**Topicality**



[Resolution 2](#_Toc394223032)

[Topicality Substantially 3](#_Toc394223033)

[1NC - Substantially 4](#_Toc394223034)

[2NCs Substantially 5](#_Toc394223035)

[Overview --- 2NC 6](#_Toc394223036)

[Not Substantial = Not Investment---2NC 8](#_Toc394223037)

[Context Key---2NC 9](#_Toc394223038)

[AT Dictionaries---2NC 10](#_Toc394223039)

[AT Without Material Quals---2NC 12](#_Toc394223040)

[AT Qualitative---2NC 13](#_Toc394223041)

[AT Arbitrary---2NC 14](#_Toc394223042)

[Substantially Definitions 16](#_Toc394223043)

[Percentages 17](#_Toc394223044)

[Meaning depends on context 19](#_Toc394223045)

[Ocean development - Substantial 20](#_Toc394223046)

[Definitions of substantial apply 23](#_Toc394223047)

[Without exception 24](#_Toc394223048)

[Not all, essential, main, real, durable 25](#_Toc394223049)

[Important, considerable, large 27](#_Toc394223050)

[Not set amount 30](#_Toc394223051)

[Other Violations 32](#_Toc394223052)

[1NC – create is not an increase 33](#_Toc394223053)

[1NC- environmental protection not increase 34](#_Toc394223054)

[GENERIC BLOCKS 36](#_Toc394223055)

[Aff Generic Ans 37](#_Toc394223056)

[Limits Bad---2AC 38](#_Toc394223057)

[Limits Bad---AT Rowland---2NC 39](#_Toc394223058)

[Neg Generic Blocks 40](#_Toc394223059)

[AT Aff Flexibility---2NC 41](#_Toc394223060)

[AT Framer’s Intent---2NC 45](#_Toc394223061)

[AT Potential Abuse =/= VI---2NC 46](#_Toc394223062)

[AT K of T---2NC 47](#_Toc394223063)

[AT Reasonability---2NC 49](#_Toc394223064)

### Resolution

#### Resolved: The United States federal government should substantially increase its non-military exploration and/or development of the Earth’s oceans

# Topicality Substantially

### 1NC - Substantially

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

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

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

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

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

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

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

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

#### Voting issue ---

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

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

## 2NCs Substantially

### Overview --- 2NC

#### Limits outweigh – they’re the vital access point for any theory impact---huge research burdens mean we can’t prepare to compete---big topics cause hyper-generics, lack of clash, and shallow debate---this destroys debate’s ability to teach us to become effective advocates because a prerequisite to learning effective advocacy skills is being trained to defend your proposals against a well-prepared opponent---and it destroys participation

**Rowland 84** Robert C., Debate Coach – Baylor University, “Topic Selection in Debate”, American Forensics in Perspective, Ed. Parson, p. 53-54

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called “NDT” programs, are diminishing in scope and size.4 This decline in policy debate is tied, many in the work group believe, to excessively broad topics. The most obvious characteristic of some recent policy debate topics is extreme breath. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. Naitonal debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change.5 The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the breadth of the topics **has all but destroyed novice debate.** Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process.6 Despite this advantage of policy debate, Gaske belives that NDT debate is not the best vehicle for teaching beginners. The problem is that broad policy topics terrify novice debaters, especially those who lack high school debate experience. They are unable to cope with the breadth of the topic and experience “negophobia,”7 the fear of debating negative. As a consequence, the educational advantages associated with teaching novices through policy debate are lost: “Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caugh without evidence or substantive awareness of the issues that confront them at a tournament.”8 The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters or eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that broad topics also discourage experienced debaters from continued participation in policy debate. Here, the claim is that it takes so much times and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are forced out of the activity.9 Gaske notes, that “broad topics discourage participation because of insufficient time to do requisite research.”10 The final effect may be that entire programs either cease functioning or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: “It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate.”11 In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to cancel their programs.

#### Limits are key to education---especially for high schoolers

**SD 9** Science Daily, “Students Benefit From Depth, Rather Than Breadth, In High School Science Courses”, http://www.sciencedaily.com/releases/2009/03/090305131814.htm

A recent study reports that **high school students** who study fewer science topics, but study them in greater depth, have an **advantage in** college science classes over their peers who study more topics and spend less time on each. Robert Tai, associate professor at the University of Virginia's Curry School of Education, worked with Marc S. Schwartz of the University of Texas at Arlington and Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics to conduct the study and produce the report. The study relates the amount of content covered on a particular topic in high school classes with students' performance in college-level science classes. "As a former high school teacher, I always worried about whether it was better to teach less in greater depth or more with no real depth. This study offers evidence that teaching fewer topics in greater depth is a better way to prepare students for success in college science," Tai said. "These results are based on the performance of thousands of college science students from across the United States." The 8,310 students in the study were enrolled in introductory biology, chemistry or physics in randomly selected four-year colleges and universities. Those who spent one month or more studying one major topic in-depth in high school earned higher grades in college science than their peers who studied more topics in the same period of time. The study revealed that students in courses that focused on mastering a particular topic were impacted twice as much as those in courses that touched on every major topic. The study explored differences between science disciplines, teacher decisions about classroom activities, and out-of-class projects and homework. The researchers carefully controlled for differences in student backgrounds. The study also points out that standardized testing, which seeks to measure overall knowledge in an entire discipline, may not capture a student's high level of mastery in a few key science topics. Teachers who "teach to the test" may not be optimizing their students' chance of success in college science courses, Tai noted. "President Obama has challenged the nation to become the most educated in the world by having the largest proportion of college graduates among its citizens in the coming decade," Tai said. "To meet this challenge, it is imperative that we use the research to inform our educational practice." The study was part of the Factors Influencing College Science Success study, funded by the National Science Foundation.

### Not Substantial = Not Investment---2NC

#### investment is financial support for a physical asset, but not for minor remodeling

**DOE 10** US department of Education “Clarifying Guidance on American Recovery and Reinvestment Act of 2009 Section 1512 Quarterly Reporting”, American Recovery and reinvestment Act, www2.ed.gov/policy/gen/.../guidance-1512-quarterly-reporting.doc

For the purposes of Section 1512 reporting, the Department has defined an infrastructure investment as follows. ‘An infrastructure investment is financial support for a physical asset or structure needed for the operation of a larger enterprise. Therefore, infrastructure investments include support for tangible assets or structures such as roads, public buildings (including schools), mass transit systems, water and sewage systems, communication and utility systems and other assets or structures that provide a reliable flow of products and services essential to the defense and economic security of the United States, the smooth functioning of government at all levels, and society as a whole.’ However, **an infrastructure investment does not include “minor remodeling**” as defined in 34 C.F.R. § 77.1(c).

#### Minor remodeling is not investment

**TEA 10** Texas Education Agency “Section 1511 Infrastructure Certification Requirements for the State Fiscal Stabilization Fund (SFSF) and Individuals with Disabilities Education Act Part B (IDEA-B) Grants under the American Recovery and Reinvestment Act of 2009 (ARRA)”

Minor remodeling, which is not an infrastructure investment under the USDE’s definition, “means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs.”

### Context Key---2NC

#### Substantially should be defined by context

**Devinsky 2** Paul, IP UPDATE, VOLUME 5, NO. 11, NOVEMBER 2002, “Is Claim "Substantially" Definite?  Ask Person of Skill in the Art”, http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object\_id/c2c73bdb-9b1a-42bf-a2b7-075812dc0e2d.cfm

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

### AT Dictionaries---2NC

#### Dictionary definitions of substantial are bad—varying and vague

**Jakubowitz 4** David, J.D. Candidate @ St. John's University School of Law, NOTE: "HELP, I'VE FALLEN AND CAN'T GET UP!" NEW YORK'S APPLICATION OF THE SUBSTANTIAL FACTOR TEST, Spring, 2004 18 St. John's J.L. Comm. 593, p. lexis

A. Defining the Word "Substantial" At least one jury actually regretted not sending for a dictionary after their misunderstanding of the word substantial resulted in a plaintiff who was unjustly prohibited from collecting damages. n117 In Moisakis v. Allied Building Products Corp., n118 the plaintiffs sought to recover damages for personal injuries. n119 After the verdict dismissing the complaint was announced, and the jurors were discharged, the plaintiffs' attorney and the jurors conversed. n120 The jurors claimed they were confused by the term "substantial factor." n121 The plaintiff's attorney brought the matter before the judge. n122 After a hearing, the judge, in a very unorthodox procedure, required all of the jurors to return the following week for questioning. n123 The Court asked the jurors if they were confused about anything and one juror responded, ""substantial' threw us off a bit. We thought the question was substantially, meaning 100  [\*616]  percent, but it wasn't that way." n124 The Court then asked all the jurors if they felt the same way. The jurors responded with a resounding "yes," and added that "the word "substantial' threw us off." n125 Juror Number Four ended the questioning session by stating, "the word "substantial' threw us off. We were fighting about the meaning of "substantial.' We should have sent for a dictionary." n126 However, even if the jury had sent for a dictionary it probably **would not have clarified** the meaning of "substantial" within the jury instruction. After all, dictionaries give **varying definitions** of the word "substantial." n127 If the jury had sent for a dictionary this is what they would have seen: Substantial adj 1 a : consisting of, relating to, sharing the nature of, or constituting substance : existing as or in substance : MATERIAL b : not seeming or imaginary : not illusive : REAL, TRUE c : being of moment : IMPORTANT, ESSENTIAL 2 a : adequately or generously nourishing : ABUNDANT, PLENTIFUL b: possessed of goods or an estate : moderately wealthy : WELL-TO-DO; often : having a good and well maintained income producing property c : considerable in amount, value, or worth 3 a : having good substance : firmly or stoutly constructed : STURDY, SOLID, FIRM b : having a solid or firm foundation : soundly based : carrying weight 4 a : being that specified to a large degree or in the main b : of or relating to the main part of something SYN see MASSIVE n128 Hence, the "substantial factor" test could be any one of the following: the "not-imaginary/real factor" test, the "important factor" test, the "generous factor" test, the "solid factor" test, or the "massive factor" test. n129

