain permanent visas. Some do not bother to come in the first place. This is often due to *visa shortages*, long waits for *green cards*, and lack of *mobility*. We believe that numerical levels and categories for high-skilled nonimmigrant and immigrant visas should be responsive to market needs and, where appropriate, include mechanisms to fluctuate based on objective standards. In addition, spouses and children should not be counted against the cap of high-skilled immigrant visas. There should not be a marriage or family penalty.

According to the U.S. Bureau of Labor Statistics, there are *tens of thousands of unfilled jobs* requiring highly skilled individuals. Five high-tech companies *alone* – IBM, Intel, Microsoft, Oracle and [end page 1] Qualcomm – have combined *10,000 openings* in the United States. Each one of these jobs has the potential to create many others, directly and indirectly. Bipartisan legislation currently introduced in the Senate, such as The Immigration Innovation Act of 2013, and bi-partisan legislation focused on addressing the needs of entrepreneurs and start ups such as the Startup Visa Act and Startup Act 3.0, will encourage innovation here in the U.S. by allowing American companies and entrepreneurs to have access to the talented workers they need while simultaneously investing in STEM education here in the U.S. We know what it will take to keep America in a position of *global leadership*. We know that when America is leading, our economic growth follows to the benefit of our nation's workforce.

Additional Negative Card for Solvency

No Solvency — "reforms" like the plan will be circumvented.

Greenwald 14 — Glenn Greenwald, journalist who received the 2014 Pulitzer Prize for Public Service for his work with Edward Snowden to report on NSA surveillance, Founding Editor of *The Intercept*, former Columnist for the *Guardian* and *Salon*, recipient of the Park Center I.F. Stone Award for Independent Journalism, the Online Journalism Award for investigative work on the abusive detention conditions of Chelsea Manning, the George Polk Award for National Security Reporting, the Gannett Foundation Award for investigative journalism, the Gannett Foundation Watchdog Journalism Award, the Esso Premio for Excellence in Investigative Reporting in Brazil, and the Electronic Frontier Foundation's Pioneer Award, holds a J.D. from New York University School of Law, 2014 ("Congress is Irrelevant on Mass Surveillance. Here's What Matters Instead.,"
The Intercept, November 19th, Available Online at https://firstlook.org/theintercept/2014/11/19/irrelevance-u-s-congress-stopping-nsas-mass-surveillance/, Accessed 06-16-2015)

All of that illustrates what is, to me, the most important point from all of this: the *last place* one should look to impose limits on the powers of the U.S. government is . . . the U.S. government. Governments don't walk around trying to figure out how to limit their own power, and that's particularly true of empires.

The entire system in D.C. is designed at its core to *prevent real reform*. This Congress is not going to enact anything resembling fundamental limits on the NSA's powers of mass surveillance. Even if it somehow did, this White House would never sign it. *Even if all that miraculously happened*, the fact that the U.S. intelligence community and National Security State operates with no limits and no oversight means they'd easily *co-opt the entire reform process*. That's what happened after the eavesdropping scandals of the mid-1970s led to the establishment of congressional intelligence committees and a special FISA "oversight" court—the committees were *instantly captured* by putting in charge supreme servants of the intelligence community like Senators Dianne Feinstein and Chambliss, and Congressmen Mike Rogers and "Dutch" Ruppersberger, while the court quickly became *a rubber stamp* with subservient judges who operate in total secrecy.

Ever since the Snowden reporting began and public opinion (in both the U.S. and globally) began radically changing, the White House's strategy has been obvious. It's vintage Obama: Enact something that is called "reform"—so that he can give a pretty speech telling the world that he heard and responded to their concerns—but that in actuality *changes almost nothing*, thus strengthening the very system he can pretend he "changed." That's the same tactic as Silicon Valley, which also supported this bill: Be able to point to something called "reform" so they can trick hundreds of millions of current and future users around the world into believing that their communications are now safe if they use Facebook, Google, Skype and the rest.

