### Topicality – Hoya Spartan Scholars

Resolved: The United States federal government should substantially increase its transportation infrastructure investment in the United States.

## \*\*\* TRANSPORTATION INFRASTRUCTURE

### TI – Categories – 1NC

#### “Transportation” must have the primary purpose of moving people or goods

DoE 8 (United States Department of Energy – Energy Intense Indicators in the U.S., “Terminology and Definitions”, 4-22, http://www1.eere.energy.gov/ba/pba/intensityindicators/trend\_definitions.html)

Transportation sector

An end-use sector that consists of all vehicles whose primary purpose is transporting people and/or goods from one physical location to another. Included are automobiles; trucks; buses; motorcycles; trains, subways, and other rail vehicles; aircraft; and ships, barges, and other waterborne vehicles. Vehicles whose primary purpose is not transportation (e.g., construction cranes and bulldozers, farming vehicles, and warehouse tractors and forklifts) are classified in the sector of their primary use. (see the EIA glossary).

#### “Infrastructure” contains multiple categories --- “transportation” is distinct from water and energy

Heintz 9 (James, Associate Research Professor and Associate Director – Political Economy Research Institute, et al., “How Infrastructure Investments Support the U.S. Economy: Employment, Productivity and Growth”, January, http://americanmanufacturing.org/files/peri\_aam\_finaljan16\_new.pdf)

II. ASSESSMENT OF INFRASTRUCTURE NEEDS FOR THE U.S.

In the previous section we looked at trends and patterns of public investment since 1950. We now examine what levels of infrastructure investment are required in the future to address expected needs and to fill the gap left by inadequate rates of past investment. We will then use this assessment of needs to develop policy scenarios and to estimate the employment impacts of an expanded infrastructure investment program. We will show, in later sections of the report, that a program of accelerated investment which aims to eliminate the country’s infrastructure deficit can generate millions of new jobs.

In this section we focus on four broad categories of infrastructure and specific areas of investment within each category. The infrastructure categories are:

1. Transportation: the road system; railroads; aviation; mass transit; and inland waterways and levees;

2. Public school buildings;

3. Water infrastructure: drinking water, wastewater, and dams;

4. Energy: electrical transmission, through all sources, including renewables, and natural gas pipeline construction.

These categories constitute the most important components of U.S. economic infrastructure. In addition, public schools represent one of the most important pillars of the country’s social infrastructure, one with important implications for the long-run productivity of the economy’s human resources. Taken together, we capture the most important assets that collectively reflect the state of the nation’s infrastructure.

In this section, we examine each of these areas in turn and then pull the information together to provide a more complete picture of infrastructure needs.

Transportation

Highways, Roads and Bridges

The nation’s highways, roads, and bridges constitute the single most important transportation system for the U.S. population and economy. According to the Federal Highway Administration, the U.S. maintains 4 million miles of roads and nearly 600,000 bridges (Department of Transportation, 2006). In dollar terms, the Bureau of Economic Analysis estimates that the current value of public assets in road infrastructure totals $2.6 trillion. The Department of Transportation periodically evaluates the condition of the country’s roads, bridges, and transit systems in its report Status of the Nation’s Highways, Bridges, and Transit. According to the most report, 85 percent of roads are in ‘acceptable condition’ but only 44 percent were deemed to be in ‘good condition’. In 2004, 26.7 percent of bridges were considered to be structurally deficient and 13.6 percent were ‘functionally obsolete.’

The cost to maintain the U.S. road system in its current condition is estimated to be $78.8 billion a year. Current levels of annual investment are around $70.3 billion, a gap of $8.5 billion. The Department of Transportation has conducted research into the level of investment needed to minimize the costs associated with prolonged travel times, vehicle damage, accidents, and excessive emissions. Bringing the system up to this high-quality standard would require annual investment of $131.7 billion, an increase of $61.4 billion over current levels (Department of Transportation, 2006).

Freight and intercity rail

By 2035, demand for freight rail transportation is expected to double (AAR, 2007). Maintaining adequate infrastructure is essential if freight rail is to continue to provide a more environmentally benign alternative to long-distance trucking. Intercity passenger rail, mostly on trains operated by Amtrak, currently links over 500 cities nationwide and provides a viable alternative to air and road transport (Department of Transportation, 2007). Insufficient capital investment in freight and intercity rail would compromise the future contributions of railroads to the U.S. economy. In turn, these investment gaps would slow down the transition to a clean-energy economy.

Unlike road transportation, rail infrastructure is largely financed by private companies. Since the railroads were deregulated in the late 1970s, securing the funds for ongoing capital improvements has been a challenge. It is unclear to what extent railroad companies will be able to finance future fixed capital requirements from ongoing revenues (ASCE, 2005). If railroads cannot finance sufficient capital improvements, the growth in demand for rail services would shift onto the road system—increasing congestion, road maintenance costs, as well as increasing greenhouse gas emissions.

A recent study by the Association of American Railroads projects that infrastructure investment of $148 billion is required in the next 28 years to be able to meet the projected level of demand (AAR, 2007). This translates into a capital investment need of $5.3 billion per year. The American Society of Civil Engineers estimates that investment needs of freight rail and intercity systems would total $12-13 billion a year over the next 20 years (ASCE, 2005). However, this estimate includes investments that would have taken place anyway, given historical trends. Therefore, we use the $5.3 billion figure as the best available estimate of the need for additional rail infrastructure in the future.

Aviation

According to forecasts compiled by the Federal Aviation Administration, the number of passengers flying on commercial airlines is expected to increases at an annual rate of 3.0 percent a year from 2008 to 2025 (FAA, 2008). By the end of this period, annual passenger travel is expected to reach 1.3 billion. This increase in volume will require capital investments in airport capacity and air traffic control systems if congestion and delays are to be minimized and passenger safety maintained. Updating the traffic control system has been ongoing since the mid-1980s, but the process has taken longer and required more investment than initially thought (ASCE, 2005).

According to the results of a survey administered to the nation’s 100 largest airports by the Airports Council International (North American branch), annual capital investment needs over the period 2007-2011 total $17.5 billion (ACI, 2007). This represents a $3.2 billion increase over the assessment of annual investment needs from 2005 to 2009. The FAA estimates the shortfall in investment funds available to be somewhat lower: $1 billion per year from 2006-2011, based on airport master plans and ACI estimates (GAO, 2007). However, neither set of estimates include capital investment for security improvements and air traffic control systems, as documented by the ASCE (2005). Therefore, we use $3.2 billion a year in additional infrastructure as a reasonable estimate of investment needs in the absence of more comprehensive data.

Mass transit

Increased usage of public transportation is one of the most efficient ways to promote energy conservation in the United States. It is therefore a positive development that public transportation has been growing steadily in recent years. The increase in demand for public transportation accelerated sharply over 2007-08, as gas prices at the pump rose as high as $4.00 a gallon. But more generally, over the decade 1996-2005, passenger miles traveled with various forms of public transportation increased by over 20 percent (Department of Transportation, 2007) and usage is expected to rise faster in the future. Capital investments in transit have increased in recent years, particularly at the state and local level (Department of Transportation, 2006).

Despite these improvements, public investment must increase further if the transit system is to be maintained, and beyond this, if public transportation is to become an increasingly significant means of promoting energy conservation. According to the 2006 Status of the Nation’s Highways, Bridges, and Transit, transit investments must total $15.8 billion a year just to maintain the current operating system. This would represent an increase of $3.2 billion a year over current levels. But to meet government operational and performance targets by 2024, annual investments must grow to $21.8 billion, requiring an additional $9.2 billion.

Inland waterways and levees

Approximately 2.6 billion short tons of commodities are transported on U.S. navigable waterways each year—an extremely cost-efficient transportation system (Army Corps of Engineers, 2005). The Army Corps of Engineers maintains and operates the inland waterway system which includes 257 lock systems nationwide, the average age of which is 55 years. According to the American Society of Civil Engineers, by 2020 80 percent of the lock systems will be functionally obsolete without new infrastructure investments (ASCE, 2005). The estimated cost of updating all the lock systems is $125 billion.

In addition, the Army Corps of Engineers assess the state of the nation’s levees and flood control systems, amounting to 2,000 levees totaling 13,000 miles, which include projects built and maintained by the Corps of Engineers; projects built by the Corps of Engineers and subsequently transferred to a local owner to maintain; and projects built by local communities. In 2007, the Corps identified 122 levees, across the country, which are in need of additional maintenance and repair.4 The investment needed to update the lock system combined with an additional $30 billion to improve the nation’s levees would total $155 billion, or about $6.2 billion annually over the next 25 years.

#### Voting issue ---

#### 1. Limits --- each category is massive, they explode the topic by allowing hundreds of new, conceptually distinct Affs --- makes Neg research impossible

#### 2. Ground --- different generics apply by category --- energy and water are both a topic to themselves --- steals core ground like politics and trade-off and artificially inflates Aff advantage ground

### TI – Categories – Violation – General

#### Energy and water are distinct categories --- “transportation” is limited to roads, bridges, waterways, ports, air and rail

Chapman 11 (Chapman and Cutler LLP, “The American Jobs Act and Its Impact on a National Infrastructure Bank”, Client Alert, 9-29, http://www.chapman.com/media/news/media.1081.pdf)

Eligibility for financial assistance must be demonstrated to the satisfaction of AIFAʼs Board of Directors. Generally, the applicantʼs request must meet the Actʼs definition of a transportation infrastructure project, water infrastructure project, or energy infrastructure project. To be eligible, the project must have costs that are reasonably anticipated to equal or exceed $100 million. However, rural infrastructure projects need only have costs that are reasonably anticipated to equal or exceed $25 million.

-- Transportation Infrastructure: includes the construction, alteration, or repair, including the facilitation of intermodal transit, of the following subsectors:

o Highways or roads

o Bridges

o Mass transit

o Inland waterways

o Commercial ports

o Airports

o Air traffic control systems

o Passenger rail, including high-speed rail

o Freight rail systems

-- Water Infrastructure: includes the construction, consolidation, alteration, or repair of the following subsectors:

o Wastewater treatment facilities

o Storm water management systems

o Dams

o Solid waste disposal facilities

o Drinking water treatment facilities

o Levees

o Open space management systems

-- Energy Infrastructure: includes the construction, consolidation, alteration, or repair of the following subsectors:

o Pollution reduced energy generation

o Transmission and distribution

o Storage

o Energy efficiency enhancements for public and commercial buildings

#### “Transportation infrastructure” is only a core set of projects for movement of goods and services

DeLauro 11 (U.S. Representative, Legislation to Create a National Infrastructure Development Bank, H.R. 402, 1-24, http://www2.apwa.net//Documents/Advocacy/HR%20402.pdf)

(25) TRANSPORTATION INFRASTRUCTURE PROJECT.—The term ‘‘transportation infrastructure project’’ means any project for the construction, maintenance, or enhancement of highways, roads, bridges, transit and intermodal systems, inland waterways, commercial ports, airports, high speed rail and freight rail systems.

#### Transportation infrastructure excludes communications, housing, and electricity distribution

Alshawi 9 (Mustafa, Associate Dean – University of Salford and Chair – Iraq Institute for Economic Reforms, “Concept and Background to Public Private Partnership (PPP) / Private Finance Initiative (PFI)”, 11-20, http://www.oecd.org/dataoecd/50/33/47562550.pdf)

1 Infrastructure is defined as transportation infrastructure (roads, bridges, airports, ports, rail lines); communications infrastructure; housing; and electricity generation and distribution. Infrastructure projects can be “mega projects” (dams, coast-to‐coast highways, mega‐ports, large power plants) or much smaller projects that can include communication franchises or limited highway spurs.

#### Water supply and disposal, telecom, and power generation, transmission, and distribution aren’t topical

Snieska 9 (Vytautas, Professor – Kaunas University of Technology, and Ineta Simkunaite, Professor – Projectu Vadybos Centras, “Socio-Economic Impact of Infrastructure Investments”, Inzinerine Ekonomika-Engineering Economics, 3, p. 17)

Authors of scientific literature suggest many definitions of infrastructure sector and its components, they widely interpret the features and functions of infrastructure while the issue of measurement is based mainly on the available data for different regions. Infrastructure is defined as a complex of capital goods which are not consumed directly; they provide services only in combination with labour and other inputs. This description allows to distinguish a wide range of components and to analyse their direct impact on development issues and emphasises the need of specification of infrastructure sector in order to measure its impact. In this article infrastructure is defined as the core physical structure consisting of: transportation infrastructure, water supply and disposal infrastructure, telecommunications infrastructure and power infrastructure, consisting of sub sectors that are defined by a set of physical variables: transportation infrastructure (length of roads, rail tracks, etc.), water supply and disposal infrastructure (resident population connected to wastewater collection and treatment systems), telecommunications infrastructure (number of telephone lines), power infrastructure (power plants, transmission and distribution lines).

#### Communication, water, and energy systems are regulated utilities, not “transportation infrastructure”

Quadrant 7 (Real Estate Investors, “Global Diversified Infrastructure Fund of Funds”, http://www.quadrantrealestateadvisors.com/investments/public/uploads/documents%5CGlobal%20Diversified%20Infrastructure%20Fund%20of%20Funds.pdf)

II. Defining Infrastructure Assets

Starting with the failure of the levy systems in New Orleans, followed by the collapse of the Mississippi River Bridge in Minneapolis, Minnesota on August 1, 2007, American infrastructure capital needs were brought to the forefront of America. The aging stock of infrastructure continues to deteriorate and the demand for public and private investment continues to grow. The question now becomes, which entity is going to address this growing need? However, an even more fundamental question also exists, what are infrastructure assets? According to the American Heritage Dictionary, infrastructure comprises the “basic facilities, services and installations needed for the functioning of a community or society, such as transportation and communication systems, water and power lines, and public institutions including schools, post offices and prisons.” The dictionary also notes that the term infrastructure has been used since 1927 to refer to the public works required for an industrial economy to function or the installations necessary for the defence of a country. The expectation most have is that infrastructure assets primarily involve government regulated monopolies and governmentally maintained assets. Unfortunately, classification is not that simple. When defining infrastructure investments, the common definition accepted in the institutional investment management community is “the physical assets that are needed to provide essential services to society,” which has lead managers to have highly different interpretations of the definition of “essential.” In general, the infrastructure market is divided into two general sectors—economic infrastructure and social infrastructure. Economic infrastructure includes transportation assets and regulated utilities, which includes communication, water, and energy systems. Social infrastructure is more vaguely defined and may include any asset in which the government maintains control or assets that are necessary for the longevity of the population. Such assets include schools, prisons, hospitals, parks, and others.

#### Infrastructure is defined by specific physical characteristics --- this differentiates transportation from utilities, communication, and energy

Inderst 9 (Georg, Financial Affairs Division – Organisation for Economic Co-operation and Development, “Pension Fund Investment in Infrastructure”, OECD Working Paper, No. 32, January, http://www.oecd.org/dataoecd/41/9/42052208.pdf)

Definition of infrastructure assets

The definition of infrastructure investment seems intuitive. The OECD uses a simple and general definition for infrastructure as the system of public works in a country, state or region, including roads, utility lines and public buildings. A standard dictionary‘s definition is:

―The basic facilities, services, and installations needed for the functioning of a community or society, such as transportation and communications systems, water and power lines, and public institutions including schools, post offices, and prisons.‖ (American Heritage Dictionary).

Infrastructure assets are traditionally defined by their physical characteristics. One can split them into two main categories, and a range of sectors within those:

Economic infrastructure

 transport (e.g. toll roads, airports, seaport, tunnels, bridges, metro, rail systems)

 utilities (e.g. water supply, sewage system, energy distribution networks, power plants, pipelines, gas storage)

 communication (e.g. TV/ telephone transmitters, towers, satellites, cable networks)

 renewable energy

Social infrastructure

 education facilities

 health (hospitals and health care centres)

 security (e.g. prisons, police, military stations)

 others (e.g. parks).

There is a lot of variety within infrastructure if it is defined by its physical nature, and people disagree what exactly should or should not count as infrastructure asset. For example, do utility companies count as infrastructure? When their activities span production, distribution and networks, where is the dividing line? More generally, where does public infrastructure end and private infrastructure start?

#### “Transportation” is a limiting term --- anything else isn’t topical

Averback 87 (Jonathan C., Citations Editor, “Comparing The Old And The New Pollution Exclusion Clauses In General Liability Insurance Policies: New Language -- Same Results?”, Boston College Environmental Affairs Law Review, Summer, 14 B.C. Envtl. Aff. L. Rev. 601, Lexis)

Courts will not honor the insurer's intention to limit coverage of certain risks if this intention is ambiguously expressed. 86 Instead, courts look for both parties' objectively-manifested intent, as implied by the words of the contract. 87 One principle of contract interpretation that courts will use to imply the parties' intent is that of ejusdem generis. 88 This principle allows a court to infer that specific words restrict the meaning of general terms when the specific terms precede the general terms in a particular phrase. 89 Thus, in a phrase "cattle, hogs and other animals," "animals" may not refer to much more than farm animals, because the specific animals mentioned before the general word are hogs and cattle. 90 Ejusdem generis is only one aspect of a broader doctrine holding that general phrases [\*613] may be restricted in meaning by being grouped with specific terms regardless of the ordering. 91 Thus, as in the above example, the term "animals" in the phrase "animals, cattle and hogs" may be limited to farm animals under this broader doctrine. In applying construction doctrines, courts look to the ordinary meanings of the words used in a phrase to discern the intent of the parties. 92.

### TI – Categories – Violation – Communications

#### “Communications” is a distinct category of infrastructure --- it’s massive

Faulkenberry 11 (Ken, MBA – University of Southern California, “Infrastructure Investment: Energy, Transportation, Communications, & Utilities”, Arbor Asset Allocation Model Portfolio Blog, September, http://blog.arborinvestmentplanner.com/2011/09/infrastructure-investment-energy-transportation-communications-utilities/)

Transportation Infrastructure

Over the last several decades America’s infrastructure spending has been less than one-half other developed nations and only a quarter of emerging market countries. Civil engineers give our transport structures low marks. Our roads, railways, ports, and airports are all judged mediocre.

It has become well recognized that we must invest more in upgrading our transportation infrastructure. But because of the years of neglect, substantial increases in operation and maintenance budgets will also be required. The above engineering and construction firms could also benefit from transportation infrastructure spending.

Communications Infrastructure

Communications infrastructure would include items we take for granted everyday, such as the internet, telephone, television (including cable TV), and satellite technology. Individual companies such as Cisco (CSCO) (internet) AT&T (T) and Verizon (VZ) (telephone), Comcast (CMCSA) (television), Boeing (BA) and Loral Space & Communications (LORL) (satellites), all play major roles in developing the communications infrastructure.

### TI – Categories – Violation – Communication – Satellites

#### Satellites are communication infrastructure, not transportation

IEDC 12 (International Economic Development Council, “Economic Development Reference Guide”, http://www.iedconline.org/?p=Guide\_Infrastructure)

Infrastructure

Infrastructure encompasses existing transportation, communication and utility networks. Rebuilding the physical infrastructure of a community improves the local business climate and is critical to the redevelopment of distressed neighborhoods. Infrastructure gets people to their jobs and goods and services to their markets. Many distressed neighborhoods suffer from inadequate infrastructure, decreasing their access to economic opportunities and their ability to integrate into wider city, national, and international markets. Programs to build roads, provide water and waste removal, and offer telecommunications services all bestow substantial economic benefits such as job and business creation and retention to a community. Additionally, modernizing physical infrastructure can help improve the image of a distressed neighborhood.

Transportation infrastructure includes:

Roads

Light transit rail networks, inter city, state passenger railways

Airports

Waterways and ports

Bus services

Communication infrastructure includes:

Copper wire for telecommunications, installed by telecommunications companies

High bandwidth and fiber optic cable capable of carrying voice, data and video streams

Satellite communications and microwave antenna

Mobile phone networks

Local area networks (LAN)

### TI – Categories – Violation – Communication – Postal Service

#### Postal services are “communication infrastructure”, not “transportation”

Akinwale 10 (Akeem Ayofe, Professor of Sociology – Covenant University (Nigeria), “The Menace of Inadequate Infrastructure in Nigeria”, African Journal of Science, Technology, Innovation, and Development, 2(3), p. 209-210)

3. The Concept of Infrastructure

Research on infrastructure dwells on different issues such as education, roads, water supply, power grids, telecommunications, and hospitals (Abosedra et al, 2009; Mandel, 2008; Frischmann, 2007; CBN, 2003; Pendse, 1980). Major infrastructures can be classified into the following categories:

1. Energy/Power Infrastructure: electricity, gas and petroleum pipelines

2. Transportation Infrastructure: surface roads, rail system, ports, and aviation

3. Water Infrastructure: Piped water and irrigation

4. Communication Infrastructure: mass media, internet, phones, and postal services

5. Health Infrastructure: primary, secondary and tertiary heath care services

6. Education Infrastructure: all categories of schools and higher institutions

### TI – Categories – Violation – Construction

#### Investment in construction capability isn’t infrastructure

Roberts 10 (Ivan, Economist – Economic Analysis Department of the Reserve Bank of Australia, and Anthony Rush, Analyst – RBA, “Sources of Chinese Demand for Resource Commodities”, Reserve Bank of Australia – Research Discussion Paper, November, http://www.rba.gov.au/publications/rdp/2010/pdf/rdp2010-08.pdf)

Our definition of manufacturing is the same as that of Barnett and Brooks from 2004 onwards, since it is given as a complete category in the FAI by industry data. Prior to 2004, we define manufacturing as ‘secondary industry’ less ‘energy’ and ‘construction’. Barnett and Brooks define ‘infrastructure’ investment as the sum of FAI in electricity, gas & water; transport, storage & post; water conservancy & environmental management; education; health, social security & welfare; and public administration & social organisations. From 2004, we follow the definition of Barnett and Brooks, except that we omit public administration & social organisations and include culture, sport & entertainment. Given the higher level of aggregation in the pre-2004 data, before 2004 we define infrastructure as the sum of ‘industry: energy’, transport, storage & telecommunications; culture, education & health care; and ‘other’ (since infrastructure-related categories that did not exist prior to 2004 such as water conservancy & environmental management were included in this category). Including investment in the ‘construction’ industry itself would make little difference to the calculation as it is small (around 1 per cent of total FAI), but we omit it as it is not clear that it constitutes ‘infrastructure’ investment as such. Since a (discontinued) urban real estate investment category is available prior to the 2004 reclassification, we use this series to extend the real estate FAI series back to 1996.19

### TI – Categories – Violation – Energy

#### “Infrastructure” is defined by function. The category of energy is distinct from transportation.

Beeferman 8 (Larry W., Director of the Pensions and Capital Stewardship Project in the Labor and Worklife Program – Harvard Law School, “Pension Fund Investment in Infrastructure: A Resource Paper”, Capital Matters, No. 3, December, http://www.law.harvard.edu/programs/lwp/pensions/publications/occpapers/occasionalpapers3. pdf)

A. Infrastructure: definitions

The term infrastructure can be defined in various ways. One approach is to describe it largely in *functional terms; that is, in terms of the uses of the facilities and services involved*. For example, some analysts use the category of economic infrastructure to describe essential services such as toll-roads, bridges, tunnels, airports, seaports, and rail networks, as well as common utilities such as gas distribution networks, electricity and renewable energy production and distribution, and water treatment and distribution facilities.8 They distinguish those from social infrastructure such as schools, health care facilities, prisons and intra-city railroads.9

A somewhat more detailed definition divides infrastructure into three categories: transportation, utilities, and social infrastructure. The first category includes toll roads, bridges, tunnels, parking facilities, railroads, rapid transit links, airports, refueling facilities, seaports. The second encompasses electricity generation and transmission, gas and water distribution, sewage treatment, broadcast and wireless towers, telecommunication, cable networks, and satellite networks. The third covers courthouses, hospitals, schools, correctional facilities, stadiums, and subsidized housing.10

#### “Energy infrastructure” is not “transportation” --- including it unlimits

Faulkenberry 11 (Ken, MBA – University of Southern California, “Infrastructure Investment: Energy, Transportation, Communications, & Utilities”, Arbor Asset Allocation Model Portfolio Blog, September, http://blog.arborinvestmentplanner.com/2011/09/infrastructure-investment-energy-transportation-communications-utilities/)

Energy Infrastructure

Energy Infrastructure would include electricity generation and the transmission grid, oil refineries and pipelines, and natural gas pipelines. The United States has an antiquated electrical transmission grid with constraints that limit power flows. Increases in demand for oil and natural gas, and changes in where it needs to go, means a need for more investment in pipelines.

Engineering and construction companies such as Flour (FLR), Shaw Group (SHAW), and Foster Wheeler AG (FWLT) are individual companies which might benefit from future energy infrastructure spending.

Transportation Infrastructure

Over the last several decades America’s infrastructure spending has been less than one-half other developed nations and only a quarter of emerging market countries. Civil engineers give our transport structures low marks. Our roads, railways, ports, and airports are all judged mediocre.

It has become well recognized that we must invest more in upgrading our transportation infrastructure. But because of the years of neglect, substantial increases in operation and maintenance budgets will also be required. The above engineering and construction firms could also benefit from transportation infrastructure spending.

### TI – Categories – Violation – Energy – Generation

#### Even if they’re right, only electricity transmission and distribution are topical --- not generation

Antonatos 12 (Larry, Director of Global Equities – Brookfield Asset Management, “What Constitutes ‘Infrastructure’?”, Dow Jones Blog – Indexology, 1-17, http://blog.djindexes.com/index.php/what-constitutes-infrastructure/)

Antonatos: Interesting question. Yes, during our deliberations, we decided that there were types of companies that we would exclude. We included electricity transmission and electricity distribution companies, however excluded electricity generation companies. Un-regulated electricity generation companies are often exposed to commodity price risk and to volatile demand, resulting in earnings and cash flow that are less predictable than we seek from “pure play” infrastructure. Conversely, regulated electricity generation utilities tend to be so overly regulated that they may not deliver the meaningful earnings growth we seek from “pure play” infrastructure.

Indexology: To be a component of the indexes, a company has to derive 70% of its cash flows from the categories we’ve discussed. Why is 70% the magic number? Why not 51% or 90%?