##### Dictionaries are imprecise—prefer contextual definitions

**Stark 97** Stephen, Lawyer in Cattanooga, “NOTE: KEY WORDS AND TRICKY PHRASES: AN ANALYSIS OF PATENT DRAFTER'S ATTEMPTS TO CIRCUMVENT THE LANGUAGE OF 35 U.S.C. Journal of Intellectual Property Law Fall”, 1997 5 J. Intell. Prop. L. 365

The court noted that "[t]he word 'substantially' tends to become somewhat of a chameleon when it appears in patent claims." n151 Judge McKelvie observed that during prosecution, the word takes on little substance or importance, but upon issuance, the term  [\*390]  "swells up to envelop potentially infringing products or processes." n152 Judge McKelvie further noted the awkward position the court is placed in when interpreting the claims for the jury, especially where a "chameleon" is present within the claims. n153 Upon looking to the ordinary meaning of "substantially" in the dictionary, the court was frustrated by a definition proving to be "**practically useless as a guide to understanding** or decision." n154 In some circumstances, the court suggested that the language in the claims, specification or prosecution history may provide guidance as to how to interpret this language, but the court admitted that the meaning is ambiguous when no guidance is given. n155

#### Dictionaries unlimit

**Stark 97** Stephen, Lawyer in Cattanooga, “NOTE: KEY WORDS AND TRICKY PHRASES: AN ANALYSIS OF PATENT DRAFTER'S ATTEMPTS TO CIRCUMVENT THE LANGUAGE OF 35 U.S.C. Journal of Intellectual Property Law Fall”, 1997 5 J. Intell. Prop. L. 365

In patent law, ambiguity of claim language necessarily results in **uncertainty in the scope** of protection. This uncertainty **impairs all of society**--the patentee, the competitor, and the public. The process of determining a particular meaning to define a term in a patent claim may result in ambiguity. 1. Ordinary Meaning. First, words in a patent are to be given their ordinary meaning unless otherwise defined. n30 However, what if a particular word has multiple meanings? For example, consider the word "substantial." The Webster dictionary gives eleven different definitions of the word substantial. n31 Additionally, there are another two definitions specifically provided for the adverb "substantially." n32 Thus, the "**ordinary meaning" is not clear**. The first definition of the word "substantial" given by the Webster's Dictionary is "of ample or considerable amount, quantity, size, etc." n33 Supposing that this is the precise definition that the drafter had in mind when drafting the patent, the meaning of "ample or considerable amount" appears amorphous. This could have one of at least the following interpretations: (1) almost all, (2) more than half, or (3) barely enough to do the job. Therefore, the use of a term, such as "substantial," which usually has a very ambiguous meaning, makes the scope of protection particularly hard to determine.

### AT Without Material Quals---2NC

#### 1) This interpretation makes every aff not-topical. Only a whole-resolution aff would avoid materially qualifying the type of exploration or development which just creates ambiguity and doesn’t solve our limits claims. Prefer our interpretation, which provides for a reasonable number of affirmatives while maintaining a clear affirmative burden.

#### 2)And that’s out of context of the resolution:

#### “increase” means to become larger or greater in quantity.

**Encarta Online Dictionary 6** "Increase." <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861620741>

in•crease [ in krss ]

transitive and intransitive verb (past and past participle in•creased, present participle in•creas•ing, 3rd person present singular in•creas•es)Definition: make or become larger or greater: to become, or make something become, larger in number, quantity, or degree

noun (plural in•creas•es)

### AT Qualitative---2NC

#### Mixes burdens---they shouldn’t have to concede a link to perception based disads just to prove they’re topical

#### This is arbitrary---whatever’s important to you isn’t important to me. Quantitative is the only non-arbitrary way to determine topicality---“considerable” or “ample” isn’t enough

**Stark 97** Stephen J., “Key Words And Tricky Phrases: An Analysis Of Patent Drafter's Attempts To Circumvent The Language Of 35 U.S.C.”, Journal of Intellectual Property Law, Fall, 5 J. Intell. Prop. L. 365, Lexis

1. Ordinary Meaning. First, words in a patent are to be given their ordinary meaning unless otherwise defined. [30](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_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#n30) However, what if a particular word has multiple meanings? For example, consider the word "substantial." The Webster dictionary gives eleven different definitions of the word substantial. [31](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_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#n31) Additionally, there are another two definitions specifically provided for the adverb "substantially." [32](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_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#n32) Thus, the "ordinary meaning" is not clear. The first definition of the word "substantial" given by the Webster's Dictionary is "of ample or considerable amount, quantity, size, etc." [33](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_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#n33) Supposing that this is the precise definition that the drafter had in mind when drafting the patent, **the meaning of** "ample or **considerable amount" appears amorphous.** This could have one of at least the following interpretations: (1) almost all, (2) more than half, or (3) barely enough to do the job. Therefore, the use of a term, such as "substantial," which usually has a very ambiguous meaning, makes the scope of protection particularly hard to determine.

#### You have to create physical change to be substantial

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

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

#### The etymology of the word is quantitative

**Etymology 10** Word Origin & History; “substantial” Online Etymology Dictionary, http://dictionary.reference.com/browse/substantial

Substantial: mid-14c., "ample, sizeable," from O.Fr. substantiel (13c.), from L. substantialis "having substance or reality, material," from substantia (see substance). Meaning "existing, having real existence" is from late 14c.

### AT Arbitrary---2NC

#### Contextual definitions are key---solves arbitrariness

**Larson 68** Justice for the Supreme Court of Iowa  Supreme Court of Iowa, Opinion in  LAWRENCE J. SMITH, MERRITT E. SKIDMORE, GEORGE G. HENDRICKS, Appellants, v. THE CITY OF FORT DODGE, IOWA, ALBERT HABHAB, Mayor, EDMUND GILLESPIE, Commissioner, and LAWRENCE CROWLEY, Commissioner; JOSEPH E. BROWN and GLENN MACHOVEC, Appellees, 160 N.W.2d 492; 1968 Iowa Sup. LEXIS 905 July 18, 1968, Filed

Apparently this is the first time we have had before us a question as to the meaning of section 373.19. Specifically, we seek the interpretation of the words "substantial amendment" in that section. A careful review of our case law reveals that we have never had occasion [\*\*14]  to define "substantial", but have attempted to define "substantially." See Hardin County v. Wells, 108 Iowa 174, 176, 78 N.W. 908, 909. Webster defines "substantial" as follows: "3. That is of moment; essential; material \* \* \*. 6. That is such in substance or in the main \* \* \*. 10. Of or pertaining to the substance or main part of anything."  [\*498]  Webster's New International Dictionary, Second Edition (1957). It has also been said the word "substantial" is a relative and not exact term subject to a rule of thumb. It is susceptible of different meanings **according to the circumstances** of its use. In considering the word, it must be **examined in its relation and context**, and its meaning gauged by all the **surrounding circumstances**. Busch v. Service Plastics, Inc., D.C., 261 F. Supp. 136, 142; State v. Pahl, 254 Minn. 349, 95 N.W.2d 85, 89. See also 83 C.J.S. Substantial, p. 762; 40 Words and Phrases, p. 493.

#### Contextual definitions of substantial solve arbitrariness

**Tarlow 2k** Barry, Nationally prominent criminal defense lawyer practicing in Los Angeles, CA. He is a frequent author and lecturer on criminal law. He was formerly a prosecutor in the United States Attorney's Office and is a member of The Champion Advisory Board, The Champion January/February, p. lexis

In Victor, the trial court instructed that: "A reasonable doubt is an actual and substantial doubt . . . as distinguished from a doubt arising from mere  [\*64]  possibility, from bare imagination, or from fanciful conjecture." Victor argued on appeal after receiving the death penalty that equating a reasonable doubt with a "substantial doubt" overstated the degree of doubt necessary for acquittal. Although the court agreed that the instruction was problematic given that "substantial," could be defined as "that specified to a large degree," it also ruled that any ambiguity was removed by reading the phrase in the context of the sentence in which it appeared. Finding such an explicit distinction between a substantial doubt and a fanciful conjecture was not present in the Cage instruction, it held that the context makes clear that "substantial" was used in the sense of existence rather than in magnitude of the doubt and, therefore, it was not unconstitutional as applied. Id. at 1250.

#### More evidence

**Devinsky 2** Paul, IP UPDATE, VOLUME 5, NO. 11, NOVEMBER 2002, “Is Claim "Substantially" Definite?  Ask Person of Skill in the Art”, http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object\_id/c2c73bdb-9b1a-42bf-a2b7-075812dc0e2d.cfm

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

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

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

2.8. Legal writers who follow the economic value criterion have generally quantified the term "substantial part" by comparing Article 3(1) CISG (substantial) with Article 3(2) CISG (preponderant): substantial being less than preponderant. In this way, legal writers have used the following percentages to quantify substantial: 15%,[[14]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146" \l "14) between 40% and 50%,[[15]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#15) or more generally 50%.[[16]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#16) At the same time, other authors, although they have not fixed any numbers in regard to the quantification of the term "substantial" have declared that "preponderant" means "considerably more than 50% of the price" or "clearly in excess of 50%".[[17]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#17) Thus it seems that for the latter authors, the quantification of the term "substantial" is placed above the 50% figure. Also, some Courts have followed this approach.[[18]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#18) 2.9. To consider a fixed percentage might be arbitrary due to the fact that the particularities of each case ought to be taken into account; that the scholars are in disagreement; and that the origin of those figures is not clear.[[19]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#19) Therefore, it does not seem to be advisable to quantify the word "substantial" *a priori* in percentages. A case-by-case analysis is preferable and thus it should be determined on the basis of an overall assessment.

## Substantially Definitions

### Percentages

Substantial means at least 20%

Words & Phrases 67 1967, 758

"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.