1NC- Presidential Powers DA

The first/next off-case position is the Presidential War Powers DA.

First, presidential war powers are strong — Obama has maintained presidential power.

Goldsmith 14 — Jack Goldsmith, Henry L. Shattuck Professor of Law at Harvard University, formerly served as Assistant Attorney General in the Office of Legal Counsel and as Special Counsel to the General Counsel to the Department of Defense, holds a J.D. from Yale Law School, 2014 ("Obama's Breathtaking Expansion of a President's Power To Make War," *Time*, September 11th, Available Online at http://time.com/3326689/obama-isis-war-powers-bush/, Accessed 08-12-2015)

Future historians will ask why George W. Bush sought and received express congressional authorization for his wars (against al Qaeda and Iraq) and his successor did not. They will puzzle over how Barack Obama the prudent war-powers constitutionalist transformed into *a matchless war-powers unilateralist*. And they will wonder why he claimed to "welcome congressional support" for his new military initiative against the Islamic State but did not insist on it in order to ensure clear political and legal legitimacy for the tough battle that promised to consume his last two years in office and define his presidency.

"History has shown us time and again . . . that military action is most successful when it is authorized and supported by the Legislative branch," candidate Barack Obama told the Boston Globe in 2007. "It is always preferable to have the informed consent of Congress prior to any military action." President Obama has discarded these precepts. His announcement that he will expand the use of military force against the Islamic State without the need for new congressional consent marks his latest adventure in unilateralism and cements *an astonishing legacy of expanding presidential war powers*.

The legacy began in 2011 with the seven-month air war in *Libya*. President Obama relied only on his Commander in Chief powers when he ordered U.S. forces to join NATO allies in thousands of air strikes that killed thousands of people and effected regime change. His lawyers argued beyond precedent that the large-scale air attacks did not amount to "War" that required congressional approval. They also blew a large hole in the War Powers Resolution based on the unconvincing claim that the Libya strikes were not "hostilities" that would have required compliance with the law.

Although he backed down from his threat to invade *Syria* last summer, President Obama proclaimed then the power to use unilateral force for purely humanitarian ends without congressional or United Nations or NATO support. This novel theory, which removed all practical limits on presidential humanitarian intervention, became a reality in last month's military strikes to protect civilians trapped on Mount Sinjar and in the town of Amirli.

Yesterday's announcement of a ramped-up war against *the Islamic State* in Iraq and possibly Syria rests on yet another novel war powers theory. The administration has said since August that air strikes in Syria were justified under his constitutional power alone. But yesterday it switched course and maintained that Congress had authorized the 2014 campaign against the Islamic State in the 2001 law that President George W. Bush sought to fight the Taliban and al Qaeda.

The administration's new approach allows it to claim that it is acting with congressional approval. It also lets it avoid the strictures of the War Powers Resolution because that law does not apply to wars approved by Congress. The problem with this approach is that its premise is unconvincing. The 2001 law authorized force against al Qaeda and its associates. The Islamic State once had associations with al Qaeda, but earlier this year al Qaeda expelled it and broke off ties. The administration nonetheless insists that the 2001 law applies to its new military action, primarily because the Islamic State claims to be "the true inheritor of Usama bin Laden's legacy" and is supported by "some individual members and factions of [al-Qaeda]-aligned groups." But if this remarkably loose affiliation with al Qaeda brings a terrorist organization under the 2001 law, then Congress has authorized the President to use force endlessly against practically any ambitious jihadist terrorist group

that fights against the United States. The President's gambit is, at bottom, *presidential unilateralism* masquerading as implausible statutory interpretation.

Second, the plan is a crushing blow to present *and future* presidential war powers.

