No Blood for Oil? United States National Security, Oil, and the Arctic Wildlife Refuge

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NO BLOOD FOR OIL? UNITED STATES NATIONAL SECURITY, OIL, AND THE ARCTIC WILDLIFE REFUGE

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"I think this is very likely the environmental fight of the decade."

I. INTRODUCTION

On February 15, 2003, "[s]everal million demonstrators took to the streets [in major cities across] Europe and the rest of the world . . . ." They came together for one purpose, to protest the American-led war against Iraq. The protests were not limited to cities overseas, similar protests were held in the United States in such places as Washington, D.C., New York, and San Francisco. The protestors' signs and shouts conveyed many different messages. Whether calling for a free Palestine or denouncing American

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1 All Things Considered: Connection Between Debates over the Nation's Dependence on Foreign Oil and Calls for Drilling in the Arctic National Wildlife (National Public Radio broadcast, Nov. 5, 2001). This statement, it turns out, was an understatement. Allen Smith, a leader in the Wilderness Society, made this assessment of the future of the Arctic National Wildlife Refuge ("ANWR") eleven years ago. A decade later the preservation of the ANWR is still an environmental fight. His words, "[the struggle for conservation and development] centers not only on the protection of one of the most unique places on the planet, the Arctic Refuge, but it also centers on our whole being as a country and how we deal with energy policy," still ring true. Id.

2 See Glen Frankel, Millions Worldwide Protest Iraq War: Coordinated Effort Yields Huge Turnout in Europe, WASH. POST, Feb. 16, 2003, at A1. "The largest rallies were [held] in London, Rome, Berlin, and Paris . . . [T]here were also protests in dozens of other cities [around the world], from Canberra to Oslo and from Cape Town to Damascus . . . ." Id.

3 Id.

imperialism, however, one theme stood out in its regularity and consistency across the protests.

From London to Bangkok, over the din of the multitudes, a clear, repetitive chant could be heard: “NO BLOOD FOR OIL!”; “NO BLOOD FOR OIL!”; “NO BLOOD FOR OIL!” The simple slogan underscores what many throughout the globe believe was the true reason for America’s war with Iraq. Even though the protesters spoke different languages, their message remained the same: No blood for oil.

Oil is the lifeblood of America’s economic and military power. It is not hard to imagine American industry, commerce, and standards of living coming to a crashing halt without a constant supply of oil. Statistics from the Energy Information Administration (“EIA”) show that the United States consumes far more oil than any other country on the planet. In 2001, the United States consumed 19.6 million barrels of oil per day, and it is projected that by 2020, this number will increase to 27.1 million. The next closest country, Japan, consumed 5.4 million barrels per day in 2001. Concurrently, the United States produced only 9 million barrels of oil per day in 2001, and is projected to produce 9.4 million barrels per day in 2020. The difference between the amount of oil America produces and the amount of oil America demands is a growing source of concern for the United States government and its national security strategy.

The argument is simple: oil is absolutely vital to American interests. The United States uses more oil than it produces. It must therefore rely

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5 See Frankel, supra note 2, at A1. Many protesters believe that oil interests dictate American foreign policy. Speaking on the behalf of London protesters, London Mayor Ken Livingstone said Bush was “a stooge for oil interests.” Id. at A20.

6 The Energy Information Administration was created by Congress in 1977, and is an independent statistical agency for the Department of Energy. The EIA is a nonpartisan agency that provides data, forecasts and analyses to assist in making sound governmental policy decisions. See Website for the Energy Information Administration, at ftp://ftp.eia.doe.gov/pub/pdf/international/0484(2002).pdf.


8 Id.

9 Id. at 235.


11 See generally ENERGY OUTLOOK 2003, supra note 7, at 38-42.
heavily on imported oil. A combination of necessity and the sheer volume of imported oil renders the United States completely dependent on foreign oil. This dependency is an economic and military weakness because the United States is, quite simply, vulnerable to the oil trade. This reality is the Achilles’ heel of the world’s only superpower and mandates the requirement for a reliable, uninterrupted supply of oil from foreign sources.

Exacerbating this vulnerability is the fact that a large percentage of the world’s oil reserves and oil production takes place in the Persian Gulf and in other nations constituting the Organization of Petroleum Exporting Countries ("OPEC"). Some of these nations historically have been anti-American and many others are becoming increasingly hostile to American interests. The effect these countries’ actions have on the world supply of oil is critical to our foreign and domestic affairs.

The answers to American dependency on oil have taken several forms. Proposals generally focus on the demand for oil, the supply of oil, or both. In the last decade, a large number of politicians and lobbyists have identified increasing the domestic supply of oil as the solution to the problem. In opposition, other politicians and groups of conservationists have complained that domestic production and exploration of oil will inevitably lead to destruction of the environment. Nowhere has this debate crystallized more clearly than the fight over the future of the Arctic National Wildlife Refuge ("ANWR").

About one-sixth of the oil produced in the United States comes from the vast oil fields in Alaska. Much of the land there and offshore have been or

12 Id.
13 The crippling effects of the oil shocks in the 1970s and the anxiety caused by the Persian Gulf War in 1990 demonstrate just how vulnerable the United States is due to the oil trade.
14 The Persian Gulf nations of OPEC include Bahrain, Iran, Iraq, Kuwait, Qatar, Saudi Arabia and United Arab Emirates.
15 In addition to the Persian Gulf states, OPEC includes Algeria, Indonesia, Libya, Nigeria and Venezuela.
16 Iran and Iraq, for example, were named as part of the "Axis of Evil" by President George W. Bush during the State of The Union Address in 2002. President George W. Bush, State of the Union Address (Jan. 29, 2002), available at http://whitehouse.gov/news/releases/2002/01/20020129-11.html.
17 See infra Part V.
18 See infra Part V. A.
19 See infra Part V. B.
20 ENERGY INFO. ADMIN., DEP’T OF ENERGY, ANNUAL ENERGY REVIEW 2001, at 127 (2002),
are being tapped for their reserves, most notably Prudhoe Bay.\textsuperscript{21} The ANWR, because of its refuge status,\textsuperscript{22} currently stands apart from the land being used for oil production. In the face of ever increasing threats to American security, and the susceptibility of the American economy to the oscillations of the oil trade, should the ANWR remain untouched? In the balancing act between environmental conservation and national security, the ANWR symbolizes this struggle unlike any other issue.

While this struggle has persisted over several decades, American energy and foreign policy have been dramatically transformed since September 11, 2001. Terrorists and rogue nation-states\textsuperscript{23} have forced the United States to take serious steps to secure its borders and its interests. The steps taken to secure American interests against terrorists, some of whom were financed by oil money,\textsuperscript{24} and rogue terrorist states, some of whom gain revenue from the oil trade,\textsuperscript{25} have brought the question of the ANWR’s future to a critical point. Should the United States choose conservation or exploitation, and what impact will that choice have on national security?

History, and the events of September 11th, have proven that there are few interests greater than national security. This Note will argue, however, that the interests of national security do not require opening the ANWR for drilling. Despite the contentions of pro-drilling forces, environmental interests outweigh the necessity to drill in the ANWR when there are more effective, alternative measures to reduce American dependency on foreign oil. Instead, the gravity of national security should force the United States to

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\textsuperscript{22} See Danny Eidson, Why Congress Should Grant Wilderness Status to the Coastal Plain of the Arctic National Wildlife Refuge: Part I, 7 S.C. ENVTL. L.J. 209, 218 (1998) (referring to the Refuge Recreation Act of 1962). The uses of wildlife refuge lands have been required to “not materially interfere with or detract from the purpose(s) for which the refuge was established.” Id. (citation omitted). This precluded drilling for oil in the ANWR.

\textsuperscript{23} Rogue nation states include those in the Axis of Evil: Iraq, Iran, North Korea, as well as nations that support terrorists. See President George W. Bush, State of the Union Address (Jan. 29, 2002), supra note 16.

\textsuperscript{24} See Gregg Easterbrook, Pumped Up: Why This War is also About Oil, NEW REPUBLIC, Oct. 8, 2001, at 15.

\textsuperscript{25} Id.
find real, long-term solutions to its dependency on foreign oil. In the process, Americans will have to answer difficult questions, and possibly make sacrifices. Drilling for oil in the nation's only untouched arctic ecosystem dodges those difficult questions and simply cannot permanently reduce American oil dependency or strengthen its national security.

Part II of this Note examines the Bush Administration's National Energy Policy and the Congressional actions to push through a comprehensive energy law in 2001. Part III describes the connection between American national security and the dependence on foreign oil. Part IV describes the origin and legislative history of the ANWR. Part V discusses the debate between proponents of drilling and environmentalists as it relates to American national security. In Part VI, this Note will argue that the paramount importance of national security requires American policymakers and citizens to choose a long-term solution to their oil dependency and forego drilling in the ANWR. Part VII will draw a conclusion to this challenge of security in opposition to the environment.

II. THE NATIONAL ENERGY POLICY

Popular sentiment over energy issues has waxed and waned over the years. In the United States "[e]nergy policy-making . . . is a cyclical enterprise. When energy prices rise rapidly because of limited supplies, energy dominates the political agenda. When supplies are plentiful and prices stable, it fades into the background." In addition to fluctuating priorities, energy issues have been difficult for the government to address because of competing interests between the energy industry and environmental groups. These obstacles have caused previous administrations to struggle since the early 1970s to create a workable national policy to address energy issues.

