2019 Final Round Ballots

Herndon

Congratulations to both teams on fantastic years, and amazing debate careers.

I voted Negative for Michigan AP.

The NDT books won't show it, but Michigan AP won the 2015 National Debate Tournament.

There is little to no solvency deficit to the counterplan.

There is an incredibly small but present risk of the disad.

The impact to the disad undermines the treaty commitment signal of that solvency deficit.

The permutation does not completely shield the risk of the disad.

The Counterplan

The largest point of controversy centers on the solvency deficit question for the counterplan. The aff arguments against it were the following:

First, absent state action, we won't fill gaps in current human rights treaties.

The aff has several solid pieces of evidence that establish the need for a greater role for the state courts in filling the gaps in our treaty obligations – particularly human rights treaties. As I understand it, the plan emboldens courts to fill that gap. Couple of important aff cards that probably enticed the other judges. The first is the Davis 14 card that clearly establishes the need for state activism to overcome status quo gaps.

> Important human rights issues are not always litigated in the federal courts, however. Federal constitutional protections tend not to include the economic, social, and cultural rights that are an integral part of the international human rights system. **State courts, by contrast**, often consider such protections and, in interpreting state law, have the **independence to recognize a broader range of rights**. In addition, state courts may be called on to interpret and apply international treaties, including human rights treaties.¶ Recognizing this important aspect of the implementation of human rights law in the U.S., this¶ report details the ways in which state courts have considered and interpreted this body of law. ¶ The report is intended for public interest lawyers, state court litigators, and judges, and also for¶ state and municipal policymakers interested in integrating compliance with international human¶ rights law into their domestic policies.17¶ State courts can draw upon a number of arguments to support their use of international human¶ rights principles in decision-making. Under Article VI, Section 2 of the U.S. Constitution,¶ treaties are the "supreme Law of the Land," binding on the "Judges in every State."18 The United¶ States has signed and ratified the International Covenant on Civil and Political Rights (ICCPR),¶ the International Convention on the Elimination of All Forms of Racial Discrimination, and the¶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¶ and is therefore bound by these treaties. Provisions of the UDHR have been recognized as¶ customary international law.19¶ Implementation of these treaties and their principles is the responsibility of federal, state, and¶ local government.20 Under the federal system, states are primarily responsible for regulating many areas

of substantive law, including criminal, family, and social welfare law. The¶ reservations the U.S. Senate issued when it ratified the treaties make clear that states are responsible for implementing international human rights law in these areas.21 **Thus, state court incorporation of human rights principles is crucial to ensuring the United States' human rights implementation and compliance.**¶

This card clearly establishes the need for state court activism as well as a lack of it in the status quo. The most strongly worded card is a good part of the 2ar and is the Davis 06 evidence:

If states fail to implement international treaty provisions that address areas traditionally reserved to them, the United States **cannot, as a practical matter, achieve compliance** with the treaty provisions to which it is party.¶ Notably, the United States' treaty obligations may go beyond treaties' substantive focus and may also incorporate their enforcement procedures.12 For example, both the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Elimination of All Forms of Racial Discrimination (CERD) require the availability of judicial remedies for violations.13 Under federal jurisdictional constraints, however, judicial remedies will sometimes be available only in state courts. This might be true, for example, of cases shielded from federal judicial review under the Pennhurst doctrine, which bars federal court adjudication of state law claims for injunctive relief against the state.14 Likewise, even if plaintiffs are pressing human rights claims that implicate federal obligations under international law, the federal courts may eschew cases arising in the family law or criminal law contexts, at least in the first instance.15 In such situations, unless there is state court participation in the procedural as well as substantive implementation of human rights standards, the United States **will fall short of fulfilling its treaty obligations**.16

I was shocked at the quality of these cards. My initial read through and comparison to the 2ar made me think that I would decide there was a substantial solvency deficit to the counterplan. The Rooney card was by far and away the best card on the question of the solvency deficit though – and was extended at length by the 2nr. Couple of important components of that card. First, Court involvement isn't all that effective – deciding individual cases would take time and would be limited to the facts. So, a particular decision – in this case on prostitution – wouldn't influence other possible decisions. Second, it cites a reluctance of allies to give credence to court decision which creates a credibility gap in how likely the government writ large would be to follow and comply with those decisions. Finally, it prodicts congressional action as likely to send an international signal of the value of IHRL treaty law as well as likely to motivate others to act to create judicial precedents that support the commitment.

The neg had two other arguments on the flow that neither the evidence nor the 2ar/1ar answered for framing the solvency deficit. First, the lack of unified voice on future court rulings. The aff extends the very long Davis 14 piece of evidence to say that, "as international human rights principles become more integrated into state law, courts will define rights more broadly." The problem is that this seems to be a direct effect of the Rooney evidence and the function of the counterplan. Both cite the same ruling and establish the same court precedent. While this argument gave me a good bit of pause. I didn't understand why state courts doing the plan was necessary to build up that position over time. Additionally, the Wilkinson 04 piece of evidence was extended and explained as an indict of both the courts likelihood to adopt the approach we would want them to:

A third set of problems concerns the methodology with which judges approach foreign sources. Which *countries* should judges consider, and which *issues* should judges address in a comparative context? The decision as to the number and type of countries to consider in comparative law decision-making is a complex one. It is particularly troublesome when

approaching social issues because of the broad diversity of social practices throughout the world.

As well as continuing to maintain the gaps in international law by picking and choosing countries and laws that best suit their agenda:

> Should judges be able simply to highlight examples from those countries that bolster their arguments and yet ignore other nations whose practices contradict their claim? The number and diversity of nations make this dilemma all the more acute. Judges have not sought to consider these questions in a systematic way. To date, the foreign sources that have been cited come largely from Europe. Obviously, our historical connections with our European friends may make reliance on European cases more appealing. But American citizens come from *all* corners of the globe. I worry that judges will appear to indulge an unfortunate Eurocentrism by overlooking the practices of Asian, Middle Eastern, African, and Latin American states. Moreover, the Court's piecemeal approach has done little to illuminate why the experiences of some European countries have been chosen and others omitted.

So, ultimately, while in theory court activism would help bolster the incorporation – I have no reason to believe that that incorporation is more likely by state court initiated momentum OR that it would be uniform enough to appease allies and international groups about our commitment to IHRL.

Second, the neg frames the counterplan as being sufficient to access the internal link of the Melish card even if state court involvement is also sufficient. I felt compelled – by both sides – to read the Melish evidence and establish the threshold for commitment to IHRL. Here is the card:

> While realists dominated U.S. human rights policy during the Cold War, 149 and remain highly influential in the foreign policy establishment today, institutionalists have gained increasing prominence over the last two decades with the dramatic proliferation of international institutions and rapid expansion of the international human rights architecture. Within this context, the push-pull dynamic over U.S. human rights policy as a foreign policy objective has shifted determinatively toward institutionalists. For this group, human rights treaty body engagement serves two primary strategic foreign policy goals today: first, renewal of **U.S. moral leadership in multilateral settings** and, second, promotion of human rights and democratic reforms in other countries. Both are directed to furthering national security and global public order objectives, independent of any domestic policy implication. ¶ First, institutionalists appreciate that the international standing of U.S. diplomats and their ability to lead in international processes of global dispute resolution are compromised by the nation's failure to ratify core human rights treaties and engage in their supervisory procedures. This failure, which has left the nation increasingly in the company of rogue or failed states,150 renders it out of step with its democratic partners and subjects it to charges of hypocrisy by less democratic nations where the United States seeks human rights improvements or security safeguards. 151 On a practical level, this **impairs the United States's ability to accomplish its national security** and other **global security priorities within multilateral settings**, at times making disagreement with the United States a "principled" human rights stand in itself for nations.152 In this sense, ratification and engagement serve as tools through which the United States can reseat itself within the "international community," reassert its moral leadership role, and hence better promote its national security agenda in multilateral settings, where most international work gets done. For institutionalists, this has been a particular priority following the widely internationally condemned unilateral actions taken by the United States following the 9/11 terrorist attacks. ¶ The second factor, **most commonly articulated by the U.S. State Department**, involves recognition that full **compliance by the United States with international human rights treaty body procedures** increases the visibility and legitimacy of the procedures themselves, ratcheting up expectation levels for their

regular and concerted use, and thereby prodding other states to take the procedures more seriously. Indeed, U.S. executive agencies recognize that human rights treaty bodies—by providing an international spotlight for gross abuses, giving voice to individuals and civil society groups seeking greater human rights protections and transparency at home, and providing legitimacy to domestic human rights and democracy movements—have initiated important conversations and processes in countries around the world, particularly in transitional states.153 They also recognize that while the United States's failure to ratify specific treaties has not likely caused other states to forego ratification, it may embolden some to turn ratification into an empty political act used as a rhetorical device to claim greater commitment to human rights than the United States without making corresponding changes in their policies and practices at home.154

This card clearly says that the US needs to make meeting our treaty obligations a larger priority and we need to be in compliance if we want to move multilat forward. I agree it is a great card. I also agree with the 2n's discussion of the Rooney card [included above] as being sufficient to accomplish the same attack on hypocrisy that this card calls for. There is nothing about this card that says the states must be the actors for it; and, it makes little logical sense to assert that the commitment of congress and the push to get the states to do it wouldn't accomplish the same thing.

