# CONDITION COUNTERPLANS – NORTHWESTERN 2012 – ABELKOP/VELLAYAPPAN LAB

# General – 1NC Blueprint

## 1NC Shell

#### Text: The United States federal government should <substantially increase funding for…> with the requirement that <loan/grant/PPP/? funding recipients> agree to <insert specific condition from later in file.>

#### Our counterplan is competitive, solves the Aff, and won’t be rolled back

Congressional Research Service, 2000 CRS Annotated Constitution, “Conditioning Grants-in-Aid”, <http://www.law.cornell.edu/anncon/authorship.html>

“Congress has frequently employed the Spending Power to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives. This Court has repeatedly upheld against constitutional challenge the use of this technique to induce governments and private parties to cooperate voluntarily with federal policy.”[555](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb555) Standards purporting to channel Congress’ discretion have been announced by the Court, but they amount to little more than hortatory admonitions.[556](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb556) First, the conditions, like the spending itself, must advance the general welfare, but the decision of that rests largely if not wholly with Congress.[557](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb557) Second, since the States may choose to receive or not receive the proffered funds, Congress must set out the conditions unambiguously, so that the States may rationally decide.[558](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb558) Third, it is suggested in the cases that the conditions must be related to the federal interest for which the funds are expended,[559](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb559) but, though it continues to repeat this standard, it has never found a spending condition that did not survive scrutiny under this part of the test.[560](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb560)Fourth, the power to condition funds may not be used to induce the States to engage in[p.158]activities that would themselves be unconstitutional.[561](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb561)Fifth, the Court has suggested that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which “pressure turns into compulsion,”[562](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb562) but again the Court has never found a congressional condition to be coercive in this sense.[563](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb563) Certain federalism restraints on other federal powers seem not to be relevant to spending conditions.[564](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb564)¶ If a State accepts federal funds on conditions and then fails to follow the requirements, the usual remedy is federal administrative action to terminate the funding and to recoup funds the State has already received.[565](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb565) But it is also clear that recipients and potential recipients in a particular program may ordinarily sue to compel the States to observe the standards.[566](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb566)Finally, it should be noted that Congress has enacted a range of laws forbidding discrimination in federal assistance programs, that has considerable effect.[567](http://www.law.cornell.edu/anncon/html/art1frag30_user.html%22%20%5Cl%20%22fnb567)

#### And –

#### *<INSERT 1NC MATERIALS FROM THE SECTION OF THE FILE FOR THE SPECIFIC CONDITION CP YOU WANT TO READ>*

# General – Theory Materials

## AT: Condition CPs Bad

#### Our counterplan is NOT your everyday condition counterplan – we do not compete off of certainty or immediacy nor do we justify counterplans that do. The Affs grant process makes more funding available for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Grant applicants have to meet a lot of criteria in order for their application to be accepted and for the funding to be disbursed – all our counterplan does is add an additional criterion that applicants must meet in order to receive the Affs funding, this is a specific grant-process CP that none of their theory offense assumes.

#### And our counterplan is uniquely good for debate--

#### A. Reciprocity— in order to receive the affs funding, applicants necessarily must meet certain requirements – for example – the money must be spent on \_\_\_\_\_\_\_\_\_\_\_\_. Proves its only fair the neg gets to do the same—sets an equal footing for debates

#### B. Roleplaying—policymakers need to decide the requirements for bills all the time. Pre-award grant criteria are a point of Congressional debate—discussion of methodology and objectives is key

Keegan 11 Natalie, ANALYST IN AMERICAN FEDERALISM AND EMERGENCY

MANAGEMENT POLICY, CONGRESSIONAL RESEARCH SERVICE, Congressional Testimony to the House Subcommittee on Technology, Information Policy, Intergovernmental Relations, and Procurement Reform, 6/23, <http://oversight.house.gov/wp-content/uploads/2012/01/6-23-11_Keegan_Tech_Fed_Grants_Testimony.pdf>

Congress often pursues oversight of federal grants through the authorization and appropriations processes, and through investigative oversight to gather information on the administration and effectiveness of a federal grant program. Congress also exercises oversight through the federal grant application process. It is useful to view Congressional oversight of grants in two overarching phases; pre-award and post-award. Pre-award oversight activities may include grant program authorizations and appropriations, determinations of eligibility and eligible activities, review of announcements of funding availability, and review of panel scorings of eligible applications. Post-award oversight activities may include audits, reporting requirements, and prevention and investigation of waste, fraud, and abuse. While recent Congressional debate has involved post-award activities, particularly recipient and agency reporting requirements, consideration of congressional oversight of pre-award activities may provide insight into improving oversight and accountability in federal grants. Pre-Award Oversight of Federal Grants Congressional authorization of federal grant programs began in 1862 with the authorization of The Morrill Land Grant Act of July 2, 1862, to establish land-grant colleges. 1. Since that time, there has been dramatic growth in federal assistance programs. 2 Currently, there are 2,123 congressionally authorized federal domestic assistance programs. 3 Five federal agencies administer 1,165 of these programs. Federal outlays for grants to state and local governments have grown from $136 billion in constant (FY2010) dollars in 1940 to $608 billion in 2010. 4 Congress exercises control over federal grants through the authorization process which generally establishes key components of the grant program, including the funding allocation methodology, program eligibility, and congressional objectives. The allocation of federal grant funds is typically based on either statutory formula, agency discretion, or a combination of the two. In some cases, Congress establishes a formula for distributing funds that provides minimum allocations to primary grant recipients. In other cases, the formula establishes the percentage of funds that go to each grant recipient. The authorizing statute establishes the terms and conditions for the particular grant program. Federal agencies implement the statutory requirements in their regulations and incorporate them in grant agreements. A grant program may authorize a range of eligible activities. Congress may limit the grant project eligibility by narrowing the range of activities to address specific categories of projects. These types of grants are known as categorical grants. Congress may also choose to provide greater flexibility in the range of eligible grant activities by authorizing a block grant. Block grants allow recipients, predominately states, to fund a broad range of activities within more general policy areas such as community development or law enforcement.

#### Assuming the role of policymakers is the best decision-making practice—forces us to think in terms of the public good

#### C. Topic relevancy—conditioning grants is constitutional and common practice—Supreme Court decisions prove it’s a critical discussion and our specific form of condition is distinct and justified in the context of transportation infrastructure

#### Engaging in the policy practices of transportation infrastructure is the only way to gain applicable topic education. We need to replicate the processes of transportation policymaking to gain advocacy skills in making change transportation policy.

#### D. Lit base checks abuse—proves the counterplan is predictable and core of the topic. Proves there’s no unique DA to the CP

## AT: PICs Bad

#### PICs good

#### A. Revisability—best policy should always be a debatable option. Aff represents the worst model of decision-making because it excludes possibilities for compromise and doesn’t think for the social good.

#### B. Roleplaying—policymakers remove parts of bills all the time—modeling the policymaking process is the best advocacy training because we learn how to engage the political system.

#### C. Responsible prep—aff gets unlimited pre-round prep—they should be prepared to defend the entirety of the plan. Encourages thorough research and scrutinized argument construction so we can be responsible academics

#### D. Lit base checks abuse—proves the counterplan is predictable and the aff can have anwers.

# General – Competition Materials

## AT: Perm Do The CP

#### Remember – we do not compete off of certainty or immediacy – Through the Affs grant process applicants have to meet a lot of criteria in order for their application to be accepted and for the funding to be disbursed – all our counterplan does is add an additional criterion that applicants must meet in order to receive the Affs funding.

#### Our counterplan is definitively plan-minus – it gives the Affs funding out in less instances than the plan. The plan gives funding out in the instance that applicants BOTH agree to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and refuse to \_\_\_\_\_\_\_\_\_\_\_\_ --- the counterplan ONLY gives out funding if the applicants agree.

#### Proves that there is a functional difference between the plan and the counterplan and also proves that their permutation is functionally severance; it severs out of giving grant money to applicants that would refuse to \_\_\_\_\_\_\_\_\_\_\_\_\_

#### Severance is bad – it makes the Aff a moving target and allows them to shift out of negative disad and counterplan links, which decks neg strategic development because our 1NC was based on their 1AC

#### Gut check – logically a counterplan that makes it easier to get the Affs funding is plan-plus because it gives out funding in MORE instances than the plan. Our counterplan is the OPPOSITE of that, because it makes it HARDER for applicants to receive the grant. Both counterplans cannot be plan-plus.

#### And – counterplans only have to be functionally competitive – requiring them to be textually competitive is bad –

#### A. Value focus—Debating the actions of the plan is key to critical analysis of transportation infrastructure and means we don’t determine the best policy option or think of the public good—textual competition turns debate into a question of letters on a page.

#### B. Roleplaying—policymakers compare the costs and benefits of the outcome of the bill, NOT the words—obviously plan texts don’t model real bills—learning how to defend the functions of bills is the only policy advocacy skill we can get from debate.

#### C. Artificially makes non-logical counterplans competitive—means counterplan: do NOT do the plan isn’t competitive because it’s textually plan plus—it’s infinitely regressive and can make counterplans texts with more letters than the plan text noncompetitive

## AT: Perm Do the Plan & Require

#### Perm: do plan and require\_\_\_\_\_

#### severs out of giving money to the ports that don’t meet the \_\_\_\_\_\_requirement but would receive grants in the instance of the plan

#### Severance is a voting issue

#### A. Argument Responsibility—ability to shift positions allows shallow argumentation that undermines thorough advocacy skills

#### B. Strategic shift—changing their argument in the 2AC means we lose 8 minutes of speech time that undermines equitable debate since time is skewed aff

## AT: Perm Do the Plan & Request

#### Neither the plan nor the counterplan contains a non-binding grant criteria for\_\_\_\_\_\_

#### Perm: do the plan and request\_\_\_\_ is intrinsic on the request

#### Instrinsic perms are a voting issue

#### A. Strategic shift—aff could always add to the plan to solve our offense—undermines switch-side debate and means the aff would never get tested—neither side is forced to think critically about the actual argumentation

#### B. Argument responsibility—the aff gets unlimited prep they should be expected to craft a 1AC that presents the best policy option possible without revision—if they need to add to their aff to be competitive you should punish them for their poor advocacy skills—all debate skills are irrelevant if you can’t even form a persuasive argument

#### And - <insert cards from specific section that say if voluntary, people won’t comply with the condition>

## AT: Perm Do Both

#### Perm: do both severs out of giving money to the ports that don’t meet the \_\_\_\_\_\_requirement who would receive grants in the instance of the plan

#### Severance is a voting issue

#### A. Argument Responsibility—ability to shift positions allows shallow argumentation that undermines thorough advocacy skills

#### B. Strategic shift—changing their argument in the 2AC means we lose 8 minutes of speech time that undermines equitable debate since time is skewed aff

## AT: Perm Do CP Then Plan

#### Perm: do the CP then the plan is intrinsic on the time before the plan is implemented

#### Timeframe perms are a voting issue

#### 1. Ground—delaying the plan takes out uniqueness on all our DAs and destroys clash

#### a. Advocacy—the aff has to defend itself from external criticism—no DAs means the aff learn how to advocate the plan against any opposition. Advocacy skills are a pre-requisite to participating in a democratic society

#### b. Critical thinking—spiking out of our offense lets the aff avoid debate and analysis of our arguments—they never develop the critical thinking skills necessary to find solutions to global problems

#### 2. Responsible prep—the aff gets unlimited prep. They should be expected to craft a 1AC that presents the best policy option possible—if they need to add to their aff to be competitive you should punish them for their poor advocacy skills.

# General – Solvency Materials

## General Solvency/Theory/Random Cards

Mason 11 Ruth, Visiting Associate Professor of Law, Yale Law School, “Federalism and the Taxing Power”, 11/10, <http://www.californialawreview.org/assets/pdfs/99-4/02_Mason.pdf>

In dicta, the Dole Court suggested some limits on conditional spending. For example, the Court stated that conditions attached to federal grants must be related to the federal purpose for the expenditure, not prohibited under other provisions of the Constitution (such as the Bill of Rights), and not coercive. 27 In other decisions, the Court has emphasized that to bind the states, federal spending conditions must be unambiguous. 28 Moreover, conditional spending, like all taxing and spending, must be for defense, to repay federal debts, or it must otherwise advance the “general welfare.” But there exist few other formal limits on congressional spending. 29 Congress often uses its spending power to make conditional grants to the states, even when it could regulate directly using the Commerce Clause or another enumerated power. 30 Congress may employ grants even when it possesses direct regulatory authority because it believes the states will be more effective regulators than the federal government would, or because the federal government lacks the administrative expertise or apparatus to effectuate federal policy cheaply. But in areas that Congress otherwise could not reach with direct regulation, grant-making allows Congress to enlarge its policy sphere by enticing the states into adopting federally prescribed policies in exchange for federal funds. For example, in Dole the Supreme Court held that it was not unconstitutional for Congress to condition a portion of federal highway grants to the states upon the requirement that the states enact a minimum drinking age of twenty-one. 31 Using highway funds, the federal government achieved through state cooperation a regulatory goal that it lacked constitutional authority to achieve directly, namely, imposition of a minimum drinking age. 32

#### Analyzing the specifics of grant criterion is key to achieving federal goals

Domestic Working Group 5 “Guide to Opportunities for

Improving Grant Accountability”, Oct, RAND, <http://www.ignet.gov/randp/grantguide.pdf>

Grants are an important tool used by government agencies to achieve goals. Grants support many programs that the public relies upon, such as healthcare, transportation, and education. The 2006 Federal budget includes approximately $450 billion for over 700 grant programs. Opportunities for improvement exist throughout the grant process, as shown in the table below. Prior to awarding grants, it is important for agencies to have internal control systems and performance measures to facilitate grant management. Agencies then need an effective pre-award process, a process for managing performance once grants are awarded, and the ability to assess grant results and use those results when awarding future grants. Appendix A provides a two-page listing of all the promising practices. This guide is intended not to simply identify areas of improvement, but to provide specific examples of how organizations have already successfully implemented new practices or are in the process of doing so. Government executives at the Federal, State, and local levels should be able to look at these approaches and apply some of them to their own organizations.

#### The details matter—government studies call for more better crafting of grant criterion

Domestic Working Group 5 “Guide to Opportunities for

Improving Grant Accountability”, Oct, RAND, <http://www.ignet.gov/randp/grantguide.pdf>

The grant process is a cyclical one, as shown in Chart 2. At all stages of the process, it is essential that adequate internal control systems (such as information systems, training, and current policies) be in place. Before the grant process even begins, goals and measures must be established to provide a guide. Pre-award processes should ensure the appropriate awarding of grants. Once grants are awarded, performance needs to be monitored. Following grant completion, the goals and measures established at the beginning of the process need to be evaluated against actual results and adjustments made as needed for future grants efforts. Federal laws and regulations establish financial accountability for Federal grants. In authorizing grant programs, Federal laws identify the types of activities that can be funded. Office of Management and Budget circulars specify how grants will be administered and the standards for determining allowable costs. The passage of the Government Performance and Results Act in 1993 signaled the commitment of the Federal government to measure results achieved with Federal funds. Most Federal agencies charged with implementing domestic programs depend heavily on other levels of government to accomplish their goals. Grants serve as the funding mechanism for these activities. As a result, Federal agencies need to be able to measure results of grant programs to assess whether programs are achieving their goals. Office of Management and Budget reviews of grant programs suggest a need for improved accountability. To date, the Office has evaluated three-fifths of all Federal programs using its Program Assessment Rating Tool. Overall, the Office assigned a rating of “Results Not Demonstrated” to 29 percent of all Federal programs. This rating means the program does not have a good performance measure or data for that measure. The percentage of grant programs receiving the “Results Not Demonstrated” rating is larger; of the 159 grant programs assessed, 72 (or 45 percent) received that rating. According to the Office ofManagement and Budget, the higher percentage for grants might be explained in part by the breadth of purpose of some grants. It might also be explained by the lack of agreement among grantees and Federal parties regarding grant purposes and performance measures, resulting in a lack of focused planning to achieve common goals.