#### A substantial increase is at least 30%

FOLEY & LARDNER LLP 2004 <http://www.freepatentsonline.com/20060057593.html>

A substantial increase in the amount of a CFTR target segment identified means that the segment has been duplicated while a substantial decrease in the amount of a CFTR target segment identified means that the target segment has been deleted. The term "substantial decrease" or "substantial increase" means a decrease or increase of at least about 30-50%. Thus, deletion of a single CFTR exon would appear in the assay as a signal representing for example of about 50% of the same exon signal from an identically processed sample from an individual with a wildtype CFTR gene. Conversely, amplification of a single exon would appear in the assay as a signal representing for example about 150% of the same exon signal from an identically processed sample from an individual with a wildtype CFTR gene.

#### **Substantially means greater than 50%.**

Statement of Considerations,5 “ADVANCE WAIVER OF THE GOVERNMENT'S U.S. AND FOREIGN PATENT RIGHTS AND ADVANCE APPROVAL TO ASSERT COPYRIGHT RIGHTS UNDER SUBCONTACT B554331 ISSUED BY LAWRENCE LIVERMORE NATIONAL LABORATORY TO INTERNATIONAL BUSINESS MACHINES CORPORATION FOR THE BLUEGENE/P DESIGN ARCHITECTURE, PHASE III - PROTOTYPE HARDWARE BUILDOUT AND BLUEGENE/Q - ADVANCED ARCHITECTURAL INVESTIGATIONS; DOE WAIVER NO. W(A) 05-048”, 2005, <http://www.gc.energy.gov/documents/WA_05_048_INTERNATIONAL_BUSINESS_MACHINES_Waiver_of_the_Gove.pdf>

The Subcontractor agrees to conduct research and development activities under this Subcontract principally in U.S.-based facilities. "Principally" is defined as greater than a ninety (90%) percent level of effort. Subcontractor also agrees that for a period of one (1) year following Subcontract completion, subsequent research and development by the Subcontractor for the purpose of commercializing technologies arising from the intellectual property developed under this Subcontract shall be performed substantially in U.S.-based facilities. "Substantially" is defined as greater than fifty (50%) percent level of effort. The Subcontractor further agrees that any processes and services, or improvements thereof, which shall arise from the intellectual property developed under this Subcontract when implemented outside the U.S., shall not result in a reduction of the Subcontractor's research workforce in the United States. Finally, it is understood between the DOE and the Subcontractor that any subsequent follow-on subcontracts and/or future phases of work under the Government's ASCI Program will be subject to a separate U.S. Competitiveness determination.

#### Substantially is at least 90%

Words and Phrases, 05 (v. 40B, p. 329)

N.H. 1949. The word “substantially” as used in provision of Unemployment Compensation Act that experience rating of an employer may be 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.

#### Substantial is 2%

Word and Phrases 1960

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

### Meaning depends on context

#### Substantially is a relative, depends on context

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

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

#### Meaning of substantial depends on context

Words & Phrases 64 (p.759)

“Substantial” is a relative term, the meaning of which is to be gauged by all the circumstances surrounding the transaction, in reference to which the expression has been used. It imports a considerable amount or value in opposition to that which is inconsequential or small.

#### Substantially should be judged by its field context

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

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

#### Substantially must be given meaning

CJS 83 Corpus Juris Secundum, 1983 , 765.

“Substantially. A relative and elastic term which should be interpreted in accordance with the context in which it isused. While it must be employed with care and discrimination, it must, nevertheless, be given effect.” 48

### Ocean development - Substantial

#### A substantial development is worth atleast $6400

Washington Department of Ecology 13 Department of Ecology, State of Washington 2013

What is "substantial development?" <http://www.ecy.wa.gov/programs/sea/sma/st_guide/administration/substantial_development.html>

Substantial development is defined in RCW 90.58.030(3) (e)

"Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

On September 1, 2007 the substantial development threshold was increased to $5,718. On September 15, 2012 it was increased to $6,416.

#### US ocean economy is over $250 billion per year

Kildow 14 Dr. Judith T. Kildow, et al, Founding Director, The National Ocean Economics Program (NOEP)—currently based at the Center for the Blue Economy—received her PhD in International Relations and Science Policyfrom the Fletcher School at Tufts University. She has taught, performed research, published and spoken widely in the fields of marine policy and ocean economics at MIT, Harvard, USC and other universities. Throughout her career she has served government and the private sector in numerous roles.

State of the U.S. Ocean and Coastal Economies 2014 Center for the Blue Economy at the Monterey Institute of International Studies http://maine.sierraclub.org/NOEP\_National\_Report\_2014.pdf

In 2010 the ocean economy comprised over 2.7 million jobs and contributed over $258 billion to the GDP of the United States. The largest sector by both employment and GDP is the Tourism & Recreation sector, accounting for 1.9 million jobs and $89 billion in economic output. (Table ES.2).

#### The US ocean economy is about $258 billion annually

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State of the U.S. Ocean and Coastal Economies 2014 Center for the Blue Economy at the Monterey Institute of International Studies http://maine.sierraclub.org/NOEP\_National\_Report\_2014.pdf

In 2010, the ocean economy comprised over 2.7 million jobs and contributed over $258 billion ( 1.8 %) to the GDP of the United States (Table 3.2). The largest sector by both employment and GDP is the Tourism & Recreation sector; however, there are large and important differences among the sectors in terms of their contributions to the economy.

3.2. The National Ocean Economy

Table 3.2. Ocean economy by sector, 2010

Sector Employment GDP

(Billions of Dollars)

Construction 46,390 $5.51

Living Resources 59,354 $6.02

Minerals 143,995 $87.37

Ship & Boat Building 144,066 $10.84

Tourism & Recreation 1,931,746 $89.25

Transportation 443,934 $58.73

Total 2,770,000 $258.

#### Ocean economy is ocean industry goods and services

Kildow 14 Dr. Judith T. Kildow, et al, Founding Director, The National Ocean Economics Program (NOEP)—currently based at the Center for the Blue Economy—received her PhD in International Relations and Science Policyfrom the Fletcher School at Tufts University. She has taught, performed research, published and spoken widely in the fields of marine policy and ocean economics at MIT, Harvard, USC and other universities. Throughout her career she has served government and the private sector in numerous roles.

State of the U.S. Ocean and Coastal Economies 2014 Center for the Blue Economy at the Monterey Institute of International Studies http://maine.sierraclub.org/NOEP\_National\_Report\_2014.pdf

Ocean Economy The concept of the ocean economy derives from the ocean (or Great Lakes) and its resources being a direct or indirect input of goods and/or services to an economic activity: a) an industry whose definition explicitly ties the activity to the ocean, or b) which is partially related to the ocean and is located in a shore-adjacent zip code. This is defined in part by the definition of an industry in the North Ameri- can Industrial Classification System1 (for example, deep sea freight transportation) and partly by geographic loca- tion (for example, a hotel in a coastal town).

#### World ocean economy is about $3trillion

UNDP 14 United Nations Development Programme, Water and Ocean Governance 2014

<http://www.undp.org/content/undp/en/home/ourwork/environmentandenergy/focus_areas/water_and_ocean_governance.html>

Globally, the market value of marine and coastal resources and industries is estimated at $3 trillion per year or about 5% of global GDP, and an estimated 63% of global ‘ecosystems services’ are provided by marine and coastal systems. As much as 40% of the world oceans are considered as ‘heavily affected’ by human activities, including pollution, depleted fisheries, loss of coastal habitats such as coral reefs, mangroves and seagrasses, and by aquatic invasive species.

### Definitions of substantial apply

#### Definitions of substantial apply – substantially is in a substantial manner

Watson 2k James L Watson, Senior Judge, UNITED STATES COURT OF INTERNATIONAL TRADE, May 23, <http://www.cit.uscourts.gov/SlipOpinions/Slip_op00/00-57.pdf>, CMR)

In T.D. 92-108, Customs notes: “[n]one of the definitions [submitted to Customs] actually quantify ‘substantial.’ It is always expressed in other terms which clearly convey the meaning. Certainly, a 40% encirclement is a substantial encirclement of the perimeter of the shoe in that it conforms exactly to the dictionary definitions of ‘substantial’ by being ample, considerable in quantity, significantly large and largely, but not wholly that which is specified.” 26 Cust. Bull. at 366. When the term “substantially” is used as an adverb preceding a verb, the term means “in a substantial manner: so as to be substantial.” Webster’s Third New International Dictionary of the English Language Unabridged (1968).

### Without exception

#### Substantially means without material qualification

Black’s Law Dictionary 90(Black’s Law Dictionary, 1990, 6th Ed., p. 1428–29)

Substantially. Essentially; without material qualification; in the main; in substance; materially; in a substantial manner. About, actually, competently, and essentially. Gilmore v. Red Top Cab Co. of Washington, 171 Wash. 346, 17 P.2d 886, 887.

#### Substantially means across the board

Anderson et al 5 Brian Anderson, Becky Collins, Barbara Van Haren & Nissan Bar-Lev, *Wisconsin Council of Administrators of Special Services* (*WCASS*) Committee Members. 2005 WCASS Research / Special Projects Committee\* Report on: A Conceptual Framework for Developing a 504 School District Policy http://www.specialed.us/issues-504policy/504.htm#committee

The issue “Does it substantially limit the major life activity?” was clarified by the US Supreme Court decision on January 8th, 2002 , “Toyota v. Williams”. In this labor related case, the Supreme Court noted that to meet the “substantially limit” definition, the disability must occur across the board in multiple environments, not only in one environment or one setting. The implications for school related 504 eligibility decisions are clear: The disability in question must be manifested in all facets of the student’s life, not only in school.

