## Resolution

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

## Transportation Infrastructure

### 1nc – Transportation Infrastructure

#### A. Interpretation – The government defines Transportation Infrastructure as roads, bridges, mass transit, inland waterways, ports, airports, air traffic control, and all rails

THE WHITE HOUSE 11 The American Jobs Act

Office of the Press Secretary, For Immediate Release September 12, 2011, <http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/american-jobs-act.pdf>

(9) INFRASTRUCTURE PROJECT-

(A) IN GENERAL- The term `eligible infrastructure project' means any non-Federal transportation, water, or energy infrastructure project, or an aggregation of such infrastructure projects, as provided in this Act.

(B) TRANSPORTATION INFRASTRUCTURE PROJECT- The term `transportation infrastructure project' means the construction, alteration, or repair, including the facilitation of intermodal transit, of the following subsectors:

(i) Highway or road.

(ii) Bridge.

(iii) Mass transit.

(iv) Inland waterways.

(v) Commercial ports.

(vi) Airports.

(vii) Air traffic control systems.

(viii) Passenger rail, including high-speed rail.

(ix) Freight rail systems.

(C) WATER INFRASTRUCTURE PROJECT- The term `water infrastructure project' means the construction, consolidation, alteration, or repair of the following subsectors:

(i) Waterwaste treatment facility.

(ii) Storm water management system.

(iii) Dam.

(iv) Solid waste disposal facility.

(v) Drinking water treatment facility.

(vi) Levee.

(vii) Open space management system.

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(D) ENERGY INFRASTRUCTURE PROJECT- The term `energy infrastructure project' means the construction, alteration, or repair of the following subsectors:

(i) Pollution reduced energy generation.

(ii) Transmission and distribution.

(iii) Storage.

(iv) Energy efficiency enhancements for buildings, including public and commercial buildings.

#### B. VIOLATION –

#### C. Vote Negative – Topicality is a voting issue

#### 1. LIMITS – transportation infrastructure is a term of art – broad definitions expand the research base and make this topic unpredictable – draw the line on how the government defines it.

#### 2. GROUND – adding other forms of infrastructure explodes aff ground – they get advantages that are based off of area specific scenarios that the neg can’t predict.

### TI – gov’t def’n

#### “Transportation infrastructure” is only a small number 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.

### Sweet Chart

#### Here’s a sweet chart about what is and isn’t T

FULMER 09 Senior Investment Analyst with Tortoise Capital Advisors, headquartered in suburban Kansas City, Kansas

[Jeff Fulmer, What in the world is infrastructure?, http://www.tortoiseadvisors.com/documents/Infrastructure\_Investor.pdf]

Sector Function Primary Components

ELECTRIC POWER Power Generation Coal Power Plants

Nuclear Power Plants

Natural Gas Power Plants

Hydroelectric Power Plants (Dams, Pump Storage, and

Run-of-River)

Fuel Oil Power Plants

Dual-Fired Power Plants

Alternate/Renewable Energy Power Plants

Distributed Power Plants

Back-up Generators

Power Plant Substations

Power Transmission Transmission Lines and Towers

Transmission Substations

DC Converter Stations

Regional Control Centers

Power Distribution Distribution Lines

Distribution Substations

Step Down Transformers

OIL AND GAS Exploration and Production Offshore Drilling and Production Platforms

Subsea Facilities

Permanent Onshore Drilling Facilities

Wells (Production, Injection, Observation,

and Disposal)

Oil and Gas Gathering Crude Oil Gathering Pipelines

and Separation Gas Oil Separation Plants

Tank Batteries (Field Seperation and Storage)

Crude Oil Lease Automatic Custody Transfer Units

Gas Gathering Pipelines and Compressors

Field Gas Processing Plants (Dehydration, Sweetening,

and Nitrogen Rejection)

Gas Sales Meters

Oil Storage, Refining, Transport Bulk Storage Facilities (Terminal, Refinery, and

and Distriburion Pipeline Breakout)