Yoo 14 — John Yoo, Emanuel Heller Professor of Law at the University of California-Berkeley, Visiting Scholar at the American Enterprise Institute, former official in the Office of Legal Counsel of the U.S. Department of Justice, holds a J.D. from Yale Law School, 2014 ("NSA spying -- will Obama lead or punt to courts, Congress and harm the presidency?," *Fox News*, January 7th, Available Online at http://www.foxnews.com/opinion/2014/01/07/nsa-spying-will-obama-lead-or-punt-to-courts-congress-and-harm-presidency.html, Accessed 08-13-2015)

Under Barack Obama, the presidency's control over national security intelligence has come under a crippling *cross-fire*.
From the right, in December Bush-appointed Judge Richard Leon found the National Security Agency's "Orwellian" phone records collection program to violate the Constitution.
From the left, the White House's own blue-ribbon commission recently urged the president to place an "out of control" NSA under unprecedented judicial, bureaucratic, and even private controls.
Mr. Obama may rise up to defend the NSA from the growing chorus of critics in Congress, the media, and the antiwar wing of his own party.
He might blunt the effort to subject the NSA's national security mission to the stricter rules that govern domestic law enforcement.
He might even preserve the intelligence agency's ability to collect phone calls and email data that, by the account of two successive administrations of both parties, has stopped terrorist attacks on the United States and its allies.
But don't count on it.
Mr. Obama's first instinct is to shift national security responsibility to other branches of government -- witness his past attempts to try the 9/11 plotters in civilian court in New York City, move the terrorists in Guantanamo Bay, Cuba to a domestic prison, and ask Congress decide on intervening in Syria.
If he makes the same mistake again, Mr. Obama will follow in the footsteps of *failed presidents* who shrunk before similar challenges, to *the long-term harm* of their office.
Kicking the intelligence question to Congress or the courts *undermines the Oval Office* by *reversing the polarity of its constitutional powers*.
The Framers created the presidency precisely because foreign affairs and national security pose *unique challenges* to a legislature, which cannot *react quickly* to sudden, unforeseen events.
"Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man," Alexander Hamilton explained in "Federalist 70."
Only *a single president* could marshal the nation's resources with the energy and vigor to effectively protect its security. "Of all the cares or concerns of government," he added in "Federalist 74," "the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand."
Presidents who have defied the Framers' design have led the nation into some of its greatest disasters, despite their great intellect or political skills.
Take, for example, James Madison, our fourth president. Madison wrote the first draft of the Constitution, co-authored "The Federalist" with Hamilton and John Jay, and led the fight for the Constitution's ratification.
But when attacking (at Thomas Jefferson's behest) George Washington's 1793 proclamation of neutrality, Madison argued that Congress should decide all questions of war and peace.
"Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded," he argued.
Madison kept true to his beliefs as president. By 1812, the nation was profiting handsomely from trade during the Napoleonic Wars.
Nevertheless, war hawks in Congress -- the term first appears here in American history -- drove the nation into a conflict with the only contending European nation with a powerful navy and a shared border with the