Antonatos: (laughs) No, there was no magic to that number. We came up with a percentage of cash flows from “pure play” infrastructure that would make it undoubtedly “substantial.” That was the term we were shooting for: substantial. We thought that a figure like 90% would be too high and would limit the stock universe. Conversely, if you lowered it to a number like 51%, it would open the indexes up to too many companies that aren’t substantially infrastructure-based.

Indexology: How does your definition of infrastructure compare with others out there?

Antonatos: Our definition of infrastructure is much broader than just utilities, yet also more selective regarding the types of utilities we include. For example, we include transportation infrastructure such as airports, seaports and toll roads, as well as communications infrastructure such as towers. Yet we exclude regulated electricity generation as we discussed a moment ago, as well as cell phone carriers and telephone landline providers.

### TI – Categories – Violation – Energy – Pipelines

#### \*Pipelines are not “transportation infrastructure” --- they’re “energy”

Commerce 10 (United States Chamber of Commerce, “Transportation Performance Index – Summary Report”, 9-23, <http://www.uschamber.com/sites/default/files/lra/files/LRA_TPI%20_Summary_Report%20Final%20092110>. pdf)

Step 1 – Definition: Transportation Infrastructure

It is important to establish a definition of transportation infrastructure in order to establish the scope of the index.

General Definition: Moving people and goods by air, water, road, and rail.

Technical Definition: The fixed facilities―roadway segments, railway tracks, public transportation terminals, harbors, and airports―flow entities―people, vehicles, container units, railroad cars―and control systems that permit people and goods to traverse geographical space in a timely, efficient manner for an intended purpose. Transportation modes include highway, public transportation, aviation, freight rail, marine, and intermodal.

Note that pipeline infrastructure is not included in this definition. For purposes of the Infrastructure Performance Index it is considered an element of energy infrastructure.

#### “Transportation” does not include pipelines

Babson 11 (Adam, Senior Portfolio Analyst – Russell Research, “Structuring a Listed Infrastructure Portfolio”, May, http://www.openworldinvesting.com/files/ow\_listed\_infra\_article.pdf)

While the global infrastructure universe can be analyzed in a variety of ways, the space can be disaggregated into the following categories: transportation infrastructure, utilities, pipelines and communications infrastructure. Transportation infrastructure assets include toll roads, bridges, ports (sea and air) and rail. Utilities infrastructure includes electricity distribution and generation, gas distribution and storage, water and renewable energy. The pipelines sector comprises companies involved in the storage and transportation of oil and gas. Communications infrastructure features cable networks and satellite systems. Some subsectors—such as power generation—may be ignored altogether by “orthodox” investors looking to minimize volatility and correlations to global equities, while other sectors that are only indirectly related to infrastructure—such as mobile telecom companies—may be attractive to “thematic” managers looking for enhanced returns (managers willing to invest in higher-beta, competitively exposed companies).

#### Pipelines are energy infrastructure

Maine Code 7 (“An Act Regarding Energy Infrastructure Development”, Public Law, Chapter 655, http://www.mainelegislature.org/legis/bills/bills\_124th/chapters/PUBLIC655.asp)

§ 122. Energy infrastructure corridors

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Department" means the Department of Environmental Protection.

B. "Energy infrastructure" includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include generation interconnection transmission facilities or energy generation facilities. :

(1) Generation interconnection transmission facilities;

(2) Energy generation facilities; or

(3) Electric transmission and distribution facilities or energy transport pipelines that cross an energy infrastructure corridor or are within an energy infrastructure corridor for a distance of less than 5 miles.

#### “Energy supply” infrastructure is distinct from “transportation”

Fourie 6 (Johan, Chief Operating Officer – ArcelorMittal South Africa, “Economic Infrastructure: A Review of Definitions, Theory, and Empirics”, South African Journal of Economics, 74(3), September, Wiley Online Library)

Another way to define – or label –‘infrastructure’ is to compile a list of all possible infrastructure goods. Such a taxonomy could include transport infrastructure, communications infrastructure, energy supply infrastructure, water infrastructure, environmental infrastructure, education infrastructure, etc. However, a list could become detailed and cumbersome, with possibly little agreement between researchers on the exact goods; for example, whether to include public education or social welfare offices.

#### Pipelines unlimit ---

#### A) Multiple subsets --- there’s oil, gas, and sub-specifications

Pipeline 101 7 (“Overview”, http://www.pipeline101.com/overview/energy-pl.html)

How Many Pipelines are There?

There are two general types of energy pipelines – oil pipelines and natural gas pipelines. Within each group are subsets that serve very specific portions of the energy marketplace.

Within the oil pipeline network there are both crude oil lines and refined product lines.

#### B) Scope --- they can be built in any region, multiplying type by location --- tens of thousands exist

Corbin 12 (Cristina, Reporter – Fox News, “Vast Network of Pipelines Already in Place in U.S.”, Student News Daily, 2-2, http://www.studentnewsdaily.com/daily-news-article/vast-network-of-pipelines-already-in-place-in-u-s/)

“There’s no shortage of energy pipelines,” Dan Kish, senior vice president for policy at the Institute for Energy Research, told FoxNews.com. “This pipeline would be better than 1.9 million miles of pipeline already in the United States. It’s newer and has the best technology.”

Pipelines in the U.S.

Maps of the U.S. energy pipeline system show a vast abundance of crude oil pipelines crossing through states like Montana to Minnesota to Texas. [NOTE: Map on left too small to read which types of pipelines each color represents; this is to give you a general understanding of where most of our pipelines are located. For a detailed map, click here and scroll down.]

Major oil pipelines include a 9,467-mile network operated by Magellan Pipeline Co. LLC; a 7,833-mile system owned by MidAmerican Energy Company; and 7,646 miles of pipeline owned by Plains All-American Pipeline LP. Other top oil pipeline companies include ConocoPhillips with 6,027 miles and Colonial Pipelines with 5,596 miles.

Kish said underground pipelines are the safest way to transport crude oil, though he acknowledged that “whenever you have any kind of human endeavor, you have potential problems and they do occur.”

“We have tens of thousands of pipeline and I don’t think there’s any good evidence that pipelines are a significant impact on ecosystems to the point that they can’t adapt,” said Kenneth Green, resident scholar at the American Enterprise Institute.

### TI – Categories – Violation – Industrial Equipment / Farming

#### Off-road industrial and farming equipment aren’t topical

ARB 8 (State of California Air Resources Board, “Public Health and Environmental Benefits of Draft Scoping Plan Measures”, September, http://www.arb.ca.gov/cc/scopingplan/document/ph\_statewide\_a.pdf)

2. TRANSPORTATION AND GOODS MOVEMENT

Regulatory Background

The transportation sector includes personal transportation vehicles (like cars and trucks) as well as vehicles that transport goods (such as heavy trucks, ships, planes and trains). The transportation sector does not include off-road sources like bulldozers and forklifts, which are included in the industrial sector. Farm equipment, like tractors, is included in the agricultural sector. Emissions from recreational off-road equipment like all-terrain vehicles and recreational boats are relatively small, and their emissions are counted in the industrial sector. In 2006, onroad mobile sources6 emitted the most NOx and ROG (ozone precursors) statewide. Exhaust emissions from mobile sources contributed only a very small portion of directly emitted PM2.5 emissions, but were a major source of the ROG and NOx that contribute to the secondary formation of PM2.5. ARB’s control programs will continue to focus on meeting more stringent ozone and PM standards as well as reducing the risk associated with diesel particulate.

#### Farm equipment is industrial infrastructure, not transportation

DoE 8 (United States Department of Energy – Energy Intense Indicators in the U.S., “Terminology and Definitions”, 4-22, http://www1.eere.energy.gov/ba/pba/intensityindicators/trend\_definitions.html)

Transportation sector

An end-use sector that consists of all vehicles whose primary purpose is transporting people and/or goods from one physical location to another. Included are automobiles; trucks; buses; motorcycles; trains, subways, and other rail vehicles; aircraft; and ships, barges, and other waterborne vehicles. Vehicles whose primary purpose is not transportation (e.g., construction cranes and bulldozers, farming vehicles, and warehouse tractors and forklifts) are classified in the sector of their primary use. (see the EIA glossary).

Industrial sector

An end-use sector that consists of all facilities and equipment used for producing, processing, or assembling goods. The industrial sector is comprised of: manufacturing; agriculture, forestry, and fisheries; mining; and construction. Establishments in this sector range from steel mills, to small farms, to companies assembling electronic components. Overall energy use in this sector is largely for process heat and cooling and powering machinery, with lesser amounts used for facility heating, air conditioning, and lighting. Fossil fuels are also used as raw material inputs to manufactured products. (see the EIA glossary).

### TI – Categories – Violation – Seawalls

#### Seawalls aren’t topical --- not “transportation”

Neumann 9 (James E., Principle – Industrial Economics, and Jason C. Price, Senior Associate – Industrial Economics, “Adapting to Climate Change: The Public Policy Response Public Infrastructure”, June, http://www.rff.org/rff/documents/RFF-Rpt-Adaptation-NeumannPrice.pdf)

This paper assesses the threats and needs that multidimensional climate change imposes for public infrastructure, reviews the existing adaptive capacity that could be applied to respond to these threats and needs, and presents options for enhancing adaptive capacity through public sector investments in physical, planning, and human resources. The paper considers four types of infrastructure: transportation; energy generation and transmission; water, sewer, and telecommunications; and coastal defense. The main threats presented by climate change to these assets include damage or destruction from extreme events, which climate change may exacerbate; coastal flooding and inundation from sea level rise; changes in patterns of water availability; effects of higher temperature on operating costs, including effects in temperate areas and areas currently characterized by permafrost conditions; and demand‐induced effects.

### TI – Categories – Violation – Space

#### “Transportation” is limited to six modes, including aviation

Kahn 6 (Ely, Director for Cybersecurity Policy at the National Security Staff – White House, and Roger Shoemaker, “Transportation Sector Specific Plan”, Chemical Security Summit, 6-28, http://www.ppt2txt.com/r/f892b8c5/)

The Transportation Sector is a vast, far-reaching, complex and diverse network system consisting of six distinct modes:

Aviation: 450 commercial airports and 19,000 additional airfields

Highway: 4 million miles of roads and supporting infrastructure (bridges, tunnels, etc.)

Maritime: 41,300 vessels; 655 billion ton-miles of domestic commerce

Mass Transit: 6,000 public transportation systems; 21 billion passenger-miles

Pipeline Systems: Oil- 177,000 miles; 623 billion ton-miles; Natural Gas- 1.3 million miles of pipeline

Rail: 193,000 miles of track; 1.4 million freight cars, 1.4 trillion revenue ton-miles; 8 Class 1 and 552 additional firms

#### “Aviation” takes place only within the atmosphere. “Space” is a different sector.

Vogt 12 (Crystal, MS in Journalism – Boston University and BA in English – University of California, Santa Barbara, “The Difference Between the Aviation Industry and the Aerospace Industry”, Houston Chronicle, http://smallbusiness.chron.com/difference-between-aviation-industry-aerospace-industry-26208.html)

Though there is some overlap between the aviation and aerospace industries, there are key differences between the two. While aviation has been around since the invention of the kite in the 5th century BC, according to the Global Aircraft Organization, the aerospace industry truly took off in the United States near the middle of the 20th century, when NASA was established in 1958 and President John F. Kennedy later made a strong push to put men on the moon.

Airspace

The aviation and aerospace industries cover different airspace. The aviation industry deals with all-things aircraft-related within the earth's atmosphere. These dealings include the design, manufacture and operation of many types of aircraft within this airspace. While the aerospace industry also designs and manufactures various forms of aircraft, the industry, as a whole, extends beyond operations within the earth's atmosphere and conducts aircraft operations in space.

Demand

There is different demand for goods and services in the aviation and aerospace industries. For example, in the aviation industry there is demand from travelers or shipping services to access aircraft and pilots that can transport people and goods internationally. The aerospace industry, on the other hand, has different demands on it from a different type of consumer base that includes more military and industrial clientele with an eye toward space travel or space communications.

Spending

Spending can vary between the aviation and aerospace industries. During certain years, for instance, economic factors like decreased government spending can scale back projects in the aerospace industry and stall work until funds are made available. This can affect how much space travel is conducted during a specific time period. In the aviation industry, economic factors like nationwide or multi-country recessions can impact how much discretionary income the general population has to spend on air travel. This can affect how many commercial jets are in use or to be manufactured, and how many pilots are needed to fly these jets.

Work Requirements

There can be varying requirements to work in either industry. For example, to fly in the aviation industry, the Bureau of Labor Statistic states that "most airlines require at least two years of college and prefer to hire college graduates," along with fulfilling commercial licensing requirements. Flying in the aerospace industry, however, categorizes most pilots as astronauts. Astronauts undergo rigorous requirements that most aviation pilots are not exposed to, including higher levels of college coursework in physics and mathematics, military jet test piloting, and buoyancy and weightlessness training. Engineers in each industry also focus on different areas of study. For example, aerospace engineers learn more about the design, manufacture and in-service engineering support of such systems as satellites and spacecraft. Aviation engineers focus more on aircraft operation, commercial or military aircraft design and air traffic management.

### TI – Categories – Violation – Social Infrastructure

#### Social infrastructure is categorically distinct and unlimits

Fourie 6 (Johan, Chief Operating Officer – ArcelorMittal South Africa, “Economic Infrastructure: A Review of Definitions, Theory, and Empirics”, South African Journal of Economics, 74(3), September, Wiley Online Library)

Economic and social infrastructure

Both economists and urban planners do, however, distinguish between economic (or hard) infrastructure and social (or soft) infrastructure. Economic infrastructure is defined as infrastructure that promotes economic activity, such as roads, highways, railroads, airports, sea ports, electricity, telecommunications, water supply and sanitation.

Social infrastructure is defined as infrastructure that promotes the health, education and cultural standards of the population – activities that have both a direct and indirect impact on the quality of life (DBSA, 1998:4). Broadly defined, thus, social infrastructure may include various institutions such as schools, libraries, universities, clinics, hospitals, courts, museums, theatres, playgrounds, parks, fountains and statues. All of these institutions entail capital goods that have some public use.

#### Social infrastructure is huge --- their interpretation excludes nothing

Quadrant 7 (Real Estate Investors, “Global Diversified Infrastructure Fund of Funds”, http://www.quadrantrealestateadvisors.com/investments/public/uploads/documents%5CGlobal%20Diversified%20Infrastructure%20Fund%20of%20Funds.pdf)

II. Defining Infrastructure Assets

Starting with the failure of the levy systems in New Orleans, followed by the collapse of the Mississippi River Bridge in Minneapolis, Minnesota on August 1, 2007, American infrastructure capital needs were brought to the forefront of America. The aging stock of infrastructure continues to deteriorate and the demand for public and private investment continues to grow. The question now becomes, which entity is going to address this growing need? However, an even more fundamental question also exists, what are infrastructure assets? According to the American Heritage Dictionary, infrastructure comprises the “basic facilities, services and installations needed for the functioning of a community or society, such as transportation and communication systems, water and power lines, and public institutions including schools, post offices and prisons.” The dictionary also notes that the term infrastructure has been used since 1927 to refer to the public works required for an industrial economy to function or the installations necessary for the defence of a country. The expectation most have is that infrastructure assets primarily involve government regulated monopolies and governmentally maintained assets. Unfortunately, classification is not that simple. When defining infrastructure investments, the common definition accepted in the institutional investment management community is “the physical assets that are needed to provide essential services to society,” which has lead managers to have highly different interpretations of the definition of “essential.” In general, the infrastructure market is divided into two general sectors—economic infrastructure and social infrastructure. Economic infrastructure includes transportation assets and regulated utilities, which includes communication, water, and energy systems. Social infrastructure is more vaguely defined and may include any asset in which the government maintains control or assets that are necessary for the longevity of the population. Such assets include schools, prisons, hospitals, parks, and others.

#### It’s not “investment”

Heller 9 (Peter S., Former Deputy Director of the Fiscal Affairs Department – International Monetary Fund and Currently Senior Adjunct Professor of International Economics – Paul H. Nitze School of Advanced International Studies at The Johns Hopkins University, “Public Investment: Vital for Growth and Renewal, But Should it be a Countercyclical Weapon?”, http://www.unctad.org/en/Docs/webdiae20091\_en.pdf)

I. What is the role of public investment?

Defining public investment

What types of expenditure can be characterized as public investment? This is less obvious than might appear at first glance. In principle, the normal distinction between capital and current outlays would apply, with the former relating to any expenditure whose productive life extends into the future. Thus, much public investment takes the form of infrastructural outlays – for road and rail networks, ports, bridges, energy-generating plants, telecommunications structures, water and sanitation networks, government buildings – which can have a productive life of several decades. Such outlays range from small, one-off, limited infrastructural projects that can be implemented within a year to more complex projects that take place over decades – so-called “mega projects” (the Boston “Big Dig”, the Netherlands’ dike schemes, Heathrow Terminal 5, the Chunnel, etc.). As in the private sector, governments may invest in machinery and equipment – computers, laboratory equipment, even textbooks – whose life span is much shorter.

But other types of outlays, some of a more current form, can also contribute to capital formation. Notably, government spending on education and health contributes not only to an individual’s human capital but also to that of society, with benefits that can extend for a lifetime. Here the capital good is less tangible than a building or a piece of equipment. While governments traditionally classify spending on education and health as current expenditure (and thus not a form of public investment), the policy implications of this treatment are often contentious, particularly when governments seek to justify borrowing only for public investment. Equally tricky is whether to include spending on maintenance in the definition of public investment. While governments often treat maintenance as a form of current outlay, periodic maintenance and rehabilitation projects should be treated as capital outlays, since the absence of maintenance can reduce the productive life of an infrastructural asset, often substantially.1

### TI – Categories – Violation – Timber / Desalinization

#### Timber and desalinization aren’t “transportation” infrastructure

Brookfield 12 (Brookfield Industrial Partners, LLP, “Operations”, http://www.brookfieldinfrastructure.com/content/operations-3313.html)

We define infrastructure as long-life, physical assets that are the backbone for the provision of essential products or services for the global economy. Due to their nature, infrastructure assets are critical to support sustainable economic development.

Infrastructure assets are typically characterized by some or all of the following attributes:

strong competitive positions with high barriers to entry;

high margins and stable cash flow; and,

upside from economic growth and/or inflation.

Examples of infrastructure assets include the following:

Energy. Energy infrastructure includes the networks that provide basic services such as gas and electricity.

Transportation. Transportation infrastructure supports the transport of passengers or cargo via air, land or sea and includes infrastructure such as toll roads, bridges, tunnels, airports, ports, railway lines, urban rail, ferries and other transport-related facilities.

Timber. Timber is a vital component of the global economy, and is used to produce lumber, paper and other wood products.

Other. Other infrastructure includes social infrastructure (such as health, justice, and education), industrial infrastructure, desalination plants.

### TI – Categories – Violation – Water

#### “Water infrastructure” is distinct from “transportation” --- only ports and waterways are topical, not containment or supply systems

Musick 10 (Nathan, Microeconomic and Financial Studies Division – United States Congressional Budget Office, Public Spending on Transportation and Water Infrastructure, p. 2)

Although different definitions of "infrastructure" exist, this report focuses on two types that claim a significant amount of federal resources: transportation and water. Those types of infrastructure share the economic characteristics of being relatively capital intensive and producing services under public management that facilitate private economic activity. They are typically the types examined by studies that attempt to calculate the payoff, in terms of benefits to the U.S. economy) of the public sector's funding of infrastructure.

For the purposes of CBO's analysis, "transportation infrastructure” includes the systems and facilities that support the following types of activities:

■ Vehicular transportation: highways, roads, bridges, and tunnels;

■ Mass transit subways, buses, and commuter rail;

■ Rail transport primarily the intercity service provided by Amtrak;\*

■ Civil aviation: airport terminals, runways, and taxi-ways, and facilities and navigational equipment for air traffic control: and

■ Water transportation: waterways, ports, vessel\*, and navigational systems.

The category "water infrastructure" includes facilities that provide the following:

■ Water resources: containment systems, such as dams, levees, reservoirs, and watersheds; and sources of fresh water such as lakes and rivers; and

■ Water utilities: supply systems for distributing potable water, and wastewater and sewage treatment systems and plants.

### TI – Categories – Limits

#### They quintuple the topic --- allowing multiple distinct types of infrastructure

Nash 9 (David J., Chair – Nash and Associates, et al., “Sustainable Critical Infrastructure Systems— A Framework for Meeting 21st Century Imperatives”, <http://www.ices.cmu.edu/censcir/resources/Critical%20Infrastructure%20pr> epub.pdf)

1 Infrastructure systems have been defined differently by different groups. For example, the Department of Homeland Security’s National Infrastructure Protection Plan identifies 18 types of infrastructure (DHS, 2009). The American Society of Civil Engineers’ “Report Card for America’s Infrastructure” identifies 15 types (ASCE, 2005). In this report, critical infrastructure systems are defined as power, water, wastewater, telecommunications, and transportation systems. These five systems are the lifelines without which other types of infrastructure (e.g., banking and finance, government facilities, schools) cannot operate as intended.

### TI – Categories – Ground

#### Our interpretation’s key to ground ---

#### A) Specificity matters. The impact of investment varies by category.

Piyapong 8 (Piyapong Jiwattanakulpaisarn, D.Phil. – University of London, Centre for Transport Studies, “The Impact of Transport Infrastructure Investment on Regional Employment: An Empirical Investigation”, May, http://www.cts.cv.ic.ac.uk/documents/theses/JiwattanakulpaisarnPhD.pdf)

Public investments in infrastructure can have both direct and indirect impacts at the sector level. The direct effects of public infrastructure are likely to be sector specific. This is mainly because some types of infrastructure might be particularly relevant to some sectors and/or certain types of activities. Indeed, relatively large effects could be expected among the most intensive users of public infrastructure since the extent to which publicly provided infrastructure is involved in the production and distribution process may differ from one sector to another. However, this is not to deny that sectors or industries that are not making use of infrastructure directly could also be affected by increases in public infrastructure endowments through some other channels. Regardless of whether there exists any direct link between infrastructure and private sector production, improvements in infrastructure services could augment the productivity of factor inputs of production (e.g. private capital and labour). Apart from the production side, the amenity role of pubic infrastructure could positively influence the demand side which may in turn lead to increases in production and sales. In addition, the economic effects of public infrastructure can be universal throughout the economy because of input and output linkages, the strength and weakness of which usually differ between sectors. For these reasons, it is natural to expect that the economic impacts of public infrastructure could be unevenly distributed across industrial sectors.

#### B) Link uniqueness. Current rates of investment differ between categories.

Heintz 9 (James, Associate Research Professor and Associate Director – Political Economy Research Institute, et al., “How Infrastructure Investments Support the U.S. Economy: Employment, Productivity and Growth”, January, http://americanmanufacturing.org/files/peri\_aam\_finaljan16\_new.pdf)

Figure 1.3 reveals the pattern we noted earlier—rates of public investment in all categories dropped off beginning in the late 1960s and early 1970s. Lower rates of investment prevailed during much of the 1980s and into the early 1990s. However, in recent years, the trends begin to differ between the distinct categories of infrastructure investment. Specifically, investment in roads and public education began to recover in the 1990s. However, as we will see later in the report, this turn-around has not been sufficient to address the infrastructure deficit created by the drop-off in public investment which occurred in the 1970s and 1980s.

#### C) Including energy alone decimates ground --- it’s bidirectional and “investment now” robs the best DAs

URS 10 (URS Corporation – Engineering, Design and Construction Firm and U.S. Federal Government Contractor, “Adapting Energy, Transport and Water Infrastructure to the Long-term Impacts of Climate Change”, January, http://archive.defra.gov.uk/environment/climate/documents/infrastructure-full-report.pdf)

The energy sector comprises a number of infrastructure components and has been divided below into electricity, gas, oil, renewable and nuclear. Across this sector significant investment in new infrastructure, as well as maintenance of existing, is expected in the next decades to ensure long term security of supply and the move to a low carbon economy.

### TI – Categories – Education

#### Clearly distinguishing “transportation” from other types of infrastructure is vital to topic education

CBO 8 (Congressional Budget Office, “Issues and Options in Infrastructure Investment”, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9135/05-16-infrastructure.pdf)

Current Spending on Infrastructure

Under any definition, “infrastructure investment” encompasses spending on a variety of projects. For present purposes, it is useful to distinguish transportation, which receives the bulk of federal support, from other types of infrastructure, such as utilities. Both types of assets promote other economic activities: An adequate road, for example, facilitates the transport of goods from one place to another and thereby promotes economic activity; utilities that provide such services as electricity, telecommunications, and waste disposal are also essential to modern economies. (Appendix A describes spending on research and development and on education. Those categories form the basis for supporting intellectual and human capital, respectively, and can provide benefits that are similar to those generated by infrastructure spending.)

#### They overgeneralize “infrastructure” --- undermines specific discussion

Asher 1 (Mukul G., Professor in the Public Policy Programme – National University of Singapore, “Globalization, the Fiscal Systems and Infrastructure Financing”, Centre for Peace and Development Studies, 3-21, http://www.cpdsindia.org/infrastructurefinancing.htm)

At the outset, it is important to recognize that the term infrastructure is quite heterogeneous. It covers economic infrastructure such as roads, ports, water and sewage systems, electricity, telecommunications, and irrigation systems; as well as social infrastructure such as schools, community centers, health facilities, prisons, and police and fire stations. It is essential that the specific characteristics of different types of infrastructure are recognized, and temptation to over generalize resisted.

### TI – Physical Asset – 1NC

#### “Transportation infrastructure” is delivery structures for goods and services

Trimbath 9 (Dr. Susanne, Senior Research Economist in Capital Market Studies at Milken Institute, Senior Advisor – United States Chamber of Commerce, and Professor of Economics and Accounting – Bellvue University, “Transportation Infrastructure: Paving the Way”, <http://www.uschamber.com/sites/default/files/issues/infrastructur> e/files/2009TPI\_Update\_Economics\_White\_Paper\_110712.pdf)

V. Paving the Way Forward

The strategy applied by the US Chamber of Commerce for the infrastructure performance index project presents a model for developing the way forward. A stakeholder-centric approach allows you to measure the right things, communicate to the people in a language they understand and get to ACTION faster. The process, detailed in the Technical Report last summer (US Chamber 2010), is basically this:

1. Clearly define “transportation infrastructure” as the underlying structures that support the delivery of inputs to places of production, goods and services to customers, and customers to marketplaces. The structures are:

- Transit

- Highways

- Airports

- Railways

- Waterways (Ports)

- Intermodal Links

#### Only targeting “hard”, physical objects is topical --- the Aff’s indirect approach unlimits

Cantarelli 10 (Chantal C., Faculty of Technology, Policy and Management – Delft University of Technology, et al., “Cost Overruns in Large-scale Transportation Infrastructure Projects: Explanations and Their Theoretical Embeddedness”, European Journal of Transport and Infrastructure Research, 10(1), March, p. 7)

We define transportation infrastructure projects as follows: ‘Transport infrastructures include roads, rail lines, channels, (extensions to) airports and harbours, bridges and tunnels. Of these projects it is the ‘hardware’ that is considered, and the “software”, i.e. projects relating to deregulations, liberalization, privatization, and so forth is excluded’. The literature did not provide one minimum cost level that is generally applied to mark a large-scale project. A large-scale project is defined in this paper by a minimum cost level of 500 million euros.