Offshore Mooring Systems

Underground Crude Storage

Refineries

Oil Main Pipelines and Interconnections

Pumping Stations

Control Centers

Truck and Rail Racks

Natural Gas Processing,Transport Gas Processing Plants

and Storage NGL Fractionation Plants

Gas Transmission Pipelines and Interconnections

Transmission Compressor Stations

Control Centers

Natural Gas Market Hubs

Natural Gas Storage Facilities

City Gates and Distribution Pipelines

LNG Trains and Regasification Facilities

LPG/Propane Interconnected Assets

POTABLE AND Water Supply, Storage Raw Supply Assets (River, Lake, Spring Inlets,

WASTEWATER and Treatment and Wells)

Raw Water Storage Assets (Reservoirs and Tanks)

Desalination Plants

Water Treatment and Filtration Plants

Finished Water Storage Assets (Towers, Clearwells,

and Standpipes)

POTABLE AND Water Delivery Water Tunnels

WASTEWATER Aqueducts

(CONTINUED) Transmission Mains

Pumping Stations

Pipeline Interconnections

Distribution Mains

Service Pipelines

Control and Monitoring Stations

Wastewater Collection, Sewer Inlets and Mains (Sanitary, Storm and

Combined)

Treatment, and Discharge Influent Storage (Tanks, Pits, Ponds and Basins)

Waste Water Treatment Plant

Pumping and Discharge Facilities

Control and Monitoring Stations

TRANSPORTATION Road Transport Roads and Highways (including Toll Roads)

Bridges (including Toll Bridges)

Tunnels (including Toll Tunnels)

Operations and Traffic Management Centers

Border Crossing Facilities

Truck Terminals

Rail Transport Rail Cars (Freight and Passenger)

Tracks

Bridges

Tunnels

Yards

Passenger Stations

Operation Centers

Waterway Transport Locks and Canals

Dams

Docks

Navigation Facilities

Sea Transport Seaports (Shallow and Deep Draft)

Air Transport Airports (Certified, Non-Certified, and Military)

Airstrips and Airfields

Heliports

Spaceports

Air Traffic Control and Navigation Facilities

Mass Transport Subway Systems

Commuter Rail Systems (Heavy and Light Rail)

Bus Systems

Tramway and Ferry Systems

COMMUNICATIONS Wireline Services End Office Switching Facilities

Access Tandems

Cables (including Submarine Cables)

Submarine Cable Landings

Telecom Hotels

Interexchange Carrier Points of Presence

Carrier Data Centers

Internet Service Provider Points of Presence

Internet Service Provider Routers

Cable Services Cable Broadcast Provider Headquarters

Headend/Distribution Hubs

Cables

Wireless Services Cell Towers

Base Transceiver Stations

Base Station Control Stations

Mobil Switching Offices

Broadcast Services Television/Radio Network Headquarters

Local Broadcast Centers

Transmitter Sites

Data Processing/ Data Centers

Network Management Operation Centers

### Excludes Water & Energy

#### Transportation Infrastructure excludes Water & Energy Infrastructure

CHAPMAN & CUTLER 11 Attorneys describing how to apply for an Infrastructure Project Loan under the American Jobs Act of 2011

[SEPTEMBER 29, 2011, The American Jobs Act and Its Impact on a National Infrastructure Bank, <http://www.chapman.com/media/news/media.1081.pdf>]

Eligible Project and Recipient Types

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

#### Leading Engineering group says Water & Environmental Infrastructure isn’t topical

ASCE 09 American Society of Civil Engineers 2009 ranking report <http://www.infrastructurereportcard.org/categories>

Infrastructure Categories

The 2009 Report Card for America's Infrastructure grades 15 categories of infrastructure. Click on any of the categories to find out the infrastructure's current condition and ASCE's solutions for improvement. Additionally, you will find case studies in each category that demonstrate how organizations across the country are already making improvements in their communities