#### Substantially refers to a full class or a broad range over different classes

O'Connor 2 Justice O’Connor delivered the opinion of the Court. SUPREME COURT OF THE UNITED STATES No. 00—1089 TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC., PETITIONER v. ELLA WILLIAMS ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT [January 8, 2002] <http://www.law.cornell.edu/supct/html/00-1089.ZO.html>

The Court of Appeals relied on our opinion in Sutton v. United Air Lines, Inc., for the idea that a “class” of manual activities must be implicated for an impairment to substantially limit the major life activity of performing manual tasks. 224 F.3d, at 843. But Sutton said only that “[w]hen the major life activity under consideration is that of working, the statutory phrase ‘substantially limits’ requires … that plaintiffs allege that they are unable to work in a broad class of jobs.” 527 U.S., at 491 (emphasis added). Because of the conceptual difficulties inherent in the argument that working could be a major life activity, we have been hesitant to hold as much, and we need not decide this difficult question today. In Sutton, we noted that even assuming that working is a major life activity, a claimant would be required to show an inability to work in a “broad range of jobs,” rather than a specific job. Id., at 492. But Sutton did not suggest that a class-based analysis should be applied to any major life activity other than working. Nor do the EEOC regulations. In defining “substantially limits,” the EEOC regulations only mention the “class” concept in the context of the major life activity of working. 29 CFR § 1630.2(j)(3) (2001) (“With respect to the major life activity of working[,] [t]he term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities”). Nothing in the text of the Act, our previous opinions, or the regulations suggests that a class-based framework should apply outside the context of the major life activity of working.

### Not all, essential, main, real, durable

#### Substantially does not mean all

Justice Berdon, 8-24-99, Supreme Court of Connecticut, 250 Conn. 334; 736 A.2d 824; 1999 Conn. LEXIS 303

In addition, the plain meaning of "substantially" does not support the defendant's arguments. Black's Law Dictionary (6th Ed. 1990) defines "substantially" as "essentially; without material qualification; in the main . . . in a substantial manner." Likewise, "substantial" is defined as, "of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. . . . Synonymous with material." (Citations omitted.) Id. Thus, the requirement of a "substantial" association creates a threshold far below the exclusive or complete association argued by the defendant.

#### Substantially means the essential

Words & Phrases, 64, 818.

“The word ‘substantially,’ in Code, § 1246, subd. 7, providing that certificates of the examination of married women should be

substantially according to a form prescribed in the statute, is used ‘as it often is, in the sense of comprehending the form given; all that is necessary or essential.’ Lineberger v.Tidwell, 10 S.E. 75 8, 761, 104 N.C. 506.”

#### Substantially means the essential part

Words & Phrases, 64, 818.

“‘Substantially’ means in substance; in the main; essentially; by including the material or essential part. Town of Checotah v.

Town of Eufaula, 119 P. 1014, 1019, 31 Okl. 85; Vannest v. Murphy, 112 N.W. 236, 238, 135 Iowa, 123. See, also, Electric Candy

Mach. Co. v. Morris, 156 F. 972, 974; Elsfeld v. Kenworth, 50 Iowa, 389, 390.”

#### Substantial means the main or most important

Cambridge Advanced Learner's Dictionary, 2004 <http://dictionary.cambridge.org/define.asp?key=79480&dict=CALD>

substantial (GENERAL) [Show phonetics] adjective [before noun] FORMAL relating to the main or most important things being considered: The committee were in substantial agreement (= agreed about most of the things discussed).

#### "Substantial" means in the main

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

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

Ballantine’s Law Dictionary (3rd edition, 1969 , p. 1232)

Substantially . In the main. Essentially.

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

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

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

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

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

Substantial - having substance; considerable

Substantially means in substance

Words & Phrases, 64, 818.

“‘Substantially’ means in substance; in the main; essentially; by including the material or essential part. Town of Checotah v.

Town of Eufaula, 119 P. 1014, 1019, 31 Okl. 85; Vannest v. Murphy, 112 N.W. 236, 238, 135 Iowa, 123. See, also, Electric Candy

Mach. Co. v. Morris, 156 F. 972, 974; Elsfeld v. Kenworth, 50 Iowa, 389, 390.”

#### “Substantially” means durable

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

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

### Important, considerable, large

#### Substantial means important

Christine Lindberg, 2007 (Managing Editor), OXFORD COLLEGEDICTIONARY, 2nd

Ed., 07, 1369. (NY: Sparks Publishing) Substantial: Important in material or social terms

#### Substantial means considerable in importance

THE AMERICAN HERITAGE DICTIONAR OF THE ENGLISHLANGUAGE, 4th Editon, 20

06, 1727.

Substantial: Considerable in importance,value, degree, amount, or extent: won by a substantial margin.

#### Substantial means considerable

Words & Phrases, 7

WORDS AND PHRASES CUMULATIVE SUPPLEMENTARY PAMPHLET,2007, Vol. 40B, 07, 95.

The term “substantially” in the ADA means considerable or to a large degree. Heiko v. Colombo Savings Bank.

#### Substantial means of considerable value

Michael Agnes, 2006 (Editor-In-Chief), WEBSTER’S NEW WORLD COLLEGEDICITONARY, 4TH EDITION, 06, 1428. (Cleveland, OH: Wiley)

Subsantial: of considerable worth or value.

#### "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 Large

Michael Agnes, 2006 (Editor-In-Chief), WEBSTER’S NEW WORLD COLLEGEDICITONARY, 4TH

EDITION, 06, 1428. (Cleveland, OH: Wiley)

Subsantial:considerable; ample; large.

#### Substantially means to a great or significant extent:

Christine Lindberg, 2007 (Managing Editor), OXFORD COLLEGEDICTIONARY, 2

ndEd., 07, 1369. (NY: Sparks Publishing)

Substantially: to a greator significant extent.

#### Substantial means of considerable size

Christine Lindberg, 2007(Managing Editor), OXFORD COLLEGEDICTIONARY, 2 ndEd., 07, 1369. (NY: Sparks Publishing)

Substantial: of considerable importance; size; or worth

#### Substantially means to a great extent

Wordnet, 03 (Princeton University, version 2.0, <http://dictionary.reference.com/browse/substantially>)

substantiallyadv 1: to a great extent or degree; "I'm afraid the film was well over budget"; "painting the room white made it seem considerably (or substantially) larger"; "the house has fallen considerably in value"; "the price went up substantially" [syn: [well](http://dictionary.reference.com/search?q=well), [considerably](http://dictionary.reference.com/search?q=considerably)] 2: in a strong substantial way; "the house was substantially built"

#### Substantially increase means by a large amount

NRC 3 (Office of Nuclear Material Safety and Safeguards Policy and Procedures, April 2003,) <http://www.fontana.org/main/dev_serv/planning/ventana_eir/appendix_e.pdf>

“Substantial increase” means “important or significant in a large amount, extent, or degree,” and not resulting in insignificant or small benefit to the public health and safety, common defense and security, or the environment, regardless of costs. However, this standard is not intended to be interpreted in a way that would result in disapproval of worthwhile safety or security improvements with justifiable costs.2

#### “Substantial” means 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)

#### Something must pass a certain point to be a substantial increase

Markely 09 (P.J., Judge for the Michigan Court of Appeals, “People of the Sate of Michgan Plaintiff-Appellee V. Robert Alan McReynolds Defendant-Apellant, “June 30, 2009 <http://coa.courts.mi.gov/documents/OPINIONS/FINAL/COA/20090630_C282582_51_282582.OPN.PDF>)

In MCL 777.37(1)(a), “sadism” is grouped with “torture,” “excessive brutality,” and “conduct designed to substantially increase the fear and anxiety a victim suffered during the offense.” The inclusion of the adjective “excessive” in “excessive brutality” is noteworthy. “Excessive” means going beyond the usual, necessary, or proper limit or degree; characterized by excess.” Random House Webster’s College Dictionary (1997). Thus, “excessive brutality” -3- implies that there may be brutality in the commission of a crime, but the variable is scored for brutality that is “beyond the usual” occurring in the commission of the crime. Similarly, in the phrase, “conduct designed to substantially increase the fear and anxiety a victim suffered during the offense,” the inclusion of the words “substantially increase” is noteworthy. The phrasing implicitly recognizes that there is a baseline level of fear and anxiety a victim suffers during an offense, and the scoring of the variable is appropriate for conduct that is designed to substantially increase that level. This phrasing also suggests that the Legislature intended the scoring to be based on conduct beyond that necessary to commit the offense. The context of the term “sadism” with other terms that contemplate conduct beyond that necessary to commit the offense suggests that the conduct that forms the basis of sadism is conduct that is in addition to that necessary to commit the offense. Thus, “sadism” denotes conduct that exceeds that which is inherent in the commission of the offense.

### Not set amount

#### Substantial means “of considerable amount” --- not some predetermined amount

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

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

#### Substantially cannot be determined by percentage tests

Leo ‘8 (Kevin Leo\*\* J.D. Candidate, Spring 2008, Hastings College of the Law. Hastings Business Law Journal Spring, 2008 4 Hastings Bus. L.J. 297 LEXIS)

In contrast, the court in Haswell v. United States held that spending over sixteen percent of an organization's time on lobbying was substantial. [n83](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?tokenKey=rsh-20.156249.8509902761&target=results_DocumentContent&reloadEntirePage=true&rand=1253667274610&returnToKey=20_T7405211855&parent=docview) The court found that applying a strict percentage test to determine whether activities are substantial would be inappropriate, since  [\*308]  such a test "obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances in the context of the totality of the organization." [n84](http://www.lexisnexis.com.www2.lib.ku.edu:2048/us/lnacademic/frame.do?tokenKey=rsh-20.156249.8509902761&target=results_DocumentContent&reloadEntirePage=true&rand=1253667274610&returnToKey=20_T7405211855&parent=docview)

#### Defining substantial as “considerable” is ambiguous

Stark 97 (Stephen J., “Key Words And Tricky Phrases: An Analysis Of Patent Drafter's Attempts To Circumvent The Language Of 35 U.S.C.”, Journal of Intellectual Property Law, Fall, 5 J. Intell. Prop. L. 365, Lexis)

1. Ordinary Meaning. First, words in a patent are to be given their ordinary meaning unless otherwise defined. [30](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_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#n30) However, what if a particular word has multiple meanings? For example, consider the word "substantial." The Webster dictionary gives eleven different definitions of the word substantial. [31](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_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#n31) Additionally, there are another two definitions specifically provided for the adverb "substantially." [32](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_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#n32) Thus, the "ordinary meaning" is not clear. The first definition of the word "substantial" given by the Webster's Dictionary is "of ample or considerable amount, quantity, size, etc." [33](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_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#n33) Supposing that this is the precise definition that the drafter had in mind when drafting the patent, the meaning of "ample or considerable amount" appears amorphous. This could have one of at least the following interpretations: (1) almost all, (2) more than half, or (3) barely enough to do the job. Therefore, the use of a term, such as "substantial," which usually has a very ambiguous meaning, makes the scope of protection particularly hard to determine.