United States.
Madison did not exercise his presidential authority to stop the rush for war, but instead left the ultimate decision to Congress.
Of all our nation's conflicts, the War of 1812 may have been the most strategically dangerous. It led to a crippling naval embargo, a series of desultory assaults on Canada, a British incursion that captured and burned the capital, and a major land invasion at New Orleans that sought to split the nation into two.
Only the end of the Napoleonic war and Andrew Jackson's heroic defeat of the British invasion force preserved American independence. A more confident and assertive chief executive would have saved the nation from this disaster.
Presidential deference to other branches on national security has not just led the nation into *mistaken wars*, it has also *kept us out of vital ones*.
When secession read its ugly head in the wake of Abraham Lincoln's election, James Buchanan sat in the Oval Office. Like the president-elect, Buchanan believed the Constitution did not permit states to leave the Union. Unlike Lincoln, however, Buchanan – an accomplished Senator from Pennsylvania and former Secretary of State – concluded that the president did not have the constitutional power "to make war against a State." Buchanan called upon "the only human tribunal under Providence possessing the power to meet the existing emergency," Congress, which promptly appointed a special committee to develop a solution.
By contrast, Lincoln maneuvered the Confederacy into firing the first shot at Fort Sumter in April 1861, raised an army and navy, imposed a blockade on the South, and sent federal troops into action – and then waited until July 4, 1861 to seek Congress's approval after-the-fact.
Lincoln never gave up the mantle of leadership, including his freeing of the slaves with the Emancipation Proclamation and his control over military strategy, and his control over the terms of the peace.
Scholars today generally rank Lincoln as one of the three greatest presidents in our history (along with Washington and FDR), and Buchanan as the worst.
Mr. Obama need not revisit the 17th or 18th Centuries to see the pitfalls in relying on the other branches for leadership in foreign affairs. He need only turn his gaze to post-Watergate years, when President Nixon's undeniable abuses of the executive power led Congress and the courts to overreact in expanding their controls over national security.
Over Mr. Nixon's veto, Congress passed a War Powers Resolution that limits foreign military interventions to less than 60 days without congressional approval.
Presidents ever since have refused to accept the WPR's constitutionality, but have often foreshortened their wars into the resolution's artificial deadline.
Congress passed the Foreign Intelligence Surveillance Act and gave the courts a veto over the executive's surveillance of foreign enemies. FISA also produced the "wall" between our nation's foreign and domestic intelligence agencies that allowed the 9/11 hijackers to succeed.
Even after U.S. withdrawal from South Vietnam, Congress cut off all funds for any U.S. military operations in Southeast Asia, which led to the shameful American abandonment of Saigon, the death of millions in communist camps, and the consignment of an entire nation to a totalitarian dictatorship.
The Iranian Revolution and hostage crisis and the Soviet invasion of Afghanistan took further advantage of a weakened presidency under the stewardship of Jimmy Carter.
Similar restrictions have re-appeared in Judge Leon's decision, which orders the end of the NSA's collection program, and in his blue-ribbon commission, which wants to subject the NSA to new oversight procedures.
Congress is considering *unprecedented restrictions* on targets, databases, and search methods.
It is not just in President Obama's interests to avoid this fate.
It is also in the interests of both parties in Congress and of *the nation*.
There are surely partisan differences to fight out over domestic policy, where the Constitution places Congress in the primary policymaking role and the president second.
But no party benefits in the long run from a weakened executive in foreign affairs, as shown by *the War of 1812*, *the Civil War,*

and even *the isolationism between the World Wars*.

Partisans must resist the temptation to *strike a blow against a vulnerable president*, and instead support his ability to fulfill the Framers' design: to protect the nation's security with *determination, vigor, speed, and secrecy*.

The Constitution expects no less.

Third, strong war powers provide necessary flexibility to prevent WMD proliferation and attacks.

Yoo 12 — John Yoo, Emanuel Heller Professor of Law at the University of California-Berkeley, Visiting Scholar at the American Enterprise Institute, former official in the Office of Legal Counsel of the U.S. Department of Justice, holds a J.D. from Yale Law School, 2012 ("War Powers Belong to the President," *ABA Journal*—a publication of the American Bar Association, February 1st, Available Online at http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president, Accessed 08-13-2015)

Our Constitution has succeeded because it favors *swift presidential action* in war, later checked by Congress' funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution.

A radical change in the system for making war might appease critics of presidential power. But it could also *seriously threaten American national security*. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike *terrorists or rogue nations*, the executive branch needs *flexibility*. It is not hard to think of situations where congressional consent *cannot be obtained in time to act*. Time for congressional deliberation, which leads only to *passivity and isolation* and not smarter decisions, will come at the price of *speed and secrecy*.

The Constitution creates a presidency that can *respond forcefully* to prevent *serious threats* to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of *terrorism, rogue nations and WMD proliferation*, now is not the time to introduce sweeping, *untested changes* in the way we make war.