Water & Environment

Dams

Drinking Water

Hazardous Waste

Levees

Solid Waste

Wastewater

Transportation

Aviation

Bridges

Inland Waterways

Rail

Roads

Transit

Public Facilities

Public Parks and Recreation

Schools

Energy

Energy

### Excludes Water, Energy, & Comm

#### 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.

### TI – highways, roads, tunnels, airports, ports, freight

#### Highways, roads, ports, and airports are T

DONG YAN 04 Institute of Comprehensive Transportation

[Dong Yan, Fan Hua, Infrastructure, Growth, and Poverty Reduction in China, National Development and Reform Commission, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/12/03/000090341\_20041203151349/Rendered/PDF/307740CHA0Infr1ure01see0also0307591.pdf]

Transportation infrastructure includes highways, railways, ports, and airports. Almost all areas in China can accommodate highways, which means that highways are more accessible than other transport modalities and thus play an important role in economic development and poverty reduction in rural areas. Except as otherwise noted, transportation infrastructure refers to highways that are directly related to economic development and poverty reduction in rural areas. In this report, “rural highways” are county and township highways counted in the statistics of the Ministry of Communication (MOC). In China highways are divided into national highways, provincial highways, county highways and township highways. County highways connect county seats with main townships, production and sales centers and inter-county highways that are not national and provincial highways. Township highways are those serving the need of economy, culture and administration of the townships (Guo Xiaopei, Luo Renjian, 1998). According to the regulations of the MOC, highways must meet certain technological standards issued by MOC to be counted in the official statistics. A large number villages and townships have roads that are able to handle vehicles but are not considered as highways according to the official statistics.

#### Highways, bridges, tunnels, railways, airports, transit systems, ports, and freight goods are topical

Building America’s Future 12 <http://www.bafuture.org/>

Transportation

America's transportation infrastructure includes our highways, bridges, tunnels, railways, airports, transit systems, ports, and freight goods movement.

#### Normal stuff is T

RIETVELD 12 Faculty of Economics, Vrije Universiteit, De Boelelaan [SPATIAL ECONOMIC IMPACTS OF TRANSPORT INFRASTRUCTURE SUPPLY, PIET RIETVELD, 1105, 1081 HV Amsterdam, The Netherlands]

As a definition for transport infrastructure we use those immovable capital goods for transport which are characterized by a considerable degree of economies of scale so that it is usually supplied as a collective input into production. As a consequence, the government has a high degree of control on the level of supply, price, and/or quality. Transport infrastructure includes facilities such as railway lines, railway stations, highways, canals, seaports, and airports. As indicated in Table 1, transport infrastructure investments have both temporary and nontemporary effects on the economy. A major temporary effect concerns the stimulation of employment and income during the construction phase via the demand side.

GEOCOM 12 <http://geocom.ch/en/public-infrastructure>

Public Infrastructure

Infrastructure is around us everywhere today. State, city and local municipalities cannot function without proper public infrastructures. They are a significant component of our society and allow us to enable, sustain or enhance our living conditions.

Transportation infrastructure includes road and highway networks, railways, waterways and seaports, mass transit systems and airports. All of these multifaceted infrastructures require a high level of administration to operate successfully in the private sector

### Includes Bikes & systems

#### Includes facilities – bikes, roads, sidewalks, and public transportation

KINGSTON 12 Kingston Massachussets master plan [Parsons Brinckerhoff, Section 8 TRANSPORTATION/CIRCULATION, <http://www.kingstonmass.org/filestorage/40/924/8_CIRCULATION-TRANSPORTATION.pdf>]

Transportation infrastructure refers to built capital facilities, such as roadways, sidewalks and bikeways, and to public transportation facilities, such as bus or commuter rail shelters, park-and-ride lots and the like.

### No Communication

#### “Communications” is distinct – including it explodes the topic

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.