#### Voting issue --- they expand the topic from “increasing” infrastructure to “altering” it through deregaulation, liberalization, or privatization --- makes Neg research impossible, especially because predictable ground assumes current methods

### TI – Physical Asset

#### “Infrastructure” must be physical

Garvin 7 (Michael J., Professor of Construction – Virginia Tech University, et al., “America’s Infrastructure Strategy: Drawing on History to Guide the Future”, http://crgp.stanford.edu/events/presentations/CA/CRGP\_KPMG\_whitepaper.pdf)

Inspection of these definitions suggests that infrastructure is broadly defined as the physical assets that facilitate the delivery of both social and economic services. Interestingly, the definitions have evolved from an emphasis upon public works and their adequacy to critical infrastructures and their security (Moteff and Parfomak 2004). In addition, the characterization of infrastructure as purely public systems has clearly diminished with time. The significance of the characterization will become very evident later in the paper when discussion regarding the contemporary role of private participants is more fully examined. Whichever way the term is defined, infrastructure is “physical” – society can see and usually come in contact with it – and “deliberate” – society develops and uses it for some purpose; it is not arbitrary. Thus, it requires creation, operation, and maintenance, which involves a number of production activities throughout its lifecycle – most of which are interdependent. Figure 1 broadly depicts these activities.2

#### Assets must be physical and tangible

Delisle 10 (Deborah S., Superintendent of Public Instruction – Ohio Department of Education, “Weekly Update”, EdConnection, 10-4, http://www.ercoinc.org/updates/October10.html)

Certification required for improvements with ARRA Funds (SFSF and IDEA)

Section 1511 of the American Recovery and Reinvestment Act (ARRA) requires that any infrastructure improvements funded with ARRA funds are certified to have received the full review and vetting required by law, and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Districts that have reported infrastructure improvements made with Individuals with Disabilities Education Act (IDEA) or State Fiscal Stabilization Funds (SFSF) funds will be contacted in the near future and requested to complete a certification letter with a description of the project. Districts that are planning future infrastructure improvements with IDEA or SFSF funds should request certification documents from recovery@ode.state.oh.us.

Per guidance provided by the U.S. Department of Education, an infrastructure investment is financial support for a physical asset or structure needed for the operation of a larger enterprise. Therefore, infrastructure investments include support for tangible assets or structures such as roads, public buildings (including schools), mass transit systems, water and sewage systems, communication and utility systems.

However, an infrastructure investment does not include “minor remodeling” according to 34 C.F.R.§ 77.1(c), which defines the term as minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term infrastructure investment does not include building construction, structural alterations to buildings, building maintenance or repairs.

#### This is the most common definition

Kamensky 3 (John M., Staff Member of the General Government Division – Government Accounting Office, “Budgeting for State and Local Infrastructure: Developing a Strategy”, Public Budgeting & Finance, 4(3), p. 3)

WHAT IS PUBLIC INFRASTRUCTURE?

"Public infrastructure" is a catchall phrase. No consistent definition exists. Some use it to encompass all governmental capital investment, including social investment such as education and health care.2 Most define public infrastructure as investment in the construction, repair, and maintenance of fixed, physical assets.3 This analysis uses a more restrictive definition, developed by the U.S. Bureau of Economic Analysis (BEA». which defines it as capital outlays for new construction put in place and associated capital equipment outlays.' This excludes maintenance and repair expenditures which cannot be clearly distinguished when allocated between operating and capital budgets via existing governmental accounting procedures. In addition, this analysis also excludes direct federal investment (such as post offices and military installations) and government-owned housing. It focuses on state and local fixed-capital investments which, however, may be financed in part or wholly by federal grants-in-aid.

#### “Transportation infrastructure” is facilities designed for transport

Delaney 11 (George, Manager of Public Works – City of Denver, “Complete Streets”, 5-17, http://www.completestreets.org/webdocs/policy/cs-co-denver-policy.pdf)

DEFINITIONS

Complete Streets is defined as a practice to promote safe and convenient access for all users along and across travel ways in the context of the overall transportation network, land use patterns, and community needs.

Transportation infrastructure is defined as any facility designed for transporting people and goods including, but not limited to, sidewalks, trails, bike lanes, highways, streets, bridges, tunnels, railroads, mass transportation, and parking systems.

### TI – Physical Asset – Violation – Greening

#### “Infrastructure investment” is increasing physical assets themselves --- “green practices” aren’t topical

EPA 9 (U.S. Environmental Protection Agency – Office of Grants and Debarment, “Definition of “Infrastructure” for Purposes of the American Recovery and Reinvestment Act of 2009”, 5-8, http://www.epa.gov/ogd/forms/Definition\_of\_Infrastructure\_for\_ARRA.pdf)

Issue: What does the term “infrastructure” mean for the purposes of applying the American Reinvestment and Recovery Act (ARRA) requirements specific to “infrastructure investments”? The Act itself does not define this term.

Proposed Definition: The term infrastructure refers to the substructure or underlying foundation or network used for providing goods and services; especially the basic installations and facilities on which the continuance and growth of a community, State, etc., depend. Examples include roads, water systems, communications facilities, sewers, sidewalks, cable, wiring, schools, power plants, and transportation and communication systems. The term does not include green practices recipients can follow to reduce energy consumption and greenhouse gas emissions and improve air, water quality, and waste management.

### TI – Physical Asset – Violation – Human Capital

#### “Infrastructure” refers to public works --- using the term to describe human capital is ungrammatical

AHD 9 (American Heritage Dictionary – via The Free Dictionary, “infrastructure”, http://www.thefreedictionary.com/Electrical+infrastructure)

in·fra·struc·ture (nfr-strkchr)

n. 1. An underlying base or foundation especially for an organization or system.

2. The basic facilities, services, and installations needed for the functioning of a community or society, such as transportation and communications systems, water and power lines, and public institutions including schools, post offices, and prisons.

infra·structur·al adj.

Usage Note: The term infrastructure has been used since 1927 to refer collectively to the roads, bridges, rail lines, and similar public works that are required for an industrial economy, or a portion of it, to function. The term also has had specific application to the permanent military installations necessary for the defense of a country. Perhaps because of the word's technical sound, people now use infrastructure to refer to any substructure or underlying system. Big corporations are said to have their own financial infrastructure of smaller businesses, for example, and political organizations to have their infrastructure of groups, committees, and admirers. The latter sense may have originated during the Vietnam War in the use of the word by military intelligence officers, whose task it was to delineate the structure of the enemy's shadowy organizations. Today we may hear that conservatism has an infrastructure of think tanks and research foundations or that terrorist organizations have an infrastructure of people sympathetic to their cause. The Usage Panel finds this extended use referring to people to be problematic, however. Seventy percent of the Panelists find it unacceptable in the sentence FBI agents fanned out to monitor a small infrastructure of persons involved with established terrorist organizations.

### TI – Physical Asset – Other Definitions

#### “Transportation investment” refers only to fixed assets --- most predictable interpretation

Hu 12 (Patricia, Director of the Bureau of Transportation Statistics – Research and Innovative Technology Administration, United States Department of Transportation, “Measuring Transportation Investment: Challenges and Opportunities”, 2-9, http://www.internationaltransportforum.org/Proceedings/InfrastructureInv/HU.pdf)

Definition of Transportation Investment

“Transportation investment is defined as additions to transportation fixed assets. Transportation fixed assets refer to:

structures,

motor vehicles, and

other machinery and equipment that are used in the provision of transportation services for more than one year.” Although it is a definition used by OECD, U.S. Bureau of Economic Analysis and U.S. Bureau of Transportation Statistics…

#### “Substantial” means physical

Ballantine’s 94 (Thesaurus for Legal Research and Writing, p. 173)

substantial [sub . *stan* . shel] *adj*. abundant, consequential, durable, extraordinary, heavyweight, plentiful (“a substantial supply”); actual, concrete, existent, physical, righteous, sensible, tangible (“substantial problem”); affluent, comfortable, easy, opulent, prosperous, solvent.

### TI – Physical Asset – Precision

#### Consensus of best definitions agree --- “transportation infrastructure” must be a fixed physical asset

Orr 8 (Dr. Ryan J., Ph.D. in Engineering and Executive Director – Collaboratory for Research on Global Projects and Gregory Keever, LLM in Taxation – George Washington University and JD – University of Virginia School of Law, “Enabling User-Fee Backed Transportation Finance in California”, Working Paper #41, http://crgp.stanford.edu/publications/working\_papers/Orr\_Keever\_Enabling\_User\_Fee\_Backed\_Transportation\_Finance\_wp0041.pdf)

In arriving at these conclusions, this paper examines data from recognized think tanks, the state budget, published articles and commentary specific to California, international studies on user-fee backed finance, and comments and views articulated by state senior government officials.

Here transportation infrastructure is defined as “any fixed physical asset designed for transporting people and goods including highways, arterial streets, bridges, tunnels, and mass transportation systems.”1 An often overlooked aspect of transportation infrastructure, even of the most well constructed type, is that it is a consumable asset: it has a finite life, wears out with use, and needs periodic replacement.

#### Their interpretation clouds topic understanding --- makes accurate learning about investment impossible

Fullmer 9 (Jeff, Senior Investment Analyst with Tortoise Capital Advisors and Former Infrastructure Analyst – U.S. Department of Defense, “What in the World is Infrastructure?”, Infrastructure Investor, July / August, http://www.tortoiseadvisors.com/documents/Infrastructure\_Investor.pdf)

The definition is crucial: if we don’t know what it is we’re talking about, there is no way we can confidently invest in infrastructure, writes Jeffrey E. Fulmer

GOVERNMENTS ARE PROJECTED to spend about three percent of the world’s GDP on infrastructure in 2009 to meet the needs of expanding populations and to desperately attempt to prop up crumbling bridges, highways, water pipelines, and other system components. The investment community is establishing evermore equity and debt investment vehicles targeting global infrastructure. Yet, when someone mentions infrastructure, we reply out of necessity, “How are you defining infrastructure?” Attempts to define infrastructure have been made by national agencies, provinces and states, municipalities, professional and trade organisations, the financial community, academia and, of course, dictionaries. Inconsistencies and sector-specific biases abound, but common threads run through the myriad of definitions. Nearly all mention or imply the following characteristics: interrelated systems, physical components and societal needs.

[CONTINUES – TO CONCLUSION]

CONCLUSION

Encompassing all things to all people is hardly a useful way to define *infrastructure* – clouding investors, governments, and their citizens’ ability to understand, advocate, and direct capital toward durable, networked assets with widespread societal benefits. Primary infrastructure components are generally monopolistic in nature and require large financial commitments for their development, repair and replacement. They can be built, touched, enabled, disabled, and function together to form interrelated, dependent systems that deliver needed commodities and services to society. In doing so, they facilitate economic productivity and promote a standard of living. Infrastructure can then be more concisely defined as “*The physical components of interrelated systems providing commodities and services essential to enable, sustain, or enhance societal living conditions*.”

#### Definitions of “infrastructure” independent of “transportation” lack necessary precision

Mineta 12 (Mineta Transportation Institute – San Jose University, “Glossary”, http://transweb.sjsu.edu/mtiportal/research/Glossary.html)

Glossary

The transportation industry has its particular language and terms. This glossary will help you understand more about what you read.

### TI – Physical Asset – Limits

#### Our interpretation’s necessary to narrow the topic

Neumann 9 (James E., Principle – Industrial Economics, and Jason C. Price, Senior Associate – Industrial Economics, “Adapting to Climate Change: The Public Policy Response Public Infrastructure”, June, http://www.rff.org/rff/documents/RFF-Rpt-Adaptation-NeumannPrice.pdf)

1. Introduction

Public infrastructure is vital to the smooth functioning of the U.S. economy and encompasses a wide range of assets. For the purposes of this paper, we begin by narrowing our definition of public infrastructure to the physical structures that form the foundation of development in the United States. Within our definition, infrastructure includes wastewater and waterworks systems, electric power generation and transmission systems, communications networks, road and rail networks, transit and transportation facilities and ports, and oil and gas pipelines and associated facilities. In the climate change context, our scope includes both current infrastructure that may be at risk (e.g., transportation, energy, water and communications, utilities) and new infrastructure that may be needed to effectively and efficiently adapt to climate risks (e.g., seawalls). The purpose of this paper is therefore to assess the threats and needs that multidimensional climate change imposes for these physical assets, review the existing adaptive capacity that could be applied to respond to these threats and needs, and present options for enhancing adaptive capacity through public sector investments in physical, planning, and human resources.1

The scope of our assessment differs from several prior well‐known assessments. Chapter 7 of the Intergovernmental Panel on Climate Change (IPCC) 2007 Working Group II report, for example, evaluates impacts to industry, settlement, and society, a much broader scope that includes public infrastructure but also private assets and natural resources, with the goal of assessing impacts to “the structure, functioning, and relationships of all of these components of human systems…” (Wilbanks et al. 2007, 360). We have chosen to exclude direct consideration of private industry assets and natural resources, making our scope and purpose far narrower than the IPCC effort in this area. Nonetheless, because infrastructure is designed to support those assets and to provide a means for the development of human settlements and industry, there are links to private sector assets and climate‐related threats and needs.

### TI – No Military – 1NC

#### “Transportation infrastructure” is strictly defined as facilities of transport --- this excludes security, law enforcement, and military support

Musick 10 (Nathan, Microeconomic and Financial Studies Division – United States Congressional Budget Office, Public Spending on Transportation and Water Infrastructure, p. 2)

Although different definitions of "infrastructure" exist, this report focuses on two types that claim a significant amount of federal resources: transportation and water. Those types of infrastructure share the economic characteristics of being relatively capital intensive and producing services under public management that facilitate private economic activity. They are typically the types examined by studies that attempt to calculate the payoff, in terms of benefits to the U.S. economy) of the public sector's funding of infrastructure.

For the purposes of CBO's analysis, "transportation infrastructure" includes the systems and facilities that support the following types of activities:

■ Vehicular transportation: highways, roads, bridges, and tunnels;

■ Mass transit subways, buses, and commuter rail;

■ Rail transport primarily the intercity service provided by Amtrak;\*

■ Civil aviation: airport terminals, runways, and taxi-ways, and facilities and navigational equipment for air traffic control: and

■ Water transportation: waterways, ports, vessel\*, and navigational systems.

The category "water infrastructure" includes facilities that provide the following:

■ Water resources: containment systems, such as dams, levees, reservoirs, and watersheds; and sources of fresh water such as lakes and rivers; and

■ Water utilities: supply systems for distributing potable water, and wastewater and sewage treatment systems and plants.

Consistent with CBO'% previous reports on public spending for transportation and water infrastructure, this update excludes spending that is associated with such infrastructure but does not contribute directly to the provision of infrastructure facilities or certain strictly defined infrastructure services. Examples of excluded spending are federal outlays for homeland security (which are especially pertinent to aviation), law enforcement and military functions (such as those carried out by the Coast Guard), and cleanup operations (such as those conducted by the Army Corps of Engineers following Hurricane Katrina in 2005).

#### Voting issue ---

#### 1. Limits --- they multiple every existing Aff by four: military, policy, homeland security, or cleanup --- and, they allow unique new areas of the topic like military aerospace or troop transport --- overstretches Neg research burdens

#### 2. Ground --- military Affs change core ground --- politics and “private sector” generics don’t apply --- and it artificially inflates advantage ground --- undermining fairness

### TI – No Military

#### “Infrastructure” must be available for public use --- military equipment is excluded

Fourie 6 (Johan, Chief Operating Officer – ArcelorMittal South Africa, “Economic Infrastructure: A Review of Definitions, Theory, and Empirics”, South African Journal of Economics, 74(3), September, Wiley Online Library)

One way to define infrastructure is to describe it in terms of its characteristics. A perhaps sufficiently succinct definition of infrastructure, also called ‘social overhead capital’, is provided by Hirschman (1958). He defines infrastructure as “capital that provides public services”. In essence, infrastructure therefore consists of two elements –‘capitalness’ and ‘publicness’. The first element is used to distinguish between infrastructure (defined as a stock variable) and public goods (defined as a flow variable) (Rietveld and Bruinsma, 1998:18). The latter element involves the general properties of non-rivalry and non-excludability. A distinction can, thus, be made between infrastructure and public capital where infrastructure would include goods that have a capital character, but are not necessarily public. Such goods could include privately owned telecommunications, but would exclude publicly owned military equipment (which are public capital, but does not provide public services). Thus, a common feature of infrastructure seems to be that there is at least a strong public involvement in the use thereof (Rietveld and Bruinsma, 1998:19). Economists label such goods physical infrastructure, or infrastructure capital, while urban planners might refer to them as transportation modalities and utilities.”

#### U.S. law defines “infrastructure” as only non-military

National Infrastructure Improvement Act 7 (National Infrastructure Improvement Act of 2007 – Passed by the Senate, http://uspolitics.about.com/od/legislation/l/bl\_s775.htm)

(4) INFRASTRUCTURE-

(A) IN GENERAL- The term `infrastructure' means a nonmilitary structure or facility and equipment associated with that structure or facility.

(B) INCLUSIONS- The term `infrastructure' includes--

(i) a surface transportation facility (such as a road, bridge, highway, public transportation facility, and freight and passenger rail), as the Commission, in consultation with the National Surface Transportation Policy and Revenue Study Commission established by section 1909(b)(1) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59; 119 Stat. 1471), determines to be appropriate;

(ii) a mass transit facility;

(iii) an airport or airway facility;

(iv) a resource recovery facility;

(v) a water supply and distribution system;

(vi) a wastewater collection, treatment, and related facility;

(vii) waterways, locks, and dams;

(viii) a levee and any related flood-control facility;

(ix) a dock or port; and

(x) a solid waste disposal facility.

#### Even broad definitions of infrastructure exclude the military

Ford 91 (Robert, Principal Administrator in Country Studies III Division – OECD, and Pierre Port, Principal Administrator in the Capital Movements – OECD, “Infrastructure and Private-Sector Productivity”, Economic Studies, 17, Autumn, http://www.oecd.org/dataoecd/32/48/34257626.pdf)

Although Aschauer concentrated on public-sector capital, this does not necessarily cover all infrastructure investment and, moreover, the split between publicly-provided and privately-provided infrastructure varies widely from country to country, perhaps for historical reasons. Therefore, two concepts of infrastructure were constructed. The “narrow” definition is the capital stock of “producers of government services”, and the “broad” definition includes, in addition, equipment and structures in electricity, gas and water, and structures in transport and communication (these are subtracted from the private-sector capital stock in the relevant regressions). The broad definition is somewhat more internationally comparable. Neither definition includes the military capital stock.

#### Their interpretation unlimits --- narrow definitions exclude military assets

El Makhloufi 11 (A., University of Amsterdam, “Economics Effects of Infrastructure Investment on Output and Productivity: A Meta-Analysis”, April, http://www.sesric.org/imgs/news/image/541-full.pdf)

2. Infrastructure investment and economic growth: A review of the literature

Existing literature concerned with the study of the relationship between infrastructure investment and economic growth show a wide variety of point of view concerning the definition of the concept 'infrastructure' (Lakshmanan, 1989).

Although the literature is generally clear in the way in which specific public goods are categorized, the general tendency is the association of infrastructure to particular characteristics of physical features (e.g. large and costly installations) or public services (educational buildings, hospitals, information flows, water and power supply, etc.). Some authors define infrastructure in a broader way without making any distinction between physical and non-physical infrastructure (Hirschman, 1958 for example). Others restrict the definition of infrastructure to core infrastructure consisting of railways, airports, and utilities such as sewerage and water facilities, information flows and particular cases of externalities of public goods (Aschauer, 1990; Anderson, 1991). Gramlich (1994, p. 1177) for example, defines infrastructure capital from an economic point of view as "large capital intensive natural monopolies such as highways, other transportation facilities, water and sewer lines, and communications systems."

More generally, most studies employ a *narrow definition* of public capital that includes the tangible capital stock owned by the public sector, excluding military structures and equipment and infrastructure capital based on private ownership. Other studies use a *broad definition* of public capital by including human capital investment (e.g., Garcia-Mila and McGuire 1992) or health and welfare facilities (e.g., Mera 1973). The latter components are hard to measure, which explains why most authors focus on narrowly defined public capital.

#### “Investment” excludes spending on the military

Halpin 11 (John, Senior Fellow – Center for American Progress, and Ruy Texeira, Senior Fellow – Century Foundation and Visiting Scholar – Brookings Institution, “The Origins and Evolution of Progressive Economics”, March, http://www.americanprogress.org/issues/2011/03/pdf/progressive\_economics.pdf)

12 Authors’ analysis of: Office of Management and Budget, Historical Tables, Budget of the U.S. Government, Fiscal Year 2011 (Executive Office of the President, 2010); public investment is defined as nonmilitary expenditures on infrastructure, research and development and education and training.

### TI – No Vehicles – 1NC

#### “Transportation infrastructure” is transport networks, not vehicles

GC 12 (Global Cargo & Commodities Limited, “Haulage & Transport”, http://www.globalcargogh.com/index.php?option=com\_content&view=article&id=44&Itemid=132)

The field of transport has several aspects; loosely they can be divided into a kind of infrasture, vehicles, and operations. Infrastructure includes the transport networks (roads, railways, airways, waterways, canals, pipelines, etc) that are used, as well as the nodes or terminals (such as airports, railway stations, bus stations and seaports). The vehicles generally ride on the networks, such as automobiles, bicycles, buses, trains, aircrafts. The operations deal with the way the vehicles are operated on the network and the procedures set for this purpose including the legal environment (Laws, Codes, Regulations, etc) Policies, such as how to finance the system (for e.g. the use of tolls or gasoline taxes) may be considered part of the operations.

#### Voting issue ---

#### Limits --- there are hundreds of types of existing vehicles and nearly infinite new innovations possible --- expanding beyond networks makes Neg preparation impossible and undermines clash and depth of discussion

#### Ground --- vehicles change the link direction to politics, rob core trade-off DAs, and have multiple uses so they artificially inflate advantage ground --- core ground is key to fairness

### TI – No Vehicles

#### Vehicles are a distinct field. “Infrastructure” is exclusively transportation networks.

CSFT 6 (“Aboard Transportation”, http://www.cfst.org/transportation.html)

Transportation

Transportation or transport is the carrying of people and goods from one destination to another. The term comes from the Latin trans meaning “across” and portare meaning “to carry”.

Transportation can be divided into three distinct fields:

1. Infrastructure - When we refer to infrastructure it includes our transport networks such as roads, railways, airways, canals, and pipeline. This also includes the terminals or nodes such as airports, railway stations, bus stations, and seaports.

2. Vehicle – These comprises of the vehicles that we regularly ride in the networks for instance automobiles (buses, cars, taxis, and etc.), trains and airplanes.

3. Operations – They are the control of the whole transport system including traffic lights/signals on roads, ramp meters, railroad switches, air traffic control, and etc.

#### “Infrastructure” and “vehicles” are distinct --- their interpretation unlimits

Array 12 (Array Systems Computing Inc., “Array's World-Class Transportation Expertise”, http://www.array.ca/applications/its/)

On today's crowded roadways, traffic congestion is a fact of life. Congestion results in extended travel times, increased air pollution and additional fuel consumption. Information technology may be employed in order to better manage the highway infrastructure and reduce the adverse effects of congestion. Intelligent Transportation Systems (ITS) refers to the application of communications and information technology to transport infrastructure and / or to vehicles to improve the efficiency of transportation networks.

In a typical ITS application, software is employed for traffic simulation, for real-time control and for communications. Transportation Systems projects may be broadly divided into infrastructure projects and vehicle-orientated applications. Typical infrastructure projects include the installation of Dynamic Message Sign (DMS) along a freeway or the implementation of intelligent traffic light control for city streets. Vehicle-orientated projects include applications such as as automated vehicle location and scheduling. Vehicular ITS applications are frequently applied to transit vehicles and corporate fleets.

Intelligent Transportation Infrastructure

Traffic Signal Sequencing and Control

Vehicle Detection and Monitoring

Dynamic Message Signs

Ramp Metering Systems

Queue-End Warning Systems

Intelligent Transit Systems / Vehicle Fleet Management

Computer Aided Dispatch

Automated Vehicle Location

Automatic Voice Annunciation

Automatic Passenger Counting

Navigation Systems

Fare Payment Systems

#### Transportation infrastructure and vehicles are distinct --- different ground applies to each

AMOS Web 12 (“A Pedestrian’s Guide to the Economy – Taking a Ride on Transportation Infrastructure”, http://www.amosweb.com/cgi-bin/awb\_nav.pl?s=pdg&c=dsp&k=47)

Every Car Needs A Road

We usually think about transportation in terms of vehicles -- like cars, trucks, trains, airplanes, and boats. Vehicles, however, are only part of any transportation system. You usually need depots, roadbeds, and other such capital goods that we refer to as infrastructure. Cars need streets and highways, trains need tracks, airplanes need airports, and boats need docks and ports.

There are two important things to note about transportation infrastructure:

First, infrastructure has many features of a public good, meaning it's very difficult to keep nonpayers from using them and there's often little reason to do so because there's no opportunity cost for extra users.

Second, infrastructure includes a whole bunch of capital that often takes years if not decades to produce. While a factory that makes the Master Sprocket's Universal do-it-yourself all-purpose spark plug tool and ice cream scoop might require a year to construct, the interstate highway system used to ship these fine utensils around the country takes several decades to complete.