Finally, proliferation risks global nuclear war.

Utgoff 2 — Victor A. Utgoff, Deputy Director of the Strategy, Forces, and Resources Division of the Institute for Defense Analyses and senior member of the National Security Council Staff, 2002 ("Proliferation, Missile Defence And American Ambitions," *Survival*, Volume 44, Number 2, June, Available Online to Subscribing Institutions via EBSCOhost Electronic Journals Service, p. 87-90)

In sum, widespread proliferation is likely to lead to an occasional *shoot-out with nuclear weapons*, and that such shoot-outs will have a *substantial probability* of escalating to the *maximum destruction possible* with the weapons at hand. Unless nuclear proliferation is stopped, we are headed toward a world that will mirror the American Wild West of the late 1800s. With most, if not all, nations wearing *nuclear 'six-shooters'* on their hips, the world may even be a more polite place than it is today, but every once in a while we will all gather on a hill to bury the bodies of dead cities or even *whole nations*.

Negative Answers to Affirmative Arguments to Press Powers DA

They Say: "Executive Flexibility Bad"

Strong presidential war powers are essential to countering WMD proliferation. Flexibility is vital.

Yoo 7 — John Yoo, Emanuel Heller Professor of Law at the University of California-Berkeley, Visiting Scholar at the American Enterprise Institute, former official in the Office of Legal Counsel of the U.S. Department of Justice, holds a J.D. from Yale Law School, 2007 ("Exercising Wartime Powers," *Harvard International Review*, April 18th, Available Online at http://hir.harvard.edu/archives/1369, Accessed 08-13-2015)

Congressional participation does not automatically or even consistently produce desirable results in war decision making. Critics of presidential war powers exaggerate the benefits of declarations or authorizations of war. What also often goes unexamined are the potential costs of congressional participation: *delay, inflexibility*, and *lack of secrecy*. In the post-Cold War era, the United States is confronting the growth in *proliferation of WMDs*, the emergence of *rogue nations*, and the rise of *international terrorism*. Each of these threats may require *pre-emptive action* best undertaken by the President and approved by Congress *only afterward*.

Take the threat posed by the Al Qaeda terrorist organization. Terrorist attacks are more difficult to detect and prevent than conventional ones. Terrorists blend into civilian populations and use the channels of open societies to transport personnel, material, and money. Although terrorists generally have no territory or regular armed forces from which to detect signs of an impending attack, WMDs allow them to inflict devastation that once could have been achievable only by a nation-state. To defend itself from this threat, the United States may have to use force earlier and more often than when nation-states generated the primary threats to US national security. The executive branch needs the *flexibility* to act quickly, possibly in situations wherein congressional consent cannot be obtained in time to act on the intelligence. By acting earlier, the executive branch might also be able to engage in *a more limited, more precisely targeted*, use of force. Similarly, the *least dangerous way* to prevent rogue nations from acquiring WMDs may depend on *secret intelligence gathering* and *covert action* rather than open military intervention. Delay for a congressional debate could *render useless* any *time-critical intelligence* or *windows of opportunity*. The Constitution creates a presidency that is uniquely structured to act *forcefully and independently* to repel serious threats to the nation. Instead of specifying a legalistic process to begin war, the Framers wisely created a fluid political process in which legislators would use their appropriations power to control war. As the United States confronts *terrorism*, *rogue nations*, and *WMD proliferation*, we should look *skeptically* at claims that radical changes in the way we make war would solve our problems, even those stemming from poor judgment, unforeseen circumstances, and bad luck.

Contemporary threats require extreme presidential powers — flexibility is vital to prevent WMD attacks.