### No Construction Improvements

#### Construction improvements aren’t transportation – too vague

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

### No Energy

#### Energy is broad – expands on the topic

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

### No Farm Equipment

#### Farm vehicles are excluded

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).

### No Industrial Equipment

#### Industrial Sector is excluded

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.

### No Military

#### “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).

#### “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.

### No Pipelines

#### Pipelines aren’t topical

DEPARTMENT OF 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.

#### Pipelines are a separate category

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

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.

#### Pipelines unlimit ---A) Mu ltiple 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.

### No Post Office

#### Post Office isn’t T – its communication

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

### No Satellites

#### Satellites aren’t T – under communication

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)

### No Seawalls

#### Seawalls aren’t T

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.

### No Software

#### Excludes Software

**UNESCAP 06** III. TRANSPORT INFRASTRUCTURE1, <http://www.unescap.org/pdd/publications/themestudy2006/9_ch3.pdf>

1 For the purpose of this study, transport infrastructure refers to “hardware”, including roads, railways, bridges, tunnels, ports (for maritime and inland water transport), airports, urban transport infrastructure (mass transit systems), dry ports and inland container depots (intermodal infrastructure). It also includes signage and traffic management systems. It does not include mobile equipment, except for trains. “Software” issues are discussed in the study only to the extent that they create an environment conducive to investment in infrastructure, make more efficient the utilization of existing infrastructure (for example, repairs and maintenance) or facilitate the movement of goods, vehicles and people, thereby supporting trade, growth and mobility objectives. In other words, they have a direct bearing on type or volume of investments for “hardware”.

### No 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.

### No Vehicles

#### Vehicles aren’t T

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.

#### 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.

### A2 BAF definition

#### A wide definition of infrastructure would explode limits

Building America’s Future Educational **Fund**, (Building America’s Future: Falling Apart and Falling Behind, Transportation Infrastructure Report 2011)

Building America’s Future Educational Fund (BAF Ed Fund) is a bipartisan coalition of elected officials dedicated to bringing about a new era of U.S. investment in infrastructure that enhances our nation’s prosperity and quality of life. Founded by former Governor Edward Rendell of Pennsylvania, former Governor Arnold Schwarzenegger of California, and Mayor Michael Bloomberg of New York, BAF Ed Fund boasts a politically diverse membership of state and local elected officials from across the nation. BAF Ed Fund seeks to advance a new national vision for infrastructure investment that strengthens our cities and rural communities, and focuses on economic growth, global competitiveness, job creation, and environmental sustainability. In addition, we embrace a wide definition of infrastructure—from roads and bridges to water and sewer systems, energy systems, buses, trains, ports, airports, levees, dams, schools, and housing.

## TRANSPORTATION

### System for modes of travel

#### Transportation is the system and modes of travel for goods and persons

FEDERAL REGISTER 04 Vol. 69, No. 120, Geological Survey, Notices, DEPARTMENT OF THE INTERIOR (DOI), Federal Geographic Data Committee (FGDC); Public Review of Framework Data Standards, 69 FR 35057, DATE: Wednesday, June 23, 2004

6. Transportation: Transportation data are used to model the geographic locations, interconnectedness, and characteristics of the transportation system within the United States. The transportation system includes both physical and non-physical components representing all modes of travel that allow the movement of goods and people between locations.

Sub-themes representing the physical components of the transportation infrastructure include the road, railroad, transit, and waterway networks and airport facilities.

## Infrastructure

### Infrastructure – not comm, water, or buildings

#### Infrastructure definitions delineate Transportation from communication, water, power, and buildings

Yahoo Dictionary 12

Infrastructure NOUN: An underlying base or foundation especially for an organization or system.

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.

## Investment

### Capital Expenditure [no repairs]

#### “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).

#### 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

### Capital Expenditures are . . .

#### Capital expenditures create or significantly improve upon assets

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.

#### Capital Expenditures exclude repairs

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.