### TI – Only Road / Rail – 1NC

#### "Substantially" means in the main

Words and Phrases 2 (Volume 40A, p. 469)

Ill.App.2 Dist. 1923 “Substantial” means in substance, in the main, essential, including material or essential parts

#### That means only road or rail Affs are topical

UK DOT 7 (United Kingdom Department of Transport, “Funding Transport Infrastructure for Strategically Significant Developments”, http://assets.dft.gov.uk/publications/funding-transport-infrastructure-for-strategically-significant-developments/devconguideline.pdf)

3.3 In the context of these guidelines, “transport infrastructure” is defined as an enhancement to surface access (primarily road or rail) identified through a transport assessment.

#### Voting issue for predictable limits --- allowing other subsections of transportation overstretch the Neg --- makes Affs about air, water, energy, communication topical --- limits are key to preparation and clash

### TI – Only Road / Rail

#### Highways are “in the main”

CBO 8 (Congressional Budget Office, “Issues and Options in Infrastructure Investment”, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9135/05-16-infrastructure.pdf)

Highways constitute by far the largest category of current spending on transportation infrastructure, and they dominate the estimates of investment required to maintain current performance. FHWA estimates that, without a significant change in the way highways are paid for, it would cost $79 billion per year to maintain performance—$12 billion more than total current spending. The next largest category is aviation, which has seen burgeoning demand for air travel and a commensurate growth in congestion. According to estimates from the FAA and other sources, annual investment of $18 billion, about $4 billion above current annual spending for airports and air traffic control, would be necessary to maintain performance under current pricing policies. Freight railroads also would require annual investment of about $4 billion more than is currently spent. (Some current spending on freight rail is for projects that will expand service by boosting capacity on major routes.4)

#### “Transportation” refers only to cars and trucks

Coleman 88 (W.S., General Manager – Eaton Corporation, “The Changing Research and Development Role in the

Mobility Industry from a Supplier’s Point of View”, Proceedings of the Institution of Mechanical Engineers, Part D: Journal of Automobile Engineering, 202(83), p. 83)

2 DEFINITIONS

‘Transportation R and D is defined, here, as the many technologies today’s suppliers bring to the table. These technologies run the gamut from mechanical-type technologies-power transmission, hydraulics, engines etc.-to a wide range of electronic and electrical control technologies. A number of technologies, computing, materials, testing etc.-are important for the overall support they provide.

‘Transportation’ industry is defined as passenger cars and medium- and heavy-duty trucks that make up the bulk of a cross-country transportation system.

### TI – Humans – 1NC

#### “Transportation” must move humans

NRDC 12 (Natural Resources Defense Council, “Glossary of Environmental Terms”, http://www.nrdc.org/reference/glossary/t.asp)

transportation - any means of conveying goods and people.

#### They don’t --- voting issue:

#### 1. Limits --- they explode the topic to include movement of only goods, makes all shipping innovations topical and opens up new, commercial-only areas of the topic --- makes deep research impossible

#### 2. Ground --- best links assume human transport, they allow minor manufacturing or equipment changes that aren’t controversial --- core ground is key to fairness

### TI – Inclusive Aff Definitions

#### Includes power cables and gas pipelines

Mills 11 (Dr Anthony, CEO – AfriCarbon (Pty) Ltd and C4 EcoSolutions (Pty) Ltd, et al., “Peri-Urban Bamboo Planting Around South African Townships”, Voluntary Carbon Standard Project, 8-24)

2.2 Justification of the choice of the methodology and why it is applicable to the project activity:

The project meets the specification criteria for the nominated methodology, namely:

 project activities are implemented on human settlements, defined as: “Residential and commercial lawns (rural and urban), gardens, golf courses, athletic fields, parks, provided such land is functionally or administratively associated with particular cities, villages or other settlement types and is not accounted for in another land-use category” or transportation infrastructure, defined as “Land strips along streets, country roads, highways, railways, waterways, overhead power cables, gas pipelines, provided such land is functionally or administratively associated with the transportation infrastructure and is not accounted for in any other land-use category”;

#### Includes roadway lighting, rights of way, and landscaping

Larsen 12 (Hans F., Rules Committee – City of San Jose, “Local Government Transportation Projects Special Taxes: Voter Approval”, 4-18, <http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/20120418/rules20120> 418\_g2.pdf)

Transportation Infrastructure continues to be the program within the City that identifies the largest unfunded need. As reported at the April 2012 Transportation & Environment meeting, the five-year unfunded needs for Transportation Infrastructure is $443.8 million with annual ongoing unfunded needs is identified at approximately $89 million. Transportation infrastructure includes the street network, roadway lighting and right of way, and landscaping assets. Of that infrastructure, street pavement is the largest portion of the need. San Jose’s estimated backlog of deferred pavement maintenance has increased from $250 million (in 2010) to $293 million (in 2012) with the quantity of streets in poor condition increasing from 425 miles (18 percent) to 500 miles (21 percent). Along with the funding needed to address the pavement backlog, additional funds are needed to meet the needs of other areas including: ADA Curb Ramps - $63 million; Signals/Signs/Markings/Street Lights - $38 million; Bridge Rehabilitation - $30 million; and, Trees/Landscaping - $19 million. If funding levels are not increased, the backlog will continue to escalate. In addition to the needs highlighted by the City, there are also transportation infrastructure needs regionally and statewide that need to identify funding sources.

#### Includes protection of hazardous waste transit

Noronha 3 (Val, Professor – University of California, Santa Barbara, “Critical Transportation Infrastructure”, 12-2, http://www.ncgia.ucsb.edu/ncrst/meetings/20031201SBA-CTI2003/first.html)

There are many classes of infrastructure — a background page on CIP enumerates these. Our focus is on transportation infrastructure, recognizing that algorithmically, methods developed for one class of infrastructure may be adaptable to another. There is also a focus on spatial attributes of the transportation system, i.e. geographic and topological characteristics of the transportation links and the places (nodes) served by them, and an emphasis on spatial technologies such as remote sensing and GIS. Transportation infrastructure includes for our purposes

road, rail, air and waterway infrastructure

pipelines

terminals, intermodal facilities and warehouses

delivery systems

control systems

infrastructure provisions to serve needs of critical hazardous/non-hazardous materials in transit

#### Modern, evolving definitions of “transportation” are most educational

Georgia Tech 10 (School of Civil & Environment Engineering, Georgia Institute of Technology, “Lesson 1 – The Transportation Sector”, http://transportation.ce.gatech.edu/node/1961)

The Transportation Sector

Lesson 1– The Transportation Sector, provides an introduction to a variety of components that constitute the transportation sector. The first of task of this lesson is to define the terms “transportation” and “transportation engineering”. Once a working definition of these terms has been established, the lesson then invites the students to navigate the history of the transportation through the various transportation modes while following the evolution of technology and it application throughout the transportation sector.

Modes of Transportation [1][2][3][4][5]

In defining what transportation is and how the transportation sector has evolved into what it is today, from what it was centuries ago, students will not only gain a greater appreciation for the importance of transportation is our society but also understand that the evolution of the transportation sector is continuous. Throughout this lesson, it is imperative to underscore the fact that this generation of engineers and scientists are responsible for continuing the evolution of the transportation sector as limitations of current systems and technologies, as well as new challenges and societal problems will need to be address in order to maintain and increase the world’s standard of living.

The Evolution of Transportation – the Motor Car

Having a solid grasp of what transportation is, its history and the our responsibility to its future, Lesson 1 also introduces how transportation projects get from being a concept to what is built to get persons from Point A to Point B. This process is referred to as the transportation process. In illustrating this process, five stages were identified and used as points of departure to facilitate a fundamental understanding of the transportation process. These five stages included 1) Problem Identification, 2) Project Development, 3) Construction/Implementation, 4) Operation, and 5) Maintenance. In guiding students through these various stages of the transportation process, it is the goal that students walk away with a few key realizations. These realization include 1) that they are already are a part of the transportation process by way of being able to identify problems within the transportation sector and 2) as they navigate through the transportation system they are a part of its operation and 3) as a transportation engineer they are further involved with the process at most, if not at all, stages. The transportation process modules seek to underscore these realizations through formal instruction as well as through guided interaction with the students.

### TI – Includes Privately Owned Assets

#### \*“Transportation infrastructure” includes privately owned assets --- their interpretation is arbitrary and excludes the core of the topic

Neumann 9 (James E., Principle – Industrial Economics, and Jason C. Price, Senior Associate – Industrial Economics, “Adapting to Climate Change: The Public Policy Response Public Infrastructure”, June, http://www.rff.org/rff/documents/RFF-Rpt-Adaptation-NeumannPrice.pdf)

Our focus on public infrastructure could be interpreted as one that is limited to those assets directly owned and operated by the public sector. Limiting our scope in that way would, in our opinion, be arbitrary and would exclude many important infrastructure resources that have a public sector presence and for which public planning and regulation has proven essential (e.g., electric energy transmission systems). In addition, a “current ownership” distinction might also exclude assets where climate change might have an influence on future ownership patterns. For example, coastal defense systems, such as seawalls and beach nourishment, in the present day are usually publicly funded, but as needs for these systems increase in the face of rising sea levels, we can anticipate public funds growing more limited and are likely to see more privately funded coastal defense efforts. In fact, in some places, such as certain coastal barrier islands where the use of federal funds for this purpose is prohibited, we have already seen privately funded beach nourishment (U.S. CCSP 2008a). An important public planning and investment function in the coastal zone remains; however, that falls largely under the umbrella of infrastructure planning to enhance and protect development. Our scope therefore includes some privately owned assets that meet our definition of “physical structures that form the foundation for development.”

### TI – Includes Non-Physical Assets

#### “Infrastructure” includes soft elements --- not just physical assets

Hinchliffe 9 (Honorable Stirling, MP, Minister for Infrastructure and Planning – Australia, South West Regional Plan, “6. Infrastructure”, August, <http://www.dlgp.qld.gov.au/resources/plan/south-west/sw-plan-policy-6-infrastructure.pdf>)

The term infrastructure does not solely refer to hard infrastructure such as roads, rail, electricity transmission, information and communication technology, and water. The term also refers to the region’s ‘soft’ infrastructure assets and requirements, such as health services, fire and ambulance facilities, access to community services, skills, knowledge, and the strength of local relationships and networks. These assets are addressed in section 3. Strong communities.

### TI – Includes Military

#### “Transportation” includes the military

Kim 9 (Brian, Wyle Laboratories, Inc., et al., “Guidebook on Preparing Airport Greenhouse Gas Emissions Inventories”, Airport Cooperative Research Program – Report 11, http://onlinepubs.trb.org/onlinepubs/acrp/acrp\_rpt\_011.pdf)

Transportation Sector: Consists of private and public passenger and freight transportation, as well as government transportation, including military operations.

### TI – Includes Vehicles

#### “Transportation infrastructure” includes vehicles

Oswald 11 (Michelle, Professor – Bucknell University, et al., “Measuring Infrastructure Performance: Development of a National Infrastructure Index”, Public Works Management & Policy, 16(4), p. 378)

Defining the Infrastructure Sector

A more technical definition of the transportation sector is

The fixed facilities (roadway segment, railway track, transit terminals, harbors, and airports), flow entities (people, vehicles, container units, railroad cars), and control systems that permit people and goods to transverse geographical space efficiently and in a timely manner in some desired activity. Transportation is provided by modes—highway, rail, air, waterway, and pipeline. (U.S. Chamber of Commerce, 2010a)

## \*\*\* INVESTMENT

### Investment – Effects – 1NC

#### “Increase” refers to a mandate, not a potential result

HEFC 4 (Higher Education Funding Council, <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtchar/1> 67/167we98.htm# n43)

9.1 The Draft Bill creates an obligation on the principal regulator to do all that it "reasonably can to meet the compliance objective in relation to the charity".[ 45] The Draft Bill defines the compliance objective as "to increase compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity".[ 46] 9.2 Although the word "increase" is used in relation to the functions of a number of statutory bodies,[47] such examples demonstrate that "increase" is used in relation to considerations to be taken into account in the exercise of a function, rather than an objective in itself. 9.3 HEFCE is concerned that an obligation on principal regulators to "increase" compliance per se is unworkable, in so far as it does not adequately define the limits or nature of the statutory duty. Indeed, the obligation could be considered to be ever-increasing.

#### “Infrastructure investment” is spending in the sector

Jimenez 95 (Immanuel, Appointed Director of Public Sector Evaluations – Independent Evaluation Group of the World Bank Group, “Human and Physical Infrastructure: Public Investment and Pricing Policies in Developing Countries”, Handbook of Development Economics, Vol. III, Ed. Behrman and Srinivasan, p. 2774)

1. Introduction and overview

Almost by definition, infrastructure is the basis for development. 1 For an economy, it is the foundation on which the factors of production interact in order to produce output. This has been long recognized by development analysts, and infrastructure, often termed "social overhead capital," is considered to include:

•.. those services without which primary, secondary and tertiary production activities cannot function. In its wider sense it includes all public services from law and order through education and public health to transportation, communications, power and water supply, as well as such agricultural overhead capital as irrigation and drainage systems [Hirschman (1958) p. 83].

These seemingly diverse services share some common traits that are important in economic analysis. They are generally not tradeable. Although they may affect final consumption directly, their role in enhancing output and household welfare can also be indirect - in facilitating market transactions or in making other economic inputs more productive. Finally, and perhaps most importantly, the many infrastructure services share characteristics, such as scale economies in production, consumption externalities and non-exclusivity, that have been used to justify a large role for public policy in their provision and financing.

This chapter will focus not only on what has traditionally been considered the "core" infrastructure sectors, which enhance the productivity of physical capital and land (mainly transportation and power). It will also include human infrastructure- or those services that raise the productivity of labor (health, education, nutrition). This is a broadening of the definition that was given great prominence by Schultz (1963) and Becker (1964) and that has since been widely accepted by both scholars and practitioners.

Public investment will be defined broadly to include all government spending in these sectors, rather than just capital expenditures as traditionally defined in official statistics. This is to ensure that the economic issues regarding recurrent as well as capital spending are covered, since both have been the focus of the recent iiterature. Moreover, the chapter will emphasize recent policy debates, but will not present in detail the basic theoretical concepts underlying them.

#### Violation --- the plan doesn’t mandate spending on transportation, it merely claims to result in it

#### Voting issue ---

#### 1. Limits --- the scope of change that could possibly result in topical action is endless --- they could change tax policy or cut spending to other sectors --- makes research and preparation impossible

#### 2. Ground --- a certain increase is necessary for CP competition and all disad links --- they could dodge core ground by reversing their stance on solvency --- undermines fairness

### Investment – Effects – Other Definitions

#### “Substantially” means the increase must be definite --- potential future increases are not topical

Words and Phrases 64 (40W&P 759)

The words" outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain: absolute: real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

### Investment – Capital Expenditure – 1NC

#### “Investment” requires capital expenditure

Anderson 6 (Edward, Lecturer in Development Studies – University of East Anglia, et al., “The Role of Public Investment in Poverty Reduction: Theories, Evidence and Methods”, Overseas Development Institute Working Paper 263, March, http://www.odi.org.uk/resources/docs/1786.pdf)

1.3 Definitions

We define (net) public investment as public expenditure that adds to the public physical capital stock. This would include the building of roads, ports, schools, hospitals etc. This corresponds to the definition of public investment in national accounts data, namely, capital expenditure. It is not within the scope of this paper to include public expenditure on health and education, despite the fact that many regard such expenditure as investment. Methods for assessing the poverty impact of public expenditure on social sectors such as health and education have been well covered elsewhere in recent years (see for example, van de Walle and Nead, 1995; Sahn and Younger, 2000; and World Bank, 2002).

#### That means topical plans must add new infrastructure

Law Depot 8 (“Capital Expenditure”, 2-6, http://wiki.lawdepot.com/wiki/Capital\_Expenditure)

Definition of "Capital Expenditure"

Capital expenditure is money spent to acquire or upgrade (improve) long term assets such as property, buildings and machinery. Capital expenditure does not include the cost to merely repair such assets.

#### Voting issue ---

#### 1. Ground --- new infrastructure is key to unique disadvantages. Repairs allow the Aff to spend to maintain the status quo, not defend a substantive change. Core ground is key to fairness.

#### 2. Limits --- other definitions of “investment” make all spending topical --- “capital expenditure” is the only way to meaningfully restrict the topic mechanism, which is the crux of all strategy and research

### Investment – Capital Expenditure

#### Not all spending is investment. Only capital expenditure is topical and requires new projects, not maintaining current capabilities.

Becker 8 (Werner, Deutsche Bank Research, et al., “Improving the Quality of Public Finances – The Road Ahead”, 2-5, http://www.dbresearch.com/PROD/DBR\_INTERNET\_EN-PROD/PROD0000000000220498.PDF)

With regard to the effects of public spending on growth, a distinction is traditionally made between current government consumption expenditure (on, say, the compensation of government employees) and capital expenditure geared to the future (on infrastructural projects such as transport, utility supply and communications systems). Government consumption spending is frequently generalised as unproductive, whereas public capital expenditure is regularly labelled as growth-enhancing investment in the future. When assessing the growth effects of public spending, however, this simplistic approach needs reexamining. There are some kinds of public spending that, while reported as capital expenditure, do not count as productive investment in the economic sense. Empirical surveys show that substantial growth effects can normally be expected only from infrastructure investment. But over the past 25 years this has accounted for a mere quarter to a third of total government investment.13 Ultimately, the simple equation “more public investment equals more growth” has been undermined in Germany by the very broad interpretation of the debt rule in Article 115 of the Basic Law.14 Although the rule stipulates that net new borrowing by the Federal government must not exceed public investment expenditure, in many years the government has departed from this principle – most recently in each of the years from 2002 to 2006 –, taking as its justification the disturbance in macroeconomic equilibrium. Public spending and public debt rose, but in most cases growth remained anaemic. A problem here is the relatively broad definition of public investment.

#### “Investment” requires capital expenditure

IER 4 (Institute for Economic Research and Policy Consulting in Ukraine, “How to Improve Public Investment Efficiency in Ukraine?”, February, http://www.osteuropa-institut.de/ext\_dateien/how%20to%20improve.pdf)

1. Definitions and recent trends

1.1. Definitions

Throughout the paper public investment is defined as capital expenditure financed out of the central or local budgets, in the Treasury definition. This comprises purchases of fixed assets including repairs and reconstruction, the creation of state reserves, purchases of land and intangibles, and capital transfers to enterprises, other levels of government, the population, or abroad. This differs from Derzhkomstat’s definition of public capital investment, also used in this paper.1

### Investment – Capital Expenditure – Violation – General

#### Plan is revenue, not capital expenditure

Transpower 10 (Transpower New Zealand Limited Business Guidance, “Accounting Guidance Notes for Revenue and Capital Expenditure”, Issue 2, November, http://ebookbrowse.com/transpower-accounting-guidance-notes-for-revenue-and-capital-expenditure-issue2-pdf-d284331433)

7.3 Maintenance Expenditure (Revenue Expenditure)

Maintenance expenditure is expenditure that satisfies one or more of the these criteria:

(i) It restores an asset to its original expected operating capability or condition;

(ii) It provides only minor or incidental improvement(s) to the features, functionality or EOL of the asset;

(iii) It maintains an asset in good working condition.

In other words, Maintenance Expenditure enables the asset to achieve its original expected operational life (EOL) through regular and/or preventive maintenance.

7.4 Capital Expenditure

Capital expenditure is expenditure that satisfies one or more of these criteria:

(i) It results in the creation of a new asset or assets2;

(ii) It provides a to significant improvement an existing asset with respect to capability or EOL.

#### Only capital expenditure is “investment”. Spending on current capabilities is maintenance revenue expenditure. Distinguishing clearly between the two is critical to precision and topic education.

Mtetwa 10 (Munya, ACCA and IFA Qualified Accountant with Over Ten Years Financial Management and Accounting Experience, “Revenue and Capital Expenditure”, Accounting – Suite 101, 3-21, http://munya-mtetwa.suite101.com/revenue-and-capital-expenditure-a212507)

In accounting there are two main mandatory financial statements and these report the financial position and the financial performance of a company. These two financial statements are known as the balance sheet and the profit and loss account. The balance sheet is the home to all capital expenditures and all revenue expenses are recorded in the profit and loss account.

Failure to distinguish the difference between revenue expenses and capital expenses can lead to a misleading picture of both the financial performance and financial position being reported or presented to the users of accounting information.

In book-keeping and accounting there is a type of error known as the error of principle. This error occurs when capital expenditure is treated as revenue expenditure in the books of accounts and vice versa. When a firm deliberately misclassifies revenue expenditure as capital expenditure this may be viewed as creative accounting, which is morally and ethically wrong. Below these two concepts are explored further.

Revenue Expenses

Revenue expenditure is outlay or expenses incurred in the day to day running of a company. In most cases revenue expenditure involves the procurement of services and goods that will be used within a financial year. Revenue expenditure does not improve or increase the income generating abilities of a company; at best it leads to the maintenance of the current organisational revenue generating capacity.

All expenses of a revenue nature are recorded in the profit and loss account as either operating expenses, marketing and selling expenses and administrative expenses. Revenue expenses play a role in determining the profit earned or a loss by a company.

Revenue expenses are routine and recurring in nature and some examples of revenue expenditure include payments in staff wages and salaries, heating and lighting, depreciation, legal and professional fees, travel and subsistence, insurance, administrative expenses, most of marketing and public relations expenses, audit fees, office supplies, staff training costs, staff recruitment costs and minor or immaterial items of equipment.

Capital Expenses

Capital expenditure represents outlay on fixed assets. Capital expenditure can be outlay of resources on the investment of long-term income generating capability of the company. Investment in fixed assets will lead to an increase or improvement in the investing company’s revenue generating capacity. Capital expenditure can also be in the form of significant acquisitions or purchases of more expensive items of equipment that will last longer than a financial year.

#### Plan’s revenue expenditure

Chennai 5 (Corporation of Chennai Tax-Free Bonds 2005, “Offer Document”, 3-31, http://www.bseindia.com/BSEdata/ipo\_downloads/Corporation%20of%20Chennai.pdf)

THE MAJOR TYPES OF REVENUE EXPENDITURE ARE

1. Salaries to the Corporation employees.

2. Terminal and Retirement benefits to the Corporation pensioners/family pensioners.

3. Operating expenses like, Power charges, Stores Consumption, Medicines, Fuel charges.

4. Repairs and maintenance like storm water drains and culverts, repair charges for vehicles, electrical installation, etc.

5. Programme expenses like Family Welfare Programme, Noon Meal, Tree Planting, etc.

6. Administration Expenses like telephone charges, audit fees, printing and stationeries, etc.

7. Interest on loan.

### Investment – Capital Expenditure – Violation – Human Capital

#### Capital expenditure excludes training and R&D --- both affect only human capital

Creel 6 (Jérôme, Professor of Economics – ESCP-EAP European School of Management, and Gwenaëlle Poilon, Ph.D. Student in Economic Management, “Is Public Capital Productive in Europe?”, May, <http://papers.ssrn.com/> sol3/papers.cfm?abstract\_id=935209&http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=19&ved=0CHcQFjAIOAo&url=http%3A%2F%2Fpapers.ssrn.com%2Fsol3%2FDelivery.cfm%3Fabstractid%3D935209&ei=EYeuT9a4NdDAtgfx5PCRCQ&usg=AFQjCNHuMwXvINRHxgPSNeVKajIqQu6sqw&sig2=JBFNdTaYwpibLNPs9dG8Gw )

Besides public debt’s growth or the cost/benefits analysis, other criticisms to the adoption of a “golden rule” in the Euro area are worth mentioning. Balassone and Franco (2000) consider that the “golden rule”, as it is promoting public investment, will result in a bias in favour of physical assets, at the expense of health and education expenditures. Hence, the definition of “public investment” in national account statistics includes transactions that lead to changes in the stock of physical capital (like the construction of infrastructures or the purchase of computer hardware), but excludes large amounts of expenditures related to the accumulation of human capital, like training or R&D.

### Investment – Capital Expenditure – Violation – Maintenance / Repair

#### That excludes maintenance and repair

360 Capital 12 (“Investor Information”, http://www.360capital.com.au/investor-information/glossary-of-terms/)

Capital expenditure (Capex): Those items that are significant replacements or additions to properties, as distinguished from expense items that are considered to be recurring items. Capital expenditure does not include general maintenance and repair items. For example the replacement of an air conditioning unit at a property would be an item of capital expenditure. However, the replacement of its fan-belt would not.

### Investment – Spending

#### “Investment” is direct spending on infrastructure and grants to support private sector asset creation

Scotland 5 (Government of Scotland, “Infrastructure Investment Plan: Investing in the Future of Scotland”, February, http://www.scotland.gov.uk/Publications/2005/02/20756/53558)

Appendix A: Technical Definitions of Infrastructure Investment

The public expenditure system uses different definitions of capital for budgeting purposes than for accounting purposes - both of which exclude elements of infrastructure investment in the wider sense used elsewhere in this publication.

For accounting purposes, capital spending is those resources used to create a fixed asset which goes on a Government Department's balance sheet. Assets are classified as fixed if they are owned by an organisation and have an ongoing benefit (generally over more than one year). If spending is not classified as being on fixed assets then it is treated as revenue expenditure.

For budgeting purposes, what scores within Capital Delegated Expenditure Limits (capital DEL) is everything that scores as capital for accounting purposes, as well as capital grants to and supported borrowing by local authorities and spending by Non-Departmental Public Bodies that will be included as capital in their accounts. For public corporations such as Scottish Water, capital DEL is the net lending to the relevant public corporation by the department and not the public corporation's own self-financed capital spending.

Net Investment - The Scottish Executive's definition of net investment for purposes such as the net investment rule incorporates spending within capital DEL as well as grants made to support capital spending (asset creation or enhancement) by private sector organisations such as Higher and Further Education Institutions. It does not include the capital element of PPP deals.

#### “Investment” is spending government resources to develop infrastructure

Laos 10 (Laos Ministry of Planning and Investment, “Manual For Public Investment Program (PIP) Program Management”, August, <http://www.jica.go.jp/project/laos/0700667/materials/pdf/ProgramManual/ProgramMa> nual\_eng.pdf)

Public investment is defined as investment from government resources, domestic or foreign, with the objective of development in the sector and/or region. Domestic PIP projects, ODA in forms of grant, technical assistance and loan are main components. Provision of public infrastructure (ex. roads, bridges, irrigation systems, public hospitals and schools, rural electrification etc.) and technical promotion (ex. training) is generally done using public investment.