Yoo 5 — John Yoo, Emanuel Heller Professor of Law at the University of California-Berkeley, Visiting Scholar at the American Enterprise Institute, former official in the Office of Legal Counsel of the U.S. Department of Justice, holds a J.D. from Yale Law School, 2005 ("An interview with John Yoo, author of The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11," University of Chicago Press, Available Online at http://www.press.uchicago.edu/Misc/Chicago/960315in.html, Accessed 08-14-2015)

The world after September 11, 2001, however, is *very different*. It is no longer clear that the United States must seek to reduce the amount of warfare, and it certainly is no longer clear that the constitutional system ought to be fixed so as to make it difficult to use force. Rather than war disappearing from the world, the threat of war may well be increasing. Threats now come from at least three primary sources: the easy availability of the knowledge and technology to create weapons of mass destruction (*WMD*), the emergence of *rogue nations*, and the rise of *international terrorism* of the kind represented by the al Qaeda terrorist organization. Because of these developments, the optimal level of war for the United States may no longer be zero, but may actually be *dramatically higher* than before.

The emergence of direct threats to the United States that are more difficult to detect and prevent may demand that the United States undertake preemptive military action to prevent these threats from coming to fruition. The costs of inaction, for example, by allowing the vetoes of multiple decision-makers to block warmaking, could entail much higher costs than scholars in the 1990s

envisioned. At the time of the cold war, the costs to American national security of refraining from the use of force in places like Haiti, Somalia, or Kosovo would have appeared negligible. The September 11, 2001, terrorist attacks, however, demonstrate that the costs of inaction in a world of terrorist organizations, rogue nations, and more easily available WMD are *extremely high*—the possibility of a direct attack on the United States and the deaths of *thousands* of civilians.
These new threats to American national security, driven by changes in the international environment, should change the way we think about the relationship between the process and substance of the warmaking system. The international system allowed the United States to choose a warmaking system that placed a premium on consensus, time for deliberation, and the approval of multiple institutions. If, however, the nature and the level of threats are increasing, the magnitude of expected harm has *risen dramatically*, and military force unfortunately remains *the most effective means* for responding to those threats, then it makes *little sense* to commit our political system to a single method for making war. Given the threats posed by WMD proliferation, rogue nations, and international terrorism, we should *not*, at the very least, adopt a warmaking process that contains a built-in presumption against using force abroad. Earlier scholarly approaches assumed that in the absence of government action peace would generally be the default state. September 11 demonstrated that this assumption has become unrealistic in light of the *new threats* to American national security. These developments in the international system may demand that the United States have the ability to use force *earlier and more quickly* than in the past.

Strong presidential power is the only way to solve global problems. This outweighs the risk of overreach.

Posner 10 — Eric A. Posner, Kirkland and Ellis Distinguished Service Professor of Law and Arthur and Esther Kane Research Chair at the University of Chicago Law School, Legal Columnist for *Slate*, Fellow of the American Academy of Arts and Sciences, Member of the American Law Institute, holds a J.D. from Harvard Law School, 2010 ("POTUS-phobia," *The New Republic*, Volume 241, Issue 18, November 11th, Available Online to Subscribing Institutions via Academic Search Premiere)

Even if Ackerman is right that there is a greater chance that an extremist will become president today than in the past, he needs to show that the risk is great enough to justify a restructuring of the government that would weaken the executive's power to do good. Surely the executive has become a powerful institution because Americans want an activist government and Congress has usually been passive. Presidents have been on the right side of history more often than Congress has; and they also stand up well against the Supreme Court. With great power to do good comes great power to engage in abuse, of course. But there is no way to reduce the risk of abuse to zero without depriving the executive branch of *all effectiveness*. Should the president be stripped of important powers so that the "near-zero" risk of a military coup will be reduced to nearer-zero? Ackerman scoffs at this question but does not answer it.
Instead he moves on to proposals for reform. You would think that the "decline and fall" of republican institutions would call for radical reform, but Ackerman rules out what he regards as politically infeasible, regretfully commenting that it would be impossible to abolish the presidency and replace the American system with a parliamentary system. He thus confines himself to mostly small-bore reform proposals, which tumble out like an avalanche. All major White House staffers will be subject to Senate confirmation so as to limit the power of toadies, partisans, and ideologues. A Presidential Commission on Civil-Military Relations will establish new canons of ethics that will discourage military officers from meddling in politics. The chairman of the Joint Chiefs of Staff will no longer be permitted to attend National Security Council meetings, except with the permission of the secretary of defense. A new statute will give the president the power to declare emergencies and act unilaterally to counter a threat, but the emergency will end unless Congress periodically renews it in a system that requires larger majorities as time passes. A Supreme Executive Tribunal, composed of independent judges, will evaluate the president's assertions of executive authority when they are challenged by members of Congress. A National Endowment for Journalism, financed by the government, will transfer funds to news organizations that publish articles on the Internet that readers electronically vote for. On Deliberation Day, which will be held two weeks before presidential elections,