#### Conditions can be used the achieve national goals

Mason 11 Ruth, Visiting Associate Professor of Law, Yale Law School, “Federalism and the Taxing Power”, 11/10, <http://www.californialawreview.org/assets/pdfs/99-4/02_Mason.pdf>

The Constitution provides the federal government with certain enumerated powers, such as the ability to regulate naturalization, the postal service, and interstate commerce. 24 In addition to directly regulating in these enumerated areas of competence, the Supreme Court has held that Congress may indirectly regulate other areas through its power of the purse. Specifically, in South Dakota v. Dole, the Supreme Court held that Congress may condition federal funding to the states upon the requirement of state compliance with federal regulatory goals, even if those goals fall outside Congress’s enumerated powers. 25 The Supreme Court held that the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution. Thus, objectives not thought to be within Article I’s enumerated legislative fields . . . may nevertheless be attained through the use of the spending power and the conditional grant of federal funds.

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Federal grants provide aid for states that match funds—additional funds are conditioned on adopting federal policy

GAO 4 “FEDERAL-AID HIGHWAYS Trends, Effect on State Spending, and Options for Future Program Design”,Aug, <http://www.gao.gov/new.items/d04802.pdf>

In general, there are three possible ways that federal grant funding can influence state spending for a program, as illustrated in figure 1. First, increased federal funding may stimulate, or leverage, additional spending from state resources. For example, a state may have to increase its own spending in order to meet federal matching requirements and obtain federal funds, thus increasing the overall level of spending by more than the amount of the federal grant. 10 As the federal-aid highway program in most cases requires that states must contribute 20 percent of the total cost of a project in order to receive federal matching funds of 80 percent of the total cost, the suggestion is that every $1.00 increase in federal funds would go towards a total spending increase of $1.25 ($1.00 is 80 percent of $1.25), $0.25 of which would be funded with state and local government funds ($0.25 is 20 percent of $1.25). The result of a stimulative effect of federal grant funding is illustrated in the first panel of figure 1, in which an additional $1.00 of federal aid increases spending from state resources by 25 cents, increasing the overall level of highway spending by $1.25. Alternatively, increased federal funding may supplement state spending by adding to what states would otherwise have spent, increasing the overall level of spending by the amount of the federal grant, as illustrated in the second panel of figure 1. To the extent that states maintain their own spending when they receive additional federal funding, either because federal policy requires that they do so or because they do so voluntarily, then the additional federal aid supplements state spending. Finally, states may use increased federal funding to substitute for, or replace, what they would otherwise have spent from state resources, so that the overall level of spending increases by less than the amount of the federal grant. This substitution of federal funds for state funds is illustrated in the third panel of figure 1, in which an additional $1.00 in federal funding results in only a 50 cent increase to total spending because in response to the influx of federal funds, the state withdraws 50 cents of its own spending on the program and uses these funds for other purposes. 11

#### The process of the condition is most relevant to policymaking—now is critical to re-evaluate its role in federalism

Thomas 12 Kenneth, legislative attorney, “The Constitutionality of Federal Grant Conditions after National Federation of Independent Business v. Sebelius”, 7/17, <http://theincidentaleconomist.com/wordpress/wp-content/uploads/2012/07/CRS-Federal-Grants-R42367-clean.pdf>

The authority of Congress to specify under what conditions the states will receive Medicaid funds is generally considered to be the Spending Clause. 15 Under the Spending Clause, Congress can allocate money to states, private entities, or individuals, but then require those recipients to engage in or refrain from certain activities as a condition of receiving and spending that money. The question arises, however, whether under precepts of federalism, there are limitations on Congress’ ability to apply such requirements to the states. The lines of authority between states and the federal government are, to a significant extent, defined by the United States Constitution and relevant case law regarding federalism. In recent years, the Supreme Court has decided a number of cases that would seem to be a reevaluation of this historical relationship. In particular, a number of these cases have cited the Commerce Clause, 16 the Tenth Amendment, 17 and the Eleventh Amendment of the Constitution as establishing limitations on the power of the federal government over the states. 18 In contrast to this trend, the Court has generally interpreted congressional power under the Spending Clause expansively, even when that legislation arguably intrudes on state sovereignty. For instance, many areas of federal law that regulate states, such as civil rights statutes, 19 have been enacted pursuant to the Spending Clause. In many situations, such as where these statutes apply to state agencies or institutions, Congress is using its spending power to accomplish goals that cannot be legislated directly because such direct legislation would be unconstitutionally intrusive on state sovereignty or beyond the authority of Congress.

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#### Conditioning grants is constitutional and common practice—Supreme Court decisions prove it’s a critical discussion and our specific form of condition is distinct and justified

Canada 3 Ben, Analyst in American National Government

Government and Finance Division, “Federal Grants to State and Local Governments:

A Brief History”, 2/19, <http://lugar.senate.gov/services/pdf_crs/grants/Federal_Grants_to_State_and_Local_Governments_A_Brief_History.pdf>

The Supreme Court upheld the practice of conditioning grants in its 1987 ruling on South Dakota v. Dole. South Dakota challenged the ability of the federal government to withhold federal highway funds from states with drinking ages below 21 years of age. The court ruled that Congress could use its spending power to encourage uniformity in the states’ drinking ages. Further, it ruled that “Congress may attach conditions for the receipt of federal funds. However, exercise of the power is subject to certain restrictions, including that it must be in pursuit of ‘the general welfare.’” 59 Other recent Supreme Court decisions have, however, limited Congress’s influence over state policy. An example is the 1992 ruling in New York v. United States. New York State disputed federal legislation pertaining to the disposal of lowlevel radioactive waste, arguing that the legislation went beyond providing monetary incentives for disposing of low-level radioactive waste, but compelled states either to follow congressional instructions or accept ownership of the waste. The court ruled that Congress overstepped its authority to condition federal grants, which is granted in the commerce and spending clauses of the Constitution. In its ruling, the court stated, “In this provision, Congress has crossed the line distinguishing encouragement from coercion.” 60

#### The process of conditioning federal grants is a critical debate—growing precedence of conditions make it a key policy question

Galle 11 Brian, Assistant Professor at the Florida State University College of Law, “Federal Grants, State Decisions”, 11/27, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume88n4/documents/GALLE-FederalGrants.pdf>

Although it is a familiar point that debates over the most appealing way to ¶ read a statute may turn largely on empirical questions,¶ 1¶ not all statutory debates ¶ have yet been subject to careful examination of the underlying empirics. For ¶ example, the Supreme Court has held that conditions attached by Congress to ¶ federal grants offered to state or local governments should be interpreted ¶ strictly against Congress, even where the plaintiff suing to enforce the ¶ condition is a third party.¶ 2¶ I argue here that this position can be justified, if at ¶ all, only by a showing that there are defects in the bargaining process between ¶ Congress and its grantees, and that those defects threaten values the courts are ¶ charged with protecting. Defenders of the Court’s approach have suggested ¶ that states bargain from a position of weakness, and that their representatives ¶ have strong incentives to ignore the federalism values protected by the ¶ Constitution.¶ 3¶ In this Article, I attempt to subject these assumptions to more ¶ rigorous scrutiny, arguing that officials in fact have their own self-serving ¶ incentives to preserve federalism values. In addition, I survey recent empirical ¶ evidence suggesting that officials typically have access to the resources to ¶ pursue their goals contrary to Congress’s entreaties. Given the scale of so-called “conditional” federal spending, and its place in ¶ our constitutional structure, these questions are urgent ones.¶ 4¶ A vast array of ¶ domestic programs depend, in one way or another, on the states’ willingness to ¶ accept both federal dollars and the terms and conditions that go with them.¶ 5¶ ¶ The question, then, of how or whether the federal judiciary should police these ¶ grants is a correspondingly important one.

#### Counterplan is core of the topic—a majority of federal investment are conditional grants

Watts 99 Ronald, Principal Emeritus and Professor Emeritus of Political Studies and Fellow of the Institute of Intergovernmental Relations at Queen's University, “The Spending in Federal Systems: A Comparative Study”, <http://www.queensu.ca/iigr/pub/archive/books/Thefederalspendingpower-acomparativestudy-Watts.pdf>

Nature and extent of the use of the federal spending power. The federal govern­ment makes extensive use of its spending power in relation to areas of state jurisdiction. Given the large number of fields of concurrent jurisdiction (in all of which there is potential total or partial federal paramountcy), many of the condi­tional grant programs, while relating to areas of state legislative competence, do not necessarily relate to fields outside the federal law-making power. Neverthe­less, the use of the federal spending power has not been restricted to these areas of concurrent jurisdiction and has also been extensive in areas of exclusive state jurisdiction. Because the latter have not required a special procedure of approval, they have not been differentiated in public accounts as a specific separate classi­fication. Without extensive examination of each individual federal grant-in-aid, it is not possible lo identify what proportion of these transfers have applied to areas clearly within exclusive state law-making power." What is clear is that, except for the partial exception of General Revenue Shar­ing (1972-86), all federal transfers have been conditional. These grants have taken a wide variety of forms. Four broad types can be distinguished: (i) project grants, which are given on a discretionary basis to qualifying applicants, (ii) formula grants with open-ended reimbursement of costs at a specified rate, (iii) formula grants related to particular projects, and (iv) formula grants in which a fixed total amount is distributed to recipients in accordance with a formula.'\* The majority of these grants have required some degree of non-federal matching. They can also be classified as categorical grants (618 in 1995) for specific, narrowly defined activities and block grants (15 in 1995) for broad functional areas that although conditional may be used with greater flexibility and discretion by recipients. By comparison with Canadian experience, the conditions and formulas specified have tended to be much more detailed." Some of the schemes have involved direct federal expenditure to individuals or non-governmental agencies, but a substan­tial number have been directed at the states and local governments as recipients.1\*

#### Nearly all federal grants are conditional

Wick 10 Douglas, Research assistant at USC Gould School of Law, “RETHINKING CONDITIONAL FEDERAL GRANTS AND THE INDEPENDENT CONSTITUTIONAL BAR TEST”, 10/25, <http://lawweb.usc.edu/why/students/orgs/lawreview/documents/scallrev83_6wick.pdf>

The federal government gives money to state and local governments in the form of grants. 20 The use of federal grants has increased dramatically over time in the United States. In 1902, federal grants accounted for less than 1 percent of state and local revenues; by 1952, 10 percent of state and local revenues came from federal grants; by 2006, the number was 30 percent. 21 State governments on their own receive nearly 32 percent of their revenue from federal grants. 22 In just ten years, total federal grant expenditures went from $285 billion in fiscal year 2000, to $653 billion in fiscal year 2010. 23 Nearly all federal grants are conditional, meaning recipients must comply with certain mandates or suffer penalties. 24 Congress issues intergovernmental grants, conditional or otherwise, by using its spending power.

#### Historical precedent—conditioning grants has been a political tool since the early 20th century

Canada 3 Ben, Analyst in American National Government

Government and Finance Division, “Federal Grants to State and Local Governments:

A Brief History”, 2/19, <http://lugar.senate.gov/services/pdf_crs/grants/Federal_Grants_to_State_and_Local_Governments_A_Brief_History.pdf>

President Theodore Roosevelt’s extensive use of power may have inspired changes in the federal system after he left office. For example, some analysts point to the Weeks Act of 1911 as the first example of a modern grant-in-aid. In the Act, Congress authorized the Secretary of Agriculture to “cooperate with any state or group of states, when requested to do so, in the protection from fire of the forested watersheds of the navigable streams.” 20 Despite its appropriation of only $200,000, observers consider it a landmark in the development of the grants-in-aid system because it contained several mechanisms that became common in future grants, including conditioning the receipt of federal funds on approval of state plans, requiring matching state funds, and specifying the oversight role of federal officials. 21 Congress established a pattern of financial grants to states in 1914, by passing the Smith-Lever Act, which distributed millions of dollars in agricultural assistance to states. 22 Within 10 years of passage of the Weeks Act, the federal government was awarding grants for highway construction (in response to the automobile), vocational education, public health, and maternity care. 23

#### The ability to condition state grants is a critical discussion—multiple Supreme Court cases prove the importance of analysis

Thomas 12 Kenneth, legislative attorney, “The Constitutionality of Federal Grant Conditions after National Federation of Independent Business v. Sebelius”, 7/17, <http://theincidentaleconomist.com/wordpress/wp-content/uploads/2012/07/CRS-Federal-Grants-R42367-clean.pdf>

An argument can be made, however, that there is a significant difference between the Dole “relatedness” inquiry and the NFIB “new and independent” program inquiry. First, as noted, the “relatedness inquiry” in Dole was identified as a limitation on the Spending Clause, while the NFIB discussion of “new and independent programs” emphasized the concerns of the Tenth Amendment. Second, under Dole, the “relatedness” and “coercion” inquiries appear to be disjunctive, in that failure to comply with either of these factors would mean that the statute was unconstitutional. Under NFIB, however (as is discussed below), the “new and independent program” inquiry and the “coercion” inquiry are conjunctive, so that a grant condition must apparently fail both tests to be found unconstitutional. If the NFIB analysis were either a supplement to or a replacement for the Dole “relatedness” doctrine, that doctrine would be significantly narrowed. It would seem premature, without further clarification by the Court, for a lower court to apply such a limiting rule of construction to Dole (requiring challenges to successfully challenge both “relatedness” and “coercion”). Thus, arguably, the Dole “relatedness” test was not directly at issue in NFIB, and it is still the case that an unrelated grant condition will be found unconstitutional under the Spending Clause without the further requirement that such a condition be coercive. However, as noted previously, no federal statute has every been found by any court to fail under this requirement. Coercion When Coercion Analysis is Important As suggested above, there are four types of grant conditions recognized by the Court: “Directly Related Conditions,” “Indirectly Related Conditions,” “Independent Program Conditions,” and “Unrelated Program Conditions.” And, as discussed above, a coercion analysis may not be particularly important for three of them. “Directly Related Conditions” are likely to be upheld and “Unrelated Conditions” conditions are likely to fail regardless of the level of funds withheld. Since, under Dole and NFIB, a coercion analysis still exists for “Indirectly Related” conditions, the implicit approval of Justice Roberts’ opinion to the withholding of all Medicaid funding for the many amendments to Medicaid prior to the ACA makes it unlikely that past or future “Indirectly Related Conditions” will be constitutionally infirm. Thus, it would appear that only when a court ascertains that a grant condition associated with an “Independent Program Condition” is used to withhold existing funds that coercion analysis is likely to be relevant.

## AT: Say No (General)

#### Federal aid motivates broad state support on any issue—federal-aid highway proves goals and penalties aren’t a deterrent

GAO 4 “FEDERAL-AID HIGHWAYS Trends, Effect on State Spending, and Options for Future Program Design”,Aug, <http://www.gao.gov/new.items/d04802.pdf>

The federal-aid highway program has a considerable regulatory component. As a condition of receiving federal aid, states agree to apply and enforce certain federal laws on federally aided projects, such as the environmental assessment provisions in the National Environmental Policy Act, the Americans With Disabilities Act, the nondiscrimination protections found in the Civil Rights Act of 1964, and others. In addition, states are required to establish goals and to award a set percentage of contracts (the national goal is 10 percent) on federally aided projects to small businesses owned and controlled by socially and economically disadvantaged individuals, including minority and women-owned businesses. Furthermore, in accepting federal-aid highway funds, states must enact certain laws to improve highway safety or face penalties in the form of either withholdings or transfers in their federal grants. 9 In addition to these penalties, states may apply for and receive highway safety incentive grants through programs administered outside the federal-aid highway program by the National Highway Traffic Safety Administration (NHTSA). For example, states in which the use of seat belts exceeds the national average or improves over time are eligible for incentive grants based on NHTSA’s calculation of the annual savings to the federal government in medical costs that resulted from the increased use.