#### “Investment” is disbursement of public funds

Perez 10 (Perez, Bustamonte, and Ponce (Law Firm), “Executive Summary of the Organic Code on Public Planning and Finance”, Legal Newsletter, 11-4, http://www.pbplaw.com/boletines/2010/20101104\_boletinPBP\_bl\_en.pdf)

Public investment is defined as “… a set of disbursements and/or transactions made out of public funds to maintain or increase social and State wealth and capacities for the purpose of achieving the planned objectives”. And Article 77 of the Code referred to herein provides that the State General Budget is an instrument used “to determine and manage income and disbursements of all the entities comprised in the different State branches.”

#### “Investment” requires spending or commitment of capital

Pedactor 11 (Ronald, “Learning About Investing or Saving”, North America Discount Gold, 6-6, http://www.northamericandiscountgold.com/learning-about-investing-and-saving/)

The term “Investment” is defined as the commitment of money or capital to purchase financial instruments or other assets in order to gain profitable returns in the form of interest, income, or appreciation of the value of the instrument. No matter your financial situation, investing and saving is essential.

#### “Infrastructure investment” requires spending

CBO 8 (Congressional Budget Office, “Issues and Options in Infrastructure Investment”, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9135/05-16-infrastructure.pdf)

Current Spending on Infrastructure

Under any definition, “infrastructure investment” encompasses spending on a variety of projects. For present purposes, it is useful to distinguish transportation, which receives the bulk of federal support, from other types of infrastructure, such as utilities. Both types of assets promote other economic activities: An adequate road, for example, facilitates the transport of goods from one place to another and thereby promotes economic activity; utilities that provide such services as electricity, telecommunications, and waste disposal are also essential to modern economies. (Appendix A describes spending on research and development and on education. Those categories form the basis for supporting intellectual and human capital, respectively, and can provide benefits that are similar to those generated by infrastructure spending.)

#### This includes tax expenditures

CBO 8 (Congressional Budget Office, “Issues and Options in Infrastructure Investment”, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9135/05-16-infrastructure.pdf)

2. The federal government also funds investments in infrastructure through “tax expenditures,” which represent the cost of tax receipts that are forgone because of the exclusion of interest on tax-exempt municipal bonds from personal and corporate gross income and certain other tax preferences. In 2006, tax expenditures for transportation, water resources, and water supply and wastewater treatment systems totaled about $8 billion.

### Investment – Can Be Nonprofit

#### “Investment” is allocation to public sectors --- their evidence assumes private investment

VNN 7 (Viet Nam News Agency, “New Law Regulates Government Investment in Public Projects”, 8-30, http://www.unescap.org/tid/tisnet/news1007.asp)

New law regulates Government investment in public projects. Viet Nam News Agency, 30 August 2007.

The Ministry of Investment and Planning has introduced a draft Law on Public Investment. The Law on Public Investment will complete the country’s legal system on investment. It defines public investment as any funds not for trading purposes but money that the State allocates from its budget to invest in industries and areas which serve the public interest. It contains many new clauses about investment management as well as project supervision and appraisal, which until now have not been regulated in legal documents. It also outlines roles and responsibilities over public investments for State offices at different levels. The document will be amended for submission to the Government in September after offices and research units have provided their opinions on the draft.

### Investment – Includes Non-Physical Assets

#### “Investment” includes expenditure on non-physical assets

UN 10 (United Nations Trade and Development Board, “Public Investment in Administrative Efficiency for Business

Facilitation – Sharing Best Practices”, 2-15, http://unctad.org/en/docs/ciid8\_en.pdf)

2. Public investment is understood here as any public expenditure that adds to the public tangible and intangible capital. One of its very effective forms is investment in administrative efficiency for business facilitation, i.e. improving the transparency and simplification of business-related rules, and introducing eGovernment services.

### Investment – Includes PPP

#### Federal investment includes public-private partnerships --- narrower interpretations distort the topic

Heller 9 (Peter S., Former Deputy Director of the Fiscal Affairs Department – International Monetary Fund and Currently Senior Adjunct Professor of International Economics – Paul H. Nitze School of Advanced International Studies at The Johns Hopkins University, “Public Investment: Vital for Growth and Renewal, But Should it be a Countercyclical Weapon?”, http://www.unctad.org/en/Docs/webdiae20091\_en.pdf)

While any capital outlay of a government would be defined as “public investment” in normal budgetary classification terms, this approach sidesteps a number of important conceptual issues. First, from a normative public finance perspective, the reason that governments spend on public assets is because some form of market failure is present that either leads to inefficient provision by the private sector or entails excess rents to a private producer. Specifically, the asset gives off externalities, positive or negative, or the asset is a “public good,” whose services are subject to “nonrivalness” in consumption or where it is difficult to exclude potential consumers. Or, there are economies of scale involved, such that a natural monopoly situation would be entailed, justifying either public provision or regulation of a private monopoly. Many kinds of infrastructural networks are subject to such natural monopoly conditions.

Moreover, the public sector’s role in public investment is not limited to its own budgetary spending. A simple focus on government outlays may yield too narrow a picture of the level of public investments and more importantly, a too restricted perspective on the potential role played by governments with regard to the provision of public infrastructure. Most obviously, when the government collaborates in a public-private partnership (PPP), most outlays will normally be made by private sector entities. Yet the purpose of these outlays would be to provide goods or services for which there is justified public involvement. And the government’s role in relation to the PPP arrangement—in terms of monitoring, regulation, risk bearing, and ultimately purchaser of the asset (long in the future perhaps but part of the PPP contractual terms)—will still remain prominent.

Similarly, in cases where the private sector invests in the production of goods characterized by natural monopoly conditions, government regulatory involvement is called for. In other spheres of private investment, a government regulatory or planning role may also be fundamental in order to take account of public policy objectives (in the case of externalities), though such investments would still be recognized as private.

The challenge of classifying public investment is rendered even more complex in the context of privatization efforts, where the sale of a government asset is classified, in budgetary terms, as a “negative investment,” though in fact the transaction simply represents a reclassification of ownership. The complexities of measuring public investment and the changes in the definitions that have occurred over time has led the OECD, in its recent effort to analyze the linkage between public investment and growth, to rely on indicators of physical stock rather than measures of the financial value of public investment or the net value of its capital stock. Rather than being misled by a narrow budgetary classification, what is important to recognize are the ways in which governments have a responsibility in the creation of capital goods and their need to intervene, particularly when market failure leads to underspending on goods vital for the realization of public policy objectives.

## \*\*\* SUBSTANTIALLY

### Substantially – 1NC

#### “Substantial investment” must be an increase of at least 20%

Traficant 89 (“H.R.2489 -- Foreign Subsidiary Tax Equity Act (Introduced in House - IH)”, 5-24, http://thomas.loc.gov/cgi-bin/query/z?c101:H.R.2489.IH:)

SEC. 2. INCOME FROM RUNAWAY PLANTS OR FROM MANUFACTURING OPERATIONS LOCATED IN A COUNTRY WHICH PROVIDES A TAX HOLIDAY INCLUDED IN SUBPART F INCOME.

(a) FOREIGN BASE COMPANY MANUFACTURING RELATED INCOME ADDED TO CURRENTLY TAXED AMOUNTS- Subsection (a) of section 954 of the Internal Revenue Code of 1986 (defining foreign base company income) is amended by striking `and' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting `, and', and by adding at the end thereof the following new paragraph:

`(6) the foreign base company manufacturing related income for the taxable year (determined under subsection (h) and reduced as provided in subsection (b)(5)).'

(b) DEFINITION OF FOREIGN BASE COMPANY MANUFACTURING RELATED INCOME- Section 954 of such Code is amended by adding at the end thereof the following new subsection:

`(h) FOREIGN BASE COMPANY MANUFACTURING RELATED INCOME-

`(1) IN GENERAL- For purposes of this section, the term `foreign base company manufacturing related income' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the manufacture for or sale to any person of personal property by the controlled foreign corporation where the property sold was manufactured by the controlled foreign corporation in any country other than the United States if such property or any component of such property was manufactured--

`(A) in a tax holiday plant, or

`(B) in a runaway plant.

`(2) OTHER DEFINITIONS; SPECIAL RULES- For purposes of this subsection--

`(A) TAX HOLIDAY PLANT DEFINED- The term `tax holiday plant' means any facility--

`(i) operated by the controlled foreign corporation in connection with the manufacture of personal property, and

`(ii) with respect to which any economic benefit under any tax law of the country in which such facility is located accrued--

`(I) to such corporation,

`(II) for the purpose of providing an incentive to such corporation to establish, maintain, or expand such facility, and

`(III) for the taxable year of such corporation during which the personal property referred to in paragraph (1) was manufactured.

`(B) RUNAWAY PLANT DEFINED- The term `runaway plant' means any facility--

`(i) for the manufacture of personal property of which not less than 10 percent is used, consumed, or otherwise disposed of in the United States, and

`(ii) which is established or maintained by the controlled foreign corporation in a country in which the effective tax rate imposed by such country on the corporation is less than 90 percent of the effective tax rate which would be imposed on such corporation under this title.

`(C) ECONOMIC BENEFIT UNDER ANY TAX LAW DEFINED- The term `economic benefit under any tax law' includes--

`(i) any exclusion or deduction of any amount from gross income derived in connection with--

`(I) the operation of any manufacturing facility, or

`(II) the manufacture or sale of any personal property,

which would otherwise be subject to tax under the law of such country;

`(ii) any reduction in the rate of any tax which would otherwise be imposed under the laws of such country with respect to any facility or property referred to in clause (i) (including any ad valorem tax or excise tax with respect to such property);

`(iii) any credit against any tax which would otherwise be assessed against any such facility or property or any income derived in connection with the operation of any such facility or the manufacture or sale of any such property; and

`(iv) any abatement of any amount of tax otherwise due and any other reduction in the actual amount of tax paid to such country.

`(D) MANUFACTURE DEFINED- The term `manufacture' or `manufacturing' includes any production, processing, assembling, or finishing of any personal property or any component of property not yet assembled and any packaging, handling, or other activity incidental to the shipment or delivery of such property to any buyer.

`(E) CORPORATION INCLUDES ANY RELATED PERSON- The term `controlled foreign corporation' includes any related person with respect to such corporation.

`(F) SPECIAL RULE FOR DETERMINING WHICH TAXABLE YEAR AN ECONOMIC BENEFIT WAS OBTAINED- An economic benefit under any tax law shall be treated as having accrued in the taxable year of the controlled foreign corporation in which such corporation actually obtained the benefit, notwithstanding the fact that such benefit may have been allowable for any preceding or succeeding taxable year and was carried forward or back, for any reason, to the taxable year.

`(3) LIMITATION ON APPLICATION OF PARAGRAPH (1) IN CERTAIN CASES- For purposes of this section--

`(A) IN GENERAL- The term `foreign base company manufacturing related income' shall not include any income of a controlled foreign corporation from the manufacture or sale of personal property if--

`(i) such corporation is not a corporation significantly engaged in manufacturing,

`(ii) the investment in the expansion of an existing facility which gave rise to a tax holiday for such facility was not a substantial investment, or

`(iii) the personal property was used, consumed, or otherwise disposed of in the country in which such property was manufactured.

`(B) CORPORATION SIGNIFICANTLY ENGAGED IN MANUFACTURING DEFINED-

`(i) GENERAL RULE- A corporation shall be deemed to be significantly engaged in manufacturing if the value of real property and other capital assets owned or controlled by the corporation and dedicated to manufacturing operations is more than 10 percent of the total value of all real property and other capital assets owned or controlled by such corporation.

`(ii) SPECIAL RULE FOR ASSESSING PROPERTY VALUE- The value of any property owned by the corporation is the basis of such corporation in such property. The basis of the corporation in any property which was acquired other than by purchase shall be the fair market value of such property at the time of such acquisition. Any property controlled but not owned by such corporation under any lease (or any other instrument which gives such corporation any right of use or occupancy with respect to such property) shall be treated as property acquired other than by purchase in the manner provided in the preceding sentence.

`(C) SUBSTANTIAL INVESTMENT DEFINED- The term `substantial investment' means any amount which--

`(i) was added to the capital account for an existing facility during the 3-year period ending on the last day of any taxable year with respect to which such facility is a tax holiday plant, and

`(ii) caused the sum of all amounts added to such account during such period to exceed 20 percent of the total value of such facility (determined in the manner provided in subparagraph (B)(ii)) on the first day of such period.'

#### That means the plan must spend 9 billion dollars

¾ of 60 billion = 45; 20% of that = 9 billion

CBO 8 (Congressional Budgeting Office, “Issues and Options in Infrastructure Investment”, May, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9135/05-16-infrastructure.pdf)

Federal spending on infrastructure is dominated by transportation, which accounted for nearly three-quarters of the roughly $60 billion total federal investment in infrastructure in 2004. Highways alone accounted for nearly half of the total. Spending by state and local governments that year was primarily for schools, highways, and water systems. Together, those categories accounted for about $135 billion in state and local government spending, which is about 80 percent of the $170 billion spent on infrastructure by state and local governments.

#### Anything less is “minor remodeling”, not “investment”

Delisle 10 (Deborah S., Superintendent of Public Instruction – Ohio Department of Education, “Weekly Update”, EdConnection, 10-4, http://www.ercoinc.org/updates/October10.html)

Certification required for improvements with ARRA Funds (SFSF and IDEA)

Section 1511 of the American Recovery and Reinvestment Act (ARRA) requires that any infrastructure improvements funded with ARRA funds are certified to have received the full review and vetting required by law, and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Districts that have reported infrastructure improvements made with Individuals with Disabilities Education Act (IDEA) or State Fiscal Stabilization Funds (SFSF) funds will be contacted in the near future and requested to complete a certification letter with a description of the project. Districts that are planning future infrastructure improvements with IDEA or SFSF funds should request certification documents from recovery@ode.state.oh.us.

Per guidance provided by the U.S. Department of Education, an infrastructure investment is financial support for a physical asset or structure needed for the operation of a larger enterprise. Therefore, infrastructure investments include support for tangible assets or structures such as roads, public buildings (including schools), mass transit systems, water and sewage systems, communication and utility systems.

However, an infrastructure investment does not include “minor remodeling” according to 34 C.F.R.§ 77.1(c), which defines the term as minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term infrastructure investment does not include building construction, structural alterations to buildings, building maintenance or repairs.

#### Voting issue ---

#### 1. Impossible Affs --- a restrictive interpretation of ‘substantial’ is the only check on topic explosion. The ‘double whammy’ a huge topic with tiny cases that avoid core arguments makes it impossible for the Neg to compete.

#### 2. Hold the line --- substantially is hard to judge, but subjectivity is inevitable and it’s better to make a determination about what the word means than to allow an endless proliferation of Affs.

### Substantially – A2: Arbitrary

#### ‘Substantially’ isn’t precise --- but still must be given meaning. The most objective way to define it contextually.

Devinsky 2 (Paul, “Is Claim "Substantially" Definite?  Ask Person of Skill in the Art”, IP Update, 5(11), November, http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object\_id/c2c73bdb-9b1a-42bf-a2b7-075812dc0e2d.cfm)

In reversing a summary judgment of invalidity, the U.S. Court of Appeals for the Federal Circuit found that the district court, by failing to look beyond the intrinsic claim construction evidence to consider what a person of skill in the art would understand in a "technologic context," erroneously concluded the term "substantially" made a claim fatally indefinite.  Verve, LLC v. Crane Cams, Inc., Case No. 01-1417 (Fed. Cir. November 14, 2002). The patent in suit related to an improved push rod for an internal combustion engine.  The patent claims a hollow push rod whose overall diameter is larger at the middle than at the ends and has "substantially constant wall thickness" throughout the rod and rounded seats at the tips.  The district court found that the expression "substantially constant wall thickness" was not supported in the specification and prosecution history by a sufficiently clear definition of "substantially" and was, therefore, indefinite.  The district court recognized that the use of the term "substantially" may be definite in some cases but ruled that in this case it was indefinite because it was not further defined. The Federal Circuit reversed, concluding that the district court erred in requiring that the meaning of the term "substantially" in a particular "technologic context" be found solely in intrinsic evidence:  "While reference to intrinsic evidence is primary in interpreting claims, the criterion is the meaning of words as they would be understood by persons in the field of the invention."  Thus, the Federal Circuit instructed that "resolution of any ambiguity arising from the claims and specification may be aided by extrinsic evidence of usage and meaning of a term in the context of the invention."  The Federal Circuit remanded the case to the district court with instruction that "[t]he question is not whether the word 'substantially' has a fixed meaning as applied to 'constant wall thickness,' but how the phrase would be understood by persons experienced in this field of mechanics, upon reading the patent documents."

#### “Substantially” needs to be given a quantitative meaning --- any other interpretation is more arbitrary

Webster’s 3 (Merriam Webster’s Dictionary, www.m-w.com)

Main Entry: sub.stan.tial

b : considerable in quantity : significantly great <earned a substantial wage>

#### Make the best determination available. Substantially must be given meaning

Words and Phrases 60 (Vol. 40, State – Subway, p. 762)

“Substantial” is a relative word, which, while it must be used with care and discrimination, must nevertheless be given effect, and in a claim of patent allowed considerable latitude of meaning where it is applied to such subject as thickness, as by requiring two parts of a device to be substantially the same thickness, and cannot be held to require them to be of exactly the same thickness. Todd. V. Sears Roebuck & Co., D.C.N.C., 199 F.Supp. 38, 41.

#### Using context removes the arbitrariness of assigning a fixed percentage to “substantial”

Viscasillas 4 – professor at the Universidad Carlos III de Madrid, (Pilar, “Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG)”, CISG Advisory Council Opinion No. 4, 10-24, <http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146>)

2.8. Legal writers who follow the economic value criterion have generally quantified the term "substantial part" by comparing Article 3(1) CISG (substantial) with Article 3(2) CISG (preponderant): substantial being less than preponderant. In this way, legal writers have used the following percentages to quantify substantial: 15%,[[14]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#14) between 40% and 50%,[[15]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#15) or more generally 50%.[[16]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#16) At the same time, other authors, although they have not fixed any numbers in regard to the quantification of the term "substantial" have declared that "preponderant" means "considerably more than 50% of the price" or "clearly in excess of 50%".[[17]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#17) Thus it seems that for the latter authors, the quantification of the term "substantial" is placed above the 50% figure. Also, some Courts have followed this approach.[[18]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#18)

2.9. To consider a fixed percentage might be arbitrary due to the fact that the particularities of each case ought to be taken into account; that the scholars are in disagreement; and that the origin of those figures is not clear.[[19]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#19)

Therefore, it does not seem to be advisable to quantify the word "substantial" *a priori* in percentages. A case-by-case analysis is preferable and thus it should be determined on the basis of an overall assessment.

**Contextual definitions of “substantial” solve arbitrariness
Tarlow** 00 – Nationally prominent criminal defense lawyer practicing in Los Angeles, CA. He is a frequent author and lecturer on criminal law. He was formerly a prosecutor in the United States Attorney's Office and is a member of The Champion Advisory Board (Barry, The Champion January/February, lexis)

In *Victor*, the trial court instructed that: "A reasonable doubt is an actual and substantial doubt . . . as distinguished from a doubt arising from mere  [\*64]  possibility, from bare imagination, or from fanciful conjecture." Victor argued on appeal after receiving the death penalty that equating a reasonable doubt with a "substantial doubt" overstated the degree of doubt necessary for acquittal. Although the court agreed that the instruction was problematic given that "substantial," could be defined as "that specified to a large degree," it also ruled that any ambiguity was removed by reading the phrase in the context of the sentence in which it appeared. Finding such an explicit distinction between a substantial doubt and a fanciful conjecture was not present in the *Cage* instruction, it held that the context makes clear that "substantial" was used in the sense of existence rather than in magnitude of the doubt and, therefore, it was not unconstitutional as applied. [*Id. at 1250*](http://www.lexisnexis.com.proxy.lib.umich.edu/lnacui2api/mungo/lexseestat.do?bct=A&risb=21_T11113058883&homeCsi=154153&A=0.08807382399355024&urlEnc=ISO-8859-1&&citeString=114%20S.%20Ct.%201239,at%201250&countryCode=USA).

**Even if a substantial increase isn’t precise --- you should still exclude their Aff for being tiny. Even judges can make a gut check.**

**Hartmann 7** – Judge, Hong Kong (IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE, 8/20, http://legalref.judiciary.gov.hk/lrs/common/ju/ju\_frame.jsp?DIS=58463&currpage=T

 The word ‘substantial’ is not a technical term nor is it a word that lends itself to a precise measurement.  In an earlier judgment on this issue, that of S. v. S. [2006] 3 HKLRD 251, I said that it is not a word —

“… that lends itself to precise definition or from which precise deductions can be drawn.  To say, for example, that ‘there has been a substantial increase in expenditure’ does not of itself allow for a calculation in numerative terms of the exact increase.  It is a statement to the effect that it is certainly more than a little but less than great.  It defines, however, a significant increase, one that is weighty or sizeable.”

### Substantially – 2%

#### “Substantial” must be at least 2%

#### Words & Phrases 60

'Substantial" means "of real worth and importance; of considerable value; valuable." Bequest to charitable institution, making 1/48 of expenditures in state, held exempt from taxation; such expenditures constituting "substantial" part of its activities. Tax Commission of Ohio v. American Humane Education Soc., 181 N.E. 557, 42 Ohio App. 4.

### Substantially – 10%

#### Less than 10% is insubstantial

Mickels 8 (Alissa, JD Candidate – Hastings College of Law, “Summary of Existing US Law Affecting Fourth Sector Organizations”, 7-17, [http://www.fourthsector.net/attachments/7/original/Summary\_of\_US\_Law\_Affecting\_ FS.pdf?1229493187](http://www.fourthsector.net/attachments/7/original/Summary_of_US_Law_Affecting_FS.pdf?1229493187))

Substantial v. insubstantial: Modern courts consider competition with commercial firms as “strong evidence of a substantial nonexempt purpose.” Living Faith, Inc. v. Comm’r, 60 T.C.M. 710, 713 (1990). Although the tax court has held that the definition of insubstantial is fact specific, it has found that less than ten percent of a charity’s total efforts is “insubstantial”, World Family Corp. v. Comm’r, 78 T.C. 921 (1982), where as unrelated business activity generating one-third of an organizations revenue does not qualify for tax-exempt status. Orange County Agric. Soc’y, Inc. v. Comm’r, 55 T.C.M. 1602, 1604 (1988), aff’d 893 F.2d 647 (2d Cir. 1990). However, this may be changing after an increasing emphasis on commensurate test.

### Substantially – 33%

#### “Substantially” means 33 percent

Maples 7 (Larry, “Pitfalls in Preserving Net Operating Losses”, The CPA Journal, 3-1, Lexis)

If a new loss corporation has substantial nonbusiness assets, the value of the old loss corporation must be reduced by the amount of the nonbusiness assets less liabilities attributable to those assets. "Substantial" is defined as one-third of total assets. This is a difficult provision to interpret. IRC section 382(1)(4) provides that a value reduction in the old loss corporation is required if, just after an ownership change, the new loss corporation has substantial nonbusiness assets. This language seems odd because the purpose of IRC section 382 is to prevent loss trafficking, so it would seem that the asset test ought to apply to the old loss corporation.

### Substantially – 40%

#### “Substantially” means 40% --- strict quantification avoids vagueness

Schwartz 4 (Arthur, Lawyer – Schwartz + Goldberg, 2002 U.S. Briefs 1609, Lexis)

In the opinion below, the Tenth Circuit suggested that a percentage figure would be a way to avoid vagueness issues. (Pet. App., at 13-14) Indeed, one of the Amici supporting the City in this case, the American Planning Association, produced a publication that actually makes a recommendation of a percentage figure that should be adopted by municipalities in establishing zoning  [\*37]  regulations for adult businesses. n8 The APA's well researched report recommended that the terms "substantial" and "significant" be quantified at 40 percent for floor space or inventory of a business in the definition of adult business. n9 (Resp. Br. App., at 15-16)

### Substantially – 50%

#### Less than 50% is insubstantial

Brown 94 (Mark R., Professor of Law – Stetson University College of Law, “The Demise of Constitutional Prospectivity: New Life for Owen?”, Iowa Law Review, January, 79 Iowa L. Rev. 273, Lexis)

n241 I am assuming here that "foreseeable" means "probable," as in "more probable than not." This appears to be a safe assumption given the proliferance of cases granting immunity to officials who offend the Constitution. If this definition is correct, deterrence only works and liability should only attach if one's conduct, viewed ex ante, is more likely illegal than legal: the risk of illegality must be more than fifty percent. In other words, one cannot face deterrence, and liability will not attach, if the risk of illegality is less than fifty percent. (When viewed in this fashion, one might perceive a risk of illegality but still not be deterrable because the risk is not substantial, i.e., not greater than fifty percent.). Lawful conduct, of course, need not be probably lawful. That is what risk is about. Situations might arise where the objective risk is that conduct is unlawful, but ex post it is lawful. Lest judicial reasoning be completely askew, a fairly strong correlation exists, however, between action that is ex ante probably lawful and that which is lawful ex post in the courts. If this is not true, then courts are reaching objectively improbable conclusions, and the whole idea of reliance is illusory.

#### “Substantial increase” must be more than 50% --- the Aff is “small”

UNEP 2 (United Nations Environmental Program, 10-2, www.unep.org/geo/geo3/english/584.htm)

Change in selected pressures on natural ecosystems 2002-32. For the ecosystem quality component, see the explanation of the Natural Capital Index. Values for the cumulative pressures were derived as described under Natural Capital Index. The maps show the relative increase or decrease in pressure between 2002 and 2032. 'No change' means less than 10 per cent change in pressure over the scenario period; small increase or decrease means between 10 and 50 per cent change; substantial increase or decrease means 50 to 100 per cent change; strong increase means more than doubling of pressure. Areas which switch between natural and domesticated land uses are recorded separately.

#### Legal experts agree

Davignon v. Clemmey 1 (Davignon v. Clemmey, 176 F. Supp. 2d 77, Lexis)

The court begins the lodestar calculation by looking at the contemporaneous billing records for each person who worked on the plaintiff's case. The absence of detailed contemporaneous time records, except in extraordinary circumstances, will call for a substantial reduction in any award or, in egregious cases, disallowance. What is a "substantial reduction"? Fifty percent is a favorite among judges.