Second, the aff goes for a precedent is necessary argument. I don't know why this doesn't boil down to another reason why courts are necessary because precedent is just what courts do. But, the neg is clearly establishing congress' ability to get the ball rolling. It's also indicted by the Wilkerson card and some cards on case.

Third, the permutation. As a quick aside, I do feel like this is the place where the 2ar had the highest likelihood of winning the debate. A fact that continued to bother me about the strategy is that the link to the disad is based on a solvency deficit existing. The disad assumes state courts get active and involved [more on that later] and the solvency deficit assumes that the counterplan leaves them less involved. The lack of discussion of how to weigh this, who benefits from this, and most importantly, how this impacted the permutation, were why this debate was so difficult to decide.

On the permutation the aff made two arguments; the perm shields the link and it lowers the risk enough to justify aff on presumption. The problem with this is that while I thought the 1ar handled the theoretical components of the permutation, the 2ar did not extend a lot of answers to the perm wall from the block that was well extended in the 2nr. Those included:

Congressional Approval First - Wu 7 – independent enforcement is avoided because the courts wait on the signal from the Senate. And, Christensen 97, which had the phrase that I thought most framed my reading of the permutation:

In an era of world civil society, however, programs encouraging federal judges to use the sources of customary international law (which include writings of academics as well as state practice and decisions of international tribunals) as formal authority for U.S. law, which binds all judges under the supremacy clause of the Constitution without approval first by the appropriate political branches, is likely to encounter profound resistance. More valuable would be a judicial architecture for making decisions in each phase of transnational civil litigation involving foreign and domestic parties whose interests are determined from their international scope and perspectives. 145 Even more important would be a critical analysis of some of the more obvious

> biases in judicial presumptions and attitudes about the use of international law and treaty interpretation in practical decision-making. 146. 146

It was very difficult for me to ignore the phrase "without approval first by political branches." [I guess it begs the question of my interpretation of fiat. Does the perm have a unified voice, or is it the courts acting independently but at the same time? I'm not sure there is any right or wrong answer to this]. Even if I have a very aff biased – "all together at the same time" – interpretation of fiat it still links to that Christensen card because it isn't waiting to implement. So, that too begs the question of the strength of the link of the disad.

So, for the counterplan – I have a difficult time assigning a solvency deficit that I could explain to the negative. While I understand that state court activism would send a strong signal that would fill the gap in our commitment to international human rights law, the act of congress in the plan does the same – if not a superior – signal. Plus, there were some internal link questions on the case that also minimized that risk.

The Case Debate

I believe that any aff ballot would have to center around the impact calculus done on the multi-lateralism impact. If there was any criticism of an otherwise amazing 2nr, it would be the lack of impact defense extended on that flow. However, the problem of leveling that as a criticism is that it ignores several high quality internal link presses extended and warranted by the 2nr. While I'm not sure that any of them reach to the level of "taking out" the advantage. They all function as shields against a possible solvency deficit to the counterplan. I had four distinct arguments extended.

First, the Posner evidence that establishes the difficulty in interpreting human rights law. My favorite of these cards was the 2nc Posner card:

> Human rights law is **too ambitious** — even utopian — and **too ambiguous**: it overwhelms states with obligations they **can't possibly keep** and provides **no method** for evaluating whether governments act reasonably or not. The law **doesn't do much**; we should face that fact and move on.

There are several other cards that make a similar argument that were extended by the 2nc. The problem with the aff's answers is that I think they have plenty of evidence that defends state courts as a spot for activism [an issue the counterplan handles] but I'm not sure the aff even has a compelling card on this question. The closest that they get is the Melish card [a piece of evidence that is just as much, if no more of, a warrant for the counterplan's solvency mechanism]. It just speaks to the gaps as a reason why multilateralism fails but not a warrant for why human rights law writ large would be able to create an effective multilateral regme.

Second, the Moravcsik card is a strong indict of the authors forwarding the value of U.S. human rights. This is extended in the 2nc as an "even-if" statement that filling the gaps of human rights law in the US wouldn't do anything for multilateral norms. This card could be better on the question of the HR spillover. But, I don't really have an answer to the indict of HR norms authors. The aff's answer is largely the "they fail because treaties are ratified not implemented." I'm not really sure how that answers the neg's evidence or gets to the heart of the value of multi-lateralism. If the US does, what is the mechanism for forcing other countries that don't want to – more on that with the next answer.

Third, McGinnis & Somis 07. This is the phrase that stands out the most in my memory. "democratic states won't model non-compliance and authoritarian ones won't model anything." This was a general indict of the effectiveness of multilateralism. To me, it is a major hole in the way the 2ar frames multi-lateralism as a possible solution for all the world's problems and does impact calc.

Fourth, the US will continue to be violators of lots of other treaties for lots of other reasons. The aff's response to this is the spillover claim. Basically, empowering the state courts would lead them to act on all of these issues*

Finally, most of the arguments on the solvency deficit on the counterplan were also applicable to the questions of the solvency internal link for the aff – so if states don't implement well, if they don't fill the gaps, and congress does [all counterplan questions] – it is hard to imagine a re-invigorated multilateralism. There were a couple of aff cards – largely the 1ac evidence – but they are also explained and discussed on the counterplan question. Most of the 2ar was excellent on why states are important and why multilateralism is important. The gap between those two claims is the place where the neg had four compelling arguments to establish a sizable solvency gap between the plan and the multi-laterlism impact.

[* as a lengthy aside, relevant for the disad later, this is both the best possible answer to one solvency question for the aff, but also the link to the otherwise intellectually gap laden LOAC disad. If the state courts are going to be activist on questions like gitmo and torture – examples that the neg gave – then it stands to reason that they would be activist in questioning other military based questions. If there is a solvency deficit to the counterplan then there is a link to the disad – and vice-versa. I struggled with this individual question for at least 45 minutes of the decision – and afterwards heard that several other judges did as well. I evaluated the debate from the perspective of the 2ar, that the aff would cause state court activism into other treaties – as I think the neg agrees with that interpretation.]

While I'm not sure how any of them resolved it, the existence of these other internal links to the advantage, namely that authoritarian states don't care, while having to give the aff this spillover internal link in order to access their advantage made me more likely to assign "a risk of the disad." Because, if I agree with the 2ar that the aff solves "a spillover to other treaties," then it stands to follow that would include the LOAC decisions.

The Disad

The aff pushes back on the disad with four category of arguments. While I didn't find any of them particularly compelling, they did function to decrease the risk of the disad quite a bit. In particular, the argument about the internal link. Those four arguments are below.

First, IHRL is dying now, so the disad impact can't turn the case. The answer the aff is making to the turns case argument presumes that the neg is forwarding an argument about the status quo solving the case. Instead, the argument is quite clearly a link/impact makes it impossible for the aff to solve. The parrish 13 cards are an important framing question for the aff because they answer the only possible solvency deficit the aff could win and apply it to state courts. I'll quote a few lines from those two cards at length here:

> Human rights become "universal" not through some sort of predetermined inevitability, but **only through careful building of coalitions** with different groups allied in purpose.139

And then, the first one at more length:

> Let me end on a different note. A recent surge of commentary invites the human rights community into a similar, or perhaps greater, folly-to double-down and promote foreign-cubed cases under state law and in **state courts**. 153 With luck, this invitation will be declined. While individual litigants may have few choices, employing a state law strategy is **unlikely to meaningfully advance human rights**. These cases face **tremendous hurdles** to success. 154 While the presumption against extraterritoriality may not apply, courts will rightly be reluctant to adjudicate foreign claims for abuses occurring abroad to which the state has no interest. The same root concerns that motivated the Kiobel court to decide the way it did, will cause **state court judges to decline to hear these cases too**. The cost of **lost time and energy** to this kind of strategy could be significant. The human rights community has a different option: to re-embrace multilateral engagement. Global human rights challenges are too daunting and complex for any nation, no matter how powerful, to effectively manage on its own. Progress can be made if human rights groups refocus energies to **press the U**nited **S**tates, its citizens, and corporations to respect human rights and the rule of law, and to **promote international agreements** with other nations. That respect includes **avoiding unilateral imposition of** U.S. law (**even** those **laws purporting to incorporate international norms**) on foreigners for conduct occurring abroad.