### Profitable Money Spent

#### Investment must place money in exchange for revenue

**Ballentine’s Law Dictionary** **2010** p. Lexis

1. The act of placing money where it will yield an income or revenue. Savings Bank of San Diego County v Barrett, 126 Cal 413, 58 P 914; Drake v Crane, 127 Mo 85, 29 SW 990. The laying out of money in such a manner that it may produce a revenue, whether the particular method be a loan, or the purchase of stocks, securities or other property. Putting money on interest, either by way of loan, or the purchase of income-producing property. Drake v Crane, 127 Mo 85, 29 SW 990. A note, bond, or share of stock purchased for income.

#### Investment requires the intent for profitable returns

**Random House Dictionary 2012**

1. the investing of money or capital in order to gain profitable returns, as interest, income, or appreciation in value.

2. a particular instance or mode of investing.

3. a thing invested in, as a business, a quantity of shares of stock, etc.

4. something that is invested; sum invested.

5. the act or fact of investing or state of being invested, as with a garment.

#### Investment requires money for profit

**The People’s Law Dictionary 2012**

(http://dictionary.law.com/Default.aspx?selected=1024)

n. the money put into use for profit, or the property or business interest purchased for profit.

### 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.

#### “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.)

#### “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.

#### 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.

### Excludes Loan Guarantees

#### Investment is distinct from loan guarantees – direct investment means the government has a share

LAI & SOUMARE 09 both are Faculty of Business Administration, Department of Finance and Insurance, Quebec - Laval University, [Van Son Lai and Issouf Soumare, “An Analysis of Government Loan Guarantees and Direct Investment through Public-Private Partnerships,” 4-3-9, <http://www.efmaefm.org/0EFMAMEETINGS/EFMA%20ANNUAL%20MEETINGS/2009-milan/EFMA2009_0368_fullpaper.pdf>]

This paper compares two forms of government support: loan guarantee and direct investment through public-private partnerships (PPPs). With loan guarantee, government provides financial guarantees to enhance project creditworthiness. With direct investment, government invests capital in return for shares in the project. We find that loan guarantees are more effective in reducing project borrowing costs. In an informationally asymmetric environment, where the government knows less about project quality than do private partners, in other words the so-called plum problem rather than the familiar lemon problem, the project sponsors should seek a loan guarantee from the government, unless they are willing to give up control over the project. We show how the portion of shares given to the government can be a bargaining tool and can mitigate information asymmetry when structuring PPPs.

**Loan guarantees are not investment**

US Tax Court 2004 [UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT,“Donald G. Oren; Beverly J. Oren, Appellants, v. Commissioner of Internal Revenue, Appellee,” 2-12-04, lexis]

Oren's loans were not actual economic outlays. He was in the same position after the transactions as before; he was not materially poorer afterwards. The transactions much more closely resemble offsetting book entries or **loan guarantees** than substantive **investments** in HL and HS.

**Loan guarantees aren’t investment**

Miller 1985 [Philip R., Judge “CELANESE CORPORATION and Consolidated Subsidiaries, Plaintiff, v. The UNITED STATES, Defendant,” UNITED STATES CLAIMS COURT, 6-3-85, lexis]

From the time of the acquisition in 1965 until the end of 1968, Celanese made capital contributions to SIACE (through Radio Hill) totalling $16.9 million, while SIACE's minority shareholders contributed $0.8 million. At the end of 1968, SIACE owed short-term debt of $43 million and long-term debt of approximately $30 million. Celanese chose to make additional funds available to SIACE through **loan guarantees** rather than **investment** because guarantees directly benefited the lenders whereas capital contributions were available to general creditors, and because Celanese's ability to make capital contributions was severely restricted by Executive Order 11,387 and regulations of the U.S. Office of Foreign Direct 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.