#### States accept conditional funding—political motivation, inter-state competition, and demand for funding

Somin 2 Ilya, Law Clerk and PhD candidate at Harvard, “Closing the Pandora's Box of Federalism: The Case for Judicial Restriction of Federal Subsidies to State Governments”, Jan, Georgetown Law Journal, accessed lexisnexis 7/22/12

Federal subsidization of state governments undermines interstate policy diversity in two major ways. First, the ability to grant subsidies conditioned on state conformity to federal standards in public policy gives state governments an incentive to yield to the preferences of national political majorities even when these differ from those within a given state. [n20](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n20)In theory, a state with a perfectly efficient political process (in the sense that it perfectly reflects the preferences of a majority of its voters) would only accept conditional federal grants that require it to forego desired policies if the additional funds were worth more to its citizens than the policies it was forced to terminate. [n21](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n21) Unfortunately, the beneficiaries of conditional federal grants may often be better organized than the state's population as a whole, particularly because they include many agencies of the state governments themselves. [n22](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n22) Even if state political processes were completely free of interest group pressure or other types of distortions, a system of federal subsidies would still [\*466] lead to a suboptimal amount of interstate political diversity. This is the case for three reasons. First, conditional federal subsidies to any given state are only partly paid for by that state itself, with the vast bulk of the funds coming from taxation in other states. A state's decision to accept conditional federal funds will, therefore, not take into account the full cost of the expenditure, but only that portion which is borne by the state itself. [n23](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n23) Thus, states will often accept conditional federal subsidies even if the benefit of maintaining their own separate policies would outweigh that subsidy's full cost.Second, states that refuse conditional federal expenditures realize that refusal may place them at a competitive disadvantage relative to other states, which now have more funds available to attract individual and corporate migrants. Indeed, if a state's taxpayers contribute to the funding of a program of conditional grants that the state itself refuses to accept, it is in effect subsidizing its competitors. [n24](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n24) Perhaps as a result of such perverse incentives, "state and local politicians usually are extremely reluctant to turn down federal money in order to avoid grant conditions," fearing the political consequences of refusing "free money." [n25](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n25) Refusals are so rare that they make headlines. [n26](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n26)

#### No political resistance to any condition—aid incentivizes cooperation

Somin 2 Ilya, Law Clerk and PhD candidate at Harvard, “Closing the Pandora's Box of Federalism: The Case for Judicial Restriction of Federal Subsidies to State Governments”, Jan, Georgetown Law Journal, accessed lexisnexis 7/22/12

There can be little doubt that federal subsidies to state governments, at least conditional ones, have the effect of imposing federal control on the legislatures and executive bureaucracies of the states. Presumably, the whole point of attaching conditions to the grants is to give state governments an incentive to implement policies they would not adopt of their own independent volition. In fact, conditional federal subsidies to states restrict state autonomy in this way much more so than does commandeering, because subsidies are ubiquitous, while commandeering is comparatively rare. [n113](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n113) Moreover, unlike commandeering, which is bitterly opposed by state governments because it appropriates their resources without providing any offsetting benefits, [n114](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n114) conditional subsidies  [\*483]  rarely attract political resistance, because state governments have strong incentives to accept them.[n115](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n115) Despite the danger that conditional federal grants pose to state autonomy, Justice O'Connor, writing for the Court in New York, attempted to distinguish them from commandeering on the grounds that state governments accept grants and their attached conditions voluntarily, thus ensuring that "residents of the State retain the ultimate decision as to whether or not the State will comply." [n116](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n116) Yet, this reliance on the consent of state governments contradicts her insistence elsewhere in the same opinion that "State officials . . . cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution." [n117](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n117) By this reasoning, a state's consent cannot in and of itself legitimate an otherwise unconstitutional action. Yet this is the only distinction that Justice O'Connor draws between conditional federal grants and commandeering.

#### Conditioning federal funding solves—states drive for money can overcome Congressional resistance on policy

Sayers-Fay 12 Kimberley, Law Clerk to the Honorable William A. Fletcher, U.S. Court of Appeals for the Ninth¶ Circuit; J.D., School of Law, University of California, Berkeley “Conditional Federal Spending: A Back Door to¶ Enhanced Free Exercise Protection”, 7/10, California Law Review, <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1494&context=californialawreview>

That back door is Article I, Section 8, Clause 1 of the U.S.¶ Constitution-the Spending Clause.¶ 12 ¶ This clause empowers Congress to¶ spend for the "general welfare."¶ 13 ¶ In the past, Congress has spent in ways¶ that effectively buy states' cooperation. In the 1980s, for example, Congress effectively purchased a national drinking age of twenty-one by¶ threatening to withhold federal highway funds from states that refused to¶ comply.¶ 14 ¶ The question is, can Congress buy enhanced free exercise protection through similar spending maneuvers? Can Congress achieve indirectly through spending the goal that the Boerne Court has held it cannot¶ directly legislate?¶ The answer is a qualified yes. By attaching strings to a host of federal¶ spending programs, Congress can accomplish some, but not all, of RFRA's¶ objectives. Faced with the prospect of losing their federal funds for noncompliance, states are likely to adopt or enact the protections Congress¶ desires. Strategic spending thus offers an alternative to the legislative approach invalidated in Boerne and to the variant of it Congress is currently¶ trying to resuscitate through the Religious Liberty Protection Act of 2000.15¶ This Comment explores this spending alternative in depth. Specifically, it¶ seeks to illustrate how Congress could promote free exercise without exceeding constitutional limits by attaching conditions on federal spending¶ programs.

## AT: Court Rollback (General)

#### Court wont rollback – two reasons – (1) the condition is related to the particular project in question and (2) the recipients voluntarily agree to the condition

Thomas 12 Kenneth, legislative attorney, “The Constitutionality of Federal Grant Conditions after National Federation of Independent Business v. Sebelius”, 7/17, <http://theincidentaleconomist.com/wordpress/wp-content/uploads/2012/07/CRS-Federal-Grants-R42367-clean.pdf>

An example of a grant condition that does not violate the Tenth Amendment can be found in South Dakota v. Dole. 37 In Dole, the Court found that Congress was well within its authority to withhold five percent of federal highway funds from states in which the age for purchase of alcohol was below twenty-one years. 38 In that case, the State of South Dakota, which permitted nineteen-year-olds to purchase beer, brought suit challenging the grant requirement, arguing that the law was an invalid exercise of Congress’s power under the Spending Clause 39 to provide for the “general welfare.” Finding that the legislation was a clear exercise of Congress’s power under the Spending Clause, 40 the Court went on to hold that, under this Clause, the condition must be related to the particular national projects or programs to which the money was being directed (relatedness). 41 Further, the Court considered whether other constitutional provisions, such as the Tenth Amendment, may independently bar the conditional grant of federal funds. 42 The relatedness requirement was of some concern to the Court. In Dole, however, the congressional condition imposing a specific drinking age was found to be related to the national concern of safe interstate travel, which was one of the main purposes for expenditure of highway funds. 43 It should be noted that this standard of relatedness was relatively lenient, in that the condition was only indirectly related to how the federal money was being spent or to the specific federal projects involved. Instead, the condition was related to the overall regulatory goal (transportation safety) of the provided funds. Next, the Court turned to the question of whether the Tenth Amendment (which provides that state legislatures or executive branch officials may not be “commandeered”) was an independent constitutional bar to the grant condition. The argument that the Court considered was whether the grant condition was intruding on the state’s authority to regulate alcohol or on the right of the state legislature to be free from federal directives as to how to legislate regarding its own state liquor laws. The Court held that because the state had voluntarily agreed to comply with the grant condition in question, the statute was not a violation of the Tenth Amendment.

## AT: Hurts Federalism

#### State rationality and Congressional discretion prevent conditional funding from impeding on federalist balance

Galle 11 Brian, Assistant Professor at the Florida State University College of Law, “Federal Grants, State Decisions”, 11/27, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume88n4/documents/GALLE-FederalGrants.pdf>

In sum, my analysis here suggests there is little justification for the clear ¶ statement rule. The rule, like other forms of constitutional enforcement, ¶ displaces the expressed preferences of political actors, including both federal ¶ grant-offerors and state and local grant-acceptors. Any analysis of the clear ¶ statement rule, including Professor Tribe’s political-process story, must ¶ account for that fact by pointing to some flaw in the decisions officials make in ¶ offering and accepting grants that might justify federal judicial intervention. ¶ Yet, there is no real evidence that state decisions to accept funds fail to ¶ preserve the values that federalism protects, even if that is not what in fact motivates the state officials. Officials have their own reasons for preserving ¶ diversity. The perceived discount on raising funds locally often counterbalances the costs of accepting federal money. And there is little evidence that ¶ state officials perceive difficulty in raising funds through their own tax ¶ systems, especially in light of other federal tax supports, such as the federal ¶ deductibility of many state and local taxes. ¶ Of course, the reader may wonder whether any of this matters at all. After ¶ all, we might think of the clear statement rule as just a sort of default rule. ¶ Perhaps if Congress views it as an unwise rule, Congress might simply enact ¶ conditional spending statutes with a disclaimer providing that all the provisions ¶ of the statute are to be interpreted purposively, or that some rules may be ¶ binding on states even if not expressly stated in the text of the statute. That, of ¶ course, assumes that the costs of overcoming legislative inertia are relatively ¶ low.

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# Specific – Contracting Reform CP

## 1NC – Counterplan

#### Text – The United States federal government should \_\_\_\_\_\_\_\_\_\_\_ with the requirement that funding recipients must complete project design documents to solicit bids and use fixed-price contracts.

#### Our counterplan is competitive, solves the entire Aff, and avoids devastating cost overruns

Jessica Perez and Tess Stovall 12 (Policy Advisor for the Third Way Economic Program, and Deputy Director for the Third Way Economic Program, “Coming in on Budget: Infrastructure Contracting Reform” pg. 3-5 <http://content.thirdway.org/publications/509/Third_Way_Idea_Brief_-_Coming_in_On_Budget_Infrastructure_Contracting_Reform.pdf>)

As LePatner and others have noted, system reform will be vital to restoring discipline to our project delivery system so that we can begin to modernize the nation’s infrastructure. To initiate this process, the federal government should require simple, but significant, changes to programs like the Federal Aid Highway Program, the Federal Transit Administration’s New Starts program, and the Federal Aviation Administration’s Airport Improvement Program. In exchange for federal funding, these programs should require that states: • Complete project design documents to solicit bids; and • Increase their use of fixed-price contracts. Prevent Surprises. Unforeseen site conditions have the ability to add enormous costs to infrastructure projects, and when construction on a project begins before the completion of design documents the likelihood of overruns increases expo­nentially. For instance, at least $737 million of project cost overruns associated with Boston’s infamous “Big Dig” tunnel project stemmed from incomplete designs.17 Thorough knowledge of physical elements like soil conditions, design preferences, and the current state of repair of a structure allows for proper planning, accurate materials purchases, and efficiency in managing labor. Although requiring the completion of design documents prior to soliciting bids may result in additional site research and decision making at the outset, the benefits far outweigh the drawbacks. Requiring the completion of design documents prior to construction would reduce the probability that contractors will encounter unanticipated challenges, and therefore, result in a lower overall price tag for state and local governments. The predictability and fiscal restraint that result from this requirement will translate into more efficient use of taxpayer dollars and more public goodwill. Reduce the gouging of government. Under contract structures used by many state and local governments, the government is the party financially responsible when projects go awry. Under a fixed-price contract, however, the government and contractor would have to agree on a dollar amount that project costs cannot exceed. Aside from specific, set increases that can be allowed for in the case of escalation in the market prices of certain materials, changes initiated by the government party, or other specified scenarios matched to a price, the contractor would be held responsible for any cost overruns. This would allow for a more appropriate balance of risk between the government entity and the contractor. The main concern for many contractors in fixed-price contracts—taking on the additional financial risk of overages—would be lessened with the use of complete design documents. And because contractors would no longer have the option of making up their profit margin through overruns, bidders would be incentivized to provide realistic estimates from the outset. The Recovery Act, which provided over $48 billion to the Department of Transportation for investment in highways and other transportation projects,18 also specified that fixed-price contracts should be used “to the maximum extent possible.”19 This is a good start, but more should be done. Fixed-price contracts and complete design documents go hand-in-hand, and federal infrastructure funding should require more of both. Get more bang for the buck. In these budget-conscious times, every dollar of infrastructure investment must be used effectively. Failing to keep one project’s costs under control and within budget can lead to delay or prevention of another. For example, The Boston Globe has reported that Massachusetts will be saddled with debt from the “Big Dig” until 2038, preventing needed infrastructure improvements across the state.20 And when the cost of building a new bridge on Interstate 680 across California’s Carquinez Straight ballooned to nearly four times the original estimate, the California Department of Transportation was forced to pay the bill with $405 million in toll revenue21—enough to fund a bridge replacement22 or buy new Toyota Priuses for 16,000 Californians. By reigning in overruns, contract reform can help to ensure that precious taxpayer dollars will pay for future construction, not past mistakes.

#### And – These cost overruns kill our ability to maintain and improve infrastructure – turns the Aff

Jessica Perez and Tess Stovall 12 (Policy Advisor for the Third Way Economic Program, and Deputy Director for the Third Way Economic Program, “Coming in on Budget: Infrastructure Contracting Reform” pg. 2 <http://content.thirdway.org/publications/509/Third_Way_Idea_Brief_-_Coming_in_On_Budget_Infrastructure_Contracting_Reform.pdf>)

The infrastructure delivery system used in the U.S. today makes it easy for projects to run over budget. When soliciting bids for projects, states often use incomplete design documents—meaning that a contractor prices and begins construction on a project before the plan is even complete.9 While this process saves time at the outset of a project, it also drastically increases the likelihood that a contractor will encounter unforeseen site conditions that cause delays and cost increases. For example, during the reconstruction of Interstate 287 in New York, unforeseen field conditions resulted in the need for an additional excavation, raising the project’s price tag by $687,400. This was just one of at least 65 change orders that have caused the project to run 22% over budget.10 Project cost overruns like these are far too common and pose a serious threat to our ability to build and maintain a 21st century infrastructure. In fact, nine out of ten infrastructure projects cost more than expected, with the average overrun a shameful 28%.11 The state of Indiana spent $17 million on overruns in 2001,12 while the state of California incurred more than $305 million in transportation cost overruns in just three years from 2007 to 2010.13 These unexpected costs consume valuable resources that could be devoted to other projects, thus limiting states’ ability to meet pressing infrastructure needs.

#### And – These cost overruns independently kill the economy

Jessica Perez and Tess Stovall 12 (Policy Advisor for the Third Way Economic Program, and Deputy Director for the Third Way Economic Program, “Coming in on Budget: Infrastructure Contracting Reform” pg. 1 <http://content.thirdway.org/publications/509/Third_Way_Idea_Brief_-_Coming_in_On_Budget_Infrastructure_Contracting_Reform.pdf>)

America’s transportation infrastructure ranks 24th in the world, behind both Barbados and Malaysia.2 Average commuting times in major U.S. cities exceed those in every European country but Hungary and Romania.3 And while Japan’s high speed rail network has the ability to transport people and goods at 186 miles per hour,4 our fastest rail lines travel at a meager 70 miles an hour.5 American businesses suffer because of the United States’ inferior infrastructure. Economic losses due to inefficiencies in our public infrastructure system currently amount to $195 billion per year. Traffic jams cost truckers $33 billion in fuel in 2009, significantly adding to the shipping costs of American manufacturers.6 These inefficiencies also take a bite out of family budgets. The average American spends an extra $335 per year on expenses related to unmaintained roads.7 The state of our infrastructure stems from a declining commitment to investment. U.S. infrastructure investment as a share of GDP has fallen 50% in the past 50 years.8 And our eroding infrastructure spells trouble for the thousands of American companies and millions of workers that rely on our infrastructure to move their goods and services quickly and easily. Without significant infrastructure improvements, economic growth will be stunted.

#### And – Only the counterplan avoids politics

Jessica Perez and Tess Stovall 12 (Policy Advisor for the Third Way Economic Program, and Deputy Director for the Third Way Economic Program, “Coming in on Budget: Infrastructure Contracting Reform” pg. 5 <http://content.thirdway.org/publications/509/Third_Way_Idea_Brief_-_Coming_in_On_Budget_Infrastructure_Contracting_Reform.pdf>)

\*\*\*Italicized text is a straw man argument\*\*\*

*This will cost more money, which the public doesn’t support*. Actually, deficit-conscious voters largely support infrastructure development, but they want it on time and within budget.23 Simple reforms like completed design plans and fixed-price contracts would allow the U.S. to build more with less. By holding state governments and contractors accountable for how they spend precious infrastructure dollars, Congress can make the U.S. a more efficient, more livable, more profitable place to do business.