Both of these cards are based on a reading of the aff that the 2ar seems to agree with. State courts would become individually active in filling gaps. The neg's use of an interpretation of fiat isn't really answered. Yes, the plan is a one time 50 states agree decision. But, the future gap-filling is single state courts acting in ways that are likely to be varied and troublesome for other states and international actors. If the neg made a mistake by not having any clear multilateralism defense warrants extended, this was the mistake of the 1ar and 2ar in this debate and ultimately a framing issue for the disad that made it easier for me to start with "no solvency deficit" while evaluating the disad.

Second, no internal link because LOAC and IHRL are distinct – and State courts are just as likely to protect. I wrote a lengthy aside above about the role of the link vis-à-vis the solvency question for the plan vs the counterplan. What are the "other gaps to be filled"? The neg's suggestion that things like torture decision and detention rulings would thump the aff are answered by the 2ar with a spillover warrant. Yet, the most compelling answer to the disad is a "no spillover" warrant. I wish either side would have debated more on this issue. Instead, it just sort of sat there in my head. When I say that this debate was incredibly close, it is what I do to resolve this particular defining issue that establishes the difficulty in deciding this debate. I could see a ballot that says "well, if there is a link then there is a solvency deficit, so I vote aff." My problem with that ballot is that I think it ignores some other solvency defense and link spin arguments that the neg is making in the debate.

There is an internal link between the plan's state court activism and our LOAC agreements. Though academically I'm not comfortable saying I believe that to be true, for the purposes of evaluating this debate, the neg won that there was a risk of some spillover. First, some great aff evidence, Ku '11 may have won the NDT:

> One prominent nationalist scholar has argued that, if the revisionist view were accepted, we would face the specter of 50 different parochial interpretations of CIL.340 My study demonstrates that even though key doctrines of CIL were immune from the appellate jurisdiction of the Supreme Court of the United States, serious splits between state court in terpretations of CIL did not occur nearly as frequently as might be expected.¶ Moreover, **state courts were just as likely to protect**

U.S. foreign relations interests as federal courts. Finally, there is evidence that state courts would defer to executive suggestions on the proper application of CIL, thereby giving the President effective control over some types of CIL such as sovereign immunity. Therefore, this account shows that the chaos of independent state court interpretation of CIL has been the rule, rather than the exception, for much of American history.

Both this card, and the Davis card read later, establish my concern about the solvency to the aff vs the link to the disad. If it is true that state courts are deferential to the executive and will not be "rogue" with their interpretations, then I'm not sure what the gap filling mechanism is that the 2ar is talking about for a spillover. I do believe that state courts are likely to rule in favor of the executive though, just based on this reading of the Ku evidence. So, the link is not one where I am concerned about the state courts destroying our LOAC agreements and telling the executive how to fight wars. But, the neg link level was slightly more diverse than just, "courts will create precedents that constrain the executive."

The neg link spin included a fiat argument about the absolute and unified position taking of the state courts. The 2nr spun that this would be perceived by allies as a "durable fiated challenge by the states to supercede federal authority." While I get that the Ku evidence speaks to the likely role of the states, the negative continually spoke about the role of the plan in our allies eyes for interpreting the outcome of the plan.

Additionally, the 1nr and 2nr talk about the Corn evidence as proof that these types of challenges are already present in state courts which means they would be likely to hear them. While the aff's evidence does speak to the likely deference of the state courts, it is compelling that they would be more likely to be pro-international law post plan

Third, state court rulings are inevitable – they just aren't cited. The Slaughter card extended on this is just an interesting FYI for the purposes of evaluating this debate. It just says state courts are citing international law but not in a compelling or forceful way so it isn't establishing precedent or influencing things. This seem to either be a take-out to the aff and the disad or a take-out to neither – I'm not sure how it could be evaluated either way. The neg's spin that the fiat of the plan is unique in that it sends a signal never before seen isn't handled well, if at all, by the affirmative.

Fourth, there are several impact defense arguments extended by the 2ar. I'll go through each of these – though I think the most warranted extension is the no escalation argument.

The Apps 14 card is good – but just says it is unclear how the US would respond since there is no appetite for aggression. The Sindelar card is barely enough to count as evidence. The Hoffman 12 card is about how Russia is more peaceful and accommodating than the old soviet union – a claim and evidence that is easily ignored given the neg evidence.

The card worth considering is the Kaplan 11 evidence. This is one of the better, and more popular for a reason, pieces of evidence about the declining significance of NATO. The problem is that the warrant I have extended in the 2ar never really lined up with that evidence. Instead, the 2ar is talking about escalation being empirically denied and how there is a low likelihood of a short term conflict.

The problem with all of these impact cards, and the 2nr is right on this point, is that it ignores the internal link being a Russian aggression in response to increased US legal ambiguity. So, the cards about the US being unwilling to get involved as well as the evidence that NATO isn't needed anymore, don't

really respond to the internal link from 15 about Russia taking the first aggressive step against NATO. Additionally, the Kupchan 13 card is just as good as the best aff card and speaks to the value of NATO for international perception.

All this discussion of the impact is enough to say that I think it is large, but it probably didn't need to be. After slogging through the cards and looking back at my flow, I actually think the risk of the disad is larger overall than it was when I voted neg after finals. I voted neg because the counterplan solved and there were answers to any solvency deficit that I could create extended and warranted in the 2nr. But, the size of the disad was substantial.

Concluding non RFD based thoughts:

1. One of the closest debates I've ever judged. It took me a while because so much of the evidence read by both sides was great. I've had the opportunity to judge all four of these debaters numerous times over the last 7 years of my life. Every single round was a pleasure.

2. If there is a lesson to be learned from them it is to read longer better cards in debate. It wins rounds. As I read through evidence again in the laborious task of writing this ballot, I'm impressed with the quality of evidence and the highlighting of cards. Read longer better more highlighted evidence.

3. I want to revisit the HS Poverty Topic TOC finals for a second. Westminster destroyed St. Marks. Miles read some of the worst highlighted and un-warranted de-dev evidence I have ever read. The world needs to never forget this fact. I am obliged to never let Miles forget it.

4. Let's increase comprehensibility in debates. The counterplans read in the 1nc that were rapid fire and I couldn't tell the difference between them was terrible. I don't want to judge and exist in an activity where I have to read a doc to figure out what the negative position are. I learned what the counterplan were during the 2ac road-map.

5. I call for a return of respect during rounds and in strategizing. The rise in strategic decisions that obfuscate communication as the a priori calculus during the NDT were awful. Debate is a communicative activity. It is two people communicating to a judge why they should win the debate. The only way that works is if teams communicate. Any and all attempts to deny the other team information for strategic purposes is a dis-service to the activity. We have norms for communicating because all we really are is a community with speech times, a resolution, and norms. If those norms are thrown out on the final day of competition for competition sakes then we are doing it wrong. I thought about listing examples, but instead I'll just stop with the norm. Communicate well.

6. <u>What an amazing topic.</u>

Seriously, a topic with disads to each of the areas, great new affs read on the final days of the NDT, and enough good critical literature to keep people engaged. I didn't like the "US" actor question, and I'd have preferred about 3 or 4 more areas to debate, but overall, an enjoyable year of research.

#thanksherndon

James Herndon

Emory University

Barkley Forum Center for Debate Education

Gomez

Decision: Negative for Kentucky BT

For the Casual Reader, The TLDR:

A disclaimer. This ballot is much longer than some that have been released in recent years. I would like to think that it was because of the evidence heavy nature of the debate and perhaps because I am trying to be extra thorough. Moreover, the page count is inflated because of the cards that I have inserted into the document for reference (roughly 8 ½ pages are added due to cards). That being said, I will gladly take the mockery for the length of this ballot if it at least shows the amount of effort that goes into judging a high-level debate in the final round of the NDT.

For those that do not want to delve through a substantial amount of reading and evidence comparison, here is a brief summary:

I voted negative for Kentucky because the Ex-Ante CEA counterplan solved a sufficient amount of the nuclear proliferation impact extended in the 2AR for the bioterrorism/weapons impact to the War Powers net benefit to outweigh the impact turn of congressional intervention on foreign policy matters. Put into terms of the real-life consequences of this decision were a policymaker forced to choose: I thought that nuclear proliferation was not a large risk no matter who I voted for, but that consequence of hindering the ability of the President to quickly marshal the military resources necessary to crack-down and quarantine the population in the aftermath of a bioweapon attack was preferable to the benefits of emboldening Congress to assert its authority on foreign policy and prevent President Trump from causing international conflict throughout the globe due to the magnitude of a super-pandemic vis-à-vis the magnitude of a (potentially) nuclear war.