In the 2000 presidential campaign, George W. Bush did not directly address energy issues. Energy supply and prices were stable at the time, and

26 See All Things Considered, supra note 1.
28 See id. at 341-42.
29 See All Things Considered, supra note 1 (analyzing the connection between debates over the nation's dependence on foreign oil and calls for drilling in the Arctic National Wildlife Refuge).
30 See Edward Walsh, Bush Tries Tested Themes to Regain Campaign Edge, WASH. POST,
the primary issues included tax cuts, education and Medicare. It was not until the California energy crisis captured the public’s attention in 2001 that President Bush made energy issues a priority for his administration. The rolling blackouts on the West Coast soon dominated the political agenda, forcing the Bush Administration to confront the difficult problem previous administrations attempted to solve and failed.

A. History of Energy Policies

Energy security issues came to the forefront of American politics in 1973 during the Nixon administration, and continued to surface whenever “oil prices spike[d] or American troops [were] sent overseas.” In October 1973, OPEC colluded to enact the first Arab oil embargo. The embargo’s purpose was to punish countries that supported Israel during the Yom Kippur War. When the embargo was lifted in early 1974, the price of oil rose dramatically from $2 per barrel to more than $12 per barrel. The price hikes resulted in higher prices for gasoline, rationing of gasoline and stagnation of economic growth.

In response, President Nixon created Project Independence on November 7, 1973, several weeks after the declaration of the OPEC oil embargo. Project Independence embodied the first real national energy plan. Its goal was total energy self-sufficiency by 1980 through allocation of sources, rationing of energy supplies, and construction of the Alaska Pipeline.

Sept. 12, 2000, at A12; see also Bryner, supra note 27, at 343.
31 See Walsh, supra note 30.
32 See Mike Allen, California Power Parley; Energy Crisis Shadows Bush’s Western Trip, WASH. POST, May 28, 2001, at A1; see also Bryner, supra note 27, at 343.
33 See All Things Considered, supra note 1. Those events are the 1973 Yom Kippur War, the 1979 overthrow of the Shah in Iran, and the 1990 Persian Gulf War.
35 Id.
36 Id. at 625.
37 Id. at 686-87, 717-18.
39 Id. at 1-2.
Additionally, the Nixon regime created the Strategic Petroleum Reserve and the first set of national fuel economy standards. During Nixon’s time in office, the United States imported thirty-six percent of its oil.

President Carter sought to build on the initiatives begun by President Nixon. On April 18, 1977, he announced an ambitious National Energy Plan focusing attention on the consumption of oil by providing incentives for conservation and alternate fuels. This conservation focus distinguished it from Project Independence, which focused primarily on production. In 1979 the world’s economies were hit by a second wave of oil shortages caused by the overthrow of the Shah in Iran. When this second crisis hit, the United States had increased its imports to forty-six percent of its oil consumption.

Following the embargo, President Carter proposed programs to increase and develop solar power, as well as declaring a decade-long effort to enhance production of synthetic fuels. None of these proposals were very successful and the “gas crunch” that followed contributed to President Carter’s loss to Ronald Reagan in the 1980 presidential election.

The next oil crisis occurred in 1990 when Iraq invaded Kuwait. The invasion rocked the world’s oil trade, sending oil prices soaring and cut into the supply of oil from the Middle East. The United States and the United Nations responded to the invasion by massing forces in Saudi Arabia and eventually liberating Kuwait. Months after the conflict was over, President George H.W. Bush pushed for a national energy security strategy that centered on expanding domestic production, namely drilling in the Arctic.

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40 See All Things Considered, supra note 1.
41 Id.
42 See Timeline, supra note 38.
43 See YERGIN, supra note 34, at 674-98.
44 See All Things Considered, supra note 1.
45 Id.
National Wildlife Refuge, but gave conservation of energy very little attention.\textsuperscript{50}

In the years between the oil crises, administrations made little effort to address national energy security issues. Notably, President Reagan identified the nation’s increasing dependence on foreign oil in his 1987 Energy Security Report.\textsuperscript{51} In the 1990s, the Clinton Administration failed to produce a national energy policy but did make an attempt to tax energy use.\textsuperscript{52} The two administrations were characterized by a period of economic growth and stable energy prices and supply, factors that made energy security less visible or important.\textsuperscript{53}

Today, thirty years after the nation’s first cohesive energy strategy, the United States has become ever more dependent on foreign oil with imports measuring sixty percent of its total consumption.\textsuperscript{54}


In his second week in office, President George W. Bush charged Vice President Richard Cheney with establishing the National Energy Policy Development Group (“NEPDG”), “directing it to ‘develop a national energy policy designed to help the private sector, and, as necessary and appropriate, State and local governments, promote dependable, affordable, and environmentally sound production and distribution of energy for the future.’”\textsuperscript{55} The group’s efforts were intensified when, in March 2001, President Bush stated that the United States was “now in an energy crisis.”\textsuperscript{56} President Bush warned that the crisis could spread to other states, and that the United States needed to explore for more oil in Alaska and the ANWR.\textsuperscript{57} On May 17, 2001, the

\textsuperscript{50} See All Things Considered, supra note 1.
\textsuperscript{51} See Timeline supra note 38.
\textsuperscript{52} See Bob Minzesheimer & Mark Memmott, Bentsen: Energy Tax Likely, USA TODAY, Jan. 25, 1993, at 1A.
\textsuperscript{53} See Bryner, supra note 27, at 341.
\textsuperscript{54} See generally, ENERGY REVIEW 2001, supra note 20 (describing the state of the United State’s oil demand and production).
\textsuperscript{56} Bryner, supra note 27, at 344 (citation omitted)(referring to the rolling electricity blackouts in California).
\textsuperscript{57} Id.
Bush Administration unveiled the plan created by NEPDG. Soon thereafter, President George W. Bush formally endorsed the new national energy policy when he sent the proposed budget for Fiscal Year 2002 to Congress.

The report formulated by NEPDG began by stating:

America in the year 2001 faces the most serious energy shortage since the oil embargoes of the 1970s. The effects are already being felt nationwide... A fundamental imbalance between supply and demand defines our nation's energy crisis... This imbalance, if allowed to continue, will inevitably undermine our economy, our standard of living, and our national security.

To meet the challenges presented by the growing population and expanding economy, the report called for "promoting energy conservation, repairing and modernizing our energy infrastructure, and increasing our energy supplies in ways that protect and improve the environment." The report contained "105 specific recommendations, including forty-two suggestions for policies to promote conservation, efficiency, and renewable energy sources, and thirty-five that deal with expanding supplies of fossil fuels." The emphasis, however, was clearly on "opening new lands for exploration, streamlining the permitting process, easing regulatory require-

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58 See Dana Milbank & Eric Pianin, White House Outlines New Energy Policy; Focus Remains on Production; Congressional Battle Expected, WASH. POST, May 17, 2001, at A1; see also Bryner, supra note 27, at 343.
59 See Bryner, supra note 27, at 344.
60 NATIONAL ENERGY POLICY, supra note 55, at viii. The report, after identifying the gravity of the crisis that faces the nation, went on to say:
   [I]t is not beyond our power to correct. America leads the world in scientific achievement, technical skill, and entrepreneurial drive. Within our country are abundant natural resources, unrivaled technology, and unlimited human creativity. With forward-looking leadership and sensible policies, we can meet our future energy demands and promote energy conservation, and do so in environmentally responsible ways that set a standard for the world.
Id. at viii, ix (emphasis added).
61 See id. at ix (emphasis added).
62 See Bryner, supra note 27, at 346-47.
ments, and enlarging the nation’s energy infrastructure.” While advocates of drilling cheered the plan, opponents, mainly democrats and environmental groups, were less than enthusiastic.

The opponents of President Bush’s plan felt it was far too devoted to increasing domestic energy supply, and neglected conservation and alternate fuels. Additionally, opponents were concerned with the composition of the development group and on what information they relied in forming the plan. Working contrary to the environmentalists’ efforts, the energy industry lobbied strenuously for increasing energy production, with oil companies steadfastly defending the presumption that the decrease in the supply of fossil fuels was the key problem. The emphasis on expansion of domestic oil production is plainly visible in the central and most contro-

63 Id. President George W. Bush began with issuing executive orders to federal agencies to expedite permits but some of the proposals require further congressional action. Congressional spokespersons said that about eighty percent of the recommendations can be handled by the executive and the remaining twenty percent would fall to legislative control. An executive official acknowledged that the recommendations emphasized the expansion of domestic energy supply. See Milbank, supra note 58.

64 See Bryner, supra note 27, at 348-51; see also Milbank, supra note 58 (reporting that Democrats and environmental groups are gearing up for a major assault on the plan); Internet News Release, President’s Energy Policy Makes All the Wrong Choices, (May 17, 2001), available at http://www.sierraclub.org, http://www.alaskawild.org, http://www.akcf.org/savethearctic.htm, and http://www.protectthearctic.com. These websites belong to environmental groups dedicated to protecting the Arctic Refuge.