## 2NC – SQ Inefficient

#### Current contract structures create a race to the bottom—that kills state taxpayers

Jessica Perez and Tess Stovall 12 (Policy Advisor for the Third Way Economic Program, and Deputy Director for the Third Way Economic Program, “Coming in on Budget: Infrastructure Contracting Reform” pg. 2-3 <http://content.thirdway.org/publications/509/Third_Way_Idea_Brief_-_Coming_in_On_Budget_Infrastructure_Contracting_Reform.pdf>)

Incomplete design documents result in a contract structure that places the majority of risk with the government entity. Because contractors can’t provide an accurate price estimate based on an unfinished plan, they aren’t willing to swallow the additional costs that result from plan changes or unforeseen site conditions. Therefore, states are forced to enter into contracts that allow for myriad changes and additional payments. That means that taxpayers are on the hook for changes like those to the I-287 corridor. Mid-project changes disrupt work flow and can lead to delays as more labor must be added, subcontractors coordinated, and additional materials purchased. Because the additional materials and services escape the competitive bidding process, contractors can charge premium prices, even further increasing the overall cost of a project. In effect, the government has agreed in advance to pay any for changes that invariably occur, and this comes at a high cost to taxpayers. Additionally, the lowest-bid system used in fielding contracts makes it difficult for contractors to compete fairly. States often are statutorily required to choose the lowest bid on a project, in effect, creating a “race to the bottom.” Because contractors know that their competitors will offer a low initial bid to secure the contract and then make up their profit margin through cost overruns, they are forced to do the same to have a chance at winning the project. This results in contracts that sometimes significantly undershoot the actual total cost of the project when it’s finished. When the government agrees to pay for additional costs up front, there is no risk associated with this underbidding—the liability rests solely with taxpayers.14

## 2NC – Contractors Say Yes

#### Contractors would agree to the CP—increases efficiency

Jessica Perez and Tess Stovall 12 (Policy Advisor for the Third Way Economic Program, and Deputy Director for the Third Way Economic Program, “Coming in on Budget: Infrastructure Contracting Reform” pg. 5 <http://content.thirdway.org/publications/509/Third_Way_Idea_Brief_-_Coming_in_On_Budget_Infrastructure_Contracting_Reform.pdf>)

\*\*\*Italicized text is a straw man argument\*\*\*

*Contractors wouldn’t agree to these terms*. They would. Honest contractors are constrained by the current practice of low bidding and cost overruns. Those who offer a reasonable bid are often passed over in favor of those who offer lower, unrealistic bids and then make up their profits in cost overruns. Surprises caused by incomplete design plans and inadequate research cause hassles for contractors. They are forced to shuffle their subcontractors and workers to accommodate changes. A design and contracting system that increases certainty would allow them to work more efficiently and save wasted time.

## 2NC – Doesn’t Link to Politics

#### Cost overruns kill public support for infrastructure projects—the CP solves and avoids politics

Jessica Perez and Tess Stovall 12 (Policy Advisor for the Third Way Economic Program, and Deputy Director for the Third Way Economic Program, “Coming in on Budget: Infrastructure Contracting Reform” pg. 3 <http://content.thirdway.org/publications/509/Third_Way_Idea_Brief_-_Coming_in_On_Budget_Infrastructure_Contracting_Reform.pdf>)

Polling reveals broad support for modernizing our nation’s infrastructure. Even in today’s harshly partisan environment, a recent survey showed that 74% of Democrats, 71% of Republicans, and 66% of self-identified Tea Party voters expressed support for infrastructure improvements.15 Yet, 90% of those polled also supported increased accountability to ensure that projects come in on time and on budget. Cost overruns betray the public’s trust that the government will act as wise stewards of their infrastructure dollars. Construction expert Barry LePatner puts it simply: “If there’s anything that Americans are more cynical about than politics, it’s construction.”16

## 2NC – Fixed Price Contract Solves

#### Fixed-price contracts are the ideal contract for efficiency, tech, and user attraction

M. Pilar Socorro 9 (Associate Professor of Applied Economics at Universidad de Las Palmas de Gran Canaria, Spain, “Contract design and financing mechanisms in transport project evaluation”, pg. 19, <http://www.evaluaciondeproyectos.es/EnWeb/Results/W_Papers/PDF/Actividad6/En6-2.pdf>)

There are several ways for the central government to remunerate concessionaires for their investments, but basically we can talk about three: cost-plus contracts, subsidies per passenger (or shadow tolls) and fixed-price contracts. With a cost-plus contract, concessionaires will only receive public funding if they have losses. These losses will then be fully or partially financed. With such a contract, concessionaires have no incentives to be efficient or attract new users to the transport system, since effort is costly and public funds are only obtained if they have losses. Subsidies per passenger consist of giving a fixed quantity to concessionaires for each passenger that uses the new infrastructure. Although this way of financing leads to good results in terms of incentives, it also implies that concessionaires bear all the demand risk and the probability of renegotiation increases. Furthermore, although a subsidy per passenger adjustable by statistical inference can provide the right incentives to attract users to the new infrastructure, it has the drawback that it is difficult to predict ex ante the final sum to finance, as this will depend on the final number of users. With a fixed-price contract the concessionaire receives a fixed transfer, regardless of its benefits. Thus, if companies are efficient enough they can keep the surplus, while if they are not, they will have losses. This type of contract is optimal in terms of constructing efficiently, choosing the most appropriate technology and attracting new users to the infrastructure. Nevertheless, similarly to subsidies per passenger, this kind of contract implies more risk for concessionaires and a higher probability of renegotiation (Guasch, 2004).

#### **Fixed-price contracts reduce cost, increase efficiency, and enhance collaboration between the government and contractor**

FHWA 11 (Federal Highway Administration, “Establishing finite budgets encourages contractor innovation”, page last updated 4/4/2011, <http://www.fhwa.dot.gov/hfl/innovations/designbuildffp.cfm>)

Over the next 5 years, the investment needed to address the backlog in highway infrastructure repairs may reach $1.6 trillion, according to American Society of Civil Engineers estimates. Compounding the problem is highway agency downsizing, reduced funding, aging infrastructure, growing congestion, escalating material costs, and public resistance to tax increases. Innovative investment financing is an increasing need in the delivery of transportation infrastructure projects. Design-build (D–B) is a method of project delivery in which the design and construction phases of a project are combined into one contract and awarded on either a low–bid or best–value basis. D–B projects allow for greater private sector participation in the delivery of transportation projects. Highway agencies can focus on policy and planning, leaving the private sector to deal with cost efficiency and construction risk. Some agencies have found that medium–to–large transportation projects are best suited to D–B project delivery because the agencies involved with larger projects typically have sufficiently knowledgeable staff to prepare the comprehensive contract documents required to clearly delineate roles, responsibility, and liability. Other agencies have had success with small–to–medium D–B projects in which the scope of work is similar for various projects. Fixed–price contracts between agencies and private partners on D–B projects are typically schedule driven, which fosters a cooperative working relationship between the designer and general contractor. This teaming environment encourages both design and construction innovation that can be rapidly incorporated into the project plan. Fixed–price selection processes can encourage the creativity of the bidders, who must consider factors such as project duration, team quality, and alternate designs carefully. Cost savings are also potentially available from reduced claims and litigation after project completion because issues are resolved by the D–B team members during the project. This reduces the potential for cost escalation due to one process impacting others downstream in the project. Advantages of considering innovative D–B contracts include the following: Single–point accountability for the owner Opportunities for increased construction efficiency Reduced construction time Greater access to private sector experience Opportunities for innovation and cost savings Transfer of delivery risk to the private sector Fewer construction claims

## 2NC – Efficiency Key

#### Failure to efficiently invest in transportation infrastructure collapses US competitiveness

Raymond F. Messer 9 (president and chairman of the board of Walter P Moore, “Infrastructure Improvements Will Boost a Struggling Economy”, 1/15/2009, <http://www.di.net/articles/archive/2966/>)

There is well-documented evidence of the direct correlation between transportation spending and job creation and the vital link between transportation and the economy. Transportation and transportation-related industries account for 10 percent of U.S. gross domestic product, and studies show that $1 billion in spending on infrastructure supports more than 34,000 jobs. Each dollar invested in highway construction generates $1.80 of GDP in the short term, according to Standard & Poor’s DRI. It is no surprise that the U.S. Chamber of Commerce and other business groups are making transportation a priority in their advocacy. Infrastructure spending received a fair amount of consideration in Congress last year as a part of an economic stimulus package. Opponents contend that it takes too long to get projects going to have any short-term stimulative effect. But supporters countered by identifying thousands of ready-to-go projects where the money could be spent within 90 days. Although most of that near-term funding will go directly to construction projects, the engineering and design community still has an interest in supporting it because there will be opportunities for project management, and the funds will help clear the books and get other projects off the shelf. Additional spending on infrastructure will foster immediate job creation, but it is also important for clients and policymakers to appreciate the long-term benefits to our national economic competitiveness. One, the transportation industry supports well-paying engineering and construction jobs, the kind of professions that are essential in the increasingly competitive global marketplace. Two, a safe and efficient transportation network is critical to economic growth — it reduces travel time and increases reliability, thereby lowering costs and leading to greater economic productivity for businesses and ease of mobility for travelers. Businesses depend on a reliable system for just-in-time manufacturing and delivery. There are other benefits as well. As outlined in a 2002 report published by the Transportation Research Board, transportation investment also strengthens local, regional, and state economies by energizing city centers and facilitating employment opportunities. One study found that a 10 percent increase in travel speed leads to increases of 15 percent to 18 percent in the size of the labor market. Transportation improvements also generate additional tax revenue by allowing businesses to expand operations and hire more workers. Despite these clear benefits, we are not doing enough to maintain, let alone improve, our infrastructure. According to the National Cooperative Highway Research Program, there is a $58 billion gap between current expenditures and the cost just to maintain highway and transit performance. To make improvements to the system, that gap grows to $119 billion. The National Surface Transportation Policy and Revenue Study Commission — a blue-ribbon panel of experts created by Congress to develop policy and funding recommendations — reported a $225 billion minimum annual investment needed to upgrade our system to a state of good repair and create a more advanced, sustainable system. Inadequate funding for transportation has led to deterioration, congestion, and delays, all of which raise the price of doing business through maintenance and repair needs, wasted fuel, and delayed cargo shipments. Last year, our national economy was crippled by nearly $80 billion in congestion costs. On the safety side, traffic accidents and fatalities, beyond their personal impact, exact a $230 billion annual toll in economic costs. The message is clear: We must not continue to put lives at risk or diminish our global competitiveness by failing to maintain and improve our transportation network.

# Specific – HSR Alt Energy CP

## 1NC – Counterplan

#### Text: The fifty states and all relevant territories should substantially increase their investment for an express train infrastructure system through a performance payment regime public private partnership program with the investment criteria of alternative energy as a fuel source.

#### HSR should be promoted alongside renewable energy promoting policies

UNESCAP 11, United Nations Economic and Social Commission for Asia and the Pacific, Low Carbon Green Growth Roadmap for Asia and the Pacific: intercity high-speed rail systems. http://www.unescap.org/esd/environment/lcgg/documents/roadmap/case\_study\_fact\_sheets/Fact%20Sheets/FS-Intercity-high-speed-railway-systems%20.pdf

Financial support from public sector: Securing and allocating government revenue for high-speed rail¶ investments over multiple years is a necessary first step to allow for the required years of planning and¶ construction of a new high-speed rail project. Long-term revenue could come from a transportation tax.5¶ Publically chartered infrastructure corporations can foster public-private partnerships and alleviate¶ planning difficulties for lines that cross administrative boundaries of provinces or even national borders.6¶ A high-speed railway should be promoted alongside renewable energy-promoting policies in order to¶ have positive climate change mitigation impacts.¶ Coordination with feeder transportation: Because a high-speed railway is usually operated for passenger¶ transport, the service should be linked to other more flexible feeder transportation in order to improve the¶ connectivity.¶ Strategic design of networks: Because demand for rail services needs to be quite high for investment in¶ high-speed rail to be worthwhile, it is significantly important that a high-speed rail system be used to link¶ sizeable population centres that expecting increased travel capacity between them ¶

#### HSR can be fueled by alt energy—Sweden proves

COPIRG 11, CoPIRG Foundation is an independent, state-based, citizen-funded organization that educates for the public interest and is a member of U.S. PIRG Education Fund, the federation of state Public Interest Research Groups. A Track Record of Success: High-Speed Rail Around the World and Its Promise for America. November 12, 2011. http://www.copirgstudents.org/reports/co/track-record-success-high-speed-rail-around-world-and-its-promise-america

High-speed rail saves energy and protects the environment. In the United States, high-speed rail could cut our dependence on oil while helping to reduce air pollution and curb global warming. • Continual improvement – Japan’s Shinkansen system is estimated to use one quarter the energy of air travel or onesixth the energy of automobile travel per passenger. The energy efficiency of Shinkansen trains has continually improved over time, such that today’s trains use nearly a third less energy, while traveling significantly faster, than the trains introduced in the mid-sixties. • More efficient – On Europe’s highspeed lines, a typical Monday morning business trip from London to Paris via high-speed rail uses approximately a third as much energy as a car or plane trip. Similar energy savings are achieved on other European highspeed rail lines. • Replacing oil with electricity makes zero emissions possible – Energy savings translate into reduced emissions of pollutants that cause global warming or respiratory problems – particularly when railroads power their trains with renewable energy. In Sweden, the country’s high-speed trains are powered entirely with renewable energy, cutting emissions of global warming pollutants by 99 percent.

#### States can solve HSR- Standardization

Hilkevitch 12 (Jon, Chicago tribune reporter, Feds open bidding for high-speed rail cars, <http://articles.chicagotribune.com/2012-04-22/news/ct-met-high-speed-rail-0422-20120422_1_rail-cars-high-speed-passenger-illinois-rail-officials>)

,The $551 million request for proposals was announced by the Federal Railroad Administration, which is coordinating a California-led effortto purchase standardized bi-level rail fleets for use on Amtrak routes in California, Illinois, Michigan, Missouri, Indiana and potentially Iowa.California will get 42 of the 130 new rail cars, which will be equipped with seating on two levels, Wi-Fi and other customer amenities, officials said. The Midwest states will share use of 88 rail cars. Existing Amtrak locomotives would be used initially to propel the new rail cars at speeds of up to 110 mph. Bids will be let later to purchase new high-performance diesel locomotives capable of sustaining 125 mph, as well as for single-level passenger cars, officials said. Multiple states participating in a joint agreement on a single type of rail car will maximize the purchasing power, lead to lower maintenance costs and reduce the cost of stocking spare parts, Federal Railroad Administrator Joe Szabo said about the biddingxzzx process that was launched Friday. "By standardizing these components it is going to give us much better leverage in the bidding process,'' Szabo said. The request for proposals contains Buy America requirements. All components of the rail cars must be built by American workers, with American-produced steel, iron and manufactured components. The procurement schedule calls for awarding a contract to a domestic manufacturer in early October. The cars will be delivered starting in 2015, officials said. The subsequent order for new locomotives is expected to lead to deliveries around 2015 too, Illinois rail officials said. The 130-car order would produce the first American-made, standardized passenger rail cars as part of the Obama administration's $53 billion proposal to build a nationwide network of high-speed passenger trains. The administration's plan faces an uphill fight in Congress, particularly among Republicans. Illinois officials voiced optimism. The multistate process that began Friday will mark "a resurrection of rail car manufacturing in the U.S.,'' predicted Joe Shacter, director of public and intermodal transportation at the Illinois Department of Transportation. The new rail cars would be used in Illinois on the Chicago-to-St. Louiscorridor, where 110-mph service is scheduled to start this year on a short stretch between Dwight and Pontiac, according to IDOT and Amtrak. In addition to that route, the new cars would be used on eight other corridors in the state: Chicago to Carbondale; Chicago to Quincy; Chicago to Detroit; Chicago to Port Huron, Mich.; and Chicago to Grand Rapids, Mich.; and on the proposed new corridors, Chicago to Moline, Chicago to Rockford and Dubuque, Iowa; and Chicago to Kansas City, Mo.