This was a difficult decision because of the late-breaking nature of the impact turn debate on the disadvantage and the 2NR's decision to ask me to strike the arguments from my flow without answering them substantively, but ultimately the 1NR's decision to read evidence that nuclear winter would not cause extinction, combined with the last second response to this argument by the 1AR and lack of scientific evidence to the contrary from the affirmative, made it difficult to vote for the aff despite them winning a large risk of unrestrained executive control over foreign policy causing escalatory tensions throughout the globe.

The Long Version

Overview

Congratulations to all the competitors of the 2019 National Debate Tournament. This year's NDT featured a ton of competitive and fantastic debates and I was honored to be a part of four out of the five elimination debates. Being able to adjudicate the final round of the National Debate Tournament as a first-year-out was an experience I will never forget, especially because I got to sit on a panel with peers that I respect immensely in this community.

Kentucky BT, your NDT run was incredible and one of the most dominant performances in recent memory. As a pair of juniors, it was impressive to witness not just your final three debates of the season but the consistency you showed throughout the season. Though I am sad that I never got to watch the "first-strike team" go for one of their infamous strategies (that flight home from the Kentucky tournament is one of my bigger regrets from this season), I will say each round was a pleasure to judge. To both of you and your entire coaching staff, congratulations on your national championship and thank you for setting the standard for competitive excellence.

Georgia RS, you two are everything I love about debate. Coming from a small-school background, scrapping it out with the best for several years, and finally breaking through to become one of the dominant teams in the country, all while making it to the final round of the NDT is an achievement you can always be proud of. Know that your careers serve as a template and inspiration for so many debaters like you and that you did your program proud. To the entire Georgia team and coaching staff, I am one of your greatest admirers. From clearing three teams at the NDT, to achieving two First Round At Large Bid teams two years in a row, and all the hard work that takes place in between, your squad is one of the most impressive in the country and a testimony to the ability of hard work, sheer talent, and belief in each other to achieve great success.

I want to be one of the first judges to submit a ballot as I am one of the least experienced on the panel (indeed, this is the first written ballot I have ever submitted) and want to defend my decision to the fullest. I also hear that memory starts to go with age, so there is a bit of time sensitivity to this process for me. I am writing this ballot not by rewatching the debate (but a big thank you to Joe Leeson-Schatz for providing those resources to everyone in the community) but by going over my flows, rewording what I had initially typed up during my decision-making process, and pulling lines from the cards that were relevant to my decision. As with the many ballots I read to get a grasp on how to do this process, I will try to refrain from any revisionism or intervention and be true to the decision I made immediately following the debate and apologize for any inevitable mistakes.

The Case-

This section of the debate was the easiest to decide. The 2NR did not spend much time here and the 2AR was able to exploit this fact to win a big risk of a proliferation impact compared to the status quo.

The 2NR listed several examples of previous nuclear-proliferators found in the 1NC Walt '12 evidence to make an argument that empirics disprove that nuclear proliferation by any one nation causes a cascade-effect where many other nations are so concerned about their national security because of the new nuclear state that they too begin the process of acquiring nuclear weapons. The 2AR decisively beat this argument by attributing past examples of containment to the existence of strong non-proliferation

norms, chiefly the Non-Proliferation Treaty, being able to defuse the tensions created by "spoiler states." This argument is found in the 1AC Coe and Vaynman evidence which is also important for the second argument on the advantage.

The 2NR then extended the Kahl '13 piece of evidence read in the 2NC with the warrant that the process of acquiring a nuclear weapon would likely take a minimum of 17 years. This piece of evidence also substantiates the "past examples disprove cascade" argument from before but is not utilized for that purpose. While I did not think the affirmative had a great response to this timeframe question in either the 1AR or 2AR, the relatively small degree of explanation on this argument, as well as the affirmative Coe and Vaynman evidence (which is consistently referred to in cross examination and every affirmative speech) convince me that more recent studies utilizing empirical tests on non-proliferation norms conclude that absent a strong NPT, a large degree of nation-states would invest in even more infrastructure, and would not fear international backlash due to the decline in non-proliferation norms, to speed up the process of acquiring a bomb.

The last argument extended in the 2NR on this flow is the 2NC piece of Payne '15 evidence which makes a theoretical argument about how nation-states view the world. It is a criticism of "utopian" views of international relations and argues that a realist reading of foreign actors proves that nation-states only act in their own strategic self-interest. This is leveraged as a TKO to the advantage to prove that norms are not followed and make the affirmative irrelevant to the nuclear considerations of other nations. While I do agree there was not explicitly an on-point answer to this realism claim in the 1AR, I again have to return to the 1AC Coe and Vaynman evidence because of its statistical analysis of non-proliferation norms and the positive relationship between their effectiveness and the strength of the commitment of major powers to those norms. To me, this argument gets the negative very little as Payne is offering little evidence for the assertions he makes about the strategic calculations of foreign nations whereas the affirmative evidence does just that.

The last note I will make about the case page is on the impact calculus that the 2AR makes at the beginning on the speech. The argument that becomes relevant later is not the try-or-die framing about risky proliferation, but the claim made about nuclear war and its capacity to cause extinction. Here, the affirmative is arguing that a nuclear war in the Middle East is especially likely to cause great power draw-in and cause extinction through the resulting environmental fall-out. The evidence that was extended for this argument is the Avery '13 evidence from the 1AC. When I get to the impact portion of the disad I will insert this card into the document for comparison purposes, but this becomes the most important moment of the 2AR for my decision.

The Counterplan-

I thought the counterplan solved all, or at worst nearly all, of the aff. Though I ultimately defaulted to the sufficiency framing established by the 2NC/NR, I was compelled to believe that the counterplan likely resolved close to 100% of the advantage due to the quality of negative evidence and debating on the question of international perception. The competition question of the counterplan was ultimately ceded by the affirmative, but it helps to explain the functional difference between the two for the purpose of the "links to the net benefit" debate.

Links to the Net Benefit-

As I understand the case to be, the Treaties of Rarotonga, Pelindaba, and the Central Asian Nuclear-Weapon-Free Zone were initially agreed to by President Obama and submitted to the Senate for ratification in 2011. The affirmative has the United States Congress, eight years later and under a new president, enact the parts of those protocols that restrict the ability of the President of the United States to conduct first-use nuclear strikes as an ex post Congressional Executive Agreement and is thereby restriction on the executive power to conduct first-use nuclear strikes. Because the order went from presidential negotiation to congressional assent, this would be considered an ex post CEA.

The counterplan takes a different approach that *functionally* accomplishes the same thing, but *procedurally* has a much different effect on the distribution of war powers authority for the United States federal government. Whereas the affirmative has the current Congress enact the protocols without the consent of the sitting president as a restriction on his authority to conduct first-use nuclear strikes, the counterplan essentially resets the process. It has Congress pass legislation that substantially *increases* the authority of the president to negotiate and implement binding CEAs on first-use nuclear strikes and then fiats that President Trump is the one who chooses, without any involvement from congress, to enact the same protocols that the plan would. Because the order went from open-ended congressional assent of presidential authority to the president enacting the protocols unprompted, this would be considered an ex ante CEA.

The 1NC Hathaway '09 evidence could not be clearer to the effect that this process would have on presidential war powers:

The CP expands executive power and avoids the war powers DA

Hathaway, Professor of International Law, Yale Law School, November **2009**

(Oona, Presidential Power over International Law: Restoring the Balance, 119 Yale L.J. 140, Lexis)

The President has not always had the power to make so much international law on his own. Indeed, executive agreements were a relative rarity before the mid-twentieth century. Beginning in the post-World War II era, however, Congress began **granting extensive power** to the President to make international agreements on his own. The statutes that initially granted [*145] authority were narrow and carefully constrained. Over time, however, many of the grants of authority became increasingly vague and **open-ended**, allowing the President to negotiate agreements and **put them into force** without any further congressional approval. The agreements that the President negotiates under this advance authority are often referred to as "ex ante" **c**ongressional-**e**xecutive **a**greement**s**.

In principle, Congress has the power to revoke these grants of authority by passing subsequent statutes. In practice, however, the authority to make such international agreements has proven to be nearly impossible to revoke once granted - not least because any effort to revoke or even amend a delegation can be vetoed by the President. Moreover, Congress retains strikingly meager power to oversee the agreements that are made. After authorizing the President to make **binding** international agreements on behalf of the United States, Congress typically does little to police the exercise of that authority. The courts, reluctant to weigh in on foreign affairs matters, have done nothing to correct the imbalance. They have instead granted substantial deference to the President as to both the substance and the form of international lawmaking. As a result, ex ante **c**ongressional-**e**xecutive **a**greement**s** - which today make up roughly eighty percent of all U.S. international legal commitments - **are made by an almost entirely unfettered President.**

It describes actions like the counterplan as Congress granting “extensive” power to the president to make international agreements “on his own.” It also states that this granting of authority is “vague” and “open-ended” and is made by an “almost entirely unfettered President.”