65 See id.

66 See Mike Allen & Dana Milbank, Cheney’s Role Offers Strengths And Liabilities, WASH. POST, May 17, 2001, at A1. Many of the criticisms of the unveiled plan centered on Vice President Cheney himself and the method he used to develop the plan. Democrats charged the Vice President with a conflict of interest based on his chairmanship of Halliburton Co., an energy service firm, and his extensive relationship with the nation’s various energy firms. Further aggravating the anti-drilling coalition, the Vice President met personally with energy industry leaders but used aides to speak with environmentalists. Id.

The General Accounting Office (“GAO”) filed suit against Vice President Cheney. The GAO sought to compel Cheney to divulge the composition of the energy development group and other information used by the group. A federal judge threw out the case on the grounds that the GAO lacked standing. The GAO has since decided that an appeal would be too costly and time-consuming and has chosen not to continue the issue. See Adam Clymer, Judge Says Cheney Needn’t Give Energy Policy Records to Agency, N.Y. TIMES, Dec. 10, 2002, at A1.

67 See Bryner, supra note 27, at 349. In addition, see the ANWR Website, at http://www.anwr.org, for a more detailed account of support for increasing domestic energy supply.
versial aspect of the plan—drilling for oil in the Arctic National Wildlife Refuge.

C. **National Energy Policy and the ANWR**

One of the major recommendations in the report was opening a portion of the Arctic National Wildlife Refuge for oil exploration and drilling. In its National Energy Policy, "[t]he NEPD Group recommend[ed] that the President direct the Secretary of the Interior to work with Congress to authorize exploration and, if resources are discovered, development of the 1002 Area of ANWR." Once the President submitted the energy plan to the legislature, it soon became apparent that the most difficult fight would be over this provision.

The 107th Congress hotly debated the merits of the energy plan and introduced a total of six bills that directly affected the future of the ANWR. In Congress, the leading advocates for opening the ANWR to oil exploration were Senator Frank Murkowski (R-AK), chairman of the Energy and Natural Resources Committee, and Senator Ted Stevens (R-AK), chairman of the Appropriations Committee. Senator Murkowski sponsored a bill on Feb. 26, 2001 that contained many of the measures under discussion in the NEDPG, including opening the ANWR for exploration and drilling. Senator Tom Daschle (D-SD) and Senator Jeff Bingaman (D-NM) countered with bills aimed at conservation, renewable resources and increased energy efficiency. Two other bills were submitted by Democrats in the House and

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68 **NATIONAL ENERGY POLICY, supra** note 55, at 5-10.
69 *Id.* The “1002 Area” refers to a small part of the ANWR along the Arctic Coastal Plain. It is in this area where the greatest prospect for untapped oil lies. *Id.*
70 See generally, *Milbank, supra* note 58.
72 Both Senators have regularly sponsored legislation allowing oil exploration in the ANWR. Senator Frank Murkowski was replaced by Senator Lisa Murkowski in December 2002, who continues his advocacy of drilling. See United States Senate Website, About Lisa at http://Murkowski.senate.gov/about.html (last visited Oct. 7, 2003).
74 **Energy Security and Tax Incentive Policy Act of 2001,** S. 596, 107th Cong. (2001);
the Senate that would have designated the ANWR a wilderness area, and would have prevented any oil future exploration. In July 2001, the House passed the Securing America’s Future Energy Act of 2001 which contained language opening the ANWR for drilling. The Senate took up the bill in early August, with democratic senators warning that the provision for drilling in the ANWR would be “dead on arrival” and would not be included in their version. Then, on September 11, 2001, terrorists attacked the World Trade Center and the Pentagon.

The Senate postponed debate on the national energy bill in the wake of the turmoil caused by the terrorist attacks, and focused instead on passing immediate national security measures. By December, the debate over the national energy policy had resumed and Senate Democrats introduced an energy bill that placed an emphasis on energy conservation and blocked any exploration of the ANWR. The debate over energy policy, however, had been changed by the events of September 11th. The terrorist attacks prompted President Bush to urge Congress to pass legislation opening the ANWR in the interests of promoting national security. The relationship between national security and energy interests sparked renewed emphasis in the administration and Congress to open the ANWR for oil drilling, and have polarized the issue into one of national security.

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75 Morris K. Udall Arctic Wilderness Act of 2001, H.R. 770, 107th Cong. (2001); S. 411, 107th Cong. (2001); see Eidson, supra note 22, for a more detailed discussion of proposals to designate the ANWR as a wilderness area.


77 See Bryner, supra note 27, at 355.


81 See Talk of the Nation, supra note 10. Host Neal Conan commented:

If we needed another lesson, September the 11th vividly illustrated this country’s dependence on imported oil, a fact that deeply affects foreign and military policies. . . . Suddenly, the goal of energy independence is on the front burner.

Id.

82 See Bryner, supra note 27, at 357, 362.

83 Id.
III. NATIONAL SECURITY STRATEGY AND OIL

The American war on terrorism and the war in Iraq have generated considerable apprehension among America, its allies and the Arab world. There is little doubt that American post-September 11th foreign and military policy has caused a great deal of conflict with the rest of the international community. As the rift between the United States and Arab countries widens, the relationship between oil and security is becoming more important than ever, and its impact on American foreign and domestic policies is intensifying.

Arab leaders have recognized for some time now that oil is an inherent weakness of Western industrialized nations, and that the supply of oil could be used as a weapon. Gamal Abdel Nasser, president of Egypt, first recognized the potential power of the Arab countries:

Nasser, too, wished to carve out a great empire, and in his book, he emphasized that the Arab world should use the power that came with the control over petroleum — "the vital nerve of civilization" — in its struggle against "imperialism." Without petroleum, Nasser proclaimed, all the machines and tools of the industrial world are "mere pieces of iron, rusty, motionless, and lifeless."

Arab countries quickly embraced this strategy, resulting in the oil embargoes of 1973 and 1979. More recently, Iraqi leader Saddam Hussein called on Arab states to deny oil exports to the United States and Israel. Hussein specifically referred to the use of oil as a weapon, "[i]f oil is not a

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85 Id.
86 See YERGIN, supra note 34, at 593.
87 Mayer, supra note 84, at 635 (quoting YERGIN, supra note 34, at 487).
88 See generally YERGIN, supra note 34 (describing the modern history of oil producing states in the Middle East).
89 See Roula Khalaf et al., Iraq Reprisal Threatens Oil Markets Saddam Halts Exports Until Israeli Forces ‘Have Unconditionally Withdrawn From The Palestinian Territories,’ FIN. TIMES, Apr. 9, 2002, at 1.
weapon while we have it, what else can we use to face the ambitious powers?" Faced with such a weapon, the United States must take measures to protect itself. Effectively disarming the Arab “oil weapon” and protecting American national security makes it vital to reduce the American dependence on oil.

The Bush Administration released the National Security Strategy of the United States of America in September 2002. The Strategy outlined America’s long-term strategy for national defense in military, economic and diplomatic language. It singled out the dangers terrorists and rogue states pose to the well-being of the United States. One of the most controversial aspects of the strategy was its endorsement of preemptive action. Among its many proposals, the Strategy outlined principles for simultaneously protecting the environment and enhancing energy security. While the strategy referred to energy and the environment in broad terms, it specified expanding energy supplies in an environmentally safe way, “promot[ing] renewable energy production,” and improving fuel economy for vehicles.

These were not entirely new ideas. The groundwork for this portion of the National Security Strategy was initially laid out by the Bush Administration in its National Energy Policy. The Policy’s language supported the Security Strategy by noting that as America imports more oil it will become increasingly more dependent on countries that have anti-American interests. A major thrust of the Energy Policy concerns national security and stresses that “[e]nergy security must be a priority of U.S. trade and

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90 *Iraq: No More Oil*, CBSNEWS.COM, Apr. 22, 2002, available at http://www.cbsnews.com/stories/2002/04/22/world/main506885.shtml (quoting Saddam Hussein). Saddam Hussein also said that Arab countries “should use oil as a companion weapon and not as [alternatives] to other weapons.” Hussein then went on to chastise the Saudis for saying that “oil was not a tank or a plane to be used as a weapon.” *Id.*


92 *Id.*

93 *Id.* at 5-7.

94 *Id.* at 15-16 (“To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.”). The invasion of Iraq in late March 2003 exemplified the doctrine of preemption.

95 *Id.* at 19-20.

96 *Id.* at 20.

97 See NATIONAL ENERGY POLICY, *supra* note 55, at x, xv.

98 *Id.*
foreign policy." These two documents explain the Bush Administration’s emphasis on energy security, national security and the oil trade.

The link between the supply of oil and national security has been made in the past. Prior to the emergence of the National Security Strategy, legislators wrestled with the issue of oil dependency and its effect on national security. Senator Frank Murkowski, a longtime advocate of opening the ANWR for oil drilling, voiced his concern for national security by saying:

> [o]ur nation is being held hostage by the Mideast, which is the supplier of the oil that we’ve become addicted to. . . . We have an opportunity to open up a portion of the Coastal Plain . . . [b]y bringing Alaska crude and gas to market, we will reduce our dependence on foreign oil and the associated threats to our national security.

Legislators, Democrats and Republicans alike, recognize that national security is jeopardized by dependence on foreign oil. Representative Henry Hyde (R-IL) noted that “our energy security is inextricably linked with the political and economic security of our suppliers,” and Representative Tom Lantos (D-CA) remarked that “our dependence on Middle East oil severely undermines our ability to combat international terrorism.” Executive officials have drawn attention to the relationship between dependency and security as well.