### Substantially – 90%

#### “Substantially” means at least 90%

Words & Phrases 5 (40B, p. 329)

N.H. 1949. -The word "substantially" as used in provision of Unemployment Compensation Act that experience rating of an employer may transferred to' an employing unit which acquires the organization, -trade, or business, or "substantially" all of the assets thereof, is 'an elastic term which does not include a definite, fixed amount of percentage, and the transfer does not have to be 100 per cent but cannot be less than 90 per cent in the ordinary situation. R.L c. 218, § 6, subd. F, as added by Laws 1945, c. 138, § 16.-Auclair Transp. v. Riley, 69 A.2d 861, 96 N.H. l.-Tax347.1.

### Substantially – Context Key

#### “Substantially” is a relative term --- context key

Words and Phrases 64 (Vol. 40, p. 816)

The word “substantially” is a relative term and should be interpreted in accordance with the context of claim in which it is used. Moss v. Patterson Ballagh Corp. D.C.Cal., 80 P.Supp. C10, 637.

#### "Substantially" must be gauged in context

Words and Phrases 2 (Volume 40A, p. 464)

Cal. 1956. “Substantial” is a relative term, its measure to be gauged by all the circumstances surrounding the matter in reference to which the expression has been used

#### Context is key --- "substantially" has no exact meaning

Words and Phrases 2 (Volume 40A, p. 483)

The word “substantial” is susceptible to different meanings according to the circumstances, and is variously defined as actual, essential, material, fundamental, although no rule of thumb can be laid down fixing its exact meaning

#### "Substantially" should be defined on a case-by-case basis

Edlin 2 (Aaron, Professor of Economics and Law – University of California Berkeley School of Law, January, 111 Yale L.J. 941)

Might price reductions of less than twenty percent qualify as substantial? In some markets they should, and it would be reasonable to decide substantiality on a case-by-case basis. One advantage of a bright-line rule is that it would let incumbents know where they stand. Monopolies that price only slightly above their average cost would be insulated from the entry of higher-cost entrants if they could credibly convey a willingness to price below the entrants' cost after entry, as illustrated in Part III. However, these monopolies do consumers little harm and may enhance market efficiency.

### Substantially – Impact

#### “Substantially” must be given meaning

Words and Phrases 60 (Vol. 40, State – Subway, p. 762)

“Substantial” is a relative word, which, while it must be used with care and discrimination, must nevertheless be given effect, and in a claim of patent allowed considerable latitude of meaning where it is applied to such subject as thickness, as by requiring two parts of a device to be substantially the same thickness, and cannot be held to require them to be of exactly the same thickness. Todd. V. Sears Roebuck & Co., D.C.N.C., 199 F.Supp. 38, 41.

### Substantially – Considerable

#### "Substantial" means of real worth or considerable value --- this is the USUAL and CUSTOMARY meaning of the term

Words and Phrases 2 (Volume 40A, p. 458)

D.S.C. 1966. The word “substantial” within Civil Rights Act providing that a place is a public accommodation if a “substantial” portion of food which is served has moved in commerce must be construed in light of its usual and customary meaning, that is, something of real worth and importance; of considerable value; valuable, something worthwhile as distinguished from something without value or merely nominal

#### “Substantial” means considerable or to a large degree --- this common meaning is preferable because the word is not a term of art

Arkush 2 (David, JD Candidate – Harvard University, “Preserving "Catalyst" Attorneys' Fees Under the Freedom of Information Act in the Wake of Buckhannon Board and Care Home v. West Virginia Department of Health and Human Resources”, Harvard Civil Rights-Civil Liberties Law Review, Winter,
37 Harv. C.R.-C.L. L. Rev. 131)

Plaintiffs should argue that the term "substantially prevail" is not a term of art because if considered a term of art, resort to Black's 7th produces a definition of "prevail" that could be interpreted adversely to plaintiffs. [99](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=16&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all#n99) It is commonly accepted that words that are not legal terms of art should be accorded their ordinary, not their legal, meaning, [100](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=16&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all#n100) and ordinary-usage dictionaries provide FOIA fee claimants with helpful arguments. The Supreme Court has already found favorable, temporally relevant definitions of the word "substantially" in ordinary dictionaries: "Substantially" suggests "considerable" or "specified to a large degree." See Webster's Third New International Dictionary 2280 (1976) (defining "substantially" as "in a substantial manner" and "substantial" as "considerable in amount, value, or worth" and "being that specified to a large degree or in the main"); see also 17 Oxford English Dictionary 66-67 (2d ed. 1989) ("substantial": "relating to or proceeding from the essence of a thing; essential"; "of ample or considerable amount, quantity or dimensions"). [101](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=16&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all#n101)

#### Substantial means “of considerable amount” – not some contrived percentage

Prost 4 (Judge – United States Court of Appeals for the Federal Circuit, “Committee For Fairly Traded Venezuelan Cement v. United States”, 6-18, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C).  In fact, they merely suggest, without disqualifying other alternatives, a “clearly higher/substantial proportion” approach.  Indeed, the SAA specifically mentions that no “precise mathematical formula” or “‘benchmark’ proportion” is to be used for a dumping concentration analysis.  SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30.  Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a “case-by-case basis.”  SAA at 860.  Finally, the definition of the word “substantial” undercuts the CFTVC’s argument.  The word “substantial” generally means “considerable in amount, value or worth.”  Webster’s Third New International Dictionary 2280 (1993).  It does not imply a specific number or cut-off.  What may be substantial in one situation may not be in another situation.  The very breadth of the term “substantial” undercuts the CFTVC’s argument that Congress spoke clearly in establishing a standard for the Commission’s regional antidumping and countervailing duty analyses.  It therefore supports the conclusion that the Commission is owed deference in its interpretation of “substantial proportion.”  The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

### Substantially – Considerable

#### "Substantial" means considerable in amount or value

Words and Phrases 2 (Volume 40A) p. 453

N.D.Ala. 1957. The word “substantial” means considerable in amount, value, or the like, large, as a substantial gain

#### “Substantial” means having worth or value

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 644)

having worth or value

### Substantially – Real

#### "Substantial" means actually existing, real, or belonging to substance

Words and Phrases 2 (Volume 40A) p. 460

Ala. 1909. “Substantial” means “belonging to substance; actually existing; real; \*\*\* not seeming or imaginary; not elusive; real; solid; true; veritable

#### "Substantial" means having substance or considerable

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 644)

having substance; considerable

### Substantially – In the Main

#### "Substantial" means in the main

Words and Phrases 2 (Volume 40A, p. 469)

Ill.App.2 Dist. 1923 “Substantial” means in substance, in the main, essential, including material or essential parts

### Substantially – Without Material Qualification

#### Substantially is without material qualification

Black’s Law 91 (Dictionary, p. 1024)

Substantially - means essentially; without material qualification.

### Substantially – Durable

#### “Substantial” means durable

Ballantine’s 94 (Thesaurus for Legal Research and Writing, p. 173)

substantial [sub . *stan* . shel] *adj*. abundant, consequential, durable, extraordinary, heavyweight, plentiful (“a substantial supply”); actual, concrete, existent, physical, righteous, sensible, tangible (“substantial problem”); affluent, comfortable, easy, opulent, prosperous, solvent.

### Substantially – Mandate

#### “Substantial” requires a certain mandate

Words and Phrases 64 (40W&P 759)

The words" outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain: absolute: real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

### Substantially – Not Covert

#### “Substantially” means not covert

Words & Phrases 64 (40 W&P 759)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

## \*\*\* INCREASE

### Increase – Excludes Creation – 1NC

#### “Increase” means to make greater and requires pre-existence

**Buckley 6** (Jeremiah, Attorney, Amicus Curiae Brief, Safeco Ins. Co. of America et al v. Charles Burr et al, <http://supreme.lp.findlaw.com/supreme_court/briefs/06-84/06-84.mer.ami.mica.pdf>)

First, the court said that the ordinary meaning of the word “increase” is “to make something greater,” which it believed should not “be limited to cases in which a company raises the rate that an individual has previously been charged.” 435 F.3d at 1091. Yet the definition offered by the Ninth Circuit compels the opposite conclusion. Because “increase” means “to make something greater,” there must necessarily have been an existing premium, to which Edo’s actual premium may be compared, to determine whether an “increase” occurred. Congress could have provided that “ad-verse action” in the insurance context means charging an amount greater than the optimal premium, but instead chose to define adverse action in terms of an “increase.” That def-initional choice must be respected, not ignored. See Colautti v. Franklin, 439 U.S. 379, 392-93 n.10 (1979) (“[a] defin-ition which declares what a term ‘means’ . . . excludes any meaning that is not stated”). Next, the Ninth Circuit reasoned that because the Insurance Prong includes the words “existing or applied for,” Congress intended that an “increase in any charge” for insurance must “apply to all insurance transactions – from an initial policy of insurance to a renewal of a long-held policy.” 435 F.3d at 1091. This interpretation reads the words “exist-ing or applied for” in isolation. Other types of adverse action described in the Insurance Prong apply only to situations where a consumer had an existing policy of insurance, such as a “cancellation,” “reduction,” or “change” in insurance. Each of these forms of adverse action presupposes an already-existing policy, and under usual canons of statutory construction the term “increase” also should be construed to apply to increases of an already-existing policy. See Hibbs v. Winn, 542 U.S. 88, 101 (2004) (“a phrase gathers meaning from the words around it”) (citation omitted).

#### “Transportation investment” means addition to existing networks

Berechman 2 (Yossi, Professor of Public Policy – Tel Aviv University, Transport and Economic Development, p. 114)

4.1. Basic definitions

In the present context, "transportation investment" is defined as a capacity improvement or addition to an existing network of roads, rail, waterways, huh terminals, tunnels, bridges, airports and harbors. The concept of "resultant economic growth" is further considered to mean the long-run increase in economic activity in a given geographical area, which can be ascribed to a specific transport investment and which confers welfare improvements to the area's residents. Additionally, as explained later, it is also required that the growth benefits will be in addition to the direct transportation benefits from the investment and not merely their capitalised value. Tin's latter condition is a fundamental one. fully discussed in section 5.2.

#### Plan creates new types of infrastructure --- voting issue:

#### 1. Limits --- they can create any form, the entire range of possible forms of transport becomes topical --- overstretches Neg research burdens --- we allow a fair number of existing types like roads, bridges, airports, etc.

#### 2. Ground --- best links assume existing infrastructure, they change the debate from improving current capabilities to creating new forms --- undermines core ground and fairness

### Increase – Excludes Creation

#### “Increase” requires pre-existence

**Brown 3** – US Federal Judge – District Court of Oregon (Elena Mark and Paul Gustafson, Plaintiffs, v. Valley Insurance Company and Valley Property and Casualty, Defendants, 7-17, Lexis)

FCRA does not define the term "increase." The plain and ordinary meaning of the verb "to increase" is to make something greater or larger. 4 Merriam-Webster's [\*\*22] Collegiate Dictionary 589 (10th ed. 1998). The "something" that is increased in the statute is the "charge for any insurance." The plain and common meaning of the noun "charge" is "the price demanded for something." Id. at 192. Thus, the statute plainly means an insurer takes adverse action if the insurer makes greater (i.e., larger) the price demanded for insurance.

An insurer cannot "make greater" something that did not exist previously. The statutory definition of adverse action, therefore, clearly anticipates an insurer must have made an initial charge or demand for payment before the insurer can increase that charge. In other words, an insurer cannot increase the charge for insurance unless the insurer previously set and demanded payment of the premium for that insured's insurance [\*\*23] coverage at a lower price.

### Increase – Excludes Creation – Statutory Construction Impact

#### Accurate application of statutory canons is the biggest impact --- it’s the only way to determine the purpose and intent of writing

Sentell 91 (R. Perry Jr., Talmadge Professor of Law – University of Georgia and LLM – Harvard University, “The Canons of Construction in Georgia: "Anachronisms" in Action”, Georgia Law Review, Winter, 25 Ga. L. Rev. 365, Lexis)

CONCLUSION
Because the consideration of written communication is the cornerstone of the judicial process, the technique involved in that consideration has intrigued the ages. That technique, judicial interpretation, [\*434]  attempts a highly delicate balance. On the one hand, it acknowledges the legendary imprecision of language. On the other hand, it seeks to glean from that language the elusive signals of purpose, meaning and intent. A "science" so inexact incessantly craves a semblance of constants -- conventions assisting to impose order upon understanding.
Roman law, and subsequently the English common-law system, sought to appease this insatiable desire by offering up the canons of construction. The canons, fundamental maxims of compositional meaning, have proved both vulnerable and venerable. Their existence has provided an irresistible historic target for a labyrinth of denigrating commentary. Yet the courts, the construers themselves, have claimed the canons as their own, affording them a determinative role in judicial decisionmaking which transverses the spectrum of litigation. Accordingly, the critics are left with little choice but to concede the canons' existence and shaping influence, while pleading for caution in their invocation.
From the canonical mass, the most popular and powerful maxims of meaning are perhaps the three here selected for treatment: Noscitur a sociis, Ejusdem generis and Expressio unius est exclusio alterius. Although different, the three precepts are also similar -- they counsel an analysis of associating what is present with what is to be determined. The writer, they presume, meant something by what he expressed; that expression, or at least a portion of it, they insist, offers the best hope for resolving the ambiguity at hand. As they occasionally broaden, frequently constrict and sometimes exclude, the maxims operate to propel the interpreter toward an intent, meaning or purpose that will decide the controversy.

### Increase – Net

#### “Increase” means a net increase

Rogers 5 (Judge – New York, et al., Petitioners v. U.S. Environmental Protection Agency, Respondent, NSR Manufacturers Roundtable, et al., Intervenors, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, 6/24, Lexis)

[\*\*48]  Statutory Interpretation. [HN16](http://www.lexis.com/research/retrieve?_m=1fe428155fdfc9074f3623f0dae9d78a&docnum=14&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=0ebd338d6a7793de8561db53b915effd&focBudTerms=term%20increase&focBudSel=all#clscc16)While the CAA defines a "modification" as any physical or operational change that "increases" emissions, it is silent on how to calculate such "increases" in emissions. [42 U.S.C. § 7411(a)(4)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=103&_butInline=1&_butinfo=42%20U.S.C.%207411&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=1f89a0e47b1996a5400e8d865d8da08a). According to government petitioners, the lack of a statutory definition does not render the term "increases" ambiguous, but merely compels the court to give the term its "ordinary meaning." See [Engine Mfrs.Ass'nv.S.Coast AirQualityMgmt.Dist., 541 U.S. 246, 124 S. Ct. 1756, 1761, 158 L. Ed. 2d 529(2004)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=104&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b541%20U.S.%20246%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=48f016ea3eabfdb898b67b348b11662c); [Bluewater Network, 370 F.3d at 13](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=105&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b370%20F.3d%201%2cat%2013%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=78fdfe9d48c7b91d7659b90c0198707e); [Am. Fed'n of Gov't Employees v. Glickman, 342 U.S. App. D.C. 7, 215 F.3d 7, 10 [\*23]  (D.C. Cir. 2000)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=106&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b342%20U.S.%20App.%20D.C.%207%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=fb18ff0b92931ac00621d88dae997e67). Relying on two "real world" analogies, government petitioners contend that the ordinary meaning of "increases" requires the baseline to be calculated from a period immediately preceding the change. They maintain, for example, that in determining whether a high-pressure weather system "increases" the local temperature, the relevant baseline is the temperature immediately preceding the arrival of the weather system, not the temperature five or ten years ago. Similarly,  [\*\*49]  in determining whether a new engine "increases" the value of a car, the relevant baseline is the value of the car immediately preceding the replacement of the engine, not the value of the car five or ten years ago when the engine was in perfect condition.

#### “Increase” means net increase

Words and Phrases 8(v. 20a, p. 264-265)

Cal.App.2 Dist. 1991. Term “increase,” as used in statute giving the Energy Commission modification jurisdiction over any alteration, replacement, or improvement of equipment that results in “increase” of 50 megawatts or more in electric generating capacity of existing thermal power plant, refers to “net increase” in power plant’s total generating capacity; in deciding whether there has been the requisite 50-megawatt increase as a result of new units being incorporated into a plant, Energy Commission cannot ignore decreases in capacity caused by retirement or deactivation of other units at plant. West’s Ann.Cal.Pub.Res.Code § 25123.

#### “Increase” requires evidence of the preexisting condition to determine a net increase

**Ripple 87** (Circuit Judge, Emmlee K. Cameron, Plaintiff-Appellant, v. Frances Slocum Bank & Trust Company, State Automobile Insurance Association, and Glassley Agency of Whitley, Indiana, Defendants-Appellees, 824 F.2d 570; 1987 U.S. App. LEXIS 9816, 9/24, lexis)

Also related to the waiver issue is appellees' defense relying on a provision of the insurance policy that suspends coverage where the risk is increased by any means within the knowledge or control of the insured. However, the term "increase" connotes change. To show change, appellees would have been required to present evidence of the condition of the building at the time the policy was issued. See 5 J. Appleman & J. Appleman, Insurance Law and Practice, § 2941 at 4-5 (1970). Because no such evidence was presented, this court cannot determine, on this record, whether the risk has, in fact, been increased. Indeed, the answer to this question may depend on Mr. Glassley's knowledge of the condition of the building at the time the policy was issued, see 17 J. Appleman & J. Appleman, Insurance Law and Practice, § 9602 at 515-16 (1981), since the fundamental issue is whether the appellees contemplated insuring the risk which incurred the loss.

### Increase – Make Greater

#### “Increase” means to become larger or greater in quantity

Encarta 6 – Encarta Online Dictionary. 2006. ("Increase" http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861620741)

in·crease [ in krss ]
transitive and intransitive verb  (*past and past participle* in·creased, *present participle* in·creas·ing, *3rd person present singular* in·creas·es)Definition**:**make or become larger or greater: to become, or make something become, larger in number, quantity, or degree
noun  (*plural* in·creas·es)

#### “Increase” does not mean to decrease

Webster’s 13 – Webster’s Dictionary. 1913 ("Increase", http://machaut.uchicago.edu/cgi-bin/WEBSTER.sh?WORD=increase)

In\*crease" (?), v. i.

To become greater or more in size, quantity, number, degree, value, intensity, power, authority, reputation, wealth; to grow; to augment; to advance; -- opposed to *decrease*.

#### “Increase” is the opposite of decrease

Cambridge 8 – Cambridge Dictionary, 8 (“increase”, 2008, http://dictionary.cambridge.org/define.asp?key=increase\*1+0&dict=A)

increase

[[Show phonetics]](http://dictionary.cambridge.org/define.asp?dict=A&key=increase*1+0&ph=on)

verb [I/T]

to become or make (something) larger or greater

The opposite of increase is [decrease](http://dictionary.cambridge.org/define.asp?key=decrease*1+0&dict=a).

#### “Increase” means to make greater

Webster’s 9 – Merriam Webster, 9 (Merriam Webster Online Dictionary, “Increase”, [http://www.merriamwebster.com/dictionary/increase[1](http://www.merriam-webster.com/dictionary/increase%5B1)])

*intransitive verb*1: to become progressively greater (as in size, amount, number, or intensity)2: to multiply by the production of young*transitive verb*1: to make greater : [augment](http://www.merriam-webster.com/dictionary/augment)2*obsolete* : [enrich](http://www.merriam-webster.com/dictionary/enrich)

### Increase – Quantitative

#### Increase means to become bigger or larger in quantity

Encarta 7 – Encarta World English Dictionary, 7 (“Increase”, 2007, <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861620741>)

Increase

transitive and intransitive verb  (past and past participle in·creased, present participle in·creas·ing, 3rd person present singular in·creas·es)

Definition:

make or become larger or greater: to become, or make something become, larger in number, quantity, or degree

### Increase – Progressive Growth

#### “Increase” means progressive growth

**Philips 2** – UNITED STATES BANKRUPTCY JUDGE (Louis, IN RE LAWRENCE D. GOLDBERG, DEBTOR; DWAYNE M. MURRAY, TRUSTEE, PLAINTIFF VERSUS MAE M. STACY TRUST AND F. EUGENE RICHARDSON, DEFENDANTS, 5/1, lexis) (emphasis in the original)

In determining the plain meaning of the phrase "increases the obligor's insolvency," the Court initially notes that this phrase makes no reference whatsoever [\*\*50] to a "reasonably equivalent value" test 26 or even to the "fair consideration" test of the Section 3 of the UFCA. 27 Instead, Article 2036 of the Civil Code merely uses the word "increases," and the absence of "reasonably equivalent value" language or "fair consideration" language rings loudly in the Court's judicial ear. Accordingly, the Court will focus on the plain meaning of the term "increases." Taking note from one of the dictionaries of choice of the United States Supreme Court, 28 the Court finds that the definition of the word "increase" in Webster's Ninth New Collegiate Dictionary reads as follows:

 [\*270] To become *progressively* greater (as in size, amount, number, or intensity). . . . to make greater: AUGMENT. . . . INCREASE, ENLARGE, AUGMENT, MULTIPLY mean to make or become greater. INCREASE used intransitively implies *progressive* growth in size, amount, intensity; used transitively it may imply simple not necessarily progressive addition. . . *the act or process of increasing*: as . . . addition or enlargement in size, extent, quantity.

Webster's Ninth New Collegiate Dictionary 611 (1990) (emphasis added).

As Webster's Dictionary states, the word "increase" means a progressive growth, that is, an incremental [\*\*52] growth. Such progressive and incremental growth implies that when Article 2036 was drafted, the codifiers used the simple and easily-understood word "increase" because they meant to imply a "dollar-for-dollar" increase in the obligor's insolvency, rather than a "reasonably equivalent value" increase. Otherwise, the codifiers would not have chosen to use the word "increase" with no obvious limitation on its meaning. Moreover, since Article 2036 was crafted in 1984, well after the UFCA, which was enacted in 1918, the drafters of Article 2036 must have been well aware of the "fair consideration" requirement in Section 3 of the UFCA, and chose not to adopt such a limitation. Therefore, the Court may reasonably conclude that HN19Go to this Headnote in the case.the plain meaning of "increases the obligor's insolvency" means a "dollar-for-dollar," incremental growth, rather than insolvency as measured by a "reasonably equivalent value" standard.

As of this stopping place, the Court has performed its task under the Louisiana Civil Code: to ferret out the plain meaning of Article 2036 of the Louisiana Civil Code from the words of the article, itself, if possible. However, the Court will resort to other modes of statutory construction [\*\*53] in support of its "plain meaning" analysis, primarily to assure ourselves that the apparently groundless arguments of the defendants really are so.. Positing for argument purposes only (of course) that the phrase "increases the obligor's insolvency" is susceptible of more than one meaning (i.e., a "reasonably equivalent value" meaning), analysis of the purpose of the Louisiana revocatory action and of its legislative history is now offered.

### Other Increase Definitions

#### “Increase” includes an extension of duration

**Word and Phrases 8** (Vol. 20B, p. 265)

Me. 1922. Within Workmen’s Compensation Act, § 36, providing for review of any agreement, award, findings, or decree, and that member of Commission may increase, diminish, or discontinue compensation, an “increase” may include an extension of the time of the award. –Graney’s Case, 118 A. 369, 121 Me.500.—Work Comp 2049.

#### Increasing duration is the equivalent of increasing monetary support

**Word and Phrases 8** (Vol. 20B, p. 265)

Minn.App. 2004. A durational modification of child support is as much an “increase” as monetary modification, and the needs of subsequent children must be considered when determining the indefinite extension of the support obligation pursuant to statute providing that, when a party moves to “increase” child support, the circumstances change and the adjudicator is obligated to consder the needs of after-born children. M.S.A. § 518.551.—State ex rel. Jarvela v. Burke, 678 N.W.2d 68, review denied.—Child S 255, 350.

#### “Increase” doesn’t require preexistence

**Words and Phrases 8** (Words and Phrases Permanent Edition, “Increase,” Volume 20B, p. 263-267 March 2008, Thomson West)

Wahs. 1942. The granting of compensation to any officer after he has commenced to serve the term for which he has been chosen, when no compensation was provided by law before he assumed the duties of his office, is an “increase” in salary or compensation within the constitutional provision prohibiting an increase of the compensation of a public officer during his term of office. Const. art, 2, 25; art. 11, 8. – State ex rel. Jaspers v. West 125 P.2d 694, 13 Wash.2d 514. Offic 100(1).

#### “Increase” doesn’t require pre-existence

**Reinhardt 5** – U.S. Judge for the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (Stephen, JASON RAY REYNOLDS; MATTHEW RAUSCH, Plaintiffs-Appellants, v. HARTFORD FINANCIAL SERVICES GROUP, INC.; HARTFORD FIRE INSURANCE COMPANY, Defendants-Appellees., lexis)

Specifically, we must decide whether charging a higher price for initial insurance than the insured would otherwise have been charged because of information in a consumer credit report constitutes an "increase in any charge" within the meaning of FCRA. First, we examine the definitions of "increase" and "charge." Hartford Fire contends that, limited to their ordinary definitions, these words apply only when a consumer has previously been charged for insurance and that charge has thereafter been increased by the insurer. The phrase, "has previously been charged," as used by Hartford, refers not only to a rate that the consumer has previously paid for insurance but also to a rate that the consumer has previously been quoted, even if that rate was increased [\*\*23] before the consumer made any payment. Reynolds disagrees, asserting that, under [\*1091] the ordinary definition of the term, an increase in a charge also occurs whenever an insurer charges a higher rate than it would otherwise have charged because of any factor--such as adverse credit information, age, or driving record 8 --regardless of whether the customer was previously charged some other rate. According to Reynolds, he was charged an increased rate because of his credit rating when he was compelled to pay a rate higher than the premium rate because he failed to obtain a high insurance score. Thus, he argues, the definitions of "increase" and "charge" encompass the insurance companies' practice. Reynolds is correct.

 “Increase" means to make something greater. See, e.g., OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("The action, process, or fact of becoming or making greater; augmentation, growth, enlargement, extension."); WEBSTER'S NEW WORLD DICTIONARY OF AMERICAN ENGLISH (3d college ed. 1988) (defining "increase" as "growth, enlargement, etc[.]"). "Charge" means the price demanded for goods or services. See, e.g., OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("The price required or demanded for service rendered, or (less usually) for goods supplied."); WEBSTER'S NEW WORLD DICTIONARY OF AMERICAN ENGLISH (3d college ed. 1988) ("The cost or price of an article, service, etc."). Nothing in the definition of these words implies that the term "increase in any charge for" should be limited to cases in which a company raises the rate that an individual has previously been charged.