### No Clear Definition

#### No clean definition of investment – faulty to make a decision

I T P 12 International Transport Forum, INTERNATIONAL WORKSHOP ON MEASURING INVESTMENT IN TRANSPORT INFRASTRUCTURE, 9-10 February 2012, Location: IEA-9 rue de la Fédération 75015 Paris (room 2), http://www.internationaltransportforum.org/Proceedings/InfrastructureInv/Investment%20workshop%20programme.pdf

Background

Infrastructure investments are a key determinant of performance in the transport sector. However, the sector lacks standardised definitions and methods for measuring investment – and a fortiori assets. The increasing mix of public and private investors and operators in the transport sector adds to the complexity of measuring investments and outcomes. Transport infrastructure has to be maintained and measurement of maintenance costs and outcomes differs widely across modes and countries. Subsidies complicate measurement further. They provide additional resources but are not necessarily defined as investments. The lack of clear definitions and common practices hinders meaningful analysis and comparison, and this may lead to inaccuracy in decision making.

#### infrastructure investment in the United States.

## Substantially Increase

### Substantially = Percentages

#### Substantial is twenty percent

**Words & Phrases 1960**

"Substantial" number of tenants engaged In production of goods for commerce means that at least 20 per cent. of building be occupied by tenants so engaged. Ullo v. Smith, D.C.N.Y., 62 F.Supp. 757, 760.

#### It’s 90%

**Words & Phrases 2000**

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.

### Substantial = 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.

### 58 Billion a year now

#### The U.S. invests $58 billion in transportation infrastructure a year

American Road & Transportation Builders Association **2012** (FAQs, p. <http://www.artba.org/about/faqs-transportation-general-public/faqs/#7>)

HOW MUCH DOES THE FEDERAL GOVERNMENT INVEST IN TRANSPORTATION IMPROVEMENTS EACH YEAR? The federal government invested $58 billion in transportation improvements through the core federal transportation improvement programs during FY 2011, which began October 1, 2010 and ended September 30, 2011. This was the same amount of funding as was provided during FY 2010. Federal investment in highway improvements in FY 2011 included $41.8 billion through the core highway program, the same as during FY 2010. Most federal highway investment is used to upgrade and maintain the nation's core highways, including the Interstate Highway System, and to repair and replace deficient bridges. For public transportation, the federal government invested $10.3 billion during FY 2011, also the same as during FY 2010. Federal public transportation program funds are used to build and upgrade rail mass transit systems in major cities and to purchase and upgrade buses and facilities of local transit agencies. The federal government’s investment in airport improvements in FY 2011 included $3.51 billion through the core Airport Improvement Program, also unchanged from FY 2010. Airport improvement funds are used to build and upgrade airport runways, taxiways and other ground facilities. The federal government also finances the air traffic control system and helps airports pay for equipment upgrades. Most of the $9 billion annual construction work on railroads is privately-financed by the nation's railroad companies. The federal government, however, provides an annual appropriation, of just under $1.5 billion in FT 2011, for capital improvements to Amtrak as well as to help cover operating expenses. In addition to the above amounts, Congress provided $527 million in FY 2011 for the Transportation Investment Generating Economic Recovery (TIGER) program under which state and local governments can apply for grants that can be used for highway, transit or railway improvements.

### Quantitative bad

#### Investments cannot be simply measured and added --- they are too complicated

**Guerrero**, 7/23/**2001** (Peter – director of Physical Infrastructure Issues at the United States General Accounting Office, U.S. Infrastructure: Funding Trends and Federal Agencies’ Investment Estimates, p. 14)

Overall Comments About the Estimates Some perspective is called for in reviewing the investment estimates by the seven agencies. First, the investment estimates encompass major areas of public infrastructure, but they cannot be easily compared or simply “added up” to produce a national estimate of all infrastructure investment needs because they were developed using different methods and were for different time periods. A fundamental reason that the estimates were prepared differently and lack comparability is that they are developed and used for different purposes. Some agencies use the information to determine the financial resources needed to manage and/or repair their own assets, while other agencies develop estimates at the request of the Congress to provide general information to decisionmakers or to help direct federal funding to states, localities, and other parties.