There is no question that American dependence on imported oil constitutes a threat to our national security. However, the consensus that

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99 Id. at xv.
100 See For the Record, WASH. POST, Nov. 2, 2000, at A28 (remarks by Senator Frank Murkowski at the National Press Club).
101 See Oil Diplomacy: Facts and Myths Behind Foreign Oil Dependency: Hearing Before the House Comm. on Int’l Relations, 107th Cong. (June 20, 2002) [hereinafter Facts and Myths].
102 Id. at 1.
103 Id. at 3.
104 See Bryner, supra note 27, at 362. Speaking at a meeting of oil producers, Secretary of the Interior Gale Norton commented that in 2001, “the United States import[ed] 700,000 barrels of oil a day from Iraq and that ‘it’s time to start investing that money in our own backyard and not in the back pocket of Saddam Hussein.’” Id. (quoting Brad Knickerbocker, New Push to Pump Oil from Alaska Refuge, CHRISTIAN SCI MONITOR, Nov. 26, 2001).
105 See All Things Considered, supra note 1 (replaying speech by President Bush where he
the supply of oil and our nation's security are inextricably linked does not provide an agreed solution. The solutions offered by the National Energy Policy beg the question: Will drilling for oil in the ANWR improve American national security?

IV. THE ANWR

The focal point of the political storm is the Arctic National Wildlife Refuge, an area that "contains the last intact arctic ecosystem in the United States, and possibly the world." Most of the approximately 1,200 miles of Alaskan coastline is being developed by the oil industry. What has not been developed lies within the Refuge, an area of coastline measuring about 125 miles. Within the Refuge itself lies a narrow portion of coastline known as the Arctic Refuge Coastal Plain. While the remainder of the ANWR enjoys the status of "wilderness," the Coastal Plain does not.

The Coastal Plain and the remainder of the Refuge have been called the "American Serengeti" because they are home to a wide variety of plants and animals. Animals such as squirrels, bears, rabbits, foxes, wolves, moose, deer, caribou, muskoxen, Dall sheep, fish, seals, whales and a variety of birds live in the ANWR. Plants ranging from mosses to shrubs and wildflowers cover the Refuge. This diversity and the Refuge's pristine condition have led to the proposal that the Refuge and two neighboring parks in Canada be made into an international park, and several species found in the area be protected by international treaties or agreements.
A. The Creation of the ANWR

The earliest efforts to protect the area of Alaska known today as the ANWR began in the early 1950s. The National Park Service ("NPS") sent personnel to Northeast Alaska in 1952 to look for potential preservation areas. George Collins, the biologist responsible for surveying the area, reported back to the NPS that "[the ANWR was] the finest national park prospect I have seen." In 1957, the Department of the Interior issued guidelines for the reservations of public land within Alaska. By November that year, the Fish and Wildlife Bureau applied for withdrawal of the land in the Arctic Refuge. The Bureau cited the area’s ecologically diverse flora and fauna and requested federal protection for over 6.4 million acres of land near the coastline. The Secretary of the Interior took no action on the application until 1960. In the meantime, the Alaska Statehood Act of 1958 was enacted. It incorporated Alaska into the Union and granted nearly thirty percent of the existing public land in the territory to Alaska. Two years later, on December 6, 1960, the Secretary of the Interior, Fred A. Seaton, declared that approximately 8.9 million acres of land in northeastern Alaska would be established as the Arctic National Wildlife Range, in order

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116 See Eidson, supra note 22, at 211.
117 Id. (citations omitted).
119 Id. at 1171-73. "The statutory and administrative law surrounding the creation of ANWR is a confused mess." Id. at 1171. The regulations promulgated by the Department of the Interior in 1957 allowed for agencies within the Department to petition the Secretary for withdrawal of public lands by filing an application for withdrawal. When the Secretary received the application, the regulations stated that the reserved land would be "‘temporarily segregated’ pending a final withdrawal decision." This had an important consequence: when Alaska filed for statehood in 1958, the “temporarily segregated” land reserved by the Fish and Wildlife Bureau did not revert to state control. Id. at 1172 (citations omitted).
120 Id. at 1171-73.
121 Id. at 1173.
123 Alaska Statehood Act § 6, 72 Stat. at 340-43; see Grover, supra note 118, at 1173.
to preserve its "unique wildlife, wilderness and recreational values ..."\(^\text{124}\) The predecessor of today's ANWR was born.

B. The Legislative History of the ANWR

The withdrawal of the arctic coastal plain by the federal government merely cemented what was already existing in Alaska in practice.\(^\text{125}\) This indifference soon changed when oil was discovered in nearby Prudhoe Bay in 1968.\(^\text{126}\) By the late 1970s, the boom in arctic oil exploration had reached a point where Congress was compelled to reevaluate the immediate future of federally owned lands on the Alaskan coast.\(^\text{127}\) Recognizing that "[s]ince its establishment in 1960 ... the Arctic Range did not encompass the entire ecological unit necessary to protect the habitats of notable wildlife populations of this portion of the Arctic,"\(^\text{128}\) Congress responded by enacting the Alaska National Interest Lands Conservation Act ("ANILCA") in 1980.\(^\text{129}\)

The passage of ANILCA was the product of seven years of intense debate in Congress revolving around its potential for gas and oil deposits.\(^\text{130}\) The passage of ANILCA did several things. First, it gave the Arctic Range


\(^{125}\) See Grover, supra note 118, at 1175. The land withdrawn by the Department of Interior was already considered federal land by the Alaskan government and the withdrawal itself came as no surprise.

\(^{126}\) Id. (noting that "the Atlantic-Richfield Company discovered 9.8 billion barrels of oil just west of the Refuge at Prudhoe Bay").

\(^{127}\) Id.


\(^{130}\) See Eidson, supra note 22, at 212. The possibility that more oil fields, similar to the one discovered at Prudhoe Bay, might be beneath the Arctic Range drove the political compromise that left the 1002 Area of the Coastal Plain without wilderness designation. The 1002 Area was considered by the oil industry to have the most potential for oil deposits. This was also the area considered by environmentalists to be the "biological heart" of the range. Id.
“Refuge” status and increased its size to nearly 19 million acres.\textsuperscript{131} Second, the Act expressly forbade any oil exploration in the newly created Arctic National Wildlife Refuge without congressional approval.\textsuperscript{132} Lastly, in a measure of political compromise, it sectioned off a portion of the Coastal Plain for further studies to determine what oil resources, if any, were present and directed an environmental impact survey contemplating the effects of oil drilling in that area.\textsuperscript{133} This portion of the Coastal Plain would become known as the “1002 Area.” The language of section 1002 of ANILCA allowed:

\begin{quote}
assessment[s] of the fish and wildlife resources of the coastal plain of the Arctic National Wildlife Refuge; an analysis of the impacts of oil and gas exploration, development, and production, and to authorize exploratory activity within the coastal plain in a manner that avoids significant adverse effects on the fish and wildlife and other resources.\textsuperscript{134}
\end{quote}

The Act thus failed to provide wilderness status to the 1002 Area and postponed the debate until further information could be obtained.

Seven years later, the Department of the Interior returned its Final Legislative Impact Statement. In it, Department of the Interior Secretary Donald Paul Hodel recommended that Congress allow exploration of oil in the 1002 Area.\textsuperscript{135} The Impact Statement addressed the environmental impact

\textsuperscript{131} See ANILCA § 303(2)(A); see also Grover, supra note 118, at 1176. “Refuge” status is defined by the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. § 668dd) and accordingly, with respect to each refuge, the Secretary of the Interior may not permit any use, or grant easements for any purpose not compatible with the purposes for which the refuge was established.

\textsuperscript{132} ANILCA § 1003.

\textsuperscript{133} See id. § 1002. This area, which comprises 1.55 million acres or approximately seventy-five percent of the Coastal Plain, is frequently referred to as the 1002 Area. It represents about seven percent of the total area of the ANWR. See Eidson, supra note 22, at 213.

\textsuperscript{134} See ANILCA § 1002(a).

\textsuperscript{135} See FISH & WILDLIFE SERV., DEP'T OF THE INTERIOR, ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA, COASTAL PLAIN RESOURCE ASSESSMENT: REPORT AND RECOMMENDATION TO THE CONGRESS OF THE UNITED STATES AND FINAL LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT (1987), available at http://library.fws.gov/Pubs7/ANWR_coastal_LEIS.pdf,[hereinafter LEIS]. The study was a result of nearly sixty individual field studies conducted between 1981 and 1985. See also Grover, supra note 118, at 1176-77.
of oil exploration and came to the conclusion that any impact would be minimal.\footnote{See LEIS, supra note 135, at VII. Potential [environmental] impacts were assessed for exploration, development drilling, and production. Impacts predicted for exploration and development drilling were minor or negligible on all wildlife resources on the 1002 area. Production of oil is expected to directly affect only 12,650 acres or 0.8 percent of the 1002 area. Consequences on species such as brown bears, snow geese, wolves, moose, and the Central Arctic caribou herd are expected to be negligible, minor, or moderate. Id.} Although some conservationists seized the study results as proof that oil development would have a negative impact on the environment, the study offered support to both sides of the argument\footnote{See LEIS, supra note 135. The study contained evidence that the fragile ecosystems in the 1002 Area would be adversely affected by opening the area to oil exploration. The greatest concern was for the potential major effects on the Porcupine caribou herd and the area’s muskoxen. Both animals faced possible displacement of their habitat and reduction in herd sizes. However, the study concluded that the danger was not great enough to warrant a prohibition on drilling.} and gave the Reagan Administration and Senate Republicans momentum in their endeavor to open the ANWR to drilling.\footnote{See, e.g., Arctic Coastal Plain Leasing Act of 1987, H.R. 49, 101st Cong. (1989); Arctic Coastal Plain Competitive Oil and Gas Leasing Act, S. 2214, 100th Cong. (1988) (sponsored by Senator Johnston (R-LA)); Arctic Coastal Plain Public Lands Leasing Act of 1987, S. 1217, 100th Cong. (1987) (sponsored by Senator Frank Murkowski).} Just when it looked as if they would succeed, disaster struck—literally.