groups of citizens will meet and deliberate about the merits of presidential candidates. States will agree to cast their electoral votes for the presidential candidate who wins the national popular vote.
This eccentric jumble of proposals is too ambitious and not ambitious enough. Few if any of them seem politically realistic, yet even if all of them were implemented, they hardly seem adequate to halt the decline and fall of the American Republic. The United States faces many problems today, and the public continues to look to the president for solutions. They do not want to abolish or to restrict the office; they want it occupied by a competent person with access to its full powers. Watergate, Iran-Contra, and Bush's war on terrorism—which are pretty much all that Ackerman offers as evidence of a dysfunctional presidency—just do not add up to a case against a system of executive primacy that is the best hope for addressing the *massive economic, environmental, and military problems* that beset us. Ackerman's fear that an extremist will seize the presidency has no political resonance—not even in our undeniably inflamed era—because nothing like that has ever happened in the United States. And the fact that the presidency used to be a weaker office is a matter of indifference to a practical-minded public that reveres the Founders but disregards their antique political trepidations.
The executive has evolved to its present state because it is *the one political institution that can address modern problems*. The clumsy, many-headed Congress is hampered by its over-elaborate structure and its senatorial half, where the threshold for action is so high and senators from small states have excessive power. The courts are too weak, passive, and decentralized. State governments are too small. The military lacks people's trust, at least as far as civilian governance is concerned, because it is not a democratic institution. Precisely because the Founders created an executive office with ill-defined powers, this office could *rise to meet modern challenges*. James Madison's vision of checks and balances has given way to a system of executive primacy, but rather than leading to tyranny, as he feared, democratic politics has—so far—kept the American president, sometimes for better and sometimes for worse, under control.

They Say: "Tyranny Turn"

No risk of tyranny — demographics and elections.

Posner and Vermeule 10 — Eric A. Posner, Kirkland and Ellis Distinguished Service Professor of Law and Arthur and Esther Kane Research Chair at the University of Chicago Law School, Legal Columnist for *Slate*, Fellow of the American Academy of Arts and Sciences, Member of the American Law Institute, holds a J.D. from Harvard Law School, and Adrian Vermeule, John H. Watson Professor of Law at Harvard Law School, Member of the American Academy of Arts and Sciences, former Bernard D. Meltzer Professor of Law at the University of Chicago, holds a J.D. from Harvard Law School, 2010 ("Tyrannophobia," *The Executive Unbound: After the Madisonian Republic*, Published by Oxford University Press, ISBN 9780199765331, p. 193)

Dictatorship and Tyrannophobia in America
Against this historical and comparative background, we turn to the relationship between tyrannophobia and dictatorship in the United States. If tyrannophobia were a crucial safeguard against dictatorship, it would have benefits. However, we believe that tyrannophobia is either *not a safeguard* against dictatorship, or is at best *an unnecessary and costly one*, akin to placing one's house underground to guard against the risk of a meteor strike. In the administrative state that flowered in the twentieth century, *demographic factors* and *the basic constraint of elections* jointly provide an *independent and sufficient buffer* against dictatorship. The contemporary United States is *too wealthy*, with a population that is *too highly educated*, to slide into authoritarianism. An implication is that even if tyrannophobia reduces the risk of dictatorship, it must also constrain grants of power to the executive that are otherwise desirable. The former effect is a benefit, the latter a cost; but the benefit is *minimal*, because demography and elections, taken together, *independently prevent dictatorship*. Accordingly, either tyrannophobia has no effect on the risk of dictatorship, or else it produces social costs for little in the way of offsetting benefits.