#### One can increase from zero

**Words and Phrases 7** (Cumulative Supplementary Pamphlet, 2007 vol. 20a, 07, 76)

Increase: Salary change of from zero to $12,000 and $1,200 annually for mayor and councilmen respectively was an “increase” in salary and not merely the fixing of salary. King v. Herron, 243 S.E.2d36, 241 Ga. 5.

## \*\*\* IN THE UNITED STATES

### Subsets – 1NC

#### Topical Affs must invest throughout the U.S.

#### “In” means “throughout”

Words and Phrases 8 (Permanent Edition, vol. 20a, p. 207)

Colo. 1887. In the Act of 1861 providing that justices of the peace shall have jurisdiction “in” their respective counties to hear and determine all complaints, the word “in” should be construed to mean “throughout” such counties. Reynolds v. Larkin, 14, p. 114, 117, 10 Colo. 126.

“United States” means all of the states

EPA 6 (EPA, US Environmental Protection Agency Terminology Reference System, 2-1-2006, <http://iaspub.epa.gov/trs/trs_proc_qry.alphabet?p_term_nm=U>)

United States

When used in the geographic sense, means all of the States. [Office of Pollution Prevention and Toxics](http://iaspub.epa.gov/trs/trs_proc_qry.org_info?P_REG_AUTH_ID=1019&P_LIST_OPTION_CD=ORG) : [Commercial Chemical Control Rules](http://iaspub.epa.gov/trs/trs_proc_qry.org_info?P_REG_AUTH_ID=1&P_DATA_ID=11722&P_VERSION=1&P_LIST_OPTION_CD=INFO) [Term Detail](http://iaspub.epa.gov/trs/trs_proc_qry.navigate_term?p_term_id=292529&p_term_cd=TERMDIS)

#### Voting issue ---

#### 1. Limits --- they allow “region of the week” Affs that target specific states or localities --- unique areas like Puerto Rico, federal lands, or natives open up huge new research burdens --- limits are key to preparation and clash

#### 2. Ground --- national change is key to quality of disads links --- specific regions give the Aff unpredictable angles against core generics --- core ground is key to fairness

### Subsets – The

#### “The” means all parts

Webster’s 8 (Merriam-Webster's Online Collegiate Dictionary, 08, http://www.merriam-webster.com/dictionary/the)

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

### Subsets – United States

#### “United States” includes all areas under U.S. jurisdiction

Rainey 95 (John, U.S. District Judge, “Donald Ray Looper, Individually and On Behalf of His Firm's Clients, Plaintiff, v. William C. Morgan, Department of the Treasury United States Customs Service, and All Unknown Individuals and Agencies Involved in the Search of a Briefcase at Inter-Continental Airport in Houston, Texas, Defendants”, 1995 U.S. Dist. LEXIS 10241, Lexis)

The term "United States" means the United States and all areas under the jurisdiction or authority thereof.

### In the United States – 1NC

#### “In” means inclusion within --- “investment” must occur within the United States

Random House 12 (Unabridged Dictionary, “in”, http://dictionary.reference.com/browse/in?s=t)

in   [in] Show IPA preposition, adverb, adjective, noun, verb, inned, in·ning.

preposition

1. (used to indicate inclusion within space, a place, or limits): walking in the park.

2. (used to indicate inclusion within something abstract or immaterial): in politics; in the autumn.

3. (used to indicate inclusion within or occurrence during a period or limit of time): in ancient times; a task done in ten minutes.

4. (used to indicate limitation or qualification, as of situation, condition, relation, manner, action, etc.): to speak in a whisper; to be similar in appearance.

5. (used to indicate means): sketched in ink; spoken in French.

#### That’s the USA

Encarta 7 (Dictionary Online, “United States”, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861708119)

U·nit·ed States [ [y ntəd stáyts](http://encarta.msn.com/encnet/features/dictionary/Pronounce.aspx?search=United+States) ] country in central North America, consisting of 50 states.
Languages: English.
Currency: dollar.
Capital: Washington, D.C..
Population: 290,342,550 (2001).
Area: 9,629,047 sq km (3,717,796 sq mi.)
Official name  United States of America

#### Voting issue ---

#### Limits --- they explode the topic, allowing investment anywhere in the world --- makes international Affs with unique, unpredictable advantages topical --- and makes the entire space topic Aff ground --- both make research impossible

#### Ground --- best links to spending, politics, and private-sector crowd-out DAs assume the United States

### In – Within

#### “In” means within --- this is the core meaning

Encarta 7 – Encarta World English Dictionary, 7 (“In (1)”, 2007, <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861620513>)

in [ [in](http://encarta.msn.com/encnet/features/dictionary/Pronounce.aspx?search=in) ] CORE MEANING: a grammatical word indicating that something or somebody is within or inside something.

1. preposition indicates place: indicates that something happens or is situated somewhere

He spent a whole year in Russia.

2. preposition indicates state: indicates a state or condition that something or somebody is experiencing

The banking industry is in a state of flux.

3. preposition after: after a period of time that will pass before something happens

She should be well enough to leave in a week or two.

4. preposition during: indicates that something happens during a period of time

He crossed the desert in 39 days.

5. preposition indicates how something is expressed: indicates the means of communication used to express something

I managed to write the whole speech in French.

6. preposition indicates subject area: indicates a subject or field of activity

She graduated with a degree in biology.

7. preposition as consequence of: while doing something or as a consequence of something

In reaching for a glass he knocked over the ashtray.

8. preposition covered by: indicates that something is wrapped or covered by something

The floor was covered in balloons and toys.

9. preposition indicates how somebody is dressed: indicates that somebody is dressed in a particular way

She was dressed in a beautiful suit.

10. preposition pregnant with: pregnant with offspring

The cows were in calf.

11. adjective fashionable: fashionable or popular

always knew which clubs were in

12. adjective holding power or office: indicates that a party or group has achieved or will achieve power or authority

voted in overwhelmingly

#### “In” means within the limits of

Webster’s 6 – Merriam Webster Online Dictionary, 06 (<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=in>)

Main Entry: 1in

Pronunciation: 'in, &n, &n

Function: preposition

Etymology: Middle English, from Old English; akin to Old High German in in, Latin in, Greek en

1 a -- used as a function word to indicate inclusion, location, or position within limits <in the lake> <wounded in the leg> <in the summer>

#### Being enclosed by

OED 8 – Compact Oxford English Dictionary, 8 (“in”, 2008, http://www.askoxford.com/concise\_oed/inxx?view=uk)

in

preposition 1 expressing the situation of being enclosed or surrounded. 2 expressing motion that results in being within or surrounded by something. 3 expressing a period of time during which an event takes place or a situation remains the case. 4 expressing the length of time before a future event is expected to take place. 5 expressing a state, condition, or quality. 6 expressing inclusion or involvement. 7 indicating a person’s occupation or profession. 8 indicating the language or medium used. 9 expressing a value as a proportion of (a whole).

adverb 1 expressing movement that results in being enclosed or surrounded. 2 expressing the situation of being enclosed or surrounded. 3 present at one’s home or office. 4 expressing arrival at a destination. 5 (of the tide) rising or at its highest level.

#### Inclusion within a place

Dictionary.com 6 (“in”, 2006, http://dictionary.reference.com/search?q=in&r=66)

1. (used to indicate inclusion within space, a place, or limits): walking in the park.

2. (used to indicate inclusion within something abstract or immaterial): in politics; in the autumn.

3. (used to indicate inclusion within or occurrence during a period or limit of time): in ancient times; a task done in ten minutes.

4. (used to indicate limitation or qualification, as of situation, condition, relation, manner, action, etc.): to speak in a whisper; to be similar in appearance.

5. (used to indicate means): sketched in ink; spoken in French.

6. (used to indicate motion or direction from outside to a point within) into: Let's go in the house.

7. (used to indicate transition from one state to another): to break in half.

8. (used to indicate object or purpose): speaking in honor of the event.

### United States – USA

#### “United States” means United States of North America

Webster’s 61 (Third New International Dictionary, p. 2501)

Of or from the United States of North America

#### “United States” means the federal government

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

the federal government

#### "United States" means the sovereign state called the "United States"

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

a sovereign nation or sovereign state called the “United States”

#### "United States" means the territory over which the sovereign nation of the "United States" exercises sovereign power

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

the territory over which this sovereign nation called the “United States” exercises sovereign power

#### “United States” is the USA

Encarta 7 (Dictionary Online, “United States”, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861708119)

U·nit·ed States [ [y ntəd stáyts](http://encarta.msn.com/encnet/features/dictionary/Pronounce.aspx?search=United+States) ] country in central North America, consisting of 50 states.
Languages: English.
Currency: dollar.
Capital: Washington, D.C..
Population: 290,342,550 (2001).
Area: 9,629,047 sq km (3,717,796 sq mi.)
Official name  United States of America

### United States – Includes Territories / Possessions

#### United States includes territories and possessions

US Code 7 (2 USCS § 1966, lexis)

(f) Definition of United States. As used in this section, the term "United States" means each of the several States of the United States, the District of Columbia, and territories and possessions of the United States.

#### United States includes territories and possessions

US Code 7 (6 USCS § 1111, lexis)

 (6) United states. The term "United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

#### United States includes territories and possessions

American Law Encyclopedia 8

(“Territories of the United States - Further Readings”, Vol 10)

Portions of the United States that are not within the limits of any state and have not been admitted as states. The United States holds three territories: American Samoa and Guam in the Pacific Ocean and the U.S. Virgin Islands in the Caribbean Sea. Although they are governed by the United States, the territories do not have statehood status, and this lesser legal and political status sets them apart from the rest of the United States. The three U.S. territories are not the only U.S. government land holdings without statehood status. These various lands fall under the broad description of insular political communities affiliated with the United States. Puerto Rico in the Caribbean and the Northern Mariana Islands in the Pacific Ocean belong to the United States and have the status of commonwealth, a legal and political status that is above a territory but still below a state. The United States also has a number of islands in the Pacific Ocean that are called variously territories and possessions. U.S. possessions have the lowest legal and political status because these islands do not have permanent populations and do not seek self-determination and autonomy. U.S. possessions include Baker, Howland, Kingman Reef, Jarvis, Johnston, Midway, Palmyra, and Wake Islands.

### United States – Excludes Territories / Possessions

#### “United States” means the 50 states and D.C.

Words & Phrases 3 – WORDS & PHRASES, Vol. 43, 2003, p. 469

FIa.App. 3 Dist. 19,76. Term "United States," as used in statute providing for exclusion of income and losses derived from sources outside of United States, means only the 50 states and the District of Columbia. West's F.S.A. § 220.13(1)(b)2b. Heft- ler Const. Co. and Subsidiaries v. Department of Revenue, 334 So.2d 129, certiorari denied 341 So.2d 1082.-Tax 1001.1, 1074.1.

#### Not territories

Words & Phrases 3 – WORDS & PHRASES, Vol. 43, 2003, p. 468-9

C.A.9 (Hawai'i) 1994. As used in the constitution, term "United States" does not include all territories subject to jurisdiction of the United States government.-Rabang v. LN.S., 35 F.3d

## \*\*\* OTHER DEFINITIONS

### Resolved:

#### ‘Resolved’ means to enact a policy by law

Words and Phrases 64 (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

#### Determination reached by voting

Webster’s 98 (Revised Unabridged, Dictionary.com)

Resolved: 5. To express, as an opinion or determination, by resolution and vote; to declare or decide by a formal vote; -- followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be apropriated (or, to appropriate no money).

#### Firm decision

AHD 6 (American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

Resolve TRANSITIVE VERB:1. To make a firm decision about. 2. To cause (a person) to reach a decision. See synonyms at decide. 3. To decide or express by formal vote.

#### Specific course of action

AHD 6 (American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

INTRANSITIVE VERB:1. To reach a decision or make a determination: resolve on a course of action. 2. To become separated or reduced to constituents. 3. Music To undergo resolution.

#### Resolved implies immediacy

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/resolve)

re·solve  [Audio Help](http://dictionary.reference.com/help/audio.html)   /rɪˈzɒlv/ Pronunciation Key - Show Spelled Pronunciation[ri-zolv] Pronunciation Key - Show IPA Pronunciation verb, -solved, -solv·ing, noun

–verb (used with object)

1. to come to a definite or earnest decision about; determine (to do something): I have resolved that I shall live to the full.

### Resolved: – Aff Competition

#### “Resolved” doesn’t require certainty

Webster’s 9 – Merriam Webster 2009

(http://www.merriam-webster.com/dictionary/resolved)

# Main Entry: 1re·solve # Pronunciation: \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ # Function: verb # Inflected Form(s): re·solved; re·solv·ing 1 : to become separated into component parts; also : to become reduced by dissolving or analysis 2 : to form a resolution : determine 3 : consult, deliberate

#### Or immediacy

PTE 9 – Online Plain Text English Dictionary 2009

(http://www.onelook.com/?other=web1913&w=Resolve)

Resolve: “To form a purpose; to make a decision; especially, to determine after reflection; as, to resolve on a better course of life.”

### Colon

#### Colon is meaningless --- everything after it is what’s important

Webster’s 00 (Guide to Grammar and Writing, <http://ccc.commnet.edu/grammar/marks/colon.htm>)

Use of a colon before a list or an explanation that is preceded by a clause that can stand by itself. Think of the colon as a gate, inviting one to go on… If the introductory phrase preceding the colon is very brief and the clause following the colon represents the real business of the sentence, begin the clause after the colon with a capital letter.

#### The colon just elaborates on what the community was resolved to debate

Encarta 7 (World Dictionary, “colon”, [http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861 598666](http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861598666))

co·lon (plural co·lons)

noun

Definition:

1. punctuation mark: the punctuation mark (:) used to divide distinct but related sentence components such as clauses in which the second elaborates on the first, or to introduce a list, quotation, or speech. A colon is sometimes used in U.S. business letters after the salutation. Colons are also used between numbers in statements of proportion or time and Biblical or literary references.

### The

#### “The” indicates reference to a noun as a whole

Webster’s 5 (Merriam Webster’s Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### Requires specification

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

(used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article *a* or *an*): the book you gave me; Come into the house.

#### Indicates a proper noun

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

(used to mark a proper noun, natural phenomenon, ship, building, time, point of the compass, branch of endeavor, or field of study as something well-known or unique): the sun; the Alps; the Queen Elizabeth; the past; the West.

#### “The” means all parts

Encarta 9 (World English Dictionary, “The”, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861719495)

2. indicating generic class: used to refer to a person or thing considered generically or universally
Exercise is good for the heart.
She played the violin.
The dog is a loyal pet.

#### Means the noun must be interpreted generically

Webster’s 9 (Merriam-Webster’s Online Dictionary, “The”, http://www.merriam-webster.com/dictionary/the)

3 a—used as a function word before a singular noun to indicate that the noun is to be understood generically <the dog is a domestic animal> b—used as a function word before a singular substantivized adjective to indicate an abstract idea <an essay on the sublime>

### Federal Government

#### “Federal Government” means the United States government

Black’s Law 99 (Dictionary, Seventh Edition, p.703)

The U.S. government—also termed national government

#### National government, not states or localities

Black’s Law 99 (Dictionary, Seventh Edition, p.703)

A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national political matters

#### Government of the USA

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 245)

the government of the United States of America

#### Not states

OED 89 (Oxford English Dictionary, 2ed. XIX, p. 795)

b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

#### Central government

AHD 92 (American Heritage Dictionary of the English Language, p. 647)

federal—3. Of or relating to the central government of a federation as distinct from the governments of its member units.

#### “Federal” refers to a government in which states form a central government

AHD 92 (American Heritage Dictionary of the English Language, p. 647)

federal—1. Of, relating to, or being a form of government in which a union of states recognizes the sovereignty of a central authority while retaining certain residual powers of government.

#### “Government” is all three branches

Black’s Law 90 (Dictionary, p. 695)

“[*Government*] In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.”

#### Includes agencies

Words & Phrases 4 (Cumulative Supplementary Pamphlet, v. 16A, p. 42)

N.D.Ga. 1986. Action against the Postal Service, although an independent establishment of the executive branch of the federal government, is an action against the “Federal Government” for purposes of rule that plaintiff in action against government has right to jury trial only where right is one of terms of government’s consent to be sued; declining to follow Algernon Blair Industrial Contractors, Inc. v. Tennessee Valley Authority, 552 F.Supp. 972 (M.D.Ala.). 39 U.S.C.A. 201; U.S.C.A. Const.Amend. 7.—Griffin v. U.S. Postal Service, 635 F.Supp. 190.—Jury 12(1.2).

### Should

#### Should refers to what should be NOT what should have been

OED, Oxford English Dictionary, 1989 (2ed. XIX), pg. 344

Should An utterance of the word *should*. Also, what ‘should be’.

#### Should means an obligation or duty

AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—1. Used to express obligation or duty: *You should send her a note*.

#### Should expresses an expectation of something

AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—2. Used to express probability or expectation: *They should arrive at noon*.

#### Should expresses conditionality or contingency

AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—3. Used to express conditionality or contingency: *If she should fall, then so would* *I*.

#### “should” expresses duty, obligation, or necessity

Webster’s Third New International Dictionary 1961 p. 2104

Used in auxiliary function to express duty, obligation, necessity, propriety, or expediency

### Should – Desirable

#### “Should” means desirable --- this does not have to be a mandate

AC 99 (Atlas Collaboration, “Use of Shall, Should, May Can,” http://rd13doc.cern.ch/Atlas/DaqSoft/sde/inspect/shall.html)

shall

'shall' describes something that is mandatory. If a requirement uses 'shall', then that requirement \_will\_ be satisfied without fail. Noncompliance is not allowed. Failure to comply with one single 'shall' is sufficient reason to reject the entire product. Indeed, it must be rejected under these circumstances. Examples: # "Requirements shall make use of the word 'shall' only where compliance is mandatory." This is a good example. # "C++ code shall have comments every 5th line." This is a bad example. Using 'shall' here is too strong.

should

'should' is weaker. It describes something that might not be satisfied in the final product, but that is desirable enough that any noncompliance shall be explicitly justified. Any use of 'should' should be examined carefully, as it probably means that something is not being stated clearly. If a 'should' can be replaced by a 'shall', or can be discarded entirely, so much the better. Examples: # "C++ code should be ANSI compliant." A good example. It may not be possible to be ANSI compliant on all platforms, but we should try. # "Code should be tested thoroughly." Bad example. This 'should' shall be replaced with 'shall' if this requirement is to be stated anywhere (to say nothing of defining what 'thoroughly' means).

#### “Should” doesn’t require certainty

**Black’s Law 79** (Black’s Law Dictionary – Fifth Edition, p. 1237)

Should. The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from “ought.” It is not normally synonymous with “may,” and although often interchangeable with the word “would,” it does not ordinarily express certainty as “will” sometimes does.

### Should – Mandatory

#### “Should” is mandatory

Nieto 9 – Judge Henry Nieto, Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009)

"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [\*\*15] interpreting the word in various contexts have drawn conflicting conclusions, although the weight of authority appears to favor interpreting "should" in an imperative, obligatory sense. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and could not be misunderstood by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [\*\*16] have also found that the word conveys to the jury a sense of duty or obligation and not discretion. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as synonymous with the word "must" and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the same meaning. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [\*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey duty or obligation. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

#### “Should” means must – its mandatory

Foresi 32 (Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, 7-14, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is not used in an advisory sense but has the force or meaning of 'must', or 'ought to' and carries [\*\*\*8] with it the sense of [\*313] obligation and duty equivalent to compulsion. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

#### Should means must

Words & Phrases 6 (Permanent Edition 39, p. 369)

C.D.Cal. 2005. “Should,” as used in the Social Security Administration’s ruling stating that an ALJ should call on the services of a medical advisor when onset must be inferred, means “must.”—Herrera v. Barnhart, 379 F.Supp.2d 1103.—Social S 142.5.

### Should – Not Mandatory

#### Should isn’t mandatory

Words & Phrases 6 (Permanent Edition 39, p. 369)

C.A.6 (Tenn.) 2001. Word “should,” in most contexts, is precatory, not mandatory. –U.S. v. Rogers, 14 Fed.Appx. 303. –Statut 227.

#### Strong admonition --- not mandatory

Taylor and Howard 5 (Michael, Resources for the Future and Julie, Partnership to Cut Hunger and Poverty in Africa, “Investing in Africa's future: U.S. Agricultural development assistance for Sub-Saharan Africa”, 9-12, <http://www.sarpn.org.za/documents/d0001784/5-US-agric_Sept2005_Chap2.pdf>)

Other legislated DA earmarks in the FY2005 appropriations bill are smaller and more targeted: plant biotechnology research and development ($25 million), the American Schools and Hospitals Abroad program ($20 million), women’s leadership capacity ($15 million), the International Fertilizer Development Center ($2.3 million), and clean water treatment ($2 million). Interestingly, in the wording of the bill, Congress uses the term *shall* in connection with only two of these eight earmarks; the others say that USAID *should* make the prescribed amount available. The difference between *shall* and *should* may have legal significance—one is clearly mandatory while the other is a strong admonition—but it makes little practical difference in USAID’s need to comply with the congressional directive to the best of its ability.

#### Permissive

Words and Phrases 2 (Vol. 39, p. 370)

Cal.App. 5 Dist. 1976. Term “should,” as used in statutory provision that motion to suppress search warrant should first be heard by magistrate who issued warrant, is used in regular, persuasive sense, as recommendation, and is thus not mandatory but permissive. West’s Ann.Pen Code, § 1538.5(b).---Cuevas v. Superior Court, 130 Cal. Rptr. 238, 58 Cal.App.3d 406 ----Searches 191.

#### Desirable or recommended

Words and Phrases 2 (Vol. 39, p. 372-373)

Or. 1952. Where safety regulation for sawmill industry providing that a two by two inch guard rail should be installed at extreme outer edge of walkways adjacent to sorting tables was immediately preceded by other regulations in which word “shall” instead of “should” was used, and word “should” did not appear to be result of inadvertent use in particular regulation, use of word “should” was intended to convey idea that particular precaution involved was desirable and recommended, but not mandatory. ORS 654.005 et seq.----Baldassarre v. West Oregon Lumber Co., 239 P.2d 839, 193 Or. 556.---Labor & Emp. 2857

### Should – Immediate

#### “Should” means “must” and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn16)

[CONTINUES – TO FOOTNOTE]

[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or *immediately effective*, as opposed to something that *will* or *would* become effective *in the future [in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

### Should – No Immediate

#### Should doesn’t mean immediate

Dictionary.com – Copyright © 2010 – http://dictionary.reference.com/browse/should

should    /ʃʊd/ Show Spelled[shood] Show IPA –auxiliary verb 1. pt. of shall. 2. (used to express condition): Were he to arrive, I should be pleased. 3. must; ought (used to indicate duty, propriety, or expediency): You should not do that. 4. would (used to make a statement less direct or blunt): I should think you would apologize. Use should in a Sentence See images of should Search should on the Web Origin: ME sholde, OE sc ( e ) olde; see shall —Can be confused:  could, should, would (see usage note at this entry ). —Synonyms 3. See must1 . —Usage note Rules similar to those for choosing between shall and will have long been advanced for should and would, but again the rules have had little effect on usage. In most constructions, would is the auxiliary chosen regardless of the person of the subject: If our allies would support the move, we would abandon any claim to sovereignty. You would be surprised at the complexity of the directions. Because the main function of should in modern American English is to express duty, necessity, etc. ( You should get your flu shot before winter comes ), its use for other purposes, as to form a subjunctive, can produce ambiguity, at least initially: I should get my flu shot if I were you. Furthermore, should seems an affectation to many Americans when used in certain constructions quite common in British English: Had I been informed, I should (American would ) have called immediately. I should (American would ) really prefer a different arrangement. As with shall and will, most educated native speakers of American English do not follow the textbook rule in making a choice between should and would. See also shall. Shall –auxiliary verb, present singular 1st person shall, 2nd shall or ( Archaic ) shalt, 3rd shall, present plural shall; past singular 1st person should, 2nd should or ( Archaic ) shouldst or should·est, 3rd should, past plural should; imperative, infinitive, and participles lacking. 1. plan to, *intend* to, or expect to: I shall go later.

### Should – Not Past Tense 2AC

#### -- We meet – plan says ‘should’. This just changes the meaning of the plan – doesn’t prove it isn’t topical.

#### -- Ungrammatical – their interpretation assumes “should” is followed by ‘have’ – but its not. Grammar is key: it defines ground.

#### -- Kills neg ground – hindsight is 20/20, Aff’s would always pick unbeatable cases

#### -- “Should” means future action

#### American Heritage 00

should    ( P )  [Pronunciation Key](http://dictionary.reference.com/help/ahd4/pronkey.html)  (shd)
aux.v. Past tense of shall

Used to express obligation or duty: You should send her a note.

#### -- Prefer our interpretation – theirs is outdated

#### American Heritage 00

Usage Note: Like the rules governing the use of shall and will on which they are based, the traditional rules governing the use of should and would are largely ignored in modern American practice. Either should or would can now be used in the first person to express conditional futurity: If I had known that, I would (or somewhat more formally, should) have answered differently. But in the second and third persons only would is used: If he had known that, he would (not should) have answered differently. Would cannot always be substituted for should, however. Should is used in all three persons in a conditional clause: if I (or you or he) should decide to go. Should is also used in all three persons to express duty or obligation (the equivalent of ought to): I (or you or he) should go. On the other hand, would is used to express volition or promise: I agreed that I would do it. Either would or should is possible as an auxiliary with like, be inclined, be glad, prefer, and related verbs: I would (or should) like to call your attention to an oversight. Here would was acceptable on all levels to a large majority of the Usage Panel in an earlier survey and is more common in American usage than should. ·Should have is sometimes incorrectly written should of by writers who have mistaken the source of the spoken contraction should've. See Usage Note at [if](http://dictionary.reference.com/search?q=if). See Usage Note at [rather](http://dictionary.reference.com/search?q=rather). See Usage Note at [shall](http://dictionary.reference.com/search?q=shall).