### Increase = Baseline

#### Increase requires a net increase over the status quo

Judge **Rogers**, June 24, **2005**, US Court of Appeals for the DC Circuit, State of New York, et al., Petitioners v. US Environmental Protection Agency, 367 U.S. App. D.C. 3; 413 F.3d 3, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, p. Lexis

[\*\*48] Statutory Interpretation. HN16Go to the description of this Headnote.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). 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); Bluewater Network, 370 F.3d at 13; 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). 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.

### Excludes Creation

#### Increase requires making an already program greater --- the Aff creates something new

**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).

#### 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.

## Impact Level Stuff

### Broad Definitions Bad

#### Broad definitions can include people

FULMER 09 Senior Investment Analyst with Tortoise Capital Advisors, headquartered in suburban Kansas City, Kansas

[Jeff Fulmer, What in the world is infrastructure?, http://www.tortoiseadvisors.com/documents/Infrastructure\_Investor.pdf]

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.

Some sample definitions include:

The infrastructure supporting human activities includes complex and interrelated physical, social, ecological, economic, and technological systems such as transportation and energy production and distribution; water resources management; waste management; facilities supporting urban and rural communities; communications; sustainable resources development; and environmental protection (American Society of Civil Engineers, 2009). The essential facilities and services that the economic productivity of a community or organisation depends on. As a real return asset class, infrastructure includes those assets that are involved in the movement of goods, people, water, and energy (Weisdorf, 2007).

Infrastructure assets are the physical structures, facilities, and networks that provide essential services to the public. These assets include transportation structures (roads, bridges, tunnels, railways, airports, and seaports), energy and utility companies, communication entities, and social services such as educational facilities and hospitals (Chambers, 2007). Certain definitions have been so broad as to include people as infrastructure. Reimut Jochimesen’s 1966 book, Theorie der Infrastruktur, Grundlagen der marktwirtschaftlichen Entwicklung, focused on infrastructure’s role in the development of a market economy. He defines infrastructure as the sum of the material, institutional, and personal foundations of an economy that contribute to realising the assimilation of factor remuneration, given an expedient allocation of resources. Jochimesen uses the term “personal infrastructure” to encompass the number and qualities of people in the market economy.

A practical definition of infrastructure is sought that satisfies standard uses of the term by integrating the common themes of systems, physical assets, and societal needs. Additionally, a listing of primary infrastructure components is thought useful in assisting infrastructure related discussions.

#### Broad definitions bad

FULMER 09 Senior Investment Analyst with Tortoise Capital Advisors, headquartered in suburban Kansas City, Kansas

[Jeff Fulmer, What in the world is infrastructure?, http://www.tortoiseadvisors.com/documents/Infrastructure\_Investor.pdf]

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.” ¥

### Limits Good - debate

#### Limits are key to research and 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.

### Limits Good – creativity

#### Working within limits boosts creativity. Its easy to be creative if you ignore rules

FLOOD 10 BS in Communication and Theatre Arts, School Board Member, and Advertising Agent – St. Joseph’s College [Scott Flood, “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.

### Precision Good

#### Precise limits is the only way to achieve consistency and prevents deviation

**Ehrlich and Posner 74** (Issac, Assistant Professor of Business Economics, University of Chicago, and Richard A., Professor of Law, University of Chicago, “An Economic Analysis of Legal Rulemaking,” : The Journal of Legal Studies, Vol. 3, No. 1 (Jan., 1974), pp. 257-286)