In March 1989, the supertanker Exxon Valdez ran aground on a submerged reef in Alaska’s Prince William Sound, spilling an estimated eleven million barrels of crude oil into the sea.\footnote{See generally JOHN KEEBLE, OUT OF THE CHANNEL: THE EXXON VALDEZ OIL SPILL IN PRINCE WILLIAM SOUND (1999) (describing the disaster and its aftermath).} It was the largest tanker spill in American history, and its devastating effects upon the wildlife and ecology quickly halted the momentum of the drilling advocates.\footnote{See Jim Greenhill, Exxon Spill Caused Record Bird Kill, USA TODAY, Feb. 5, 1993, at 3A (noting the 1989 Valdez spill “killed 10 times more birds than any [other] spill in history”); Jay Mathews, In the Last Year, Exxon Valdez Spill Was Only Tip Of Iceberg, WASH. POST, Mar. 20, 1990, at A6 (reporting “[t]he incident has helped to delay federal approval of oil drilling in some offshore and wildlife refuge areas, particularly the Arctic National Wildlife Refuge”).}
of the damage from the *Exxon Valdez* disaster grew.\textsuperscript{141} For the time being, Congress shelved plans for drilling in the ANWR.

Pro-development legislators waited for another couple of years before attempting to open the ANWR for drilling by attaching a rider to the 1995 budget that would authorize oil development.\textsuperscript{142} President Clinton vetoed the bill\textsuperscript{143} in December 1995,\textsuperscript{144} primarily because of the inclusion of the budget rider.\textsuperscript{145} From 1996 to 2000, while several bills were introduced in both the Senate and House dealing with the ANWR issue, none were seriously debated, and no action was taken.\textsuperscript{146}

With no progress being made through federal legislation, state officials in Alaska attempted to open the ANWR for drilling themselves, and brought a lawsuit in 1996 against the federal government to force action.\textsuperscript{147} The legal contest began with the apportionment of federal lands to Alaska when it became a state in 1958.\textsuperscript{148} With both the Alaskan and federal government disagreeing over the ownership of land located in the ANWR, Alaska turned to the courts to settle the conflict.\textsuperscript{149} The scope of the lawsuit extended back to 1979 when the federal government filed an original action in the Supreme Court to determine to whom the various submerged lands off Alaska's arctic coast belonged.\textsuperscript{150} Alaska responded by filing a counter claim seeking quiet claim to the submerged lands within the ANWR.\textsuperscript{151} The Supreme Court appointed a Special Master to examine the facts and recommend a decision to the Court.\textsuperscript{152} The Special Master heard six years of testimony and deliberated for ten years before returning a recommendation to the Court in April 1996.\textsuperscript{153} Alaska took exception to the final report and brought the matter to the Supreme Court.\textsuperscript{154}

\textsuperscript{141} See Matthews, *supra* note 140, at A6.
\textsuperscript{142} See Eidson, *supra* note 22, at 214-16.
\textsuperscript{144} See Eidson, *supra* note 22, at 214-16.
\textsuperscript{145} See C\textsc{orn} \textsc{et} \textsc{al.}, *supra* note 71, at 2.
\textsuperscript{146} Id. at 3.
\textsuperscript{147} United States v. Alaska, 521 U.S. 1 (1997).
\textsuperscript{148} See Grover, *supra* note 118, at 1173-74.
\textsuperscript{149} Id.
\textsuperscript{150} See Alaska, 521 U.S. at 4.
\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} See Grover, *supra* note 118, at 1178.
\textsuperscript{154} See Alaska, 521 U.S. at 6.
In a majority opinion written by Justice O'Connor, the Supreme Court ruled against Alaska on the grounds that the Alaska Statehood Act reflected a clear intent to defeat state title to all lands within the reserve [ANWR] and the 1957 withdrawal of federal land from Alaska encompassed submerged land.\(^\text{155}\) The Supreme Court holding ensured that the decision to open up the ANWR would be made at the national level, and not by the state of Alaska.

A major turning point in the debate came in 1998 when the United States Geological Survey updated the assessment of mineral resources in the Arctic Wildlife Refuge.\(^\text{156}\) The assessment, conducted pursuant to section 1002 of ANILCA, involved three years of study by dozens of scientists, and used new technology to locate and predict the size of underground oil reservoirs.\(^\text{157}\) The report is the latest study on the potential for oil exploration in the ANWR.\(^\text{158}\) The study concluded that there was a higher probability of a larger oil reserve under the Refuge than originally thought just a decade

\(^{155}\) See id. at 1.


Since completion of [the 1987] report, numerous wells have been drilled and oil fields discovered near ANWR, new geologic and geophysical data have become available, seismic processing and interpretation capabilities have improved, and the economics of North Slope oil development have changed significantly. The U.S. Geological Survey (USGS) commonly is asked to provide the Federal Government with timely scientific information in support of decisions regarding land management, environmental quality, and economic and strategic policy. To do so, the USGS must anticipate issues most likely to be the focus of policymakers in the future. Anticipating the need for scientific information and considering the decade-old perspective of the petroleum resource estimates included in the 1987 Report to Congress, the USGS has reexamined the geology of the ANWR 1002 area and has prepared a new petroleum resource assessment.

Id. (internal citations omitted).


\(^{158}\) The last study was completed in 1987. See LEIS, supra note 135.
earlier. The report’s data, much like the data from the 1987 survey, has been used by both opponents and proponents of drilling.

Since its earliest days, the ANWR has been recognized for its ecological and wilderness value. Its history is marked by a clear intent to respect the Arctic environment. Its potential for oil, however, makes it a valuable natural resource and the argument for oil exploration is almost as old as the Refuge itself.

V. The Debate Over Drilling

The battle lines between those who oppose and those who support drilling for oil in the ANWR are distinctly drawn. Those who support drilling include the Bush Administration, Republican congressmen, oil companies, and some Alaskan constituents. Those who oppose consist mainly of environmental groups and Democratic politicians. Although several separate arguments are made by each side, such as the prospects for job creation, this Note focuses on the question of drilling within the framework of national security and the environment.

A. Pro-Drilling Forces

The Bush Administration and Republican legislators’ central argument is that it is necessary to drill for oil in the ANWR to reduce the nation’s dependence on Middle Eastern oil. In an effort to head off criticism from environmentalists, they consistently point to the belief that drilling can be done in an environmentally safe manner with new technologies. Spencer Abraham, the Secretary of Energy, testified that:

[W]e’re working on a number of ways to increase domestic oil production. Advanced technology for exploration and development, for example, add to our oil reserves from new

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159 See Petroleum Assessment Hearing, supra note 157.
160 See Weigert, supra note 115, at 169.
161 See supra note 64 for background on environmental groups opposed to drilling in the ANWR, including the Sierra Club, Defenders of Wildlife, Northern Alaska Environment Center, and the Wilderness Society, to name a few.
162 See Weigert, supra note 115, at 172.
163 See id. But see Talk of the Nation, supra note 10. Senator Frank Murkowski has
and existing oil fields every year . . . . [O]ur plan calls for the use of the most advanced exploration and drilling technologies in a tiny, a remote portion of the Arctic National Wildlife Refuge known as ANWR to increase domestic production in the future.\textsuperscript{164}

The pro-drilling forces cite the 1987 Final Legislative Impact Statement to prove that exploration can be done in an environmentally safe method.\textsuperscript{165} Gale Norton, the Secretary of the Interior, has consistently defended the interests of oil exploration and has said that the wildlife and wilderness of the 1002 Area will not be harmed substantially by the introduction of oil drilling.\textsuperscript{166}

In addition to giving the perception that there will be minimal impact on the environment in the Refuge, proponents for drilling frequently raise the question of whether American military presence and intervention in other countries is worth stabilizing world oil prices or supply from OPEC. They argue that by increasing domestic oil supply from Alaska, the United States will prevent the need to send American soldiers overseas to protect its foreign oil supply.\textsuperscript{167} Current American foreign policy acknowledges the

\begin{itemize}
\item repeatedly referred to the minimal impact drilling would have on the ANWR:
\item \textsuperscript{[O]}ne of the things a lot of people forget is how small that footprint [drilling infrastructure] is and how large ANWR is. ANWR is the size of the state of South Carolina. It's 19 million acres. We've already taken three-quarters of it and put it into wilderness or refuge, leaving a million and a half acres, and that million and a half acres is what would be open if ANWR were open. And the footprint is estimated to be 2,000 acres out of, you know, 19 million acres.
\end{itemize}