#### Reasonability is insufficient in defining substantial

Brennan 88 (Justice, Pierce v. Underwood (Supreme Court Decision), 487 U.S. 552, http://socsec.law. cornell.edu/cgi-bin/foliocgi.exe/socsec\_case\_full/query=%5Bjump!3A!27487+u!2Es!2E+552+opinion+n1!2 7%5D/doc/%7B@ 825%7D?)

The underlying problem with the Court's methodology is that it uses words or terms with similar, but not identical, meanings as a substitute standard, rather than as an aid in choosing among the assertedly different meanings of the statutory language. Thus, instead of relying on the legislative history and other tools of interpretation to help resolve the ambiguity in the word "substantial," the Court uses those tools essentially to jettison the phrase crafted by Congress. This point is well illustrated by the Government's position in this case. Not content with the term "substantially justified," the Government asks us to hold that it may avoid fees if its position was "reasonable." Not satisfied even with that substitution, we are asked to hold that a position is "reasonable" if "it has some substance and a fair possibility of success." Brief for Petitioner 13. While each of the Government's successive definitions may not stray too far from the one before, the end product is significantly removed from "substantially justified." I believe that Congress intended the EAJA to do more than award fees where the Government's position was one having no substance, or only a slight possibility of success; I would hope that the Government rarely engages in litigation fitting that definition, and surely not often enough to warrant the $ 100 million in attorney's fees Congress expected to spend over the original EAJA's 5-year life. My view that "substantially justified" means more than merely reasonable, aside from conforming to the words Congress actually chose, is bolstered by the EAJA's legislative history. The phrase "substantially justified" was a congressional attempt to fashion a "middle ground" between an earlier, unsuccessful proposal to award fees in all cases in which the Government did not prevail, and the Department of Justice's proposal to award fees only when the Government's position was "arbitrary, frivolous, unreasonable, or groundless." S. Rep., at 2-3. Far from occupying the middle ground, "the test of reasonableness" is firmly encamped near the position espoused by the Justice Department. Moreover, the 1985 House Committee Report pertaining to the EAJA's reenactment expressly states that "substantially justified" means more than "mere reasonableness." H. R. Rep. No. 99-120, p. 9 (1985). Although I agree with the Court that this Report is not dispositive, the Committee's unequivocal rejection of a pure "reasonableness" standard in the course of considering the bill reenacting the EAJA is deserving of some weight. Finally, however lopsided the weight of authority in the lower courts over the meaning of "substantially justified" might once have been, lower court opinions are no longer nearly unanimous. The District of Columbia, Third, Eighth, and Federal Circuits have all adopted a standard higher than mere reasonableness, and the Sixth Circuit is considering the question en banc. See Riddle v. Secretary of Health and Human Services, [817 F.2d 1238](http://socsec.law.cornell.edu/cgi-bin/foliocgi.exe/socsec_case_full/query=%5BJUMP:%27817+F%212E2d+1238%27%5D/doc/%7B@1%7D?firsthit) (CA6) (adopting a higher standard), vacated for rehearing en banc, 823 F.2d 164 (1987); Lee v. Johnson, 799 F.2d 31 (CA3 1986); United States v. 1,378.65 Acres of Land, 794 F.2d 1313 (CA8 1986); Gavette v. OPM, 785 F.2d 1568 (CA Fed. 1986) (en banc); Spencer v. NLRB, 229 U. S. App. D. C. 225, 712 F.2d 539 (1983). In sum, the Court's journey from "substantially justified" to "reasonable basis both in law and fact" to "the test of reasonableness" does not crystallize the law, nor is it true to Congress' intent. Instead, it allows the Government to creep the standard towards "having some substance and a fair possibility of success," a position I believe Congress intentionally avoided. In my view, we should hold that the Government can avoid fees only where it makes a clear showing that its position had a solid basis (as opposed to a marginal basis or a not unreasonable basis) in both law and fact. That it may be less "anchored" than "the test of reasonableness," a debatable proposition, is no excuse to abandon the test Congress enacted. [n2](http://socsec.law.cornell.edu/cgi-bin/foliocgi.exe/socsec_case_full/query=%5BJUMP:%27487+U%212ES%212E+552+CONCUR+n2%27%5D/doc/%7B@1%7D?firsthit)

# Other Violations

### 1NC – create is not an increase

#### A. The plan is not an increase – it's creation

#### Increase means make greater

Meriam Webster 13 http://www.merriam-webster.com/dictionary/increase

in·crease verb \in-ˈkrēs, ˈin-ˌ\ in·creasedin·creas·ing Definition of INCREASE intransitive verb 1: to become progressively greater (as in size, amount, number, or intensity) 2: to multiply by the production of young transitive verb 1: to make greater : augment 2 obsolete : enrich

#### The plan creates a whole new area of exploration / development. Increase does not include create

Words and Phrases '59 vol 20A p 381

“Increased,” as used in West’s Ann.Cal. Const. art 12, §11, providing that the stock and bonded indebtedness of corporations shall not be increased without the consent of the person holding the larger amount of the stock, does not include or apply to the first creation of bonded indebtedness. To give it such a meaning would be to inject into the provision the word “create.” Union Loan & Trust Co. v. Southern California Motor Road Co., 51 F 840,850

#### B. Prefer Neg

#### Limits are necessary for negative preparation and clash. Adding to existing efforts provides a finite set of cases. Creation unlimits. There are limitless possibilities.

Swaminathan 3 Dr K V Swaminathan, Waterfalls Institute of Technology Transfer (WITT) February 2003 Ocean Vistas <http://www.witts.org/Ocean_wealth/oceanwealth_01_feb03/wista_oceanwealth_feture.htm>

The oceans cover nearly two-thirds of the world's surface area and have profoundly influenced the course of human development. Indeed the great markers in man’s progress around the world are in a large measure the stages in his efforts to master the oceans. Nations and people who are conscious of the almost limitless potential of the oceans. Those who have sought to comprehend its deep mysteries, processes and rhythms and have made efforts to explore and utilize its resources, stand in the van of progress, while those who have been indifferent to the critical role that oceans play in human life and its development, have remained mired in stagnation and backwardness.

#### C. T is voter because it's necessary for good, well-prepared debating

### 1NC- environmental protection not increase

#### Increase means the plan must mandate more development

#### Increase means make greater

Meriam Webster 13 http://www.merriam-webster.com/dictionary/increase

in·crease verb \in-ˈkrēs, ˈin-ˌ\ in·creasedin·creas·ing Definition of INCREASE intransitive verb 1: to become progressively greater (as in size, amount, number, or intensity) 2: to multiply by the production of young transitive verb 1: to make greater : augment 2 obsolete : enrich

Increase excludes decrease

Words and Phrases 8 vol 20B p 264

U.S. Ct. Cl. 1919 Act March 4, 1909, § 2, 35 Stat. 1065, authorizing the Secretary of the Treasury to "increase" and "fix" compensation of inspectors of customs, as he may think advisable, not to exceed a certain amount, gives no power to decrease compensation: "fix" being controlled by "increase." Cochnower v. United States, 39 S.Ct. 137, 248 U.S. 405, 63 L.Ed. 328, modified 39 S.Ct. 387, 249 U.S. 588, 63 L.Ed. 790 – Cust. Dut. 60.

#### B. Violation – the plan restricts development

#### Ocean development means commercial action, not preservation

Underhill 7 Stefan R. Underhill, United States District Judge. STATE OF CONNECTICUT and ARTHUR J. ROCQUE, JR., COMMISSIONER OF THE CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION, Plaintiffs, v. UNITED STATES DEPARTMENT OF COMMERCE and THE HONORABLE DONALD L. EVANS, IN HIS CAPACITY AS SECRETARY OF COMMERCE, Defendants, ISLANDER EAST PIPELINE COMPANY, LLC, Intervenor Defendant.CIVIL ACTION NO. 3:04cv1271 (SRU) UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT 2007 U.S. Dist. LEXIS 59320 August 15, 2007, Decided lexis

The term "develop" is not defined in the statute, and there is a dearth of case law on the subject. In the "absence of statutory guidance as to the meaning of a particular term, it is appropriate to look to its dictionary definition in order to discern its meaning in a given context." Connecticut v. Clifton Owens, 100 Conn. App. 619, 639, 918 A.2d 1041 (2007). There are various definitions of the term "develop," some of which connote commercial and industrial progress, and some of which imply natural growth. See BLACK'S LAW DICTIONARY 462 (7th ed. 1999); WEBSTER'S NEW COLLEGE DICTIONARY 310 (2d ed. 1995). Having gained no clear answer from the dictionary, words must be given their "plain and ordinary meaning . . . unless the context indicates that a different meaning was intended." Connecticut v. Vickers, 260 Conn. 219, 224, 796 A.2d 502 (2002). [\*19] Here, the plain meaning of the term "develop" includes commercial improvement. Connecticut argues, in effect, that by placing the term "develop" in the context of other terms, such as "preserve, protect, and restore," the definition of "develop" must have a natural, conservationist meaning. That argument is not supported by the legislative history of the CZMA. Congress intended the CZMA to balance conservation of environmental resources with commercial development in the coastal zone. See, e.g., COASTAL AND OCEAN LAW at 229. In fact, in the context of the CZMA, the term "develop" has been defined to mean commercial improvement. Id. ("[T]he CZMA reflects a competing national interest in encouraging development of coastal resources.").See also Conservation Law Foundation v. Watt, 560 F. Supp. 561, 575 (D. Mass. 1983) (noting that the CZMA recognizes a wide range of uses of the coastal zones, including economic development).