It does this by increasing the (subjective) probabilities that the undesirable activity is punishable and that the desirable is not. The cost of an activity includes any expected punishment costs. The expected punishment cost of engaging in an activity is the product of (1) the subjective probability of the participant's being apprehended and convicted and (2) the cost to him of the penalty that will be imposed if he is convicted. The probability of apprehension and conviction, in turn, is the product of (1) the probability that the activity in which the person is engaged will be deemed illegal and (2) the probability that, if so, he will be charged and convicted for his participation in it. **The more** (efficiently) **precise and detailed the** applicable substantive **standard or rule is**, the higher is the probability that the activity will be deemed illegal if it is in fact undesirable (the kind of activity the legislature wanted to prevent) and the lower is the probability that the activity will be deemed illegal if it is in fact desirable. Thus the expected punishment cost of undesirable activity is increased and that of desirable activity reduced. Although this conclusion is independent of individuals' attitudes toward risk, its implications are particularly striking under certain plausible assumptions about those attitudes. Suppose that most people who engage in socially undesirable activities (criminals, tortfeasors, and other violators) are risk preferring while most people who engage in socially desirable activities are risk averse. Then **an increase in specificity**, by reducing the variance in outcomes associated with engaging in a particular activity, would tend to have a disproportionately deterrent effect on undesirable activity and a disproportionately encouraging effect on desirable activity. This is because people who like risk may invest in risky activities resources greater than the expected gain, while people who dislike risk may invest in the avoidance of risky activities resources greater than the expected cost of these activities, and the elimination of risk discourages both kinds of investment.

### Prefer Professionals

#### Transportation is hard to define --- only clear communication on the definition as roads, bridges, rail lines and runways can create clarity

**Regenold**, August **2005** (Michele – Center for Transportation Research and Education, Workforce Recruitment Dilemma: Defining Transportation and Transportation Careers, Mid-Continent Transportation Research Symposium, p. 2)

When high school and college students hear the term “transportation,” what comes to mind? Moving goods and people? Driving somewhere? Maybe taking a plane? What generally does not come to mind is the transportation infrastructure—the roads and bridges, rail lines and runways. These elements are invisible to them. Transportation can be a vague, even misleading, word, so it’s not surprising that workforce development efforts, especially those targeting children, avoid the term. The concept of transportation careers is nearly as ambiguous. What job titles does that term encompass? In the Des Moines Register’s help-wanted ads, for example, one category of jobs is “Automotive/Transportation.” The majority of the jobs advertised in this section is usually truck drivers. While moving goods across the country is important and necessary work, it does not reflect the breadth of the transportation career field. Misperceptions about transportation careers compound the recruiting problem. Yet the field of transportation is a great industry for people looking for long-term work. According to the National LTAP (Local Technical Assistance Program) Association, nearly half of the current transportation workforce may retire by 2010. The U.S. is beginning to experience a serious worker shortage at all skill and education levels. Attracting young people to transportation careers, particularly careers related to the transportation infrastructure, has become critical. But designing, developing, and maintaining the infrastructure can be an invisible function to young people and to their parents, teachers, and guidance counselors. Even when the work is visible, as in the case of road work zones, high school students (and most adults, for that matter) have no idea what kind of work and planning is done before and after that work zone goes up. There is a fundamental communication gap between transportation professionals and laypeople about the work that goes on to keep this country moving. Because of this communication gap, recruiting young people into professional and non-professional careers in transportation can be particularly challenging.

## Other Words

### 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 thinsp [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.

### 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)

1. indicating generic class: used to refer to a person or thing considered generically or universally  
   bullettransExercise is good for the heart.  
   bullettransShe played the violin.  
   bullettransThe dog is a loyal pet.

### United States

#### “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

### 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

#### "Federal Government" means the national government, not the 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

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

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

the government of the United States of America

#### “Federal” means the political unit created by the states, not the states themselves

**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.

#### “Federal” is the central government not the states

**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.

#### “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.”

### Should – Desirable

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

**Atlas Collaboration 99** (“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” 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.

### Its – Solely U.S.

#### ‘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 the U.S.

**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 --- its 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

### In – Within the Limits

#### “In” indicates within a place or limits

**Random House Dictionary 2012**

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.

#### “In” indicates a position within the limits or boundaries

**Merriam-Webster Dictionary 2012** (http://www.merriam-webster.com/dictionary/in)

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>

b : into 1 <went in the house>