\textit{Id.;} NATIONAL ENERGY POLICY, supra note 55, at xiii, xiv. The National Energy Policy hails technological advances that have made oil exploration and production more environmentally safe. Current oil production needs far fewer rigs and less drilling then it once did. With today's technology, one oil drilling site can drill oil deposits up to six miles away thus leaving the environment unharmed. \textit{Id.}

\textsuperscript{164}See Facts and Myths, supra note 101 (statement of Spencer Abraham, Secretary of the Department of Energy).
\textsuperscript{165}See generally LEIS, supra note 135 (reporting that developing the 1002 Area would have negligible effects on the environment).
\textsuperscript{167}See Talk of the Nation, supra note 10. Senator Frank Murkowski echoed Senator Hatfield's statement: "I'll vote for opening the ANWR and decreasing our dependence on
importance of securing Kuwaiti, Saudi Arabian and now Iraqi oil fields through continued military presence in those countries.\textsuperscript{168}

The need for foreign oil creates other problems beyond stationing troops on foreign soil. It is frequently called to the public’s attention that the United States imported oil from Iraq during the 1990s at a time when we were practically at war with them.\textsuperscript{169} Money for imported Iraqi oil went straight into Saddam Hussein’s treasury. Perversely, the American thirst for oil was actually funding its enemies. Even more disturbing is that anti-American oil producing nations are not the only ones who prosper from American oil dependency. Advocates of drilling point to the sobering reality that terrorism is undoubtedly funded by American money going to purchase oil from abroad.\textsuperscript{170} One example of this: Osama Bin Laden’s multi-million dollar wealth, and the financial backing of Al-Qaeda, came from his father’s construction business that made its fortune during the Arabian oil boom.\textsuperscript{171}

Those who support drilling suggest that the oil in the 1002 Area of the ANWR can replace the oil imported from unfriendly states.\textsuperscript{172} The results of the 1998 USGS Resource Assessment show there could be great amounts of untapped oil beneath the ANWR. In a hearing before the Senate, Dr. Thomas J. Casadevall, Acting Director of the Interior, and Kenneth Boyd, Director of the Alaska Division of Oil and Gas, explained the results of the survey to the Energy and Natural Resources Committee.\textsuperscript{173} Boyd said “[t]he latest USGS estimates confirm what geoscientists have been saying for years. The 1002 area [sic] holds extremely high promise for finding commercial petroleum deposits. This is great news for Alaska and great news for the Nation.”\textsuperscript{174}

Pro-drilling forces believe the newest estimates of oil underneath the ANWR prove the value of drilling there for energy and national security.\textsuperscript{175}
By combining the size of the potential oil fields, the negligible effect oil production will have on the ANWR, and the requirements of national security, the Bush Administration and its allies have decided that drilling in the 1002 Area is a central part of the solution to ending our oil dependency.

B. Anti-Drilling Forces

For environmentalists, the conclusion is a simple one: oil drilling and wilderness cannot co-exist. Although both sides concur that the actual extent of environmental damage to the ANWR is unknown, it is virtually certain that oil exploration in the Coastal Plain will have some detrimental effect on the environment.\(^\text{176}\) Some environmentalists argue that the "wilderness" designation must be extended to the 1002 Area to protect it from the oil industry.\(^\text{177}\) Once the ANWR Coastal Plain is designated "wilderness," it would be protected from any kind of industrial or commercial encroachment.\(^\text{178}\) Environmentalists argue that only by designating the area as wilderness will the fate of the ANWR be secured.\(^\text{179}\)

Additionally, opponents point to the futility of reducing dependence on foreign oil by drilling in the ANWR:

The myth is that we can drill our way out of dependency. . . . Underlying the logic of the [Bush energy plan's] supply side approach is the fantasy that we can significantly reduce our reliance on imported oil simply by bringing more domestic production online. Simply saying that increased domestic

\(^{176}\) See Weigert, supra note 115, at 169.


\(^{178}\) See Eidson, supra note 177, at 79-80.

\(^{179}\) See sources cited supra note 177.
drilling will reduce our dependence on foreign oil doesn’t make it so.\textsuperscript{180}

Given the vast quantities of oil America consumes and the relatively small amount of oil that will be extracted from the ANWR, conservationists argue that the idea that development in the Refuge will decrease American dependency on foreign oil is ridiculous.\textsuperscript{181}

Senator Lincoln Chaffee’s (R-RI) position is representative of many other senators opposed to opening the ANWR. He has said,

I am prepared to support a national energy policy that balances our energy needs with strong environmental protection. Reducing our dependence on foreign oil is a national priority, but should not come solely at the expense of our nation’s precious natural resources. . . . Allowing oil and gas development in the coastal plain promises only short-term benefits that may irreparably damage the wildlife values and unique vitality of the Arctic Refuge.\textsuperscript{182}

Opponents further argue that developing an oil producing infrastructure in the 1002 Area would take about a decade to actually produce any oil.\textsuperscript{183} Anti-drilling advocates argue that the time is too long to give the United States any advantage. Rather, there are numerous other sources of oil that the United States has only begun to tap, such as Russia, Mexico and West

\textsuperscript{180} \textit{Facts and Myths}, \textit{supra} note 101 (statement of Tom Lantos, House Representative).
\textsuperscript{181} See Eidson, \textit{supra} note 177, at 62-68; Kolton Statement, \textit{supra} note 177. “Peak production associated with a technically recoverable resource of 5.0 billion barrels (billion bbls) at the faster development rate would be 750,000 bbls per day. U.S. petroleum consumption is about 19 million bbls per day.” \textit{CORN ET AL.}, \textit{supra} note 71, at 5 (emphasis added).
\textsuperscript{183} See \textit{CORN ET AL.}, \textit{supra} note 71, at 5.

The U.S. Energy Information Administration estimated that at a relatively fast development rate, production would peak 15-20 years after the start of development, with maximum daily production rates of roughly 0.00015 (0.015\%) of the resource. Production associated with the slower rate would peak about 25 years after the start of development at a daily rate equal to about 0.000105 (0.0105\%) of the resource.

\textit{Id.}
Africa. The opponents to drilling submit that it would be a more cost-effective use of time and money to develop these sources instead of ruining the Refuge.

In addition to arguing that the reserves in the 1002 Area amount to no more than a drop in the bucket of American oil demand, opponents vigorously advance the alternative idea of increasing fuel efficiency for passenger vehicles. Supporters of higher mandatory mile per gallon standards for automobiles cite that increasing the average fuel economy of American cars and sport utility vehicles to thirty-nine miles per gallon would save fifteen times the amount of oil that the Coastal Plain might yield. Other proposals include requiring replacement tires that are of equal quality as new tires which could save more oil than the Arctic refuge might hold.

The variety of options available to policymakers leads environmentalists to conclude that drilling in the ANWR is not the best choice, given alternative measures.

C. Recent Developments in the Debate

A total of six bills came before the 107th Congress that would have affected the future of the Refuge. Four of these bills would have opened the ANWR to drilling. Two bills would have designated it as “wilderness.” Only

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185 See Eidson, supra note 177, at 62-66.

186 148 CONG. REC. S2906 (daily ed. Apr. 18, 2002) (statements of Senator Nelson). Senator Nelson raised the issue, [I]f we don't ever address the enormous consumption of energy in the cars that we drive, then we will remain dependent on all that foreign oil. There is an easy way to do that, and that is to use this beneficence of American ingenuity called technology and apply it to the problem and increase the miles per gallon in our automobiles and SUVs and light trucks, which we can do so well.

Id.

187 See Kolton Statement, supra note 177; see also NATIONAL ENERGY POLICY, supra note 55, at xii (directing the Secretary of Transportation to recommend CAFE standards based on a study released by the National Academy of Sciences). The Policy recognizes the importance of gas mileage standards even though it advocates the expansion of domestic oil supply. Id. For a discussion of CAFE standards, see infra notes 242-49 and accompanying text.

188 See Kolton Statement, supra note 177. Kolton’s statement was endorsed by the Alaska
H.R. 4, a comprehensive energy bill, had serious action taken. The House sent the bill, which would have allowed drilling in the ANWR, to the Senate by a vote of 240 to 189 in August 2001. By April 2002, the Senate sided with the environmentalists and passed their version of the energy bill refusing to allow exploration for oil in the Coastal Plain. The bill was sent on to conference where conferees tried unsuccessfully to reconcile the many differences between the two bills. Representative Don Young (R-AK) quickly picked up where the 107th Congress left off and introduced H.R. 39 on January 7, 2003. The bill “establish[es] and implement[s] a competitive oil and gas leasing program that will result in an environmentally sound and job creating program for the exploration, development and production of the oil and gas resources of the Coastal Plain, and for other purposes.”

Congressional leaders have stated in the opening days of the 108th Congress that this will be a key piece of legislation and will be the pivotal debate over the future of American energy policy. President Bush continues to support ANWR development as a vital part of his national energy security strategy.