The affirmative argument that the counterplan links to the net benefit relies on an “emboldened congress” claim. The 2AC first advances the argument that the 1NC evidence is about “reinvigorating checks on the President.” Sure enough, the 1NC link evidence is about the precedent that a first restriction would have:

Kenneth **Klukowski 11**, Research Fellow, Liberty University School of Law; Fellow and Senior Legal Analyst, American Civil Rights Union; National-Bestselling Author. George Mason University School of Law, J.D. 2008; University of Notre Dame, B.B.A. 1998, “MAKING EXECUTIVE PRIVILEGE WORK: A MULTI-FACTOR TEST IN AN AGE OF CZARS AND CONGRESSIONAL OVERSIGHT” 2011, 59 Clev. St. L. Rev. 31)

VI. CONCLUSION Most controversies between Congress **and** the White House over information are decided more by politics than by law, and so a settlement is usually reached favoring the party with the public wind to its back. n348 **Questions of law should not be decided in that fashion**. Therefore, the reach and scope of executive privilege should be settled by the courts in such situations, **so that the President's power is not impaired** whenever the political wind is in the President's face and at his opponents' backs, or the President is inappropriately shielded when political tides flow in his favor. While the best outcome in any interbranch dispute is the political branches reaching a settlement, "such compromise may not always be available, or even desirable." n349 It is not desirable where **it sets a precedent that degrades one of the three branches of government. If one branch of government demands something to which it is not constitutionally entitled and that the Constitution has fully vested in a coequal branch, the vested branch should not be required to negotiate on the question**. Negotiation usually involves compromise. This negotiation would often result in **one branch needing to cede to the other, encouraging additional** unconstitutional **demands in the future**. Though this may perhaps be a quicker route to a resolution, **it disrupts the constitutional balance in government**. As the Supreme Court has recently explained, "'convenience and efficiency are not the primary objectives--or the hallmarks--of democratic government.'" n350 President Reagan declared that "you aren't President; you are temporarily custodian of an institution, the Presidency. And you don't have any right to do away with any of the prerogatives of that institution, and one of those is executive privilege. And **this is what was being attacked** by the Congress." n351 Thus, **any White House has the obligation to** fight to **protect executive privilege**, and the courts should draw the line to preserve that constitutional prerogative. Likewise, there are times when it is the President who is refusing to give Congress its due under the Constitution, where Congress must assert its prerogatives for future generations. Conversely, where confidentiality is not warranted, courts must ensure public disclosure and accountability.

My read of Klukowski’s argument is that if congress were to restrict the power of the president over something that is arguably the executive’s constitutional authority, it would embolden the legislative branch to pursue additional checks in the future.

The 1AR expands this argument by arguing that if the Scarry ’14 evidence read by the negative in the 1NR is true, then the counterplan would also result in a precedent that spills over. Here is that evidence for reference:

Nuclear authority uniquely spills over.

Elaine **Scarry 14**. Harvard Professor. 2014. Thermonuclear Monarchy: Choosing between Democracy and Doom. 1st ed., W. W. Norton & Company. p 32.

Second, once Congress was stripped of its responsibility for overseeing war – as happened the moment **atomic weapons** were invented – it was, in effect, infantilized. Deprived of its most weighty and arduous burden, it lost the very work that had given it its gravity as an institution. Though its members still convened in an august building, their **capacity** to deliberate about military and nonmilitary matters gradually deteriorated, as did their **sense of obligation** to the people of the nation. Now, six decades later, book after book has appeared describing Congress as “dysfunctional” or “dead.” Once Congress regains its **authority** over war, however, there is every reason to believe that it will travel back along the reverse path, **reaquiring** the **stature**, **intelligence**, eloquence, and **commitment** to the population it once had. In the chapter ahead, we look at the nature of congressional debate in the country’s five constitutionally declared wars – the War of 1812, the Mexican-American War of 1846, the Spanish-American War of 1898, World War I and World War II – deliberations in which the full stature of the assembly comes clearly into view. The high quality of congressional analysis constrasts sharly with the

low quality of debate carried out in secret presidential deliberations about whether to drop the atomic bomb in the Taiwan straits in 1954 and on East Germany in 1959.

Clearly, this piece of evidence is damning for the negative if the affirmative can prove that the counterplan results in congress regaining authority over nuclear weapons.

The 2AR identifies this as a place where the affirmative can gain a lot of ground and give them a strong chance of winning the debate and as such, spends a significant amount of time, slows down, and has a connection moment with the panel where he gives the final and most developed explanation of the story for why the counterplan links to the net-benefit. Nathan argues that the story of the counterplan linking to the net benefit goes as follows: The counterplan would result in congress passing legislation that encourages the president to ratify treaties the restrict the United States from conducting first-use nuclear strikes. Immediately following that legislation, Trump seemingly listens to their advice and enters into law the treaties signed by his predecessor, essentially forgoing his own authority to first-strike. Congress, the 2AR argues, would see this as a win on for their ability to influence foreign policy and be emboldened to further intrude on executive authority elsewhere.

This is a fantastic moment for the 2AR and extremely high-level debating. Nathan identified a potential weakness in one of the centerpieces of the negative strategy and chose to invest a significant amount of time, detail the argument more than any other speech in the debate, and clearly explain the story for why the argument might be true. This serves as a model for any 2As out there who constantly hear that the 2AR needs to "make choices" and go deeper on fewer arguments.

In fact, and this is an aside from the counterplan commentary (but as a former 2A I couldn't help but take some space to remark on this speech in particular), the 2AR functionally only makes 5 arguments throughout the speech. 1) Nuclear proliferation will cascade and have catastrophic effects, 2) the counterplan links to the net benefit, 3) the counterplan is reversible which means it can't solve the signaling internal link to the proliferation advantage, 4) congressional emboldenment on foreign policy is good, 5) the link is NUQ because congress is already emboldened now, as evidenced by current restrictions. Nathan made necessary and strategic choices in his final speech that allowed him to filter out a lot of the white noise from the rest of the debate and go deep on the 5 arguments, split across 3 flows, that would maximize his chance of winning the debate. There is no question for anyone with a trained eye/flow that this was an extremely difficult 2AR that was executed with a high-degree of proficiency. It also turned what I thought was a heavily negative-leaning debate into a game of inches that took me over an hour and a half to resolve. And what is more impressive is that he only had roughly 3 minutes to prepare it.

Back to the counterplan, the issue I had was I did not believe the affirmative won the prior claim that the counterplan would be considered a "restriction" on presidential authority, either legally or perceptually. The negative consistently pushed back that the only checks that spill over are ones that change the constitutional division of power among the branches that is the line from the 1NC Klukowski evidence as well as a couple of lines from the 1NR answers to thumpers that I discuss in the disad section of this ballot. While I think the counterplan might be heartening for Congress and certainly the democratic House would be pleased the President chose to take the authority they gave him and use it for a good cause, the negative won that it would not accomplish the change in authority that is necessary to trigger the link to the disad. While the 2NR could have done more to push back on this "congressional emboldenment" argument, the full reveal of the affirmative story was not made until the

2AR which convinced me to give the 2NR some leeway. Instead, I looked to what the 2NR does say on this question. I've already spoken to the quality of the 1NC Hathaway evidence but the 2NC also reads three more cards on this.

The Galbraith '12 evidence is a card that responds to the legalese argument for why the counterplan links. It states that:

> Ex ante **c**ongressional-**e**xecutive **a**greement**s** hold obvious appeal to the President relative to subsequent advice and consent and to ex post **c**ongressional-**e**xecutive **a**greement**s**. Once Congress has passed its single [*281] authorizing statute on a particular subject, the executive branch can enter into many **c**ongressional-**e**xecutive **a**greement**s** based on that authorization **without returning to Congress**

The Bradley and Goldsmith '18 evidence compares ex post to ex ante CEAs. In stating why ex ante CEAs are different, they state that:

> Instead, Congress provides the President with general advance authorization to make an agreement (or many agreements) that the President **in his or her broad discretion** can negotiate, conclude, and ratify without ever returning to Congress for its review, much less approval

They go on to say:

> Most statutory authorizations for ex ante **c**ongressional-**e**xecutive **a**greement**s** are similarly **open-ended in their guidance to the President**. They **give the President significant discretion** to conclude and make agreements that bind the **U**nited **S**tates under international law, usually without further congressional review or even notice.

The very next line of the card, which would have been useful in responding to the emboldenment story of the 2AR, but was not underlined, says that:

> This is why Hathaway concludes, correctly in our view, that ex ante congressional-executive agreements "possess the form of congressional-executive cooperation without the true collaboration."

And finally, the Harrington '16 card which says:

> Of course, the appearance of congressional participation is misleading. In reality, the lack of congressional involvement during the process, which makes negotiating and concluding an agreement so much easier for the Executive, shows how little interbranch coordination truly exists. 55 The process described above represents a dramatic change from the level of oversight that Congress previously conducted with international agreements, which provided "none of the **broad**, **open-ended**, time unlimited **grants of authority** from Congress to the president that we find today."

