

Judges Ballots 2007

Emory (Akimi Hamraie & Julie Hoehn) vs. Missouri-Kansas City (Amy Foster & Malcolm Gordon)



Eric Slusher, Dartmouth

I don't suppose that anyone *really wants* to judge the NDT Finals. But for me, this was a unique honor. I've known for sometime that this year would be my last as a full-time debate coach. I've been doing the full-time coaching thing for 8 years now and am ready to move on to new things. I'll spare you the sappy crap, because in all likelihood I'll be traveling to some tournaments, judging and helping out where I can in the future. But, I probably won't be as plugged-in to the arguments and strategy as much, so this year was really my last chance to do something like this. I am particularly honored that these two deserving teams wanted me to be a part of such a special moment for them.

My roots in college debate began with UMKC, going back about 15 years. Couldn't be happier for everyone associated with this fine program: current, past and future. Malcolm and Amy were my kind of team: blue collar, scrappy, and always having fun. Loved judging them because you were sure to see good arguments, awesome cross-examinations, and have lots of laughs. Vega, Stanley and Jordan deserve a helluva lot of credit for getting their team ready for a fantastic Monday.

Don't know how I ended up judging Emory HH so much, but I'm glad I did. I think they were glad I did too given my voting record, and their win record, with me judging. Speaking of having a fantastic Monday, Emory HH bounced back after having a 5-3 prelim record by taking out the 2 nd, 3 rd and 4 th-ranked pre-bid teams on Monday, in addition to winning a re-match of one of their prelim loses in the finals. You can't take anything away from 'em. They earned it by turning it up a notch when the pressure was on and beating a higher seed in each of their elims.

I voted Negative, for Emory , because the amendment counterplan solved the aff and avoided the rights rollback turn. While Permute do both resolves solvency – the problem of lower court enforcement of the plan and judicial reinterpretation of the counterplan. – it risks the rights rollback turn and the impact to rule of law. These outweighed the Henderson/Stare Decisis criticism because the impact to those arguments seemed to be an inability of progressive movements or coalitions or whatever to challenge patriarchy in the law. Aside from being poorly impacted or neatly tied to the aff's coalition-building/spillover “advantage” in the 1AC, it seemed unwise to accept an Alito-led assault on existing progressive rights as the price of admission for future gains at some unidentified point in the future.

Permute: do both

The 2AR was a model speech for assessing risk in light of a permutation. What follows will assess the debate in those terms. Both sides were content to suspend disbelief and stipulate that the counterplan's amendment is passed, ratified and implemented instantly, all in one day – the same day the Supreme Court hears, votes and releases their decision in the plan. This world probably does lower the risk of minimalism a bit, which is all the 2AR suggested. (it doesn't solve the link, just lowers it.)

The 1AR said, the perm solves the net-benefit because it doesn't look like the Court is doing it on their own, they do it on the same day and it wouldn't be perceived as the Court acting alone so it doesn't risk the legitimacy disad. None of these really address how the Court itself feels about its relationship to precedent and stare decisis. The 2AR said the amendment gives the Court cover after the link kicks in. He also said the neg's UQ evidence about Robert's ability to control the Court proves he could rein in the radical right justices let loose by the link. A little new, it's impact assessment, whatever.

I thought the point about the neg's UQ taking out the internal link was dead wrong, though. Roberts can contain the rightward faction now by using stare decisis as "cover." The plan and the permutation risk lifting Robert's cover, which implicates how effective he is when it comes to controlling the other justices. The minimalism link alters Robert's position vis-à-vis the other justices. He is effective now but won't be after the plan or the permutation. I know there's an argument to be made that Roberts could point to the amendment in the days after deciding the plan as a reason why respect for precedent and stare decisis should still justify minimalism, but it wasn't clearly argued this way by the aff. If other squads are anything like mine the constitutional amendment counterplan is pretty controversial. And people have strong feelings about how "permute do both" operates in relation to minimalism disads. I can only evaluate the arguments made in this debate. I thought the aff was just too thin on the mechanics of the permutation to get the minimalism risk down to where the stare decisis "critique" could prove decisive.

CP Solvency

Aff pretty much dropped that new grounds would confuse lower courts and they would interpret the plan ineffectively. Neg is putting up a pretty good fight on how the Court(s) would interpret the counterplan. If there was some reason the aff felt like they didn't need to answer the neg's argument that lower courts wouldn't enforce the plan, it was lost on this judge. I'm guessing the aff's thinking was that this argument applied equally to the counterplan, i.e. courts would be confused by the concept of personhood in the amendment text. This should have at least been addressed by the aff. Even a new 2AR argument could've been enough. I think the assumption is sort of correct; it just needs to be verbalized.

The neg referred to this card about how the counterplan symbolizes that the case harm was a problem of the constitutional text rather than a particular court decision. That's kind of hard to believe given how directly the text challenges the decision in PP v. Casey, but it just wasn't addressed by the aff.

I didn't think the neg's solvency evidence was great, but I thought they argued it better than the aff did. I'm willing to accept that court confusion over the grounds in both the counterplan and the plan may prevent spillover for both. This is more troublesome for the aff, though. More on that in a minute.