#### Sustainable development reduces development

UN 11 UN Conference on Sustainable Development (Rio+20) 2011 An inter-agency paper towards the preparation of the Blueprint for ocean and coastal sustainability [http://www.unesco.org/new/fileadmin/ MULTIMEDIA/HQ/SC/pdf/ interagency\_blue\_paper\_ocean\_rioPlus20.pdf](http://www.unesco.org/new/fileadmin/%20MULTIMEDIA/HQ/SC/pdf/%20interagency_blue_paper_ocean_rioPlus20.pdf)

SIDS expect Rio+20 to provide support for sustainable ocean development and protection of resources. Measures could include actions to reduce fishing overcapacity, to establish MPAs, enhance and support local coastal management efforts, improve wastewater treatment as well as solid waste management and recycling. Significantly, capacity development could take place through SIDS-SIDS partnerships based on the sharing and consolidation of unique SIDS approaches to coastal management; such as the Pacific Locally Managed Marine Areas (LMMA) network, the recognition and transmission of local and indigenous knowledge and customary management of the coastal environment, and community participation in scientific coastal monitoring, management and decision-making as practiced in UNESCO’s Sandwatch programme.

#### C. The affirmative interpretation is bad for debate

#### Limits are necessary for negative preparation and clash. The aff unlimits by making every action topical – both increases in development and decreases in development.

#### D. T is voter because it's necessary for good, well-prepared debating

# GENERIC BLOCKS

## Aff Generic Ans

Also see Aff file

### Limits Bad---2AC

#### Breadth is key to catalyzing in depth education---broad limits solve all their offense

**Colander and McGoldrick 9** Professor of Economics at Middlebury College, Professor of economics at the University of Richmond(David, and Kim Marie, *Liberal Education*, Vol. 95, No. 2 “The Economics Major and Liberal Education,” Spring, <http://www.aacu.org/liberaleducation/le-sp09/le-sp09_economics.cfm>

**The success or failure of a liberal education,** or an undergraduate major, depends far more on how the educational process influences students’ passion for learning than it does on what specifically they learn. A successful liberal education creates a lifelong learner, and classroom instruction **is as much a catalyst for education as it is the education itself**. Because passion for learning carries over to other fields and areas, the catalyst function of education does not depend on content. Academic departments tend to focus on both the need for depth in the field and the need for specialized training as a component of liberal education. The push for depth over breadth by disciplinary scholars is to be expected. Just as a Shakespeare scholar is unlikely to be passionate about teaching freshman composition, a scholar of classical game theory is unlikely to be passionate about teaching general economic principles within the context of an interdisciplinary consideration of broad themes. Because breadth is not usually associated with research passion by disciplinary specialists, and because a college is a collection of disciplinary specialists, breadth often gets shortchanged; it is interpreted as “superficial.” **But in reality, breadth pertains to the nature of the questions asked**. It involves asking questions that are unlikely to have definitive answers—“big-think” questions that ch**allenge the foundations of disciplinary** **analysis**. By contrast, depth involves asking smaller questions that can be answered—“little-think” questions that, too often, **involve an uncritical acceptance of the assumptions upon which research is built.** Questions and areas of study have two dimensions: a research dimension and a teaching dimension. The disciplinary nature of both graduate education and undergraduate college faculties leads to an emphasis on “research questions,” which tend to be narrow and in-depth, and a de-emphasis on “teaching questions,” which tend to involve greater breadth. Economics has its own distinctive set of teaching questions: Is capitalism preferable to socialism? What is the appropriate structure of an economy? Does the market alienate individuals from their true selves? Is consumer sovereignty acceptable? Do statistical significance tests appropriately measure significance? It is worthwhile to teach such “big-think” questions, but because they do not fit the disciplinary research focus of the profession, they tend not to be included in the economics major. This is regrettable, since struggling with “big-think” questions helps provoke a passion for learning in students and, **hence, can be a catalyst for deeper student learning.** It is similarly worthwhile to expose students to longstanding debates within the field.

#### Narrow focus compartmentalizes knowledge -- kills holistic perspective

**Miller 98** Professor of Philosophy George David, *Negotiating toward truth: the extinction of teachers and students*, Google Book, previewed online, January 1998 <http://books.google.com/books?id=I5Yvrv1Rst4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false>

Compartmentalization prevents students from seeing the whole. When students are given only a **focalized view** of reality, then they become more alienated . I would like to expand on this alienation. The alienation arises, on the one hand, from drawing solutions from this compartmentalized solutions that do not work. Education fails to develop holistic perspectives on issues. Secondly, compartmentalized education retards solidarity. We only see our neck of the woods. We don't see how our neck of the woods interacts with other necks of the woods and how the necks of the woods are similar. Compartmentalized learning narrows perspectives.

### Limits Bad---AT Rowland---2NC

#### Limits focus is absurd – prefer the predictable ground we create

**Ryan 4** Associated with policy debate, Diamond McCarthy LLP, Blue Helmet Blues: United Nations Peacekeeping and the United States Editors: Stefan Bauschard & Jean-Paul Lacy Researchers: Adrienne Brovero, Patrick Waldinger, Sam Maurer Patrick Barnes Reviving Reasonability: Affirmative Topicality in the "Negative Age" Andrew B. Ryan BK

\*This evidence is from someone associated with debate BK

Justify Your Catchphrase My old debate partner was fond of saying: “It’s not what you do, it’s what you justify.” I thought that was a bit naïve, but since we won about every time she said it, I suffered quietly. Topicality, to a large extent, is about what each interpretation justifies. More importantly, however, topicality is about the quality of the debate that each interpretation ensures. There are subtle, but significant differences, between these two viewpoints. First, the negative frequently relies on this theory as a scare tactic to intimidate judges into voting for them. “If you vote affirmative, every kind of case could be run.” Well, that’s clearly not true. Defensive arguments are incredibly useful in preventing the limits of interpretations from exploding. For example, if someone says “your affirmative justifies writing UN peacekeeping missions on colored paper”, arguing that the word substantially in the resolution prevents affirmatives from making minor changes would rein in the negative’s wild interpretations. More importantly, speak about the actual outcome of debates under your interpretation. If they say “our interpretation is good because otherwise the affirmative could not-unique our disadvantages,” then explain what would actually happen. For example, explain that there are other disadvantages that they could run which would be unique, or that the disadvantages are as unique as the affirmative is inherent, so arguments about what the status quo is doing cut both ways. Affirmative debaters should remember that when the negative says, “it’s not what you do, but what you justify”, it is always in the negative’s interest to make the category of cases you justify as large and absurd as possible. Rather than join the bandwagon, the affirmative should push for more reasonable interpretations. Second, the statement “what you justify” is too malleable to provide any real guidance. Negatives often prioritize limits as a standard, so they argue the affirmative justifies a broad topic. They use this as a draconian measure to support limited and often unrealistic interpretations. The problem with this theory is that **what you justify is a qualitative, rather than quantitative, standard**. Instead of numbers of cases, affirmatives should talk about the types of cases that are run. For example, anyone who debated last year likely heard the topicality argument that the word “establish” means to ratify a treaty. Negatives then argued if the affirmative plan did not ratify a treaty, it justified any possible change in US ocean policy. What the affirmative justified, negatives would say, is an unlimited topic. But we never heard much about what the negative justified. First, affirmatives forgot to bring their common sense into the debate room. When in the history of etymology has the word establish, standing on its own, meant to ratify a treaty? Why would any judge want to vote on a silly interpretation? **That would justify the negative’s finding absurd definitions, or better yet making up their own, that limit out the affirmative**. Second, if the five cases named would be non-topical by some other standard, then those cases should not be preferred. The goal of topicality is to create predictable, fair, and equitable debate **for both sides**. Judges should not prefer interpretations that make achieving this goal more difficult. Worst of all, when you combine the offense/defense limits paradigm with “what you do is what you justify”, the negative is a walking contradiction that affirmatives never notice. Prioritizing limits over all other goals of topicality justifies arbitrary interpretations. For example, if the negative can interpret a word in a nonsensical way to set a fair limit on the topic, why can’t the affirmatively similarly counter-interpret the topic to where only their affirmative is topical? Both sides lose in this equation because debate must be built on predictable ground: the topic is generated by a general consensus of what words mean, and affirmatives and negatives prepare accordingly. **Predictability is almost always more important than limits in that respect because topicality is about evenly dividing ground for both sides.** Allowing debaters to upset the parity that predictable interpretations generate has no stopping point. The end result is that debaters will mangle the resolution in order to gain a competitive advantage.

## Neg Generic Blocks

### AT Aff Flexibility---2NC

#### Aff flexibility inevitable—finding strategic add-ons, exploration and/or development all solve

#### It’s a slippery slope that destroys the topic—it’s only a justification for reading the smallest, sketchiest affs that unlimits the topic and makes being neg impossible—it makes debate terrible

#### Limits and neg ground outweighs—critical thinking and strategic affs are irrelevant if the neg doesn’t have comprehensive case negs against them—debating core-of-the-topic affs ensures new debates over creative advantage CPs, process CPs, and case-specific disads—key to information processing and being an informed citizen about major issues

#### Limits are key to creative affs---challenging ourselves to innovate within the confines of rules creates far more creative responses than starting with a blank slate

**Mayer 6** – Marissa Ann Mayer, vice-president for search products and user experience at Google, February 13, 2006, “Creativity Loves Constraints,” online: http://www.businessweek.com/print/magazine/content/06\_07/b3971144.htm?chan=gl

When people think about creativity, they think about artistic work -- **unbridled, unguided effort** that leads to beautiful effect. But if you look deeper, you'll find that **some of the most inspiring art forms**, such as haikus, sonatas, and religious paintings, are **fraught with constraints**. They are beautiful **because creativity triumphed over the "rules**." Constraints shape and focus problems and provide **clear challenges to overcome**. **Creativity thrives best when constrained.**

But constraints must be balanced with a healthy disregard for the impossible. Too many curbs can lead to pessimism and despair. Disregarding the bounds of what we know or accept gives rise to ideas that are non-obvious, unconventional, or unexplored. The creativity realized in this **balance** between constraint and disregard for the impossible is fueled by passion and leads to revolutionary change.