Due to the lack of evidence speaking to the perception of congress on the effects of an ex ante CEA compared to the four cards presented by the negative that provide a strong legal and intuitive basis for why congress would be taking a more hands-off approach and factually would be increasing the

authority of the president, I conclude that the counterplan definitively does not link to the net benefit, despite strategic spin and compelling debating by the affirmative.

Solvency-

The key solvency question surrounded the reversible nature of the counterplan and whether that was enough to make foreign governments view the counterplan as an unreliable commitment.

The affirmative extends four cards for this argument. The first is the 2AC CRS '18 evidence which speaks to the strictly legal effect of an ex ante CEA. The highlighted portions of the card do state that presidents have occasionally terminated these types of agreements unilaterally (without Congressional approval):

> **CRS 18** **(Congressional Research Service, author is a legislative attorney, but their name was redacted, May 4, 2018. "Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement." https://www.everycrsreport.com/files/20180504_R44761_aea5a473b3849e1096be89c61dae7b8e44febe76.pdf)**
>
> Presidents also have asserted the authority to withdraw unilaterally from congressional-executive agreements, but there is an emerging scholarly debate over the extent to which the Constitution permits the President to act without the approval of the legislative branch in such circumstances. For **congressional-executive agreements** that Congress pre-authorized by statute (called **ex ante agreements**), Presidents sometimes have unilaterally terminated the agreement without objection. 56 **But** for those **c**ongressional-**e**xecutive **a**greement**s** that are approved by Congress **after they are entered into by the President** (called **ex post agreements**), commentators disagree on whether the President possesses the power of unilateral termination. 57 Some argue that certain congressional-executive agreements—chiefly those involving international trade58—are based on **exclusive congressional powers**, and therefore **Congress must approve their termination**.59 Others assert that the President has the power to withdraw from these agreements unilaterally, but he **cannot terminate** the domestic effect of their **implementing legislation** **in the absence of congressional authorization60**—an issue discussed in more detail below.61 Although this debate is still developing, unilateral termination of congressional-executive agreements by the President has not been the subject of a high volume of litigation, and prior studies have concluded that such termination has not generated large-scale opposition from the legislative branch. 62

I also am not persuaded by the negative's assertion that I should disregard this evidence because of the technical concession that it is "just some random staffer" since the qualifications cited clearly state that the author is a legislative attorney whose named was redacted and since it comes from the Congressional Research Service, a highly credible public think tank embedded in Congress. However, I am concerned that this evidence is only speaking factually about the legal ability of the president to terminate these agreements, and not about the signaling effect they would have.

The 1AR reads a Bradley '18 card that cites empirical examples of presidents unilaterally terminating ex ante CEAs, including a screwworm eradication agreement in 2012. This is cited by the 2AR as evidence that relevant states would understand that the counterplan is reversible:

> **In addition, in the 1950s and 1960s, presidents terminated multiple ex ante congressional-executive agreements** relating to trade by obtaining the consent of the trading partner, but not Congress.95 More recently, **in 2012 President Barack Obama terminated a congressional-executive agreement relating to screwworm eradication** by entering into an agreement with Mexico.96 In some instances, **congressional-executive trade agreements have been terminated even without the consent of the trading partner**.97

Again, the evidence is good at establishing the legal case that the counterplan is reversible but does not necessarily say other countries would consider it so. Notice that in the un-highlighted portion of the Bradley card, Obama did not terminate the agreement without first entering into an agreement with Mexico. And though Bradley does state that there have been cases where the president has unilaterally terminated ex ante CEAs without the consent of the partner nation, it does not cite recent examples.

The 1AR then reads two more pieces of evidence that are not about ex ante CEAs but instead serve as a sort of “connect-the-dots” solvency deficit. The Ingram ’17 and Stone ’02 cards are both in the vein of “hard legal checks that are not reversible are key to solve the advantage.”

Ingram is highlighted to say:

Ingram 17 (Paul Ingram, Executive Director of the British American Security Information Council (BASIC), a think tank focusing on nuclear disarmament, previous Project Leader for the Oxford Research Group, an international security policy think tank, BA in Politics and Economics from the University of Oxford, June 2017. “Renewing Interest in Negative Security Assurances.” http://www.basicint.org/sites/default/files/NSAs-June2017_0.pdf)

4. Tightening NSAs could be irreversible over time. If a nuclear-armed state needs to ‘reset’ its NSAs (perhaps as security situations deteriorate) this could send undesirable signals and worsen international security at a sensitive moment. This **resistance to irreversibility** gives away a **deep assumption of commitment** to **indefinite nuclear postures** that **contradicts diplomatic commitments to a world free of nuclear weapons**. **Irreversibility is an important notion within the diplomatic process**; but it is this very irreversibility that creates resistance to agreement. 5. Ministries of Defence are institutionally resistant to limiting their options in advance of any conflict, particularly after they have allocated substantial resources to the acquisition and upkeep of the capabilities concerned. This freedom of action is often seen as a sign of their sovereignty in an uncertain future strategic security environment. 6. Attention drawn to scenarios that might merit a threat to use nuclear weapons could focus public attention on these scenarios and generate unwelcome debate on whether this threat would be justified. On the other hand, it may also highlight the state’s dependence upon nuclear deterrence and thus strengthen resistance to any evolution in policy or move away from nuclear deployments. Equally, the downsides of ‘too much’ ambiguity include: 1. Deterrence credibility requires some level of specificity and clarity in communicating intent, otherwise adversaries can underestimate or otherwise misread the intent of the leadership in the Nuclear Weapon State. There needs to be some confidence on the part of the state being deterred that the nuclear threat is genuine, but will not be exercised unless it transgresses strong boundaries. A strengthening nuclear taboo could tempt future bluff calling. 2. Ambiguity is no friend to a Nuclear Weapon State offering extended deterrence assurances to its allies. Dennis Healey, when UK Defence Secretary in the 1960s, famously said that it takes 5% credibility to deter the Soviets but 95% credibility to assure allies. Allies are more clearly 2 reassured if their nuclear sponsor’s arsenal and posture is clearly there to deter the nuclear state they also feel threatened by. A more ambiguous posture is less assuring. 3. Ambiguity undermines nuclear legitimacy within the international community. NNWS are not only seeking to improve their own security by insulating themselves from nuclear threat; they also look to the nuclear armed states to act with responsibility and restraint more generally towards the international community. If nuclear armed states show little willingness to act with such restraint and be specific about when they would or would not consider nuclear use it harms the trust in their commitment to their NPT obligations. 4. Exceptions to NSAs draw attention to nuclear threats that are deeply unacceptable to a majority of the international community, or trigger undesirable responses from those states that lie outside the guarantees. Withdrawal of these exceptions would be a recognition from the Nuclear Weapon States of the boundaries to nuclear deterrence within the international community. Non-proliferation & disarmament NSAs are critical signals of acknowledgement that NNWS have reduced their freedom (and sovereignty) by joining international non-proliferation arrangements from which all states benefit from. Weak NSAs are an affront to this commitment and to the very idea of a cosmopolitan international community. NSAs have been a consistent and at times high-profile demand of the NNWS within the NPT process. They are an important tool in the international community’s management of nuclear security and proliferation. They also reduce the freedom of action for nuclear armed states. The strength of particular NSAs on offer is therefore an indication of a nuclear armed state’s willingness to accept such restrictions for the wider benefits they bring. These focus particularly on encouraging NNWS to stick to their obligations and thereby strengthen confidence in the non-proliferation regime. The impact of NSAs goes further than the security calculations of the states directly involved. They are an expression of the bargain at the heart of the NPT, an invitation for Nuclear Weapon States to demonstrate political will in reducing the salience of nuclear weapons. In this respect they are also a modest disarmament measure. NSA exceptions **Strengthening NSAs** essentially means reducing the number of exceptions and **enshrining the guarantee in law**. The exceptions to negative security assurances (NSAs) have at times involved: ● States that attack in alliance with a nuclear armed state ● States that are deemed to be in breach of their non-proliferation obligations ● States that use chemical or biological weapons By and large, the NSA exceptions expressed by most nuclear armed states are determined by military scenario planning. These exceptions are included to ensure that NSAs will not constrain any options that may be seriously contemplated by a future leader.