## Not sure what this card is for

#### Cap and Trade

Jaff 11, Steven. The Daily Pennsylvanian: Taking action on high-speed rail and alternative energy. November 13, 2011. http://www.thedp.com/index.php/blog/redandblue/2011/11/taking\_action\_on\_highspeed\_rail\_and\_alternative\_energy

The United States doesn’t lead the world in everything.¶ Europe has trains that can exceed 200 mph. Our alternative energy programs lag behind foreign ones.¶ However, there’s always time to catch up.¶ Last month, California adopted the nation’s first cap-and-trade program. At the beginning of this month, it released its business plan for an intrastate high-speed railway system.¶ Both high-speed rail and energy programs have rightfully been long-term goals of the United States for a long time – every State of the Union address in recent memory (delivered by presidents from both parties) has mentioned that the United States should improve its infrastructure, with particular respect to high-speed rail, and that the United States should promote alternative energy. In fact, presidents have mentioned both those goals (especially the energy one) for decades.¶ Which is why many Americans, myself included, were somewhat frustrated when President Barack Obama mentioned these two goals in his last State of the Union address: it epitomized talk without action and talk we had heard before.¶ Perhaps some hope is to be found in California’s plan. High-speed rail should attract customers – Californians voted to fund the plan, after all. Cap and trade will either decrease energy use or bolster California’s coffers, with which California can fund alternative energy. In all likelihood, both will occur to some extent.¶ Furthermore, both plans should create plenty of jobs. Sure, that includes temporary construction ones, but it also involves hundreds of thousands of permanent ones.¶ And if California’s initiatives do work, maybe the country will – and should – follow its lead.

# Specific – Port Security Environment CP

## 1NC – Counterplan

#### Text: The United States federal government should \_\_\_\_\_\_\_\_ with the requirement that funding recipients must complete and pass a FEMA Environmental Planning and Historical preservation review process.

#### The Port Security Grant Program requires an environmental review now

GAO 11 (Government Accountability Office, “PORT SECURITY GRANT PROGRAM

Risk Model, Grant Management, and Effectiveness Measures Could Be Strengthened”

<http://www.gao.gov/assets/590/587142.pdf>, November 2011)

PSGP funds cannot be distributed to grantees to begin projects until DHS ensures the grantee’s compliance with federal grant management requirements. FEMA’s GPD is responsible for ensuring that all grant projects adhere to federal grant requirements, including all EHP requirements. For example, the National Environmental Policy Act requires DHS to analyze the possible environmental impacts of each project funded by a DHS grant.16

#### But, failing the environmental review doesn’t preclude eligibility

FEMA 8 (“PORT SECURITY GRANT PROGRAM Plan Implementation Guidance” <http://www.maritimedelriv.com/Port_Security/AMSC/PSGP8_Files/PSGP_Plan_Implementation_Guidance_11_08.pdf> 11/24/2008)

All projects must undergo a programmatic review for compliance with FEMA Environmental Planning and Historic Preservation (EHP) requirements. Though the FA is not responsible for determining each sub-grantee’s compliance, the FA is responsible for requiring the sub-grantees to submit additional information if needed. Providing as much information upfront with the initial submission of IJs to FEMA will help expedite the review process and reduce the additional correspondence that might be needed. Potential environmental/historical impact will not necessarily preclude a project from eligibility. Rather, EHP will consider level of impact as it relates to level of enhanced security/preparedness.

#### **Only binding conditions on federal funding can solve environmental change**

PolitiFact 2012 [J.B. Wogan, Cites NDRC, DOT, NHSA, multiple different interviews with experts such as nterview with Deron Lovaas, director of the Federal Transportation Policy, Energy and Transportation Program at the National Defense Resource Council and Interview with Jesse Prentice-Dunn, transportation policy analyst for the Sierra Club, “Obama has encouraged energy conservation, but not required it”, 6/26/12, http://www.politifact.com/truth-o-meter/promises/obameter/promise/488/require-energy-conservation-in-use-of-transportati/]

Sometimes, candidates get a little unrealistic with their promises.¶ As a candidate, Barack Obama said he would require governors and local leaders in metropolitan areas to include energy conservation in their planning for projects that rely on federal transportation money.¶ Broadly speaking, energy conservation has been part of President Obama's agenda.¶ Under Obama, the Transportation Investment Generating Economic Recovery, or TIGER, program has provided $3.1 billion in grants to state and local governments for 218 transportation projects that promote environmental sustainability.¶ His administration has sought more stringent fuel economy standards for passenger cars.¶ We also found the Partnership for Sustainable Communities, an initiative launched in 2010, which aims to locate people near transit centers, reducing commute times and gas consumption while increasing affordable housing options.¶ "I think this administration has been more cognizant of this idea of improving the energy performance of our transportation systems than any president maybe since Jimmy Carter,” said Kevin McCarty, assistant executive director of the U.S. Conference of Mayors.¶ Jesse Prentice-Dunn, transportation policy analyst for the Sierra Club, called the Transportation Department's energy-conservation efforts "phenomenal,” especially with the TIGER grants.¶ Prentice-Dunn also referred us to the administration's support of a Senate transportation bill awaiting a vote in the House. The bill uses energy conservation as a state and metropolitan transportation planning objective and calls for research and development that would promote sustainability and environmental protection.¶ Deron Lovaas, director of the Federal Transportation Policy, Energy and Transportation Program at the National Defense Resource Council, said the Senate bill could have a positive effect on energy conservation in terms of freight policy objectives and shifting funding away from federal highways.¶ "But overall, it sadly falls far short of the campaign promise,” Lovaas said.¶ No one we interviewed could point to an existing or recently proposed requirement that energy conservation be a condition of receiving federal transportation dollars at the state or local level.¶ Tanya Snyder, editor of Streetsblog Capitol Hill, said Obama's energy-conservation promise is difficult to deliver when there is such strong political resistance to imposing federal requirements on states.¶ "There's so much passion among the Republicans and conservatives in the freshman class in preserving states rights,” Synder said.¶ McCarty, of the U.S. Conference of Mayors, said Obama's energy-conservation requirement would have been unprecedented in federal funding of state and local transportation.¶ "There's nothing else like that in the system,” he said.¶ This is a clear case that Obama promised more than was realistic.¶ The promise was specific in calling for federal transportation funding to be granted on the condition of energy conservation in state and local transportation planning. Nothing like that exists. We rate this a Promise Broken.

#### Current port infrastructure is destroying marine ecosystems and causing a major loss of biodiversity

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

The EPA estimates that only half of the continental United States’ original wetlands remain; millions of acres have been lost to development. From 1986 to 1997, some 58,500 acres of wetland were lost each year, and today, the remaining wetlands are home to one-third of the nation’s threatened or endangered species. Because many ports are located either on former wetland sites or near remaining wetlands, they pose grave dangers to sensitive ecosystems and the surrounding areas. The combined effects of dredging, drainage, fill, runoff, and air and water pollutants include disruption of bird migration patterns, loss of biodiversity, increased flooding, chemical contamination of soil and marine life, loss of recreational opportunities, and erosion.101 Water sedimentation from erosion and dredging may also cause irreversible damage to other important centers of biodiversity such as seagrass beds. In addition, toxic contaminants in sediment or runoff may affect commercial fish populations and even make these fish unsafe for human consumption. Three-quarters of all commercial fish are caught in the estuaries in which ports are located.102 Projects to mitigate this loss of habitat are cropping up throughout the country. As noted earlier, one such effort has been undertaken at the Port of Houston. Collisions involving boats and marine mammals also contribute to marine mortality. Since 1995, along the East Coast, eight right whales, a species in danger of extinction, have been killed by collisions with ships. These whales must share the coastal waters they need for migration routes with the ships that travel to and from bustling East Coast ports.103 Manatees also die from collisions with ships or from being crushed beneath barges or between docks and vessels in the shallow estuaries, bays, and canals along which ports are located.104 Expansive wharves built on piles can block sunlight from reaching aquatic plants upon which marine wildlife rely for survival. For example, the manatee in Florida, salmon, Dungeness crab, and Pacific herring in Puget Sound suffer from such loss of habitat.105,106 Exposure to debris, including plastic bags, netting, and plastic pellets, results in thousands of wildlife deaths each year, through starvation, exhaustion, or ingestion of toxics often found in plastics. 107 Plastic pellets, the raw material for plastic goods, have been found polluting oceans all over the world, as well as 13 of 14 U.S. harbors tested in an EPA study. The pellets can be spilled directly into the ocean from ship- 13 Strategies to Clean Up U.S. Ports The EPA estimates that only half of the continental United States’ original wetlands remain; millions of acres have been lost to development, including development of port terminals.ping containers or can travel via stormwater discharge. They are known to be ingested by one-quarter of all seabird species and have been found to account for 71 percent of all plastic ingested by seabirds. 108,109 In the Houston Ship Channel alone, 250,000 pellets were found in a single sample during a 1992 study.110 The effects on seabirds include malnutrition (since they have been found to mistake pellets for food), stomach ulcers, and accumulation of PCBs in the birds’ systems.111 These pellets can also cause problems higher up in the food chain because they can store and transport toxic chemicals in addition to PCBs, including DDE (a breakdown product of DDT) and nonylphenols.112 Roughly 10,000 of the 100 million containers shipped annually fall overboard.113 As containers are stacked ever taller and wider, the odds of spillage increase, which is particularly alarming given that almost one-third of all cargo is hazardous material.114

**Marine ecosystem collapse causes extinction of all species**

**Craig**, Associate Professor of Law, Indiana University School of Law, **2003** (Robin Kundis, Associate Professor of Law, Indiana University School of Law, 34 McGeorge L. Rev. 155)

Biodiversity and ecosystem function arguments for conserving marine ecosystems also exist, just as they do for terrestrial ecosystems, but these arguments have thus far rarely been raised in political debates. For example, besides significant tourism values - the most economically valuable ecosystem service coral reefs provide, worldwide - coral reefs protect against storms and dampen other environmental fluctuations, services worth more than ten times the reefs' value for food production. n856 Waste treatment is another significant, non-extractive ecosystem function that intact coral reef ecosystems provide. n857 More generally, "**ocean ecosystems play a major role in the global geochemical cycling of all the elements that represent the basic building blocks of living organisms**, carbon, nitrogen, oxygen, phosphorus, and sulfur, as well as other less abundant but necessary elements." n858 In a very real and direct sense, therefore, **human degradation of marine ecosystems impairs the planet's ability to support life. Maintaining biodiversity is often critical to maintaining the functions of marine ecosystems.** Current evidence shows that, in general, **an ecosystem's ability to keep functioning in the face of disturbance is strongly dependent on its biodiversity,** "indicating that more diverse ecosystems are more stable." n859 Coral reef ecosystems are particularly dependent on their biodiversity. [\*265] Most ecologists agree that the complexity of interactions and degree of interrelatedness among component species is higher on coral reefs than in any other marine environment. This implies that the ecosystem functioning that produces the most highly valued components is also complex and that many otherwise insignificant species have strong effects on sustaining the rest of the reef system. n860 Thus, **maintaining and restoring the biodiversity of marine ecosystems is critical to maintaining and restoring the ecosystem services that they provide**. Non-use biodiversity values for marine ecosystems have been calculated in the wake of marine disasters, like the Exxon Valdez oil spill in Alaska. n861 Similar calculations could derive preservation values for marine wilderness. However, economic value, or economic value equivalents, should not be "the sole or even primary justification for conservation of ocean ecosystems. Ethical arguments also have considerable force and merit." n862 At the forefront of such arguments should be a recognition of how little we know about the sea - and about the actual effect of human activities on marine ecosystems. The United States has traditionally failed to protect marine ecosystems because it was difficult to detect anthropogenic harm to the oceans, but we now know that such harm is occurring - even though we are not completely sure about causation or about how to fix every problem. Ecosystems like the NWHI coral reef ecosystem should inspire lawmakers and policymakers to admit that most of the time we really do not know what we are doing to the sea and **hence should be preserving marine wilderness whenever we can** - especially when the United States has within its territory relatively pristine marine ecosystems that may be unique in the world. We may not know much about the sea, but we do know this much: **if we kill the ocean we kill ourselves, and we will take most of the biosphere with us.** The Black Sea is almost dead, n863 its once-complex and productive ecosystem almost entirely replaced by a monoculture of comb jellies, "starving out fish and dolphins, emptying fishermen's nets, and converting the web of life into brainless, wraith-like blobs of jelly." n864 More importantly, the Black Sea is not necessarily unique.¶ The Black Sea is a microcosm of what is happening to the ocean systems at large. The stresses piled up: overfishing, oil spills, industrial discharges, nutrient pollution, wetlands destruction, the introduction of an alien species. The sea weakened, slowly at first, then collapsed with [\*266] shocking suddenness. The lessons of this tragedy should not be lost to the rest of us, because much of what happened here is being repeated all over the world. The ecological stresses imposed on the Black Sea were not unique to communism. Nor, sadly, was the failure of governments to respond to the emerging crisis. n865 Oxygen-starved "dead zones" appear with increasing frequency off the coasts of major cities and major rivers, forcing marine animals to flee and killing all that cannot. n866 Ethics as well as enlightened self-interest thus suggest that the United States should protect fully-functioning marine ecosystems wherever possible - even if a few fishers go out of business as a result.

## 2NC – Say Yes

#### **Incentivizing ports solve – they will agree to get the grants**

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Although ports cannot require oceangoing ships to meet more stringent emission standards, ports should set up incentives for ships making frequent calls at a port to use emission controls. Incentives should take the form of differentiated harbor fees or direct cash grants to shipping lines. Oceangoing ship emissions are virtually unregulated because they traverse international boundaries. Moreover, international standards will not come into force until next year, and these standards will be quite weak and will apply only to newer ships. 29 Strategies to Clean Up U.S. Ports The United States should follow suit by requiring 2,000 ppm or less sulfur content fuel for all oceangoing vessels while berthed at ports nationwide. Therefore, creative local and national incentives or requirements are necessary if ship emissions are to be reduced in coastal areas. Sweden’s differentiated harbor fees are a good example of what can be done by way of incentives (see “Swedish Harbor Fees Deter Dirty Ships,” page 32). When ships enter Swedish harbors, discounts are given to those using lower-sulfur fuel or NOx emission controls. California is evaluating this strategy, along with economic incentives for cleaner ships through the addition of pollution controls or the replacement of engines with cleaner models.34

## Solvency – Water Pollution – Stormwater

#### **Counterplan solves stormwater pollution**

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Under the federal Clean Water Act, operators of marine port terminals are required to obtain national pollution discharge elimination system (NPDES) permits for what are considered point source discharges to waterbodies, or pollution emanating from a confined, discrete source, such as a pipe, ditch, tunnel, well, or floating craft.25 These regulated point sources primarily include stormwater runoff from paved terminals and facilities. In 1987, nonpoint sources—those water discharges that do not come from an identifiable pipe or outfall—became subject to a revised regulatory approach as well. Stormwater permits are issued either through one of the EPA’s 10 regions or through an authorized state or territorial authority. Permits must, at a minimum, meet federal standards, although individual state programs are permitted to be more stringent or to alter certain procedures.26 Stormwater permit holders must monitor pollution levels in receiving waters to prove that they are within allowable levels, implement a stormwater pollution prevention plan (SWPPP), and perform facility inspections, among other requirements. Appendix C contains a comprehensive description of a model water quality program under an NPDES permit and describes elements beyond permit requirements. Recommendation: The EPA should issue effluent guidelines to require a general baseline level of pollutant reduction for port facilities or for those pollutants typically found in port runoff.