A few years ago, I met Paul Beckett, a talented designer who makes sculptural clocks. When I asked him why not do just sculptures, Paul said he **liked the challenge of making something artistically beautiful that also had to perform as a clock**. Framing the task in that way freed his creative force. Paul reflected that he also found it easier to **paint on a canvas that had a mark on it** rather than starting with one that was entirely clean and white. This resonated with me. It is often **easier to direct your energy** when you **start with constrained challenges** (a sculpture that must be a clock) **or constrained possibilities** (a canvas that is marked).

#### Err neg—they get first/last speech, get to pick between theory and substance, and pick the focus of the debate

#### Abolishing constraints does not improve creativity---starting from defined constraints like the topic is better for overall creativity because innovative thinking comes from problem-solving like figuring out how to read what you want to read while still being topical

**Intrator 10** – David, President of The Creative Organization, October 21, 2010, “Thinking Inside the Box,” http://www.trainingmag.com/article/thinking-inside-box

One of the **most pernicious myths about creativity,** one that **seriously inhibits creative thinking** and innovation, **is the belief that one needs to “think outside the box**.”

As someone who has worked for decades as a professional creative, **nothing could be further from the truth**. This a is view shared by the vast majority of creatives, expressed famously by the modernist designer Charles Eames when he wrote, “**Design depends largely upon constraints.”**

The myth of thinking outside the box stems from a **fundamental misconception of what creativity is**, and what it’s not.

In the popular imagination, creativity is something weird and wacky. The creative process is magical, or divinely inspired.

But, in fact, creativity is not about divine inspiration or magic.

It’s **about problem-solving, and by definition a problem is a constraint**, a limit, a box.

One of the best illustrations of this is the work of photographers. They create by excluding the great mass what’s before them, **choosing a small frame in which to work**. Within that tiny frame, literally a box, they uncover relationships and establish priorities.

What makes creative problem-solving uniquely challenging is that you, as the creator, are the one defining the problem. You’re the one choosing the frame. And you alone determine what’s an effective solution.

This can be quite demanding, both intellectually and emotionally.

Intellectually, **you are required to establish limits**, set priorities, and cull patterns and relationships from a great deal of material, much of it fragmentary.

More often than not, this is the material you generated during brainstorming sessions. At the end of these sessions, you’re usually left with a big mess of ideas, half-ideas, vague notions, and the like.

Now, chances are you’ve had a great time making your mess. You might have gone off-site, enjoyed a “brainstorming camp,” played a number of warm-up games. You feel artistic and empowered.

But to be truly creative, you have to clean up your mess, organizing those fragments into something real, something useful, something that actually works.

That’s the hard part.

It takes a lot of energy, time, and willpower to make sense of the mess you’ve just generated.

It also can be emotionally difficult.

**You’ll need to throw out many ideas you originally thought were great**, ideas you’ve become attached to, because they simply **don’t fit into the rules** you’re creating as you build your box.

#### Railing against constraints actually shuts down thinking. Actually forcing yourself to be topical makes you view things from new perspectives and be overall more creative

**Brewer 10** – Joshua Brewer, January 28, 2010, “Constraints Fuel Creativity,” online: http://52weeksofux.com/post/358515571/constraints-fuel-creativity

We are often led to believe that **the more freedom we have the more creative we will be**. Full creative license? Sweet. Unlimited budget? Awesome! No timetable? Even better. **Yeah, right**. I say **embrace your constraints** and draw out of them the very solution that sets you apart from the crowd. **The imposition of constraints** can lead to **great design decisions**. Limitations often **force you to view things from a perspective you are not accustomed to** and, in turn, can stimulate the clarity and purpose of the design, **rather than debilitate and hinder your creative process**.

#### Studies prove constraints are key to innovation and creativity---it’s why improv comedy uses prompts and jazz musicians start improvisational compositions by riffing on an existing piece

**Heath 7** – Dan Heath, Senior Fellow at Duke University's CASE center, which supports social entrepreneurs, December 1, 2007, “Get Back in the Box,” online: http://www.fastcompany.com/magazine/121/get-back-in-the-box.html

As we've seen, **a well-constructed box can help people generate new ideas**. Imagine if, as in the case of the Hotel Vitale team, you could flip through hundreds of pages of Real Simple magazine for strategic inspiration. **Research tells us** that brainstorming becomes more productive when it's focused. As jazz great Charles Mingus famously said, "**You can't improvise on nothing, man; you've gotta improvise on something**."

Keith Sawyer, author of the insightful book Group Genius, **spent years studying** the work of jazz groups and improvisational theater ensembles. He found that **structure doesn't hamper creativity; it enables it**. When improv comedians take the stage, they **need a concrete stimulus**: "What if Romeo had been gay?" The stimulus can't be: "Go on, **make me laugh, funnyman**."

"Improv actors are taught to be specific," Sawyer says. "Rather than say, 'Look out, it's a gun!' you should say, 'Look out, it's the new ZX-23 laser kill device!' Instead of asking, 'What's your problem?' say, 'Don't tell me you're still pissed off about that time I dropped your necklace in the toilet.'" The paradox is that while specificity **narrows the number of paths that the improv could take**, it makes it **easier for the other actors to come up with the next riff**.

#### Narrow constraints are key to overall creativity---affirming absolute openness is paralyzing, particularly for highly creative people like debaters

**Slee 10** – Mark Slee, May 24, 2010, “Are limitless resources or a certain number of constraints more beneficial for creativity?,” online: http://www.quora.com/Art-Creativity/Are-limitless-resources-or-a-certain-number-of-constraints-more-beneficial-for-creativity

Both anecdotally and from personal experience, I'm inclined to say that **constraints are a strong enabler of creative output**, and a **requirement for most**. The degree certainly varies by individual and depends upon the method. With that said, I think the most commonly applied creative approach essentially involves two steps: \* **Define a set of parameters to work within** (you'll often hear artists/musicians speaking similarly about "setting up a creative space") \* **Explore the space as freely and fully as possible** (the bulk of creative time tends to be spent in this phase) The obvious pitfalls here are creating either too large or too narrow a space to work in. **Intuitively**, it may seem that a larger space is better due to the freedom it affords, but I tend to think **the opposite is actually the case**. Having **too many variables or resources to work with** can be very **paralyzing**, **especially for highly creative types**. Highly creative people may **easily overwhelm themselves** with an incredible number of exciting new ideas, which can make it very **difficult to actually execute on anything** (I don't have personal experience with attention-deficit hyperactivity disorder, but I imagine there's a reasonably strong analogy to be made here). Generating creative output (not just a deluge of ideas) requires **finding a way to artificially suppress the firehose of competing new concepts**, thereby **enabling a more intense focus**.

#### Countless artistic and expressive examples prove the benefits of constraints for creativity

**Slee 10** – Mark Slee, May 24, 2010, “Are limitless resources or a certain number of constraints more beneficial for creativity?,” online: http://www.quora.com/Art-Creativity/Are-limitless-resources-or-a-certain-number-of-constraints-more-beneficial-for-creativity

There are **countless clear examples of this approach**. Pablo Picasso had his Blue Period. Mark Rothko spent a great deal of time exploring compositions of colored rectangles. **Most musical composers use highly restricted forms**, in both structure and instrumentation, and some composers will write countless variations on a single piece. Brian Eno talks a lot about generative music, which **evolves from a fixed set of starting rules**. Periods of Frank Lloyd Wright's architecture, or even architectural trends in general, show adherence to clear themes (many constrained by the requirements of structural engineering). I actually think **it is more difficult to identify great works of creativity that have not employed constraints**, many of which are **self-imposed**.

### AT Framer’s Intent---2NC

#### Framer’s intent is arbitrary and should be considered secondary to the best interpretation

**Weaver 7** Aaron, Ph.D. Candidate in Politics and Society – Baylor University, “An Introduction to Original Intent”, Fall,<http://www.thebigdaddyweave.com/BDWFiles/originalism.pdf>

Discovering the “original intent” behind the religion clauses of the First Amendment is much more difficult than Edwin Meese, Antonin Scalia or any other 21 Ibid, originalist wants to admit. Contrary to the revisionist history being pushed by originalists who desire extensive government accommodation of religion, the founders did not always agree with one another. We simply can not determine with sufficient accuracy the collective intent of the Founding Fathers and the Framers of the Free Exercise Clause and the Establishment Clause of the First Amendment. Those scholars in search of “original intent” have returned with strikingly inconsistent accounts of original intent. Thus, the originalism of Scalia, Meese, and Rehnquist is ambiguous at best and downright dishonest at worst. We do not know nor can we be expected to accurately determine the intent or understanding of what the First Amendment meant to each person who cast their vote. After all, delegates to the Constitutional Convention were voting on the text of the First Amendment, not Madison’s writings or the private correspondence of the Framers. The text of the First Amendment reigns supreme. Authorial **intent must take a backseat to the actual text**. Justices should examine the text first and scour it for as much meaning as it will generate before turning to extrinsic evidence of intent. However, original intent is hardly irrelevant but simply subordinate to the text. Extrinsic evidence does not control the text. The text controls the text.

#### No impact to “intent”. The framer’s knowledge was far more limited than the community’s after months of research. Their standard is outdated and prevents informed and progressive understanding.