And Stone says:

Stone 02 (Christopher, Associate, Sullivan & Cromwell; J.D., University of California-Berkeley School of Law, “Signaling Behavior, Congressional-Executive Agreements, And The Salt I Interim Agreement” George Washington International Law Review, 34 Geo. Wash. Int'l L. Rev. 305)

Similarly, the **difficulty of repealing** a congressional-executive agreement [**CEA**] **reinforces the idea** that the political branches have forged a **durable consensus** on the wisdom of a **given signal**. The President can withdraw from a treaty unilaterally, without congressional consent. 191 But while no court has tested the proposition, the **President** probably **cannot unilaterally terminate** congressional-executive agreements [**CEAs**]. Congressional-executive agreements [**CEAs**] are international accords that the President has submitted for congressional approval **as statutes**. That is, **congressional-executive agreements represent a form of lawmaking**. 192 Since Congress can repeal existing laws only by passing new legislation, 193 presumably **Congress must pass a new law to repeal a congressional-executive agreement [CEA].**

The reason these cards do not cut against counterplan solvency are two-fold:

The first is that the 2NR correctly identifies that Ingram is writing about “attempts to reset NSAs” (Negative Security Assurances, i.e. what the plan and counterplan are supposed to be) as being seen as resistance to irreversibility. The 2NR then says that because the counterplan also gets durable fiat, then a reset of NSAs would be “off the table” and the counterplan would not be perceived as a resistance to irreversibility.

The second is that though the Stone card is clearly describing an ex post CEA due to its description of the process of CEAs and how they are hard legal limitations, I think it only serves to cement an affirmative solvency argument, but not a solvency deficit to the counterplan. It is also comparing ex post CEAs to the treaty process, not to ex ante CEAs. Furthermore, it seems to be making the claim that the reason

CEAs are so reliable is that they represent "durable consensus" which the first plank of the counterplan resolves in my mind.

The 2NR correctly diagnoses the affirmative strategy as an attempt to, using harsher words than I might, "Frankenstein a bunch of cards together to get a solvency deficit" but not possessing a single card that assesses how foreign countries would perceive the counterplan.

In contrast, the 1NC card on this question is easily the best in the debate. The 1NC Harrington '16 evidence says:

> **Harrington**, Lecturer in Legal Research at the Yale Law School, Spring **2016**
>
> (Ryan, A REMEDY FOR CONGRESSIONAL EXCLUSION FROM CONTEMPORARY INTERNATIONAL AGREEMENT MAKING, 118 W. Va. L. Rev. 1211, Lexis)
>
> Benefits of the ex ante congressional-executive agreement are plain to see. These agreements rely not solely upon the constitutional authority of the President, but rather **upon interbranch coordination with Congress**. 52 Having gone through both houses and the President, ex ante congressional-executive agreement**s have the status of domestic legislation**, **which means they provide greater legitimacy to foreign states**. 53 [INSERT NOTE 53: Similar to the argument espoused above, even a treaty that negotiators believe will be ratified domestically still requires implementing legislation. Ex ante congressional-executive agreements have greater domestic legal status than treaties, which provides for more reliable commitments. See Hathaway, supra note 26, at 1316.] When the Constitution does not empower a President to make agreements that bind the nation, advance congressional authority provides flexibility during negotiations and a **guarantee to the foreign state that the commitment will be honored**. 54 Indeed, **a foreign state is certain to prefer ex ante c**ongressional-executive agreements as they are more **secure**, **reliable** and **faster** to create.

There are some great lines in here for the negative. Harrington speaks directly to the legitimacy of the counterplan to foreign states, says it is more reliable than treaties (which serves as a response to Stone), provides more reliable commitments, and provides "a guarantee to the foreign state that the commitment will be honored." It even says that "a foreign state is certain to prefer ex ante CEAs as they are more secure, reliable, and faster to create." These are all comparisons being made to the treaty process, not to the ex post CEA process, but do a lot to get me across the line for the neg on counterplan solvency.

The first card in the 2NC block is not really relevant, it just says that the counterplan is "functionally interchangeable" with the aff. But the second card, the Bradley '18 evidence, is the backbreaker for the aff. Bradley makes the argument that:

> In stark contrast to domestic law, it is remarkably difficult for anyone outside the State Department to [*1209] figure out the range of and legal bases for many U.S. international agreements. 14 Article II treaties are easy to understand because they all go to the Senate labeled as such and are approved and ratified in a public manner. But the other four forms of agreement are much less transparent and thus much harder to analyze in terms of their numbers, how they should be categorized, and their legal bases. 15 For reasons we explain in detail in Part V, the executive branch does not publicize the international agreements it makes in a comprehensive or organized fashion, and it only very rarely explains to the public (including elements of the public who might serve as watchdogs) the legal bases for these agreements.

This is an argument that intuitively seems to not make much sense because you would think that a country considering whether or not to shatter international non-proliferation norms by building a nuclear bomb would try to educate themselves on the process of the counterplan before deciding whether or not it was a sufficient commitment by the United States. However, the affirmative's only pushback against this is the screwworm eradication agreement example from before which does not really respond to the argument that Bradley is making about the opaque and confusing nature of the ex post vs. ex ante process in United States law. This, combined with the rhetorically powerful lines from the Harrington evidence, cements the counterplan's solvency in my mind.

The Disad-

There are three relevant debates happening on the disad. The first is whether the affirmative gets the impact turn from the 1AR or not. The second is the impact comparison of the disad vs. the impacts that the aff are winning. The third is the link uniqueness of the disadvantage.

The Impact Turn-

I will admit that during the 1AR and going into my decision, I was shocked that Georgia spent so much time on this argument in their rebuttals. I thought I would end up following Dan's command to strike the argument from my flow because I initially agreed that it was a new argument in the 1AR and that the disad had never changed from the 1NC. The 2AC chose not to make "congress war powers" good arguments, the aff does not get to start making that argument in the 1AR. However, I came to realize that this was because I misunderstood a moment that happened extremely fast during the 1AR.

The initial argument in the 1NC was that executive war powers are necessary for marshaling the military to engage in quarantines and martial law powers in the immediate aftermath of a bioweapon or pandemic episode in the United States. However, the 1NR read a piece of evidence in the impact overview tagged as "Prez Power turns the case" by Yoo '17.

This card turned the debate on its head. By reading the Yoo evidence, Anthony probably inadvertently expanded the internal link claim made by the disad from flexibility over quarantines and martial law to include an argument about speed, secrecy, and flexibility during war. The Yoo evidence is clearly making a broader claim than the 1NC evidence. Here are the two cards for comparison.

1NC Donohue:

Broad powers are key to disease and bioweapon response.

> Laura K. **Donohue 14**. Professor of Law at Georgetown Law, Director of Georgetown's Center on National Security and the Law, and Director of the Center on Privacy and Technology. "Pandemic Disease, Biological Weapons, and War" in *Law and War*. Stanford University Press. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2350304
>
> Turning to the use of the military, the armed forces have for decades been engaged in **biological weapons research**. The military understands many such weapons. It is likely to have a **greater capacity** to **identify engineered diseases** and potentially devastating natural diseases that have served as a basis for BW research with precision. It may have access to a broader range of **antibiotics, vaccines, and prophylactic measures** than civilian agencies. The military has **prepared** its own personnel to face such weapons in a way that **civilian agencies have not**. Furthermore, it may be the **only institution** with the **necessary tech**nology, **resources**, and man**power** to be able

to effectively counter an attack—or a **pandemic disaster**. These **practical considerations** are **important** and, indeed, have been **deeply influential** in the changes that are occurring. But what has become lost in the discussion are many of the **constitutional questions and policy concerns** that present themselves. That is, once pandemic disease and biological weapons are placed within a national security framework, disease becomes seen through a lens of war. Broader **powers**, with fewer checks on them, **come into play**. Rights become constricted, judicial remedies narrowed, and civilian agencies pushed to one side. Federalism falls even further away as a check on national authority. Such a change may be warranted when the country is at war and civil society itself is threatened; but how does one mediate the response as a framing for all of public health, once it has been placed on a national security footing? What happens when the federal government can impose cordon sanitaire on cities, regions, or entire states, using the military to enforce it, in response to annual outbreaks of influenza? The United States has had long experience with natural disease and its weaponization for which quarantine and isolation has been a common response. But despite the potentially devastating consequences of both threats, for much of the country's history, it was the states— not the national government—that took the lead. This chapter suggests that the **current state of play** is a result of two major shifts. The first took place during the early part of the twentieth century with the federalization of quarantine law. The second, and most recent, is the one identified above—that is, the **integration of public health and biological weapons concerns**, the use of quarantine and isolation for both, and the **potential use of the military to enforce federal law**. While strong arguments support the first shift, the second is of concern. The history of public **health law** in general, and **quarantine and isolation** in particular, underscores four **constitutional questions**: first, the **degree to which Article II claims override** the tension between police powers and the Commerce Clause, driving the discussion into the realm of war; second, in looking at a growing role for the military in the realm of public health, what the contours of military deployment on U.S. soil might be; third, the extent to which Commerce Clause authorities more generally may be marshaled in the realm of public health—an area traditionally reserved to the states consistent with the Tenth Amendment; and fourth, whether recent interpretations of the Necessary and Proper Clause militate in favor of an expanded federal role in this area.