## Solvency – Water Pollution – Ballast Water

#### **Counterplan key to solve ballast water**

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

The federal government maintains no mandatory ballast water discharge requirements other than that ships entering U.S. waters must file a report detailing their ballast water management practices. 27 What those practices entail is not regulated, and a regimen of voluntary guidelines has proved largely inadequate.28 The EPA recently announced it would not regulate ballast water discharges from ships, deferring to the U.S. Coast Guard, and in the summer of 2003, the Coast Guard began developing a nationwide rule.29 A final, mandatory national ballast water management program rule is expected by summer 2004.30 Recommendation: The U.S. Coast Guard must finalize mandatory national ballast water regulations as quickly as possible and no later than the expected summer 2004 completion date.

## Solvency – Water Pollution – Water Discharge

#### **Counterplan solves water discharge**

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Various state and federal regulations prohibit marine vessels from dumping sewage, toxics, and oil in U.S. waters. For example, all ships with toilets must have sewagetreatment equipment, called marine sanitation devices. Within three miles of the U.S. coast, ships may then either discharge the treated sewage or store it for later disposal at a shoreside pumpout facility.31 Outside the three-mile coastal U.S. territorial water limit, ships are allowed to discharge untreated sewage. In addition, the EPA has designated more than 50 “no discharge zones” (NDZs), in which all sewage discharge, treated or not, is prohibited. About half of these NDZs are located in salt or estuarine waters, which are important to marine habitats.32 Recommendation: The EPA should consider more stringent requirements on the dumping of wastes containing oxygen-depleting nitrogen and phosphorous, as well as persistent toxic compounds, that continue to threaten marine life.

## Solvency – Air Pollution – Shoreside Power

#### Shoreside power solves air pollution

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Marine vessels contribute substantial quantities of air pollution by running onboard diesel auxiliary engines for power while they are at dock. This “hoteling,” as it is known, contributes significant but unnecessary pollution, aggravated by auxiliary engines run on bunker fuel—the dirtiest grade of diesel. This measure therefore employs a strategy of hooking docked marine vessels to less polluting power sources and is a critical step to reducing emissions from marine vessels. Plugging in to shoreside power, also known as “cold ironing,” should make use of near-zero or zeroemissions technology to provide cleaner power to docked vessels. Several ports throughout the world, including Los Angeles, California; Juneau, Alaska; and Göteberg, Sweden, have already implemented shoreside power measures, and they serve as examples. Specifically, this measure calls for ports to (1) require shoreside power as a condition of new terminal leases or renewals; (2) invest in infrastructure for electric power; (3) develop shoreside power for port-operated facilities; (4) subsidize the development of shoreside power for harborcraft; and (5) provide funding to offset the costs of retrofitting vessels to accommodate shoreside power. For this measure to be successful, sufficient power must be available for use at the wharves. Three specific power source options should be considered: a new installation or an upgraded substation, fuel cell units, and a “power barge.” Installation or upgrade of a port area substation would be appropriate for terminals requiring high power loads, such as cruise terminals or very large cargo areas. Requirements would include 3- to 15-megawatt transformers that meet varying voltage requirements, and flexible connections for vessels loading or off-loading at dock. The emissions associated with the electrical generation supplied by the substation must be significantly lower than the emissions generated by auxiliary engines on the receiving vessels to ensure meaningful reductions, making the use of renewable energy sources or natural gas appropriate. Any port-operated substation should employ the best available control technology (BACT) to reduce pollution impacts. The second power-generation option is the installation of one or two fuel cell units (200 to 250 kW) at berths where smaller ships (tugboats, commercial fishing boats, and crew/supply boats, for example) are hoteling, and where natural gas is available as a fuel source. The third option is a power barge equipped with fuel cells that can maneuver within a port to supply power at multiple locations. The fuel cell application might be particularly well suited for cargo ships in berth where diesel generators producing auxiliary loads are in the 1- to 2-megawatt range, as opposed to cruise ships, for which the load can be an order of magnitude higher. Fuel cell technology offers many significant enhancements over existing diesel generators with respect to marine applications. These enhancements include very low exhaust emissions, inherently low vibration and sound levels, and improved thermal efficiency (particularly at low-load levels). The U.S. Navy is one of many navies considering the use of integrated electric plants employing fuel cells in future ship designs. However, ships employing fuel cells for propulsion are not yet commercially available. In fact, fuel cells for auxiliary power or shoreside power generation are also still in the development stage and therefore cannot yet compete with existing technologies on a cost basis. For more information on fuel cells, see Appendix B. Based on currently available technology for large power applications (greater than 100 kilowatts), emissions from cold ironing would be far below the emissions from diesel power generation. The type of fuel used to generate shoreside electricity at a port for either technology approach, of course, will largely determine the level of emissions reductions this strategy will achieve. For cold ironing, the use of more renewables, cleaner fuels, and BACT for power plants in a utility’s portfolio will also play a role in overall emissions reductions and will further alleviate concerns about the issue of transferring the pollution problem from the port area to the location of the power generation plant. The EPA has developed estimates of the current mix of technology used in applications such as auxiliary diesel engines.6 The range of horsepower ratings for this class of engines is from 50 to 750 hp. Table 2-2 compares current emissions from auxiliary diesel engines to emissions from average U.S. power plants and two different fuel cell technologies. The average power plant in the United States is at least five times as clean as a marine diesel engine.7 Additionally, notoriously dirty coal-fired power plants alone release only one-third as much NOx than marine diesel engines.

## Solvency – Air Pollution – Alt Fuel

#### Marine vessel fuel produces massive amounts of emissions – only mandating a shift to alternative fuel solves

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Ports should significantly reduce emissions from marine vessels by requiring reduced sulfur content of marine diesel fuel. Large oceangoing marine vessels are notorious for running on bunker fuel, the dirtiest grade of diesel. We recommend that ships run on fuel with the lowest sulfur content possible, from 15 to 2,000 ppm. Higher sulfur content fuels cause increased emissions of NOx , SOx , and PMs. Although cleaner running vessels are slowly penetrating the U.S. market (see “Quiet, Clean, Hybrid Marine Power,” page 33), current marine diesel fuel can reach levels as high as 50,000 ppm sulfur (5 percent by weight). These high sulfur levels are approximately 15 times as great as current EPA non-road diesel fuel standards and 100 times as great as current EPA on-road fuel standards. Several lower-sulfur and alternative fuel options are available that are compatible with existing oceangoing and harbor-craft marine vessel engines, including fuels currently used for nonroad and on-road vehicular applications. According to the International Organization for Standardization (ISO 8217), 19 categories of marine residual fuels are available internationally. The lowest sulfur content fuel grade must have sulfur content less than 1 percent sulfur (10,000 ppm). Table 2-3 summarizes the most common of these marine fuel specifications under ISO 8217. The widely accepted average for marine bunker fuels in use by ships around the globe is approximately 2.7 percent sulfur (27,000 ppm). For comparison purposes, Table 2-4 lists the various national and international sulfur content fuels that are either in use today or slated for use in the near future. Because these fuels are available nationally, and because global conventions have recognized the need for lower sulfur content fuels (see Appendix D for more information on international rules governing marine fuels), several cleaner-fuel options are available for marine propulsion and auxiliary engines, as well as for on-board, backup generators. In addition, the use of cleaner, lower-sulfur fuels enables the use of a wider range of control technologies on these engines.

#### A switch from current marine fuel to low-emission fuel results in major emissions reductions

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

The three primary pollutants affected by the use of lower-sulfur fuel are SOx , NOx , and PM. Except for SOx , the emission reduction value of lowersulfur fuel is highly variable and depends greatly on the make, age, and quality of maintenance on the engine, the duty cycle, and many more factors. The amount of sulfur in ship emissions is equivalent to the amount of sulfur in the fuel. Therefore, the amount of SOx that will be reduced with use of the lower-sulfur diesel is a direct function of the level of sulfur reduced. Typically, however, a reduction from standard marine fuel with 2.7 percent sulfur content to a fuel with 0.3 percent sulfur content will yield approximately a 90 percent reduction in SOx emissions.18 The cleaner fuel will affect PM emissions, both directly and indirectly. Because both SOx and NOx contribute to PM formation, reductions in these emissions also reduce particulate levels. PM is also reduced directly by the cleaner fuel. According to the EPA, a switch of all vessel operations within 175 nautical miles of the U.S. coast would result in significant reductions in PM and SOx emissions.19 Table 2-5 shows that PM and SOx can be reduced dramatically by changing to lowersulfur diesel in marine engines. NOx reductions are more difficult to estimate. A reduction of approximately 10 percent may be realized when a ship uses a distillate fuel instead of heavy fuel oil.20 Further NOx reductions may be achieved when utilizing CARB on-road diesel due to lower aromatics, but these emission reductions have not been widely demonstrated in practice.21

## Solvency – Air Pollution – Equipment

#### **Alt fuel for port equipment solves emissions reductions**

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Ports should replace older diesel-powered cargo-handling equipment at container terminals with equipment powered by alternative fuel, where possible. Specifically, natural gas, propane, or battery-electric systems would be required for all new purchases.36 Where possible, ports should also adopt policies that require the purchase of new alternative-fuel cargo-handling equipment as a condition of all new leases and significant lease renegotiations.37 Diesel equipment that is ten years old or older should be targeted for replacement. These recommendations might necessitate the installation of fueling stations for alternative fuels throughout port terminals. Certified natural gas engines are available and are used widely in transit bus fleets operating throughout the country. In fact, the same manufacturers that make natural gas bus engines produce conventional diesel engines for cargohandling equipment.38 The vehicles and equipment in this category are powered by off-road engines, ranging from 100 to 500 horsepower (HP), depending on the application. Equipment with known alternative-fuel, electric, or electric hybrid models available are outlined in Table 2-7. The four types of yard equipment in this table—terminal tractors, straddle carriers, rubber-tired gantry cranes (RTGs), and forklifts—make up the majority of cargo-handling equipment and also account for the majority of pollution from equipment at ports.39 It should be noted that other pre-1996 cargohandling equipment, for which alternative-fuel, electric, or hybrid-electric options are not available, should still be retired and replaced with cleaner new models. Where possible, those new diesel models should incorporate cleaner on-road, instead of nonroad, engines. Also, where possible, vehicles and equipment that predate standards but are not quite ten years old (for example, eight years old or pre- 1996), should be slated for replacement. Replacing older equipment with equipment powered by alternative fuels significantly reduces emissions of toxic diesel PM, NOx , and other pollutants. The South Coast Air Quality Management District recently reported that, compared with conventional diesel technology, natural gas technology can reduce more than 60 percent more NOx and 30 percent more PM in terminal tractors.40 Although natural 34 Harboring Pollution TOM PLENYS Much of the cargo-handling equipment at the Port of Los Angeles runs on diesel emulsions, a cleaner diesel fuel, with simple emission controls that reduce pollution.gas engines have significantly lower NOx and PM emissions, they will likely have slightly higher CO and VOC emissions. However, the increase in CO and VOC emissions is small compared with the decrease in NOx and PM emissions. 41 Table 2-8 shows the total pollutant reductions obtained in three Southern California demonstration projects where non-road diesel vehicles were converted (either by new purchase or repower) from diesel to propane-fueled engines.42 One new propane engine reduced NOx emissions in this equipment by an average of 0.3 tons per year, and a repower of one engine eliminated more than half a ton per year.

#### Retrofitting and Repowering also solves

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Although the superior approach to cleaning up older equipment is to replace it with new, cleaner models, existing equipment with remaining useful life can be significantly cleaned up through retrofits and repowers. Under this approach, ports would fund an incentive program for marine terminal operators (MTOs) to repower and retrofit and to use cleaner fuel in cargo-handling equipment to reduce NOx and diesel particulate emissions. MTOs that choose to repower their equipment would install newer, lower-emitting diesel engines to replace existing diesel engines. MTOs that retrofit would install add-on equipment to their existing engines or to their new repowered engines. For repowering, the program should target existing “middle-aged” or recently purchased engines that are used extensively and that have relatively long remaining useful lives—generally speaking, engines manufactured between 1994 and 2003. Numerous new certified nonroad diesel engines in the appropriate size categories may be installed in place of older, dirtier engines. Target equipment would include regularly used yard hostlers, top-picks, side-picks, and straddle carriers. Several technologies have been shown to be cost-effective whether the engine repowers are installed on new or middle-aged equipment. Diesel particulate filters (DPFs) and diesel oxidation catalysts (DOCs) are available in various configurations from a number of manufacturers and are used to reduce harmful particulate matter as well as CO and VOCs. Ports should favor retrofit equipment that has been “verified” or “certified” for effectiveness by the CARB or the U.S. EPA. However, because very few controls have been verified or certified specifically for use in off-road equipment, controls demonstrated in other applications or verified/certified for on-road use should also be considered, with consultation and approval from the manufacturer. Cleaner diesel fuels, necessary for many controls to function, are available in much of the country. For more information on control technologies, see Appendix B.

## Solvency – Air Pollution – Trucks

Replacing trucks at ports sovles emissions

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

This program would encourage independent truck owners who perform the majority of their contractual work at a given port and operate pre-1984 model year trucks to voluntarily replace them with 1994 model year or newer trucks. The measure is an extremely cost-effective way to reduce truck emissions at ports, particularly because most truck models from 1983 and earlier have no emissions controls whatsoever. Newer vehicles would also be equipped with an appropriate after-treatment system to further reduce particulate matter (PM) emissions and air toxics, described in more detail in the cargo-handling equipment section, with the priority of replacing pre-1984 heavy trucks. After identifying the applicant pool with the oldest heavy trucks, preference should be given to applicants willing to replace their trucks with the cleanest available options. Incremental funding should also be disbursed for lowsulfur diesel to those applicants who opt to install a higher-efficiency DPF system on their new trucks until mid-2006, when federal requirements for low-sulfur diesel phase in. The program should encourage the replacement of the oldest vehicles with the newest, cleanest engines, including after-treatments. Pollutants Reduced Similar to the recommendation to purchase new cargo-handling equipment, this measure would reduce toxic diesel PM, NOx , and other pollutants associated with diesel engine exhaust.

#### Retrofitting solves

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

This program would encourage, but not require, independent truck owner contractors who perform the majority of their contractual work at the port and operate a 1984 or later model year truck to install an appropriate after-treatment system to reduce emissions. The approach would be very similar to the previously described approach of replacing older trucks with newer models, allowing incentive funding for after-treatments on 1984 and newer trucks. After-treatments, such as diesel particulate filters (DPF) and diesel oxidation catalysts (DOCs), can reduce diesel exhaust emissions by varying amounts depending on the specific technology employed. The CARB and the EPA have so far verified five DPF emission-control devices for 1994 model year or newer heavy trucks, as well as many other retrofit devices.88 Of all the retrofit devices available, DOCs have the longest history of certification and use on both diesel and natural gaspowered heavy-duty vehicle configurations. Where trucks cannot be replaced with 1994 or newer engines, retrofits with DOCs would be required.89 Where compatible, incentives should favor the use of the cleanest possible retrofit controls available. Extra fuel stipends should be offered to cover the incremental cost of low-sulfur diesel for after-treatments that specify the cleaner fuel. This extra incentive should expire in mid-2006, when federal requirements for low-sulfur diesel phase in. All applicants who receive awards from the proposed measure should be required to attend free maintenance and training courses to help ensure proper care for the vehicle and after-treatment systems.

## Solvency – Air Pollution – SCI + DWI

#### **Selective catalytic reduction and direct water injection solve emissions reductions**

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Selective catalytic reduction (SCR) can achieve NOx reductions of 80 percent or more. Although it was developed for such stationary sources as power plants, it has been successfully adapted to large marine vessels. The evidence indicates, however, that the cost of this technology can be prohibitive and that, in some instances, use of existing marine SCR systems has been discontinued due to cost. Furthermore, SCR technology still has several problems to overcome before it can be a fully successful NOx control strategy for marine diesel engines. Urea, the chemical relied on by SCR to reduce NOx emissions, can become a problem pollutant itself. Without the use of low sulfur diesel and additional controls—oxidation catalysts, for example—the problem is worsened. Finally, it is difficult to enforce the actual use, instead of bypass, of these systems because engines operate whether or not an installed SCR system is functioning. Other promising NOx reduction technologies are currently under development for marine diesel engines. Direct water injection can reduce NOx by as much as 60 percent, and humid air motors can reduce NOx by 40 to 80 percent. Both technologies are based on a similar principle—lowering engine temperatures—and have been tested on a number of ferries running in the Baltic Sea. Several variations on the technology have been developed, such as continuous water injection and combustion air saturation systems, reducing NOx up to 30 percent and 70 percent, respectively. Some of these technologies have the added benefit of reducing some other pollutants as well. Various engine modifications can achieve additional NOx reductions of up to 30 percent and PM reductions of up to 50 percent. Many of the particulate matter controls discussed in the measures for cargo-handling equipment and trucks may also be practical for use on large ships. The California Air Resources Board is funding a U.S. Navy study of one such control, diesel particulate filters on marine military craft. It is also possible to install DOCs on ships; however, both DOCs and DPFs require much lower sulfur levels than current marine-grade fuels.