The benefits of strong presidential powers outweigh a ***non-existent risk*** of tyranny.

Posner and Vermeule 10 — Eric A. Posner, Kirkland and Ellis Distinguished Service Professor of Law and Arthur and Esther Kane Research Chair at the University of Chicago Law School, Legal Columnist for *Slate*, Fellow of the American Academy of Arts and Sciences, Member of the American Law Institute, holds a J.D. from Harvard Law School, and Adrian Vermeule, John H. Watson Professor of Law at Harvard Law School, Member of the American Academy of Arts and Sciences, former Bernard D. Meltzer Professor of Law at the University of Chicago,

holds a J.D. from Harvard Law School, 2010 ("Tyrannophobia," *The Executive Unbound: After the Madisonian Republic*, Published by Oxford University Press, ISBN 9780199765331, p. 202-203)

The Costs and Benefits of Tyrannophobia
We have suggested that the framers' tyrannophobia, combined with the lack of dictatorship in later periods, plausibly fuels contemporary tyrannophobia, insofar as contemporary actors infer that the framers' design choices are what has allowed democracy to endure. However, the inference is invalid, for the key choice of presidentialism may itself have been a risk factor for dictatorship; if it was, then the framers inadvertently put self-government at risk, but were favored by fortune. Likewise, while it is possible that tyrannophobia has an endogenous tyranny-preventing effect, it is equally possible that it perversely increases the risk, and the most plausible conclusion of all is that it has no effect in either direction; to ignore the latter two possibilities is itself a major symptom of tyrannophobia. Tyrannophobia in the United States is real, and it may well be the result of the psychological and informational factors discussed above, but there is *no evidence* that it contributes to the absence of dictatorship in the United States, and some affirmative evidence that it *does not do so*.
Even if tyrannophobia has a weak effect of that sort, it seems clear that *wealth* and *other demographic factors* in all likelihood prevent dictatorship in the United States, quite apart from its tyrannophobic political culture. So [end page 202] even if tyrannophobia *once* checked dictatorship, that check is *unnecessary today*, in light of the exceptional stability of advanced democratic polities like the United States. The main possible benefit of tyrannophobia is therefore *illusory*. On the other hand, if tyrannophobia hampers useful grants of power to the executive, it creates *social costs*, namely an entrenched reluctance to transfer necessary powers to the executive. Elsewhere, we have described a range of institutions and policy initiatives that would *increase welfare* by increasing executive power, especially in the domain of *counterterrorism*, but that are blocked by *"libertarian panics"* and tyrannophobia.93 Overall, then, the cost-benefit ledger of tyrannophobia shows *real costs* and *illusory benefits*.

The benefits of a strong president massively outweigh the costs.

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Meanwhile, the founders' anxieties about executive tyranny have proven *erroneous*. The president is kept in check by *elections*, the *party system*, the *press*, *popular opinion*, *courts*, a political culture that is *deeply suspicious* of his motives, *term limits*, and the sheer *vastness of the bureaucracy* which he can only barely control. He does not always do the right thing, of course, but presidents generally *govern from the middle* of the political spectrum.
Obama's assertion of unilateral executive authority is just routine stuff. He follows in the footsteps of his predecessors on a path set out by Congress. And well should he. If you want *a functioning government*—one that protects citizens from *criminals*, *terrorists*, the climatic effects of *greenhouse gas emissions*, *poor health*, *financial manias*, and the like—then you want a government *led by the president*.