**Moore 85** Michael, Professor of Law – University of Southern California Law Center, “Interpretation Symposium: Philosophy of Language and Legal Interpretation: Article: A Natural Law Theory of Interpretation”, University of Southern California, 58 S. Cal. L. Rev. 279, January, Lexis

My conclusion is that the text has a better claim to being called the "choice of the legislature" than do any legislative materials. The political ideals of democracy and of institutional competence are thus better served by a court working from the text alone and not from some "second text" unofficially adopted by some supposed, silent consensus of legislators. That being so, and liberty and fairness also being better served by looking to the other ingredients in the theory of interpretation, I conclude that **legislative intent has no role to play in interpretation**. This conclusion has been defended solely by using the rule of law virtues as our normative guidelines. This conclusion is supported by the other set of considerations relevant here, namely, the kinds of effects an intent-oriented theory of interpretation produces. Such a theory produces **worse effects than its competitors because it imposes old ideals upon us**. In constitutional law **this consideration is so compelling that it swamps all the others in importance**. Better that we fill out the grand clauses of the Constitution by our notions of meaning (evolving, as we have seen, in light of our developing theories about the world), by our notions of morals, and by two hundred years of precedent. What the founders intended by their language should be of relevance to us only as a heuristic device to enable us to think more clearly about our own ideals. The dead hand of the past ought not to govern, for example, our treatment of the liberty of free speech, and any theory of interpretation that demands that it does is a bad theory. This argument applies to statutory interpretation as well, although with somewhat diminished force. For guiding one's statutory interpretations by legislative materials will be to judge by ideals as old as those [\*358] materials. In the Keeler case, for example, a 1970 decision was predicated on an 1850 statute, recodified in 1872. Using nineteenth-century ideas of personhood to decide whether a fetus is a person is not a good idea in the twentieth century. **We have thought more about the problem, and we know more factually and morally** than those who drafted the commission report concluding that fetuses were not human beings. And even if we do not know more than they, we are as entitled to live under our ideals of personhood as we are to live under our ideals of free speech. For old statutes, thus, the consequentialist arguments against looking to framers' intent are as strong as they are for the Constitution. The meanings of words, the direction of precedent, and the nature of goodness are all items about which we can have developing theories. Our admittedly imperfect knowledge of each of these things can get better. A theory of interpretation built out of these materials thus can accommodate change and development in our law by court interpretation. A theory emphasizing **the enacting body's intention**, on the other hand, **is glued to the past**. Change can only come by constitutional or legislative amendment. Even apart from the rule of law virtues, an intentionalist theory should be disfavored on this ground alone.

### AT Potential Abuse =/= VI---2NC

#### Irrelevant—it’s about preserving the best debate rounds, not abuse

#### The abuse was pre-round—we couldn’t run core neg strategies and we couldn’t be prepared to do in-depth case negs because they are outside the topic

#### Potential abuse is arbitrary---we could just lose on arguments on purpose to prove that we were abused

#### It is a voting issue—vote them down to set a precedent for future debates

### AT K of T---2NC

#### 1. No internal link---our arg isn’t about legitimate/illegitimate discourse---it’s about what responses to the resolution actually engage it

#### 2. Other topical affs check---<>

#### 3. Advantage areas check---there’s nothing about the language of their advantages that we’re excluding – it’s a question of how we get there

#### 4. Our impacts outweigh---even if they win that their interpretation is the only way to talk about the harms of the 1ac, our impacts based off of clash comes first---if we win that their affirmative is undebatable, then it means that debate can’t teach us to become effective advocates because a prerequisite to advocacy skills is learning how to defend your aff against a well trained opponent---decision-making skills outweigh---it’s key to democratic deliberation which both solves the case and a litany of existential global problems

Christian O. **Lundberg 10** Professor of Communications @ University of North Carolina, Chapel Hill, “Tradition of Debate in North Carolina” in Navigating Opportunity: Policy Debate in the 21st Century By Allan D. Louden, p311

The second major problem with the critique that identifies a naivety in articulating debate and democracy is that it presumes that the primary pedagogical outcome of debate is speech capacities. But the democratic capacities built by debate are not limited to speech—as indicated earlier, **debate builds capacity for critical thinking**, analysis of public claims, **informed decision making**, and **better public judgment**. If the picture of modem political life that underwrites this critique of debate is a pessimistic view of increasingly labyrinthine and bureaucratic administrative politics, rapid scientific and technological change outpacing the capacities of the citizenry to comprehend them, and ever-expanding insular special-interest- and money-driven politics, it is a **puzzling solution, at best, to argue that these conditions warrant giving up on debate**. If democracy is open to rearticulation, it is open to rearticulation precisely because **as the challenges of modern political life proliferate, the citizenry's capacities can change**, which is one of the primary reasons that theorists of democracy such as Ocwey in The Public awl Its Problems place such a high premium on education (Dewey 1988,63, 154). Debate provides an indispensible form of education in the modem articulation of democracy because it **builds precisely the skills that allow the citizenry to research and be informed** about policy decisions that impact them, to son rhroueh and evaluate the evidence for and relative merits of arguments for and against a policy in an increasingly infonnation-rich environment, and to prioritize their time and political energies toward policies that matter the most to them.

The merits of debate as a tool for building democratic capacity-building take on a special significance in the context of information literacy. John Larkin (2005, HO) argues that one of the primary failings of modern colleges and universities is that they have not changed curriculum to match with the challenges of a new information environment. This is a problem for the course of academic study in our current context, but perhaps more important, argues Larkin, for the future of a citizenry that will need to make evaluative choices against an increasingly complex and multimediatcd information environment (ibid-). Larkin's study tested the benefits of debate participation on information-literacy skills and concluded that in-class debate participants reported significantly higher self-efficacy ratings of their ability to navigate academic search databases and to effectively search and use other Web resources:

To analyze the self-report ratings of the instructional and control group students, we first conducted a multivariate analysis of variance on all of the ratings, looking jointly at the effect of instmction/no instruction and debate topic . . . that it did not matter which topic students had been assigned . . . students in the Instnictional [debate) group were significantly more confident in their ability to access information and less likely to feel that they needed help to do so----These findings clearly indicate greater self-efficacy for online searching among students who participated in (debate).... These results constitute strong support for the effectiveness of the project on students' self-efficacy for online searching in the academic databases. There was an unintended effect, however: After doing ... the project, instructional group students also felt more confident than the other students in their ability to get good information from Yahoo and Google. It may be that the library research experience increased self-efficacy for any searching, not just in academic databases. (Larkin 2005, 144)

Larkin's study substantiates Thomas Worthcn and Gaylcn Pack's (1992, 3) claim that debate in the college classroom plays a critical role in fostering the kind of **problem-solving skills** demanded by the increasingly rich media and information environment of modernity. Though their essay was written in 1992 on the cusp of the eventual explosion of the Internet as a medium, Worthcn and Pack's framing of the issue was prescient: the primary question facing today's student has changed from how to best research a topic to the crucial question of learning how to best evaluate which arguments to cite and rely upon from an easily accessible and veritable cornucopia of materials.

There are, without a doubt, a number of important criticisms of employing debate as a model for democratic deliberation. But cumulatively, the evidence presented here warrants strong support for expanding debate practice in the classroom as a technology **for enhancing democratic deliberative capacities**. The unique combination of critical thinking skills, research and information processing skills, oral communication skills, and capacities for listening and thoughtful, open engagement with hotly contested issues argues for debate as a **crucial component of a rich and vital democratic life**. In-class debate practice both aids students in achieving the best goals of college and university education, and serves as an unmatched practice for creating thoughtful, engaged, open-minded and self-critical students who are open to the possibilities of **meaningful political engagement** and **new articulations of democratic life.**

Expanding this practice is crucial, if only because the more we produce citizens that can actively and effectively engage the political process, the more likely we are to **produce revisions of democratic life** that are **necessary if democracy is not only to survive, but to thrive**. Democracy faces a myriad of challenges, including: domestic and international **issues of class, gender, and racial justice**; wholesale **environmental destruction** and the potential for **rapid climate change**; emerging **threats to international stability** in the form of terrorism, intervention and new possibilities for great power conflict; and increasing **challenges of rapid globalization** including an increasingly volatile global economic structure. More than any specific policy or proposal, an **informed and active citizenry that deliberates with greater skill** and sensitivity provides one of the best hopes for responsive and effective democratic governance, and by extension, one of the last best hopes for dealing with the **existential challenges** to democracy [in an] increasingly complex world.

### AT Reasonability---2NC

#### Prefer competing interpretations

#### a. Explodes the topic—reasonability is a slippery slope to unlimit the topic because affs can be less and less topical while being vaguely related to the topic—Impacted in the overview.

#### b. Bad decision-making model—the aff can’t win on a “reasonable link turn”---offense defense good b/c it forces the consideration of small risks---ignoring small distinctions leads to reckless policymaking

#### c. They aren’t reasonable—all our impact arguments are reasons why they make debate bad and impossible for the neg

#### d. The term “reasonable” is vague and arbitrary—this destroys predictability because there’s no stable definition of what is and what isn’t reasonable

**Stone 23** Justice in the Circuit Court of Appeals, Eighth Circuit, Sussex Land & Live Stock Co. v. Midwest Refining Co., 294 F. 597; 1923 U.S. App. LEXIS 2531; 34 A.L.R. 249, No. 6192; No. 6193, Circuit Court of Appeals, Eighth Circuit, December 5, Available Online via Lexis-Nexis

Where the use of land affects others, the use must be "reasonable" to escape liability for resultant damage to others. What is "reasonable" depends upon a variety of considerations and circumstances. It is an elastic term which is of uncertain value in a definition. It has been well said that "reasonable," means with regard to all the interest affected, his own and his neighbor's and also having in view public policy. But, elastic as this rule is, both reason and authority have declared certain limitations beyond which it cannot extend. One of these limitations is that it is "unreasonable" and unlawful for one owner to physically invade the land of another owner. There can be no damnum absque injuria where there is such a trespass.

#### e. Err negative on theory—aff speaks first and last and gets infinite prep