## Water Pollution – Species Invasion

#### Ports, specifically ballast water, cause species invasion

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Ballast water taken in or discharged by large ships to maintain balance is responsible for the transport of thousands of marine species into foreign habitats worldwide. These invasive species often prey upon native species, or compete for resources with them—thus posing hazards to native species and ecosystems and threatening biodiversity and human health.115 For example, ballast water from cargo ships has been implicated in transporting a South American strain of cholera to the Gulf of Mexico, leading to fish and shellfish contamination. 116 Ballast water itself is also responsible for the introduction of “red tide” algae to the waters of several countries, contaminating shellfish and threatening human health.117,118 The 3 billion to 5 billion tons of ballast water moved by ships annually, including the 80 million tons discharged into U.S. waters, is only loosely regulated.119,120

#### Species invasion kills global biodiversity

Deacutis and Ribb 2002 [Christopher, PhD, and Richard, PhD, “Management Options for Narragansett Bay and Rhode Island”, January 2002, Narragansett Bay Estuary Program R.I. Department of Environmental Management, http://www.nbep.org/publications/other/ballast/BallWaterIntroSpeciesRpt.pdf]

Introduced species are recognized as the second most significant cause of loss of biodiversity (e.g., loss of species w/in an area) after habitat degradation (Vitousek et al., 1997). In the United States, scientists have demonstrated that of 1,880 U.S. species classified as imperiled, invasive species played a major role in the listing of 49% of these impacted species (Wilgrove et al., 1998). Non-native species, once successfully established, have the potential to cause myriad problems, ranging from parasitising important native species, to out-competing local populations for food, to outright predation on important native species. Such ecological changes to the ecosystem are often significantly disruptive to the normal functioning of that system. Introductions of exotic species have radically altered the structure and biodiversity of ecosystems around the globe. Europe, Australia, New Zealand, Russia (Black Sea), and the U.S. have all experienced major shifts/losses of local aquatic species, human health risk and economic loss of shellfish due to outbreaks of toxic algal blooms or even human pathogenic organisms (Carlton, 1999; 2001). Although it is considered to be conservatively low, Ruiz et al. (1997) has estimated that at least 400 aquatic nonindigenous species populations had become established in estuaries on US coasts by 1990. Such introduced species may out-compete and displace commercially important resources for food or space (as in San Francisco Bay with the Asiatic clam and Chinese mitten crab) or harm and feed upon aquaculture stock (as is happening on the U.S. Northwest coast due to recent green crab introduction). Scientists studying Chesapeake Bay have recently seen the introduction of the rapa whelk, a large Asian snail that eats native clams and oysters, threatening an important economic activity. Introduced species can cause unexpected and unpredictable ripple effects within the food web of an ecosystem. The latter happened in the Black Sea, where a comb jelly species from the U.S. (Mnemiopsis leidyi) preyed on fish larvae as well as their prey food, essentially wiping out the anchovy fishery there. On the Gulf coast of the U.S., population explosions of the Pacific spotted jellyfish appears to be a major threat to Gulf finfish populations by consuming massive quantities of fish larvae in the water column (Carlton, 2001).

#### Species Invasion destroy biodiversity

McGeoch et al. 2010 [Melodie, Centre for Invasion Biology and Cape Research Centre, “Global indicators of biological invasion: species numbers, biodiversity impact and policy responses”, January 2010, http://onlinelibrary.wiley.com/doi/10.1111/j.1472-4642.2009.00633.x/full]

Invasive alien species (IAS) pose a significant threat to biodiversity. Moreover, compelling evidence exists, based on global trade and movement patterns, that the magnitude of this threat is increasing globally (Hulme, 2009). Invasive alien species alter ecosystem processes (Raizada et al., 2008), decrease native species abundance and richness via competition, predation, hybridization and indirect effects (Blackburn et al., 2004; Gaertner et al., 2009), change community structure (Hejda et al., 2009) and alter genetic diversity (Ellstrand & Schierenbeck, 2000). In Europe, for example, the large majority of the most invasive species reduce diversity and change community structure, whereas a smaller percentage directly harm threatened species (Viláet al., 2009). Increases in the number and spread of alien species appear to be strongly associated with substantial increases in the extent and volume of trade and transport, particularly over the last 25 years (Levine & D’Antonio, 2003; Ruiz & Carlton, 2003; Hulme et al., 2009). Whereas global trends in trade and movement are clear, related patterns of the extent of biological invasion, their impacts on biodiversity and societal responses to these impacts remain poorly quantified at a global scale. The Convention on Biological Diversity’s (CBD) 2010 Biodiversity Target (UNEP, 2002a), and the associated Invasive Alien Species Indicator under the focal area ‘Threats to biodiversity’ (UNEP, 2005, Walpole et al., 2009), presents one of the first concerted and globally coordinated efforts to do so.

**Loss of biodiversity causes human extinction**

**Diner 1994**

(Judge Advocate’s General’s Corps of US Army, David N., Military Law Review, Winter, 143 Mil. L. Rev. 161,)

No species has ever dominated its fellow species as man has. In most cases, people have assumed the God-like power of life and death -- extinction or survival -- over the plants and animals of the world. For most of history, mankind pursued this domination with a single-minded determination to master the world, tame the wilderness, and exploit nature for the maximum benefit of the human race. n67 In past mass extinction episodes, as many as ninety percent of the existing species perished, and yet the world moved forward, and new species replaced the old. So why should the world be concerned now? The prime reason is the **world's survival**. Like all animal life, humans live off of other species. At some point, the number of species could decline to the point at which the ecosystem fails, and then humans also would become extinct. No one knows how many [\*171] species the world needs to support human life, and to find out -- by allowing certain species to become extinct -- would not be sound policy. In addition to food, species offer many direct and indirect benefits to mankind. n68 2. Ecological Value. -- Ecological value is the value that species have in maintaining the environment. Pest, n69 erosion, and flood control are prime benefits certain species provide to man. Plants and animals also provide additional ecological services -- pollution control, n70 oxygen production, sewage treatment, and biodegradation. n71 3. Scientific and Utilitarian Value. -- Scientific value is the use of species for research into the physical processes of the world. n72 Without plants and animals, a large portion of basic scientific research would be impossible. Utilitarian value is the direct utility humans draw from plants and animals. n73 Only a fraction of the [\*172] earth's species have been examined, and mankind may someday desperately need the species that it is exterminating today. To accept that the snail darter, harelip sucker, or Dismal Swamp southeastern shrew n74 could save mankind may be difficult for some. Many, if not most, species are useless to man in a direct utilitarian sense. Nonetheless, they may be critical in an indirect role, because their extirpations could affect a directly useful species negatively. In a closely interconnected ecosystem, the loss of a species affects other species dependent on it. n75 Moreover, as the number of species decline, the effect of each new extinction on the remaining species increases dramatically. n76 4. Biological Diversity. -- The main premise of species preservation is that diversity is better than simplicity. n77 As the current mass extinction has progressed, the world's biological diversity generally has decreased. This trend occurs within ecosystems by reducing the number of species, and within species by reducing the number of individuals. Both trends carry serious future implications. Biologically diverse ecosystems are characterized by a large number of **specialist species**, filling narrow ecological niches. These ecosystems inherently are more stable than less diverse systems. "The more complex the ecosystem, the more successfully it can resist a stress. . . . [l]ike a net, in which each knot is connected to others by several strands, such a fabric can resist collapse better than a simple, unbranched circle of threads -- which if cut anywhere breaks down as a whole." n79 By causing widespread extinctions, humans have artificially simplified many ecosystems. As biologic simplicity increases, so does the risk of ecosystem failure. The spreading Sahara Desert in Africa, and the dustbowl conditions of the 1930s in the United States are relatively mild examples of what might be expected if this trend continues. Theoretically, each new animal or plant extinction, with all its **dimly perceived and intertwined affects, could cause total ecosystem collapse and human extinction**. Each new extinction increases the **risk of disaster**. Like a mechanic removing, one by one, the rivets from an aircraft's wings, [hu]mankind may be edging **closer to the abyss**.

## Water Pollution – General

#### Ports create massive amounts of water pollution

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Port operations, including waste from ships that is either dumped directly or leached into water, can cause significant damage to water quality -- and subsequently to marine life and ecosystems and human health. These effects may include bacterial and viral contamination of commercial fish and shellfish, depletion of oxygen in water, and bioaccumulation of certain toxins in fish.20 Bilge is water collected at the bottom of the hull of a ship-water that is often contaminated with oil leaking from machinery. Bilge water must be emptied periodically to maintain a ship's stability and to prevent the accumulation of hazardous vapors. This oily wastewater, combined with other ship wastes such as sewage and wastewater from other onboard uses, is a serious threat to marine life.21 Antifouling additives are often added to the paint used on ships to prevent the growth of barnacles and other marine organisms on ship surfaces. Some of these additives contain tributyltin (TBT), a toxic chemical that can leach into water.22 While toxic antifouling additives are slowly being phased out of use, these toxic pollutants persist in the marine environment. Alternatives to TBT are in ample supply. Stormwater runoff is precipitation that travels across paved surfaces. It can accumulate deposits of air pollution, automotive fluids, sediments, nutrients, pesticides, metals, and other pollutants. In fact, urban stormwater runoff from all sources, including marine ports, is the largest source of impairment in U.S. coastal waters and the second-largest source of water pollution in U.S. estuaries.23 Virtually all of the land at a port terminal is paved, and therefore impervious to water. When water bodies are overloaded with nitrogen, algae and plankton can rapidly increase in numbers, forming "blooms" which are sometimes called red or brown tides. This process, called eutrophication, has been identified by the National Research Council as the most serious pollution problem facing estuaries in the United States.24 As major sources of NOx, ports are major contributors to eutrophication. In the year 2000, 8,354 oil spills were reported in U.S. waters, accounting for more than 1.4 million gallons of spilled oil. The majority of these spills occurred in internal and headlands waters, including the harbors and waterways upon which ports rely.25 A large share of oil contamination is the result of "chronic" pollution from such sources as port runoff, unloading and loading of oil tankers, and the removal of bilge water -- resulting in up to three times as much oil contamination as tanker accidents.26 However, large, "catastrophic" spills also have a significant impact. Dredging is a routine activity of ports to remove sediment that builds up in ship channels from erosion and silt deposition. Dredging also creates new channels and deepens existing ones. Each year, more than 300 million cubic yards of sediment in waterways and harbors are dredged to allow ships to pass through.1 About five to 10 percent of dredged sediment is contaminated with toxic chemicals, including polychlorinated biphenyls (PCBs), mercury and other heavy metals, polycyclic aromatic hydrocarbons (PAHs), and pesticides -- all of which can cause water contamination and complicate sediment disposal.28 Dredging may also increase water turbidity (cloudiness), harm habitat, and disturb or kill threatened and endangered species. It may also risk stirring up and releasing buried contaminants. These various forms of water pollution cause a broad range of environmental problems, including loss of critical wetlands areas, water sedimentation that harms important habitat (seagrass beds, in particular), collisions involving boats and marine mammals, and marine life exposure to debris, including plastic bags, netting, and plastic pellets.

### Air Pollution - Emissions

#### **Ports are one of the largest sources of emissions and air pollution**

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

Nationally, the proportion of pollution from commercial ships is growing due to the lack of regulation. This category of pollution is expected to account for one-fifth of all diesel soot generated in 2020, making ships the second-largest source nationwide.17 Indeed, as Figure 1 shows, marine vessels contribute an average of 34 percent of NOx and 44 percent of PM emissions from ports alone.18 While new trucks are fairly clean compared to other diesel sources, the local trucks that serve container ports tend to be much older than the long-haul truck fleet, and therefore more polluting. Figure 1 also shows that diesel trucks are the second-largest source of port emissions today. Locomotives and cargo-handling equipment are also extremely polluting compared to on-road trucks due to their much more relaxed emission standards -- in some cases 15 times more polluting. While there is only a limited amount of cargo-handling equipment at ports compared to tens of thousands of trucks that can service a port in a single day, this pollution source on average contributes almost a quarter of the emissions of NOx and PM at ports. Locomotives are a relatively small contributor to overall port emissions; however, most of the large rail yards serving ports from Long Beach to Virginia are significant pollution sources outside of port property, and therefore not included in overall port emissions. Although cars, power plants, and refineries are all well-known, large sources of pollution, Figure 2 demonstrates that the air pollution from ports rival or exceed these sources. This can be attributed to varying degrees of regulations. Pollution from cars, power plants, and refineries are somewhat controlled, whereas port pollution has continued to grow with almost no regulatory control. The Port of Los Angeles is the largest West Coast port, while the Port of New York & New Jersey is the largest East Coast port. The Port of Virginia represents other large ports such as Savannah, Houston, and Seattle. Figure 2 highlights emissions of NOx and PM because these pollutants are associated with very severe health impacts. Despite very conservative assumptions used to calculate port emissions, ports out-pollute some of the largest sources, begging the question: Should ports be regulated like other large sources of pollution?19

#### Ports are major sources of air pollution

National Resources Defense Council 2004 [NRDC, the nation's most effective environmental action group consisting of expertise of more than 350 lawyers, scientists and other professionals, “Harboring Pollution”, August 2004, <http://www.nrdc.org/air/pollution/ports1/overview.asp>]

The diesel engines at ports, which power ships, trucks, trains, and cargo-handling equipment, create vast amounts of air pollution affecting the health of workers and people living in nearby communities, as well as contributing significantly to regional air pollution. More than 30 human epidemiological studies have found that diesel exhaust increases cancer risks, and a 1999 California study found that diesel exhaust is responsible for 71 percent of the cancer risk from air pollution.1 More recent studies have linked diesel exhaust with asthma.2 Major air pollutants from diesel engines at ports that can affect human health include particulate matter, volatile organic compounds, nitrogen oxides (NOx), ozone, and sulfur oxides (SOx). Particulate matter pollution, or PM, ranges from coarse dust kicked up from dirt roads to tiny sooty particles formed when wood, gasoline or diesel is burned. At ports, construction and daily operations often create coarse PM, but it is the tiniest PM that causes the greatest health hazards. Much of this fine PM -- so small it is invisible to the eye -- comes from diesel engine exhaust. Less than 1.20 the diameter of a human hair, fine PM can travel deep into the lungs, landing in the delicate air sacs where oxygen exchange normally occurs.3 Numerous studies have found that these fine particles impair lung function, aggravate such respiratory illnesses as bronchitis and emphysema, and are associated with premature deaths.4 Dozens of studies link airborne fine-particle concentrations to increased hospital admissions for asthma attacks, chronic obstructive lung disease, pneumonia, and heart disease, including an increased risk of heart attacks.5 School absenteeism due to respiratory symptoms has also been linked to PM pollution.6 Volatile organic compounds (VOCs) are often toxic, and when they evaporate into the air they can react with other pollutants to form ground-level ozone, commonly referred to as smog. Common VOCs produced by diesel engines include benzene, 1,3-butadiene, formaldehyde, and toluene, each of which poses significant health risks, including cancer and birth defects.7 Nitrogen oxides (NOx) are a family of chemicals, including nitrogen dioxide, nitric acid, nitrous oxide, nitrates, and other related compounds. They can cause a wide variety of health problems, including respiratory distress, and react with VOCs in the atmosphere to create ozone. A number of studies have found that NOx can have a toxic effect on the airways, leading to inflammation and asthmatic reactions.8 In fact, people with allergies or asthma have far stronger reactions to common allergens, such as pollen, when they are also exposed to NOx.9 Ozone, also known as smog, is a reactive gas produced when VOCs and NOx interact in sunlight and split apart oxygen molecules in the air. The layer of brown haze it produces is not just an eyesore, but also is a source of serious illnesses. Ozone is extremely irritating to the airways and the lungs, causing serious damage to the delicate cells lining the airways. It contributes to decreased lung function, increased respiratory symptoms, asthma, emergency room visits, and hospital admissions.10 Ozone can cause irreversible changes in lung structure, eventually leading to chronic respiratory illnesses, such as emphysema and chronic bronchitis.11 Burning fuels that contain sulfur, such as diesel and especially marine diesel fuels that have a high sulfur content, produce sulfur oxides (SOx). Sulfur oxides include sulfur dioxide, PM, and a range of related chemical air pollutants. SOx react with water vapor in the air to create acids that irritate the airways, sometimes causing discomfort and coughing in healthy people, and often causing severe respiratory symptoms in asthmatics.12 In addition to the pollutants discussed above, there are other air pollutants that threaten public health that are not discussed in this report, including carbon monoxide (CO), formaldehyde, heavy metals, dioxins, and pesticides used to fumigate produce.