#### -- Key to Aff ground –best literature supports prescriptive future action

#### -- Neg ground – all disads assume future action, otherwise they’re non-unique.

#### -- No offense – future-oriented genealogical Affs can explore history.

#### -- Potential abuse isn’t a voter – don’t punish for what we didn’t do

### Its

#### Belonging to or associated with

Oxford Dictionary 10 (“Of”, http://www.oxforddictionaries.com/definition/its?view=uk)

Pronunciation:/ɪts/

possessive determiner

belonging to or associated with a thing previously mentioned or easily identified:turn the camera on its side he chose the area for its atmosphere

#### Of or relating to

Webster’s 10 (Merriam-Webster’s Online Dictionary, “its”, http://www.merriam-webster.com/dictionary/its)

Main Entry: its

Pronunciation: \ˈits, əts\

Function: adjective

Date: circa 1507

: of or relating to it or itself especially as possessor, agent, or object of an action <going to its kennel> <a child proud of its first drawings> <its final enactment into law>

### Its – Possessive

#### “Its” refers to the United States Federal Government and is possessive

Updegrave 91 (W.C., “Explanation of ZIP Code Address Purpose”, 8-19, <http://www.supremelaw.org/ref/zipcode/updegrav.htm>)

More specifically, looking at the map on page 11 of the National ZIP Code Directory, e.g. at a local post office, one will see that the first digit of a ZIP Code defines an area that includes more than one State. The first sentence of the explanatory paragraph begins: "A ZIP Code is a numerical code that identifies areas within the United States and its territories for purposes of ..." [cf. 26 CFR 1.1-1(c)]. Note the singular possessive pronoun "its", not "their", therefore carrying the implication that it relates to the "United States" as a corporation domiciled in the District of Columbia (in the singular sense), not in the sense of being the 50 States of the Union (in the plural sense). The map shows all the States of the Union, but it also shows D.C., Puerto Rico and the Virgin Islands, making the explanatory statement literally correct.

#### ‘Its’ is possessive

English Grammar 5 (Glossary of English Grammar Terms, <http://www.usingenglish.com/glossary/possessive-pronoun.html>)

Mine, yours, his, hers, its, ours, theirs are the possessive [pronouns](http://www.usingenglish.com/glossary/pronoun.html) used to substitute a [noun](http://www.usingenglish.com/glossary/noun.html) and to show possession or ownership. EG. This is your disk and that's mine. (Mine substitutes the word disk and shows that it belongs to me.)

#### Grammatically, this refers solely to U.S. investment

Manderino 73 (Justice – Supreme Court of Pennsylvania, “Sigal, Appellant, v. Manufacturers Light and Heat Co”., No. 26, Jan. T., 1972, Supreme Court of Pennsylvania, 450 Pa. 228; 299 A.2d 646; 1973 Pa. LEXIS 600; 44 Oil & Gas Rep. 214, Lexis)

On its face, the written instrument granting easement rights in this case is ambiguous. The same sentence which refers to the right to lay a 14 inch pipeline (singular) has a later reference to "said lines" (plural). The use of the plural "lines" makes no sense because the only previous reference has been to a "line" (singular). The writing is additionally ambiguous because other key words which are "also may change the size of its pipes" are dangling in that the possessive pronoun "its" before the word "pipes" does not have any subject preceding, to which the possessive pronoun refers. The dangling phrase is the beginning of a sentence, the first word of which does not begin with a capital letter as is customary in normal English [\*\*\*10]  usage. Immediately preceding the "sentence" which does not begin with a capital letter, there appears a dangling  [\*236]  semicolon which makes no sense at the beginning of a sentence and can hardly relate to the preceding sentence which is already properly punctuated by a closing period. The above deviations from accepted grammatical usage make difficult, if not impossible, a clear understanding of the words used or the intention of the parties. This is particularly true concerning the meaning of a disputed phrase in the instrument which states that the grantee is to pay damages from ". . . the relaying, maintaining and operating said pipeline. . . ." The instrument is ambiguous as to what the words ". . . relaying . . . said pipeline . . ." were intended to mean.

#### And it’s a term of exclusion

Frey 28 (Judge – Supreme Court of Missouri, Supreme Court of Missouri,

320 Mo. 1058; 10 S.W.2d 47; 1928 Mo. LEXIS 834, Lexis)

In support of this contention appellant again argues that when any ambiguity exists in a will it is the duty of the court to construe the will under guidance of the presumption that the testatrix intended her property to go to her next of kin, unless there is a strong intention to the contrary. Again we say, there is intrinsic proof of a  [\*1074]  strong intention to the contrary. In the first place, testatrix only named two of her blood relatives in the will and had she desired [\*\*\*37]  them to take the residuary estate she doubtless would have mentioned them by name in the residuary clause. In the second place, if she used the word "heirs" in the sense of blood relatives she certainly would have dispelled all ambiguity by stating whose blood relatives were intended. Not only had  [\*\*53]  she taken pains in the will to identify her own two blood relatives but she had also identified certain blood relatives of her deceased husband. Had it been her intention to vest the residuary estate in her blood relatives solely, she would certainly have used the possessive pronoun "my" instead of the indefinite article "the" in the clause, "the above heirs."its is geographical.

## \*\*\* TOPICALITY IMPACTS

### Framer’s Intent Good

#### Framer’s intent is the basis of predictability --- without it, it’s impossible to interpret the topic

Hutchison 8 (Cameron, Assistant Professor of Law – University of Alberta, “Which Kraft of Statutory Interpretation”, Alberta Law Review, November, 46 Alberta L. Rev. 1, Lexis)

Second, it is not possible to interpret even a single word, much less an entire text, without knowing the purpose of the statute. [123](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&brand=&_m=bef2ae73d8968e2a7ac2c41f4058a2c3&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtb-zSkAb&_md5=78aa7022ae9dd715e1437a81c40167d8&focBudTerms=canon+and+competing+interpretation+w%2F100+text%21&focBudSel=all" \l "n123#n123" \t "_self) To take Hart's "no vehicle in the park" example, if local patriots were to wheel a truck used in World War II on a pedestal, would this qualify as a core case? This example illustrates that meaning of language in a statute cannot be divorced from an inquiry into the purpose that a rule serves. When courts are offered competing interpretations, they must choose the one that is most sensible in connection with its legislative purpose, [124](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&brand=&_m=bef2ae73d8968e2a7ac2c41f4058a2c3&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtb-zSkAb&_md5=78aa7022ae9dd715e1437a81c40167d8&focBudTerms=canon+and+competing+interpretation+w%2F100+text%21&focBudSel=all#n124#n124) and makes the statute "a coherent [and] workable whole." [125](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&brand=&_m=bef2ae73d8968e2a7ac2c41f4058a2c3&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtb-zSkAb&_md5=78aa7022ae9dd715e1437a81c40167d8&focBudTerms=canon+and+competing+interpretation+w%2F100+text%21&focBudSel=all#n125#n125) Moreover, the purpose of a statute is not static, but through interpretation, courts engage in a process of redefining and clarifying the ends themselves. [126](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&brand=&_m=bef2ae73d8968e2a7ac2c41f4058a2c3&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtb-zSkAb&_md5=78aa7022ae9dd715e1437a81c40167d8&focBudTerms=canon+and+competing+interpretation+w%2F100+text%21&focBudSel=all" \l "n126#n126" \t "_self) As Fuller puts it, courts must "be sufficiently capable of putting [themselves] in the position of those who drafted the rule to know what they thought 'ought to be.' It is in the light of this 'ought' that [they] must decide what the rule 'is.'" [127](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&brand=&_m=bef2ae73d8968e2a7ac2c41f4058a2c3&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtb-zSkAb&_md5=78aa7022ae9dd715e1437a81c40167d8&focBudTerms=canon+and+competing+interpretation+w%2F100+text%21&focBudSel=all" \l "n127#n127" \t "_self)

#### Legislative intent of the resolution outweighs limits

Clements 5 – Judge Jean Harrison Clements, Court of Appeals of Virginia, October 25, 2005, Bryan David Auer v. Commonwealth of Virginia – Court of Appeals of Virginia, <http://www.courts.state.va.us/opinions/opncavtx/0851041.txt>

Consequently, the fact that the statute does not expressly enumerate a particular item implies that the item "falls outside of the definition." Highway & City Freight Drivers, 576 F.2d at 1289; see County of Amherst Bd. of Supervisors v. Brockman, 224 Va. 391, 397, 297 S.E.2d 805, 808 (1992) (holding that the courts "may not add to a statute language" that the legislature intended not be included therein). Because the word "include" is susceptible to more than one meaning and because it is not immediately clear from the word's context which meaning is meant to apply in Code 19.2-295.1, we conclude that the statute's provision that "[p]rior convictions shall include convictions . . . under the laws of any state, the District of Columbia, the United States or its territories" is ambiguous. See Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) (noting that words are ambiguous if they admit to "being understood in more than one way" or lack "clearness and definiteness"). See generally Liverpool v. Baltimore Diamond Exch., Inc., 799 A.2d 1264, 1274 (Md. Ct. Spec. App. 2002) (recognizing that "the term 'includes,' by itself, is not free from ambiguity" because it "has various shades of meaning," ranging from enlargement and expansion to limitation and restriction); Frame v. Nehls, 550 N.W.2d 739, 742 (Mich. 1996) ("When used in the text of a statute, the word 'includes' can be used as a term of enlargement or of limitation, and the word in and of itself is not determinative of how it is intended to be used."). "Therefore, we are called upon to construe this statutory language in a manner that will ascertain and give effect to the General Assembly's intent." Herndon v. St. Mary's Hosp., Inc., 266 Va. 472, 475, 587 S.E.2d 567, 569 (2003). In seeking to resolve the ambiguity in the statutory language and discern the legislature's intent, we apply established principles of statutory interpretation. See Va. Dep't of Labor & Industry v. Westmoreland Coal Co., 233 Va. 97, 101-02, 353 S.E.2d 758, 762 (1987). Consistent with such principles, we interpret the statute so as "to promote the end for which it was enacted, if such an interpretation can reasonably be made from the language used." Mayhew v. Commonwealth, 20 Va. App. 484, 489, 458 S.E.2d 305, 307 (1995). Thus, the "statute must be construed with reference to its subject matter, the object sought to be attained, and the legislative purpose in enacting it; the provisions should receive a construction that will render it harmonious with that purpose rather than one which will defeat it." Esteban v. Commonwealth, 266 Va. 605, 609, 587 S.E.2d 523, 526 (2003). Furthermore, although "[i]t is a cardinal principle of law that penal statutes are to be construed strictly against the [Commonwealth]" and "cannot be extended by implication, or be made to include cases which are not within the letter and spirit of the statute," Wade v. Commonwealth, 202 Va. 117, 122, 116 S.E.2d 99, 103 (1960), "we will not apply 'an unreasonably restrictive interpretation of the statute' that would subvert the legislative intent expressed therein," Armstrong v. Commonwealth, 263 Va. 573, 581, 562 S.E.2d 139, 144 (2002) (quoting Ansell v. Commonwealth, 219 Va. 759, 761, 250 S.E.2d 760, 761 (1979)).

### Framer’s Intent Bad

#### Framer’s intent is arbitrary and should be considered secondary to the best interpretation

**Weaver 7** (Aaron, Ph.D. Candidate in Politics and Society – Baylor University, “An Introduction to Original Intent”, Fall, <http://www.thebigdaddyweave.com/BDWFiles/originalism.pdf>)

Discovering the “original intent” behind the religion clauses of the First Amendment is much more difficult than Edwin Meese, Antonin Scalia or any other 21 Ibid, originalist wants to admit. Contrary to the revisionist history being pushed by originalists who desire extensive government accommodation of religion, the founders did not always agree with one another. We simply can not determine with sufficient accuracy the collective intent of the Founding Fathers and the Framers of the Free Exercise Clause and the Establishment Clause of the First Amendment. Those scholars in search of “original intent” have returned with strikingly inconsistent accounts of original intent. Thus, the originalism of Scalia, Meese, and Rehnquist is ambiguous at best and downright dishonest at worst. We do not know nor can we be expected to accurately determine the intent or understanding of what the First Amendment meant to each person who cast their vote. After all, delegates to the Constitutional Convention were voting on the text of the First Amendment, not Madison’s writings or the private correspondence of the Framers. The text of the First Amendment reigns supreme. Authorial intent must take a backseat to the actual text. Justices should examine the text first and scour it for as much meaning as it will generate before turning to extrinsic evidence of intent. However, original intent is hardly irrelevant but simply subordinate to the text. Extrinsic evidence does not control the text. The text controls the text.

#### No impact to “intent”. The framer’s knowledge was far more limited than the community’s after months of research. Their standard is outdated and prevents informed and progressive understanding.

Moore 85 (Michael, Professor of Law – University of Southern California Law Center, “Interpretation Symposium: Philosophy of Language and Legal Interpretation: Article: A Natural Law Theory of Interpretation”, University of Southern California, 58 S. Cal. L. Rev. 279, January, Lexis)

My conclusion is that the text has a better claim to being called the "choice of the legislature" than do any legislative materials. The political ideals of democracy and of institutional competence are thus better served by a court working from the text alone and not from some "second text" unofficially adopted by some supposed, silent consensus of legislators. That being so, and liberty and fairness also being better served by looking to the other ingredients in the theory of interpretation, I conclude that legislative intent has no role to play in interpretation. This conclusion has been defended solely by using the rule of law virtues as our normative guidelines. This conclusion is supported by the other set of considerations relevant here, namely, the kinds of effects an intent-oriented theory of interpretation produces. Such a theory produces worse effects than its competitors because it imposes old ideals upon us. In constitutional law this consideration is so compelling that it swamps all the others in importance. Better that we fill out the grand clauses of the Constitution by our notions of meaning (evolving, as we have seen, in light of our developing theories about the world), by our notions of morals, and by two hundred years of precedent. What the founders intended by their language should be of relevance to us only as a heuristic device to enable us to think more clearly about our own ideals. The dead hand of the past ought not to govern, for example, our treatment of the liberty of free speech, and any theory of interpretation that demands that it does is a bad theory. This argument applies to statutory interpretation as well, although with somewhat diminished force. For guiding one's statutory interpretations by legislative materials will be to judge by ideals as old as those [\*358] materials. In the Keeler case, for example, a 1970 decision was predicated on an 1850 statute, recodified in 1872. Using nineteenth-century ideas of personhood to decide whether a fetus is a person is not a good idea in the twentieth century. We have thought more about the problem, and we know more factually and morally than those who drafted the commission report concluding that fetuses were not human beings. And even if we do not know more than they, we are as entitled to live under our ideals of personhood as we are to live under our ideals of free speech. For old statutes, thus, the consequentialist arguments against looking to framers' intent are as strong as they are for the Constitution. The meanings of words, the direction of precedent, and the nature of goodness are all items about which we can have developing theories. Our admittedly imperfect knowledge of each of these things can get better. A theory of interpretation built out of these materials thus can accommodate change and development in our law by court interpretation. A theory emphasizing the enacting body's intention, on the other hand, is glued to the past. Change can only come by constitutional or legislative amendment. Even apart from the rule of law virtues, an intentionalist theory should be disfavored on this ground alone.

### Grammar

#### Grammar outweighs --- it determines meaning, making it a pre-requisite to predictable ground and limits – and, without it, debate is impossible

Allen 93 (Robert, Editor and Director – The Chambers Dictionary, Does Grammar Matter?)

Grammar matters, then, because it is the accepted way of using language, whatever one’s exact interpretation of the term. Incorrect grammar hampers communication, which is the whole purpose of language. The grammar of standard English matters because it is a codification of the way using English that most people will find acceptable.

### Limits – Rowland

#### Limits outweigh – they’re the vital access point for any theory impact --- it’s key to fairness --- huge research burdens mean we can’t prepare to compete – and its key to education --- big topics cause hyper-generics, lack of clash, and shallow debate --- and it destroys participation

Rowland 84 (Robert C., Debate Coach – Baylor University, “Topic Selection in Debate”, American Forensics in Perspective, Ed. Parson, p. 53-54)

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called “NDT” programs, are diminishing in scope and size.4 This decline in policy debate is tied, many in the work group believe, to excessively broad topics. The most obvious characteristic of some recent policy debate topics is extreme breath. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. Naitonal debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change.5 The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the breadth of the topics has all but destroyed novice debate. Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process.6 Despite this advantage of policy debate, Gaske belives that NDT debate is not the best vehicle for teaching beginners. The problem is that broad policy topics terrify novice debaters, especially those who lack high school debate experience. They are unable to cope with the breadth of the topic and experience “negophobia,”7 the fear of debating negative. As a consequence, the educational advantages associated with teaching novices through policy debate are lost: “Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caugh without evidence or substantive awareness of the issues that confront them at a tournament.”8 The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters or eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that broad topics also discourage experienced debaters from continued participation in policy debate. Here, the claim is that it takes so much times and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are forced out of the activity.9 Gaske notes, that “broad topics discourage participation because of insufficient time to do requisite research.”10 The final effect may be that entire programs either cease functioning or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: “It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate.”11 In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to cancel their programs.

### Precision

#### Legal precisions outweighs limits and ground --- it’s a prerequisite to effective policy education

Shannon 2 – Bradley Shannon, law at University of Idaho, January 2002 (Washington Law Review, 77 Wash. L. Rev. 65, Lexis

The first answer to this question is, why should we not care? If proper terminology (of whatever type) is readily available and comprehendible, why should one not want to use it? Does one really need a reason for not misusing any word, technical or otherwise? In other words, though many misuses of Rules terminology might not seem to cause serious problems, surely that is not an argument in favor of a disregard of proper Rules terminology, particularly where the cost of using proper terminology is negligible. 79

The second answer to the question why we should care about the use of proper Rules terminology goes to the cost of using improper terminology even in seemingly trivial contexts. Understanding legal concepts is difficult enough without the confusion created when an inappropriate term is used to represent those concepts. And this is true regardless of how minor the misuse. In some sense, every misuse of legal language impedes the understanding - and, consequently, the progress - of the law.

### A2: Aff Flexibility

#### Strict limits *enable* creativity. Beauty emerges from identifying constraints and working within them.

Flood 10 (Scott, BS in Communication and Theatre Arts – St. Joseph’s College, School Board Member – Plainfield Community School Corporation, and Advertising Agent, “Business Innovation – Real Creativity Happens Inside the Box”, http://ezinearticles.com/?Business-Innovation---Real-Creativity-Happens-Inside-the-Box&id=4793692)

It seems that we can accomplish anything if we're brave enough to step out of that bad, bad box, and thinking "creatively" has come to be synonymous with ignoring rules and constraints or pretending they just don't exist. Nonsense. Real creativity is put to the test within the box. In fact, that's where it really shines. It might surprise you, but it's actually easier to think outside the box than within its confines. How can that be? It's simple. When you're working outside the box, you don't face rules, or boundaries, or assumptions. You create your own as you go along. If you want to throw convention aside, you can do it. If you want to throw proven practices out the window, have at it. You have the freedom to create your own world. Now, I'm not saying there's anything wrong with thinking outside the box. At times, it's absolutely essential - such as when you're facing the biggest oil spill in history in an environment in which all the known approaches are failing. But most of us don't have the luxury of being able to operate outside the box. We've been shoved into reality, facing a variety of limitations, from budgets, to supervisors' opinions and prejudices, to the nature of the marketplace. Even though the box may have been given a bad name, it's where most of us have to spend our time. And no matter how much we may fret about those limits, inside that box is where we need to prove ourselves. If you'll pardon the inevitable sports analogy, consider a baseball player who belts ball after ball over 450 feet. Unfortunately, he has a wee problem: he can't place those hits between the foul lines, so they're harmful strikes instead of game-winning home runs. To the out-of-the-box advocates, he's a mighty slugger who deserves admiration, but to his teammates and the fans, he's a loser who just can't get on base. He may not like the fact that he has to limit his hits to between the foul poles, but that's one of the realities of the game he chose to play. The same is true of ideas and approaches. The most dazzling and impressive tactic is essentially useless if it doesn't offer a practical, realistic way to address the need or application. Like the baseball player, we may not like the realities, but we have to operate within their limits. Often, I've seen people blame the box for their inability or unwillingness to create something workable. For example, back in my ad agency days, I remember fellow writers and designers complaining about the limitations of projects. If it was a half-page ad, they didn't feel they could truly be creative unless the space was expanded to a full page. If they were given a full page, they demanded a spread. Handed a spread, they'd fret because it wasn't a TV commercial. If the project became a TV commercial with a $25,000 budget, they'd grouse about not having a $50,000 budget. Yet the greatest artists of all time didn't complain about what they didn't have; they worked their magic using what they did. Monet captured the grace and beauty of France astonishingly well within the bounds of a canvas. Donatello exposed the breathtaking emotion that lurked within ordinary chunks of marble. And I doubt that Beethoven ever whined because there were only 88 keys on the piano. Similarly, I've watched the best of my peers do amazing things in less-than-favorable circumstances. There were brilliant commercials developed with minimal budgets and hand-held cameras. Black-and-white ads that outperformed their colorful competitors. Simple postcards that grabbed the attention of (and business from) jaded consumers. You see, real creativity isn't hampered or blocked by limits. It actually flowers in response to challenges. Even though it may be forced to remain inside the box, it leverages everything it can find in that box and makes the most of every bit of it. Real creativity is driven by a need to create. When Monet approached a blank canvas, it's safe to say that he didn't agonize over its size. He wanted to capture something he'd seen and share how it looked through his eyes. The size of the canvas was incidental to his talent and desire. Think about the Apollo 13 mission. NASA didn't have the luxury of flying supplies or extra tools to the crew. They couldn't rewrite the laws of physics. Plus, they faced a rapidly shrinking timeline, so their box kept getting smaller and less forgiving. And yet they arrived upon a solution that was creative; more important, that was successful. The next time someone tells you that the real solution involves stepping outside the box, challenge him or her to think and work harder. After all, the best solution may very well be lurking in a corner of that familiar box.

### A2: Breadth Good

#### Depth is more educational than breadth --- studies prove

WP 9 (Washington Post, “Will Depth Replace Breadth in Schools?” http://voices.washingtonpost.com/class-struggle/2009/02/will\_depth\_replace\_breadth\_in.html)

The truth, of course, is that students need both. Teachers try to mix the two in ways that make sense to them and their students. But a surprising study — certain to be a hot topic in teacher lounges and education schools — is providing new data that suggest educators should spend much more time on a few issues and let some topics slide. Based on a sample of 8,310 undergraduates, the national study says that students who spend at least a month on just one topic in a high school science course get better grades in a freshman college course in that subject than students whose high school courses were more balanced. The study, appearing in the July issue of the journal Science Education, is “Depth Versus Breadth: How Content Coverage in High School Science Courses Relates to Later Success in College Science Coursework.” The authors are Marc S. Schwartz of the University of Texas at Arlington, Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics and Robert H. Tai of the University of Virginia. This is more rich ore from a goldmine of a survey Sadler and Tai helped organize called “Factors Influencing College Science Success.” It involved 18,000 undergraduates, plus their professors, in 67 colleges in 31 states. The study weighs in on one side of a contentious issue that will be getting national attention this September when the College Board’s Advanced Placement program unveils its major overhaul of its college-level science exams for high school students. AP is following a direction taken by its smaller counterpart, the International Baccalaureate program. IB teachers already are allowed to focus on topics of their choice. Their students can deal with just a few topics on exams, because they have a wide choice of questions. AP’s exact approach is not clear yet, but College Board officials said they too will embrace depth. They have been getting much praise for this from the National Science Foundation, which funded the new study. Sadler and Tai have previously hinted at where this was going. In 2001 they reported that students who did not use a textbook in high school physics—an indication that their teachers disdained hitting every topic — achieved higher college grades than those who used a textbook. Some educators, pundits, parents and students will object, I suspect, to sidelining their favorite subjects and spending more time on what they consider trivial or dangerous topics. Some will fret over the possibility that teachers might abandon breadth altogether and wallow in their specialties. Even non-science courses could be affected. Imagine a U.S. history course that is nothing but lives of generals, or a required English course that assigns only Jane Austen. “Depth Versus Breadth” analyzes undergraduate answers to detailed questions about their high school study of physics, chemistry and biology, and the grades they received in freshman college science courses. The college grades of students who had studied at least one topic for at least a month in a high school science course were compared to those of students who did not experience such depth. The study acknowledges that the pro-breadth forces have been in retreat. Several national commissions have called for more depth in science teaching and other subjects. A 2005 study of 46 countries found that those whose schools had the best science test scores covered far fewer topics than U.S. schools.

#### Especially for high school students

**SD 9** (Science Daily, “Students Benefit From Depth, Rather Than Breadth, In High School Science Courses”, http://www.sciencedaily.com/releases/2009/03/090305131814.htm)

A recent study reports that high school students who study fewer science topics, but study them in greater depth, have an advantage in college science classes over their peers who study more topics and spend less time on each. Robert Tai, associate professor at the University of Virginia's Curry School of Education, worked with Marc S. Schwartz of the University of Texas at Arlington and Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics to conduct the study and produce the report. The study relates the amount of content covered on a particular topic in high school classes with students' performance in college-level science classes. "As a former high school teacher, I always worried about whether it was better to teach less in greater depth or more with no real depth. This study offers evidence that teaching fewer topics in greater depth is a better way to prepare students for success in college science," Tai said. "These results are based on the performance of thousands of college science students from across the United States." The 8,310 students in the study were enrolled in introductory biology, chemistry or physics in randomly selected four-year colleges and universities. Those who spent one month or more studying one major topic in-depth in high school earned higher grades in college science than their peers who studied more topics in the same period of time. The study revealed that students in courses that focused on mastering a particular topic were impacted twice as much as those in courses that touched on every major topic. The study explored differences between science disciplines, teacher decisions about classroom activities, and out-of-class projects and homework. The researchers carefully controlled for differences in student backgrounds. The study also points out that standardized testing, which seeks to measure overall knowledge in an entire discipline, may not capture a student's high level of mastery in a few key science topics. Teachers who "teach to the test" may not be optimizing their students' chance of success in college science courses, Tai noted. "President Obama has challenged the nation to become the most educated in the world by having the largest proportion of college graduates among its citizens in the coming decade," Tai said. "To meet this challenge, it is imperative that we use the research to inform our educational practice." The study was part of the Factors Influencing College Science Success study, funded by the National Science Foundation.