The aff's Segal and Spaeth card says, "the Court is free to construe any amendment - whether or not it overturns one of its decisions - as it sees fit, even though its construction deviates appreciable (sic) from the language or purpose of the amendment" Example it cites is the 26th amendment. I guessing there's more to this part of the book than what made it into this card. I have no idea after looking at it how a court has ever misconstrued the 26th amendment. The Court said congress couldn't lower the voting age, so an amendment did. I don't understand what the problem was - the voting age is and has been 18 - it doesn't discuss what the Court did to circumvent it.

Didn't hear the 2AR extend the last 2AC card on the CP about how the 14th amendment proves the Court can re-interp. I figured the argument it made was extended, though. The neg made some sense to me when they said that while *broad* rights amendments have been subjected to a wide array of interpretations by courts over the years, the specificity of the counterplan in modeling the aff's plan probably prevents this problem. Also the neg draws a distinction between amendments that overrule decisions that increased or upheld rights, and ones that restricted them.

I can't think of how a court would poorly interpret the amendment text except in determining what personhood means. And if that's true, the lower courts, or a future Supreme Court could do that with the plan. Because the text of the Court's decision (the plan) mirrors that of the amendment (the counterplan) both sides risk some re-interpretation. The negative argues that it risks re-interpretation less because the amendment gives all courts a constitutional basis for the personhood right, rather than a particular Supreme Court decision.

The point of the aff's Henderson card seemed to be that the Court can't just declare new rights – they are bound by the text of the constitution. The counterplan gives the Court a constitutional basis for a right to personhood. This evidence was explained in cross-x as “a solvency card for the permutation.” This makes sense, but it doesn't fly as a re-interpretation deficit card on its own.

The counterplan is competitive. The permutation is worse than the counterplan alone because the minimalism turn is a greater immediate risk of judicial authoritarianism than respect for stare decisis. The impact to authoritarianism is sexuate rights, civic identity, patriarchy, women's rights, whatever – same as the overall impact to the aff. (Whitford card, violence, etc.)

The counterplan solves at least as well as the case for all 1AC impacts except coalitions. The debate now pivots on the minimalism and legitimacy DA versus coalitional challenges to patriarchy in the law. The difficulty is that the impact to the aff's spillover, coalitional challenges to judicial authoritarianism net-benefit is undifferentiated argumentatively from the impact to the DA and turn. (i.e. violence, authoritarianism, patriarchy)

Disad

After the 2AR the aff only has a Stare Decisis Bad/Judicial Authoritarianism critique going against the neg's minimalism and legitimacy disads. Again, the impact is the ability of citizen-driven litigation seeking progressive legal change to overcome judicial conservatism.

The aff has a handful of cards from Lynne Henderson that all suggest that the problem with the Court is the domination of conservative justices disabling progressive approaches to the law. Without going into much more detail

I will just say that the minimalism disad says BECAUSE the Court is conservative it is likely to accelerate its rightward, authoritarian shift after the plan in a way that rolls-back EXISTING progressive rights. Respect for precedent and stare decisis prevents this now. The turn says because the Court is conservative we should challenge it to adopt more progressive rights. The aff suggests this blunts the disad's ability to "turn the case." The way I see it, the disad means we'd have to go backwards before we can go forward.

As I mentioned before, the impact to progressive challenges to judicial authoritarianism is undifferentiated from the case impact (the 2AR said it was the 1AC Whitford evidence, which had a lot of circled words, but just said "violence" in terms of tangible impact). The 2AR also mentioned the references to racism and patriarchy in the Henderson evidence. But the increase of conservatism stemming from the DA implicates these impacts as well. And there's an impact to rule of law that is similar to the case impact. I didn't think Emory's impact cards were very good, but the CP solved the aff's impact from creating sexuate rights and since it was tough to weigh the advantage to opening the Court-house door to progressive legal change years down the road, the short-term turn favored the neg.

The aff may be right that respect for neutrality in the law means the Court can't be an effective vehicle for liberal, progressive rights. But the counterplan demonstrates that alternatives exist. The affirmative didn't argue that litigation is easier to pursue than amendments, but this is obviously true. I think the aff would have benefited enormously from having a tangible, add-on impact to coalitions, or future pursuit of rights in the Court made available by the destruction of strong respect for stare decisis on the Court. At least something that outweighed short-term rollback. (By the way, the aff argued that fiat is durable, but the turn had to do with rollback of other rights, not the plan.) It wouldn't have taken much in my mind since the neg's impact evidence wasn't very good.

While I thought the debate was fairly decisive for the negative, I should mention that the 1AR and 2AR made excellent strategic choices and did a nice job getting back in the debate after the block. Going into rebuttals it looked like it might be a blowout for the neg. But, I thought the 1AR did a really nice job selecting arguments in a way that pressured the 2NR. And I think the 2AR did exactly the right thing in using the permutation as a focal point for assessing the risk of the case turn versus future progressive litigation strategies. It might have worked if there was some different evidence or arguments in support of it. Both teams debated fairly well given their nerves. Congratulations to all four of you for a fantastic NDT.