#### Port expansion will worsen air pollution

Norsworthy 6/3, [Marcelo Norsworthy, Tom Graff Fellow at EDF.], USACE Releases Report On U.S. Port And Inland Waterways Modernization To Prepare For Panama Canal Expansion, http://blogs.edf.org/texascleanairmatters/2012/07/03/usace-releases-report-on-u-s-port-and-inland-waterways-modernization-to-prepare-for-panama-canal-expansion/]

On June 20, the U.S. Army Corps of Engineers (USACE) submitted a vision and strategy document to Congress for the development of port and inland waterway infrastructure related to Panama Canal expansion. Expected to be completed in late 2014 or early 2015, the expansion will double the capacity of the Canal by allowing larger container ships to travel through the channel. U.S. ports seek to capture much of that traffic and are engaged in numerous projects to increase their capacity, primarily by dredging (the removal of sediment from a waterway) the areas leading to their terminals. The Panama Canal expansion, **U.S. port modernization and subsequent expected rise in container volumes at U.S. ports may have adverse environmental effects** if proactive mitigation steps are not undertaken. **With respect to air pollution, many ports are located in areas already burdened by unhealthy air and the potential rise in emissions from increased traffic would further deteriorate local air quality**. EDF has worked with a number of ports on air quality mitigation programs and the USACE report indicates that further measures may be needed to ensure the well-being of the local population and environment.

#### US ports are the largest source of air pollution

Cannon 08, James S. Cannon, [President of Energy Futures], U.S. “Container Ports and Air Pollution: A Perfect Storm”, Energy Futures, Inc. Study, http://s3.amazonaws.com/energy-futures.com/port\_study\_ef.pdf.

Oceangoing container ships make more than 10,000 visits to ports in the United States (U.S.) from around the world each year. Delivery of goods to ports and from there to U.S. consumers is powered by diesel fuel each step of the way. Diesel fuel quality ranges from notoriously filthy bunker fuel that powers ships, to lower quality grades for offroad vehicles, to lower sulfur grades recently required for onroad trucks. **Burning diesel fuel releases health threatening toxic air contaminants, smog forming air pollutants, and climate changing greenhouse gases. Air pollution and greenhouse gas emissions from international shipping are bad and getting worse.** The combination of **growing port activity**, the densely populated regions where most ports are located, **and the prevailing onshore wind patterns that accumulate, rather than disperse, port air pollution creates a “perfect storm” of threats to public health.** Most **U.S. ports are now among the largest sources of air pollution** in their cities and **progress toward reducing that pollution has been slow.** Public concern is rising, however, and efforts to grapple with the complex challenge of reducing air pollution from ports are finally gathering momentum.

## Pollution - General

**Ports are huge sites of pollution—collisions, oil spills, fires, and accidents**

Yarin **Eski 11** (a Glasgow University PhD candidate, affiliated with the Scottish Centre for Crime and Justice Research, “'Port of call': Towards a criminology of port security”, pg. 5-6

<http://crj.sagepub.com/content/early/2011/07/16/1748895811414593.full.pdf>)

**The top-of-the-agenda insecurity for ports to deal with is pollution in the port area by ships’ dispersal of waste and other residues to water** (Blakesley, 2006). **Pollution is difficult to tackle**, as more awareness is raised for ports as crucial in the global trade, **but also as there has been ‘a growing awareness of the need to ensure that health, environment and safety are adequately protected and considered as an integral function of these facilities’** (Wenning et al., 2007: 4). Clearly, economic and environmental agendas conflict most vibrantly in port policies and securing. Overall, **water pollution occurs in two ways** (Goulielmos and Pardali, 1998). **First, by ships, and second, by cargo transported by ships. Ships** move in ports to dock and in doing so, **form a collision risk that can heavily pollute the port waters and soil. Besides oil, slops, as a result of cargo residuals, for example, form direct pollution of water** too, and so do fuel emission and waste resulting from maintenance and repairs of ships, and pollution from removing rust with the use of various chemicals as other problems. The fuelling of ships itself is also a major polluter of the port waters, and eventually the sea. Bulk (liquid) cargoes remain the main polluters. **From coal and iron ore to oil and dangerous chemicals; each one of them endangers the port area and its surroundings**. Worldwide, about five million tons of oil is transported daily through shipment (Zaidi, 2007). When oil is moved from ship to shore, ‘and the linkage with shore is broken, then 3,000 litres per hour can be poured into the sea, provided the pace of 100 cm per hour is involved in unloading’ (Goulielmos and Pardali, 1998: 285). **Fire hazard because of poured oil or other flammable chemicals, for example liquefied gasses, form a serious threat to the entire port population.** Consequently, boxes that carry these chemicals are scrutinized severely by inspectors, as demanded by the IMO’s Convention for Safe Containers (CSC). Of the insecurities described here, transport of hazardous chemicals is thus the riskiest of them all, which may or may not be caused by terrorists, but certainly not by illegal immigrants or corrupted port personnel. They are caused by port workers who merely fulfill their jobs. On a day-to-day basis, **the biggest insecurities therefore lie in ‘accidents … because of falls of boxes from cranes and damage caused by cargo handling equipment’** (Goulielmos and Pardali, 1998: 286), heavily affecting cargo transport as they cause delays for trucks to transfer goods to the ports’ hinterlands. Arguably, **it is the mundane nature of port activity that needs scrutiny and security.**

## PSGP Solves

#### PSGP makes ports environmentally friendly

Nagle 11 (Kurt J. Nagle, President and CEO of the American Association of Port Authorities, August 31st 2011, American Association of Port Authorities, <http://aapa.files.cms-plus.com/PDFs/Secy%20Napolitano%2031AUG2011.pdf>]

Since 9/11, seaports and the federal government have partnered to harden our water borders against terrorism, protecting people, goods and equipment within this critical infrastructure. AAPA is gravely concerned about the recent proposal to eliminate direct funding for the FEMA Port Security Grant program and bundle it into other drastically cut FEMA grants. Additionally, while seaports remain committed to enhancing coastal resources and reducing their environmental impact, the federal government is a critical partner in beneficial reuse of dredged material and reduction of air emissions from older diesel engines – programs that should continue.

# AFFIRMATIVE ANSWERS

## General Aff Answers

#### The counterplan is unconstitutional

Thomas 12 Kenneth, legislative attorney, “The Constitutionality of Federal Grant Conditions after National Federation of Independent Business v. Sebelius”, 7/17, <http://theincidentaleconomist.com/wordpress/wp-content/uploads/2012/07/CRS-Federal-Grants-R42367-clean.pdf>

In the 1987 case of South Dakota v. Dole, the Supreme Court held that, in order for a federal grant condition imposed on a state to pass constitutional muster under the Spending Clause, the condition must be related to the particular national projects or programs to which the money was being directed. In addition, in order to comply with the limits of the Tenth Amendment, the level of funds withheld for failure to comply with that condition cannot be coercive. In a controlling opinion in NFIB, Justice Roberts suggested that this analysis may vary based on the type of grant condition that was at issue. It is unclear, however, whether NFIB significantly changed the Dole analysis, or whether the combination of factors that led the Court’s decision to limit how ACA Medicaid expansion would be enforced is likely to be repeated. For instance, if a grant condition is directly related to the expenditure of federal funds in a state program or activity, then, according to Justice Robert’s opinion in NFIB, the condition is usually constitutional under the Spending Clause. Or even if a grant condition is only generally related to the policy goals of the underlying grant, NFIB suggests that withdrawal of all program funds would still, in most foreseeable cases, be constitutional under the Spending Clause and the Tenth Amendment. If a grant condition is unrelated to the general policy goals of the underlying grant, however, then it is most likely unconstitutional under the Spending Clause. This latter standard, however, has been in place since the Dole case, and no court has ever struck down a federal law on this basis.

#### Conditional grants undermine state innovation—empirically creates ineffective public policy and guts solvency

Somin 2 Ilya, Law Clerk and PhD candidate at Harvard, “Closing the Pandora's Box of Federalism: The Case for Judicial Restriction of Federal Subsidies to State Governments”, Jan, Georgetown Law Journal, accessed lexisnexis 7/22/12

Federal subsidization of state governments undermines vertical competition for many of the same reasons that it undermines horizontal competition. Quite simply, the federal government can pay the states not to compete with it. It seems unlikely, for instance, that state resistance to the Fugitive Slave Act would have been as strong if state governments were eligible to receive substantial federal subsidies in exchange for cooperation. Fortunately, federal subsidies to state governments were relatively rare in the nineteenth century and were not usually a viable policy option. [n55](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n55) Currently, conditional federal subsidies to state governments undermine vertical competition in a wide range of areas, including, for example, state efforts to protect the rights of illegal immigrants, [n56](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n56) state efforts to punish civil liberties violations resulting from the war on drugs, [n57](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n57) and conditional grants that give states incentives to adhere to federally mandated standards in environmental, regulatory, and labor policy. [n58](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n58)

#### Conditioning grants undermine state autonomy and destroys federalism—it’s a slippery slope towards ignoring public interest

Somin 2 Ilya, Law Clerk and PhD candidate at Harvard, “Closing the Pandora's Box of Federalism: The Case for Judicial Restriction of Federal Subsidies to State Governments”, Jan, Georgetown Law Journal, accessed lexisnexis 7/22/12

The danger of federal control over state legislatures and executive bureaucracies is the touchstone of the Supreme Court's anticommandeering decisions, New York v. United States[n108](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n108) and Printz v. United States. [n109](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n109) In these cases the Court established the principle that "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." [n110](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n110) Federal commandeering of state governments is condemned because it takes control of state bureaucracies away from their own governments and "reduces [them] to puppets of a ventriloquist Congress." [n111](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n111) According to the Court, Congress "may not conscript state governments as its agents." [n112](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n112)

There can be little doubt that federal subsidies to state governments, at least conditional ones, have the effect of imposing federal control on the legislatures and executive bureaucracies of the states. Presumably, the whole point of attaching conditions to the grants is to give state governments an incentive to implement policies they would not adopt of their own independent volition. In fact, conditional federal subsidies to states restrict state autonomy in this way much more so than does commandeering, because subsidies are ubiquitous, while commandeering is comparatively rare. [n113](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368#n113) Moreover, unlike commandeering, which is bitterly opposed by state governments because it appropriates their resources without providing any offsetting benefits, [n114](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368#n114) conditional subsidies  [\*483]  rarely attract political resistance, because state governments have strong incentives to accept them.[n115](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368#n115)

Despite the danger that conditional federal grants pose to state autonomy, Justice O'Connor, writing for the Court in New York, attempted to distinguish them from commandeering on the grounds that state governments accept grants and their attached conditions voluntarily, thus ensuring that "residents of the State retain the ultimate decision as to whether or not the State will comply." [n116](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368#n116) Yet, this reliance on the consent of state governments contradicts her insistence elsewhere in the same opinion that "State officials . . . cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution." [n117](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368#n117) By this reasoning, a state's consent cannot in and of itself legitimate an otherwise unconstitutional action. Yet this is the only distinction that Justice O'Connor draws between conditional federal grants and commandeering.

We are therefore left with the task of deciding which of the two statements should be followed. On a purely doctrinal level, the condemnation of consent has greater precedential value than the endorsement. The former is part of the holding of New York, while the latter is merely dictum. [n118](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n118) More important, however, is O'Connor's own substantive argument that the consent of state governments is inadequate because the purpose of state autonomy is to protect "individuals" rather than governments. [n119](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n119) In addition, as O'Connor points out, [n120](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n120) state governments often have incentives to give up state autonomy even in cases in which this would not be to the benefit of the state's population. In this area, states are severely flawed agents for their citizens, partly because the latter have little understanding of the true import of federal grants and partly because individual states face competitive pressures to accept grants that it would be in their collective self-interest to reject. [n121](http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342986062911&returnToKey=20_T15176273236&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.528923.444070368" \l "n121)

#### Congress can attach conditions to any federal spending to guide policy in the public interest

National Paralegal College 7 “Congressional Powers”, <http://nationalparalegal.edu/conlawcrimproc_public/Federalism/CongressionalPowers.asp>

In other words, Congress can attach “strings” to money given to states in order to encourage states to comply with Congress’ wishes.¶ Almost two decades after Dole, in another popularly-followed case, the Court reiterated its position.¶ Four performance artists denied funding by the National Endowment for the Arts were up in arms concerning certain grant-making procedures detailed in 20 U.S.C.S. § 954 (d)(1), the National Foundation on the Arts and Humanities Act.¶ The artists argued that language in the Act requiring that “general standards of decency and respect” be taken into consideration in awarding grants violated their First Amendment rights (see Chapter 5). The Court found that the NEA’s resources were limited, that it denies most of the grant applications received, and that the basic assumption is that the NEA will grant awards according to some measure of artistic worth, making absolute neutrality inconceivable. National Endowment for the Arts v. Finley, 524 U.S. 569, 585 (1998), citing Advocates for the Arts v. Thomson, 532 F.2d 792 (1976).¶ So the language regarding “decency and respect” was not found by the Court to be an overreaching of Congressional authority, but merely a condition imposed on the distribution of funds.

#### Conditioning federal spending shifts accountability guts solvency—states and Congress play the blame game on implementing policies

Murashko 7 Dennis, Candidate for Juris Doctor, Northwestern University School of Law, “ACCOUNTABILITY AND CONSTITUTIONAL ¶ FEDERALISM: RECONSIDERING FEDERAL ¶ CONDITIONAL SPENDING PROGRAMS IN ¶ LIGHT OF DEMOCRATIC POLITICAL THEORY”, <http://www.law.northwestern.edu/lawreview/v101/n2/931/LR101n2Murashko.pdf>

One might, and should, wonder why the accountability logic should ¶ not apply when Congress conditions federal funds on a state’s implementation of a congressionally mandated waste removal schedule. If a state institutes waste removal programs to comply with Congress’s schedule, the ¶ decision may displease some voters. When pressed by these voters at the ¶ next elections to explain the decision to comply, state officials may shift the ¶ blame to Congress for imposing conditions on federal funds. But, because ¶ federal officials may in turn point fingers at their state counterparts and explain to the upset voters that the state officials always had the option of ¶ foregoing federal funding and refusing to comply, the buck would not stop with Congress either. Thus, conditional spending programs may very well ¶ lead to a diffusion of responsibility that ultimately results in voter confusion. If commandeering state legislatures through a take title provision results in voter confusion, it is difficult to see how conditioning federal ¶ funding on the state taking certain actions is not equally as violative of the ¶ accountability principle. The most reasonable explanation as to why the New York Court did not ¶ raise accountability concerns when analyzing the conditional spending provision of the Act is that it did not recognize federalism and accountability as ¶ distinct constitutional values. Remember, the Dole decision had already put ¶ to rest the federalism objection by establishing that conditional spending ¶ was within Congress’s enumerated powers.¶ 20¶ Thus, the New York Court did ¶ not think it needed to raise the accountability concerns, which, in its opinion, were but a subset of the federalism objections