VI. DO AMERICAN NATIONAL SECURITY INTERESTS REQUIRE DRILLING IN THE ANWR?

There can be little doubt that the war in Iraq and the post-September 11th “war on terrorism” represent major shifts in the focus and definition of American foreign and domestic policy. This shift is accompanied by the threat created by American dependence on oil. Hopes for peace will be greatly enhanced if the United States can reduce its dependence. Since peace is obviously the goal, reducing dependence on oil necessarily follows. The decision whether to drill for oil in the ANWR comes down to striking a
balance between conservation of the wilderness, the American need for oil, and from where that oil will come. Is increasing domestic oil production the nation’s primary energy challenge, and does that mean the ANWR is the answer?

The reality is threefold. First, the United States does not possess a large amount of the world’s oil reserves; it is estimated at around three percent of the world’s total. Second, the majority of the world’s oil reserves are found in the Middle East. Third, the American demand for oil is increasing by 1.7% annually. The United States will therefore continue to import a greater amount of oil from the Middle East in the coming years. This trend began years ago and will continue. Two things are certain: there is nothing the United States can do to change the geographic location of oil reserves, and the disparity between American supply and American demand for oil will increase.

A. Freeing America From Dependence

The American thirst for oil is inevitably intertwined with national security. Oil is vital to the economy, and it perpetuates the conflicts that threaten national security. The first point is obvious, without a steady supply of crude oil the nation would come to a standstill. The second point is more subtle. The need for oil forces the United States to deploy troops to protect oil interests, which in turn sows the seeds of hatred towards American foreign policy, which eventually forces the United States to deploy more troops in more areas. The need for oil pushes the United States to tolerate societies that breed hate towards America and create the incubators for tomorrow’s terrorists. The possibility, if not probability, that American

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197 Id.

198 See ENERGY OUTLOOK 2003, supra note 7, at 32.

199 Id.

200 Id.

201 See Mayer, supra note 84, at 635-43.

202 Id.
money for OPEC oil ultimately finances terrorist groups is a grim reminder that dependency on oil has deadly consequences.\textsuperscript{203}

Lessening the dependence on oil is a critical step towards better national security and global peace. How to get there is the difficult part. Until an equally efficient source of energy is found to replace petroleum, the stark realities of the oil trade give the United States few options. America can increase its domestic—and therefore reliable and safe—supply, it can decrease demand, or it can do both. Relying wholly on increasing domestic supply to fill the gap is unrealistic, therefore the only real choices are the latter two options. The wiser and more efficacious route is to do both, reduce demand and increase supply from non-OPEC sources. But what should have greater importance, demand or supply?

\textbf{B. Increasing Domestic Supply}

The National Energy Policy clearly gives priority to increasing supply and claims that any chance of meaningfully increasing domestic oil production depends on opening the ANWR to exploration.\textsuperscript{204} The results of the 1998 USGS Survey raise the hope of discovering huge oil fields underneath the ANWR.\textsuperscript{205} But statistics can be deceiving. The data collected by the USGS and other sources can be used by both sides of the debate to strengthen their arguments. It is important to understand what the data means and recognize when numbers are used to skew the conclusions in one party's favor.

The study broke the oil reserve numbers into three categories: in-place oil, technically recoverable oil, and economically recoverable oil.\textsuperscript{206} In-place oil is the “amount of petroleum contained in accumulations . . . without regard to recoverability.”\textsuperscript{207} Technically recoverable oil is the “volume of petroleum representing that proportion of assessed in-place resources that may be recoverable using current recovery technology without regard to

\begin{thebibliography}{9}

\bibitem{203} Id.
\bibitem{204} \textit{See generally} NATIONAL ENERGY POLICY, \textit{supra} note 55 (explaining the energy challenges facing the United States).
\bibitem{205} \textit{See Petroleum Assessment, supra} note 156.
\bibitem{206} Id.
\bibitem{207} Id. at 4.
\end{thebibliography}
cost.” Economically recoverable oil is the “part of the technically recoverable resource for which the costs of discovery, development, and production, including a return to capital, can be recovered at a given well-head price.”

The study computed a range of probabilities of finding X amount of oil. According to the study, technically recoverable oil within the 1002 Area is estimated to be between 4.3 and 11.8 billion barrels of oil with an average assessment of 7.7 billion barrels of oil. This number can be misleading, because what counts is the economically recoverable oil estimate. Using a baseline price of $24 per barrel, USGS estimated that there was a mean value of 5.2 billion barrels of economically recoverable oil. Depending on the price of oil, the number of recoverable barrels of oil will fluctuate. Additionally, as technology changes so too can the number of economically recoverable barrels.

The numbers in this study are important because both sides tend to manipulate them to their liking. Proponents of the national energy policy can use the high end of the technologically recoverable oil figures because 11.8 billion barrels of untapped oil looks better than the lower end of economically recoverable estimates. In contrast, opponents of the energy plan can respond by saying that if all the oil in the ANWR were used it would only give the country enough oil for six months. That would be true only if the United States relied solely on oil from the ANWR with no importation of oil, which is obviously not what the drilling forces have in mind.

The inescapable fact is that a large amount of oil is located in the ANWR. Taking the USGS baseline example, one can expect around 7.7 billion barrels of oil beneath the ANWR. EIA has predicted, using the mean estimates of available resources, that opening the ANWR to crude oil
development will add 800,000 barrels per day to American oil production in 2020, nine years after ANWR is projected to begin production.\textsuperscript{217} This increase in production is projected to reduce the net share of foreign oil consumed by the United States from sixty-two percent to sixty percent, and will increase domestic production by fourteen percent.\textsuperscript{218}

If the oil fields under the ANWR did contain 7.7 billion barrels of oil, then it would be one of the larger oil fields in the United States. By comparison, the Prudhoe Bay oil field—the largest discovered in the United States—contains 13 billion barrels of oil, and the estimated recoverable oil from the lower forty-eight states is 136 billion barrels.\textsuperscript{219} Despite the possible size of the ANWR oil fields, there still remains great uncertainty regarding the size of those oil fields, the costs of developing those resources, the timing of production and the environmental effects of drilling.\textsuperscript{220}

The only certainty is that opening the ANWR for drilling will have only marginal effects on reducing dependency on foreign oil. Even in the best case scenarios, oil extracted from the ANWR cannot win American independence from oil imported from the Persian Gulf.

Fundamentally, the linkage between American dependence for oil and national security is so important that it should make drilling in the ANWR a priority, unless there are better alternatives. Given the marginal effects oil drilling in the ANWR will have on mitigating American demand for foreign oil, there are better choices available. The question is not whether the United States should sacrifice national security for the sake of 1.5 million acres of Arctic tundra, but whether drilling is necessary for national security given alternate measures, concern for the conservation of the ANWR and to a larger extent, the remaining public lands.

C. Alternatives to Drilling

Historically, America has recognized the importance of the environment by passing laws to protect it.\textsuperscript{221} This interest in conserving public lands was

\textsuperscript{217}energy info. admin., dep't of energy, the effects of the alaska oil and natural gas provisions of h.r. 4 and s.1766 on u.s. energy markets 2 (2002), available at http://tonto.eia.doc.gov/ftproot/service/sroiaf(2002)02.pdf.
\textsuperscript{218}id.
\textsuperscript{219}id. at 3.
\textsuperscript{220}id. at 12.
\textsuperscript{221}see, e.g., the clean water act ("cwa"), 33 u.s.c. § 1251 (1977); the clean air act
written into law in the Wilderness Act of 1964.\(^{222}\) More than seventy-five areas located in sixty-three wildlife refuges have been granted wilderness designation.\(^{223}\) Along with the Refuge Recreation Act of 1962 and the National Wildland Refuge System Administration Acts of 1966 and 1997, the Wilderness Act demonstrates a clear commitment to protect the natural ecosystems.\(^{224}\) All of those acts support protecting wilderness areas such as the Arctic Refuge Coastal Plain.\(^{225}\) Specifically, President Eisenhower’s Public Land Order recognized the public’s interest in “preserving unique wildlife, wilderness and recreational values” when he established the ANWR.\(^{226}\)

The ANWR is valuable as a complete and intact arctic ecosystem. Before deciding to explore for oil in its “biological heart”\(^{227}\) the nation must look at alternatives that might be more environmentally friendly and effective.\(^{228}\)

1. Other Sources of Supply

There are sources of oil from “safe” countries that the United States has barely begun to tap. While it would take about seven to twelve years for oil production to begin in the ANWR,\(^{229}\) the fastest growing sources for oil production are the Caspian states, Africa and Russia.\(^{230}\) The United States could promote greater diversified production of oil from these more reliable and

\(^{222}\) Wilderness Act of 1964, Pub. L. No. 88-577 (1964). The Act provides the procedure for declaring an area a “wilderness.” Once land receives “wilderness” status, the construction of buildings and/or roads in the area is forbidden. Recreational uses are allowed. The act was intended to keep certain areas pristine and safe from outside exploitation. See Eidson, supra note 22, at 216 (stating the Act was a legislative struggle that took over nine years and sixty-five revisions).

\(^{223}\) Id.

\(^{224}\) Id.

\(^{225}\) Id.

\(^{226}\) Public Land Order 2214, 25 Fed. Reg. 12,598, 12,598 (Dec. 8, 1960); see also Kolton Statement, supra note 177 (arguing that drilling in the ANWR would undermine the environmental progress begun under President Eisenhower).

\(^{227}\) See Eidson, supra note 22, at 212.

\(^{228}\) See Bryner, supra note 27, at 369-71.

\(^{229}\) See ENERGY INFO. ADMIN., supra note 217, at 4.

\(^{230}\) See Facts and Myths, supra note 101 (statement of Alan Larson, Undersecretary for Economic, Business and Agricultural Affairs).
friendly countries. Initiating closer ties with Russia’s energy industry and developing oil pipelines from the Caspian Sea are other options available to the Bush administration.\footnote{See \textit{id.} at 18.} By diversifying supply from non-OPEC nations, the United States can reduce its dependency on oil from unfriendly countries without needing to produce oil from the ANWR.\footnote{See \textit{id.} at 45-47 (statements of Daniel Yergin, Cambridge Energy Research Associates and Stuart Eizenstat, former deputy Secretary of the Treasury).}

2. New Technology

There are new technologies that are already in place or will be in the not too distant future that will reduce the need for new oil exploration. New oil recovery technology and exploration of oil fields in the Alaskan North Slope\footnote{The North Slope is the northern region in Alaska where Prudhoe Bay and the National Petroleum Reserve is located.} are allowing greater amounts of oil recovery in areas already developed for drilling.\footnote{See Kolton Statement, \textit{supra} note 178.} Advanced recovery technology has the ability to extend the life of existing oil fields. For example, in 1990, the American Petroleum Institute determined that the Prudhoe Bay oil field was depleted, but due to the use of improved oil recovery technology, this “depleted” field was producing 855,000 billion barrels per day by 1996.\footnote{Eidson, \textit{supra} note 177, at 78 (citation omitted).} It is now expected to produce oil until 2030.\footnote{Id. (Citation omitted).} Application of emerging technology could boost production of Alaskan oil without drilling in the ANWR.\footnote{See \textit{id.} at 78-79.}

New technologies are quickly emerging, such as hydrogen-powered automobiles and fuel-cells, that might one day reduce the consumption of petroleum.\footnote{See President George W. Bush, State of the Union Address (Jan. 28, 2003) ("proposing $1.2 billion in research funding so that America can lead the world in developing clean, hydrogen-powered automobiles"), \textit{available at} http://www.whitehouse.gov/news/releases/2003/01/20030128-19.html [hereinafter State of the Union 2003].} Auto companies such as Ford, General Motors, Toyota and Daimler-Chrysler are all developing fuel-cell cars and are planning to introduce them to the market by 2005.\footnote{See Marianne Lavelle, \textit{Living Without Oil}, U.S. \textit{NEWS \& WORLD REP.}, Feb. 17, 2003, at 32, 35.} Hybrid vehicles such as Honda’s
Civic and Toyota's Prius are already on the market.\textsuperscript{240} The FreedomFUEL initiative, a scientific research program launched by President Bush, focuses on developing what is unquestionably the most promising alternative fuel source—hydrogen.\textsuperscript{241} Scores of firms as well as major petroleum companies are researching how to make hydrogen powered cars a reality.\textsuperscript{242} The government can continue to search for a long-term solution to petroleum use by increasing support for alternative fuel sources without allowing oil exploration in the ANWR.

3. CAFE Standards

Perhaps the quickest and single-most effective alternative to oil exploration in the ANWR is raising the Corporate Average Fuel Economy ("CAFE") standards. Raising these standards would make automobiles more fuel efficient and save millions of barrels of oil per day.\textsuperscript{243} Senators Diane Feinstein (D-CA) and Gordon Smith (R-OR) attempted unsuccessfully to pass legislation in May 2001 that would increase mandatory miles per gallon ("mpg") for light trucks, SUVs, and mini-vans to 27.5 mpg by 2007.\textsuperscript{244} Similar legislation was introduced in early 2002 that would have increased CAFE standards to 36 mpg by 2015 for SUVs and mini-vans.\textsuperscript{245} Despite these efforts, Congress has consistently killed these attempts and any other legislation that would attempt to curb gasoline usage by Americans.\textsuperscript{246} The administration has repeatedly held that the American standard of living should not be sacrificed for higher gas mileage.\textsuperscript{247} Critics of gas

\textsuperscript{240} Id. at 37.
\textsuperscript{241} Id. at 35.
\textsuperscript{242} See id. Firms like British Petroleum and Royal Dutch/Shell Group have invested billions of dollars into hydrogen projects. See also Eidson, supra note 177, at 76-77.
\textsuperscript{243} See Comm. on the Effectiveness & Impact of Corp. Average Fuel Econ. Standards, Transportation Research Board, Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards 1-3 (2002), available at http://www.nap.edu/books/0309076013/html. The report was a comprehensive investigation into CAFE standards. The study estimates that roughly 2.8 million barrels of oil per day would be used in the absence of CAFE standards. Id.
\textsuperscript{244} Bryner, supra note 27, at 353.
\textsuperscript{245} Mayer, supra note 84, at 622.
\textsuperscript{246} See William Newkirk, Senate Gives OK to Energy Measure; Passage Sets Up Conference Fight over House Bill, CHI. TRIB., Apr. 26, 2002, at 8.
\textsuperscript{247} See Bryner, supra note 27, at 359-60.
mileage standards point to vehicle safety among other arguments for not accepting higher standards. If Americans would accept higher standards for automobiles, however, the United States would be much less dependent on oil. Furthermore, auto manufacturers can increase gas mileage using existing technologies. A National Academy of Science study found that new technology, some of it already in use, could improve gas mileage by twenty-five to fifty percent. It seems disingenuous for our government to ask American service members to make sacrifices in the Persian Gulf, and then refuse to raise gas mileages on SUVs here at home. Legislating new CAFE standards could save more oil than we could ever hope to extract from the 1002 Area of the ANWR.

4. Fundamental Changes

Fundamentally, the debate over the ANWR goes deeper than just the conservation of a national refuge versus exploitation of federal land. The debate is about difficult choices we as Americans will be forced to make today or in the future. Despite the significance of American dependency on oil and the enormous repercussions this dependency can have, no one in the government has attempted to confront the tougher issues. The American lifestyle will have to change if Americans are ever to be free of oil dependency. Despite this, no one has asked Americans to drive less or buy more fuel efficient cars. No one has proposed taxing gasoline at higher rates. Instead, Congress has continually rejected legislation to increase minimum gas mileage requirements for vehicles. While this Note does not advocate any particular solution, the fact remains that a permanent long-term solution can only come when the government gives serious deliberations to the domestic demand for oil.

President George W. Bush said in his State of the Union Address that Americans would not leave their problems to future generations.

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248 But see Mayer, supra note 84, at 624 (stating that the argument that consumers should be able to purchase larger, safer vehicles is weakened by evidence that shows SUVs are not safer and the auto industry’s own failure to fully disclose safety statistics for SUVs).
249 See Lavelle, supra note 239.
250 Id. at 35. Raising the miles per gallon standard to 35 mpg would save 1.5 million bbls of oil per day, more than the most optimistic estimate of production in the ANWR. See Bryner, supra note 27, at 371.
251 See State of the Union 2003, supra note 238.
tially, that is what will happen by developing the ANWR. Instead of meeting the real challenge, over consumption of oil, America merely puts off the problem until tomorrow. The debate over the ANWR boils down to choosing the easy solution over the difficult solution.

Oil pumped from the Coastal Plain of the ANWR is not vital to our national security. There are other measures which would accomplish the results of opening the ANWR in less time, such as higher mileage standards for vehicles, newer technology in existing oil fields, and importing from friendlier states. The bottom line is that the United States, at its current consumption rates, will always be reliant on foreign produced oil. It is time for America to handle its dependency on oil by addressing what it controls—demand for oil—and not try and drill the way to freedom.

VII. CONCLUSION

Sacrificing one of America’s greatest wilderness areas in lieu of the available alternatives is a poor bargain and futile solution. It is impossible for the United States to increase domestic production to a point where we will be independent from Middle East oil. Our dependency is and will be a constant in our national security equations. The best approach the United States can take is to reduce demand for oil and increase supply from other existing sources. A reduction in demand can come from higher gas mileage standards, but at a more fundamental level, it has to come from a determined change in lifestyles of the average American.\(^2\) This is the difficult part. Americans must realize that lower gasoline prices and bigger cars come at a price. The price is the blood of our citizens and the destruction of our environment. There may come a day when the oil underneath the ANWR is actually vital to our nation’s security. Today with the number of viable alternatives available to the country, it would be regretful if we chose the least attractive and most destructive.

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\(^2\) See Mayer, supra note 84, at 641.

If more and more members of the U.S. motoring public were to voluntarily use less gasoline, and if as citizens they supported higher gasoline taxes, stricter fuel economy standards, and the phase out of subsidies for oil and its related industries, the United States would be less dependent on oil generally, and Persian Gulf oil in particular.

*Id.*
Most recently, the debate in the 108th Congress for the future of the ANWR came to a head on March 19, 2003, when the Senate narrowly voted against drilling in the Refuge by a vote of 52 to 48.\footnote{David Firestone, \textit{Drilling in Alaska, A Priority for Bush, Fails in the Senate}, N.Y. \textsc{Times}, Mar. 20, 2003, at A29.} The vote followed two days of passionate debate with both sides offering statistics and speeches to support their perspective. Republican leaders had expressed hopes that this would be the year to force the provision through Congress.\footnote{\textit{Id.}}

The fight of the decade continues.