1NR Yoo:

Prez power turns the case.

John **Yoo 17**, J.D. from Yale, Emanuel Heller Professor of Law and director of the Korea Law Center, the California Constitution Center, and the Law School's Program in Public Law and Policy, "Trump's Syria Strike Was Constitutional", National Review, https://www.nationalreview.com/2017/04/trump-syria-strike-constitutional-presidents-have-broad-war-powers/

Our Constitution has **succeeded** because it favors **swift presidential action in war**, later checked by Congress's funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo, or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. A **radical change in the system** for making war might appease critics of presidential power. But it could also **seriously threaten American national security**. In order to **forestall another 9/11** attack, or take advantage of a window of opportunity to **strike terrorists** or **rogue nations**, the executive branch needs **flexibility**. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which can lead to passivity and isolation and not smarter decisions, will come at the price of **speed** and **secrecy**. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative, and Congress can use its funding power to check presidents. Instead of demanding a **legalistic process** to begin war, the Framers left war to politics. As we confront the new challenges of **terror**ism, **rogue nations**, and **WMD prolif**eration, now is **not the time** to introduce **sweeping**, untested **changes** in the way we make war.

Given this reading of the cards, the 1AR makes what I called during my truncated post-round RFD and still believe to be, an incredibly strategic move when Johnnie says "Concede Yoo's impacts of terrorism and WMD prolif – Yoo is wrong – Flex not key" and proceeds to read a piece of Streichler evidence from 2008. That card establishes a defensive claim made to Yoo's argument about executive flexibility needs during war fighting. Because those warrants are conceded and not necessarily too important to my decision, I won't paste the card into the document. However, Streichler does say that Congress is less vulnerable to groupthink and that Congress has demonstrated the capacity to act quickly in times of crisis. It also makes the argument that the Executive does not always act quickly and can be vulnerable to poor decisions and groupthink. More on this later.

Johnnie then completes the impact turn by reading two offensive cards that congressional control over war powers is good. These are the Fuchs (which are specific to conflicts that Trump might cause) and Adler cards. Fuchs gives me the biggest headache in my post-round decision making. He says, without contestation by the negative, that Trump threatens nuclear war with North Korea, cedes too much ground to Russia in the middle east, could get the US dragged into a great power conflict from his ill-conceived military missions like the strike on the air base in Syria, and that Congress must assert itself on foreign policy to prevent conflicts from escalating throughout the middle east.

I will discuss Adler more on the impact comparison section but that card argues that Congressional accountability and insulation from groupthink are superior options given the "devastating consequences of nuclear war and the possible extermination of the human race."

The 2NRs only response to these turns are that they are new and I should strike them from my flow. Dan argued that the disad story never changed from the 1NC and that this was a new argument. Because I determined that to not be the case, the affirmative has essentially neutralized the counterplan and now this debate is all about the bioterror impact vs the executive foreign policy bad impact.

Impact Comparison-

The negative impact of bioweapons outweighs the affirmative impact, no matter whether it is the 1AC internal of nuclear war or the 1AR internal of Trump foreign conflicts, of nuclear war.

The affirmative attacked the bioweapons impact on two levels: capability to build the weapon, and ability of a disease to cause extinction.

On the capability question:

The negative is ahead here. The 1NC Sandberg evidence is good but not great on the ability of a synthetically-engineered pathogen to achieve longer incubation, higher infectiousness, and a sufficient fatality rate to cause extinction but it does establish the possibility.

The 2AC reads a piece of Wimmer '18 evidence that is marked about halfway through. As such, it is establishing some barriers to a large-scale bioweapon, but strong ones:

Technical barriers prevent synthetic pathogens.

--"select agents" are dangerous infectious agents

Eckard **Wimmer 18**. Prof @ Stony Brook University. 2018. "Synthetic Biology, Dual Use Research, and Possibilities for Control." Defence Against Bioterrorism, Springer, Dordrecht, pp. 7–11. link.springer.com, doi:10.1007/978-94-024-1263-5_2.

Listed below are some constraints that show how in the US the development of dangerous infectious agents, referred to as "**select agents**", is controlled – perhaps misuse even **prevented** – through **technical and administrative hurdles**: I. **Re-creating** an already existing dangerous virus for malicious intent is a **complex** scientific **endeavor**. (i) It requires **considerable** scientific **knowledge** and experience and, more importantly, considerable **financial support**. That support usually comes from government and private agencies (NIH, NAF, etc.), organizations that carefully screen at multiple levels all applications for funding of ALL biological research. (ii) It requires an **environment** suitable for **experimenting** **with dangerous infectious agents** (**containment** facilities). Any work in containment facilities is also carefully regulated. II. Genetic engineering to synthesize or modify organisms relies on

chemical synthesis of DNA. Synthesizing DNA is automated and carried out with sophisticated, expensive instruments

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. The major problem of DNA synthesis, however, is that the product is **not error-free**. Any **single mistake** in the sequence of small DNA segments (30–60 nucleotides) or large segments (>500 nucleotides) can **ruin the experiment**. Companies have developed strategies to produce and deliver error free, synthetic DNA, which investigators can order electronically from vendors, such as Integrated DNA Technologies (US), GenScript (US) or GeneArt (Germany). This offers a superb and easy way to **control** experimental **procedures** carried out in **any laboratory**: the companies will **automatically scan ordered sequences** in extensive data banks to monitor relationship to sequences of a **select agent**. If so, the order will be **stalled** until sufficient evidence has been provided by the investigator that she/he is carrying out experiments approved by the authorities. The entire complex issue of protecting society from the misuse of select agents has been discussed in two outstanding studies [11, 12]. III. Engineering a virus such that it will be **more** harmful (more contagious, more pathogenic) is generally difficult because, in principle, viruses have evolved to proliferating **maximally in their natural environment**. That is, genetic manipulations of a virus often **lead to loss of fitness** that, in turn, is unwanted in the bioterrorist agent.

The 1AR also reads a new card, Lentzos '14, that is fairly qualified and rhetorically powerful. This card gets the aff much more than the 2AC Wimmer evidence. It says that expert views that bioterrorism is a low risk are backed up by historical evidence of small-scale attacks and builds a theory that this is due to the knowledge and resources necessary to carry out a high-casualty attack.

However, the 1NR reads two much longer and more recent cards that convince me that a bioweapon poses a large risk of extinction. The first is a piece of Millet '17 evidence that makes a claim about state-sponsored bioweapon research being able to overcome a lot of the barriers that skeptics use to respond to bioterror threats (i.e. the aff evidence). It also assumes the empirics argument and says that because technology is more accessible, and the pool of experienced researchers is starting to grow, the high risk of a mass casualty bioweapon attack needs to be given priority. The second is a Rose '14 card that supports the argument made in Millet about the technology and expertise already spreading and increasing the risk.

Overall, I think the negative is winning a fairly large risk, but not a 100% risk, of a bioweapon attack being able to be carried out and causing extinction. Conversely, I think the affirmative is winning a 100% risk of Trump causing conflict in the Middle East, potentially in North Korea, and probably dragging Russia into the fray. However, I think the risk of that causing extinction is much lower than the risk of bioweapons doing so.

The reason is that the 1NR reads card in the impact overview that cites scientific evidence carried out by the DoD that references fuel inventories and declining arsenals to support the claim that it is the consensus of the defense community that nuclear winter is not a serious extinction risk. The 1AR nearly drops this argument and only responds to it in the last five seconds when prompted to say that nuclear war turns the environment and ties that to the 1AC Avery evidence.

A side note: Both of these cards are very underhighlighted warrant-wise and made it difficult to evaluate the true risk of either argument. However, given context and that I felt I fairly gave each team the full weight of their cards, only Kentucky had forwarded evidence that refuted the why of whether nuclear war would create sufficient environmental damage to cause extinction, whereas Georgia's evidence only asserted that it would. Here are those two cards for comparison:

1NR Frankel:

Outweighs their impacts.

Frankel et al. 15. Dr. Michael J. Frankel is a senior scientist at Penn State University's Applied Research Laboratory, where he focuses on nuclear treaty verification technologies, is one of the nation's leading experts on the effects of nuclear weapons, executive director of the Congressional Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack, led development of fifteen-year global nuclear threat technology projections and infrastructure vulnerability assessments; Dr. James Scouras is a national security studies fellow at the Johns Hopkins University Applied Physics Laboratory and the former chief scientist of DTRA's Advanced Systems and Concepts Office; Dr. George W. Ullrich is chief technology officer at Schafer Corporation and formerly senior vice president at Science Applications International Corporation (SAIC), currently serves as a special advisor to the USSTRATCOM Strategic Advisory Group's Science and Technology Panel and is a member of the Air Force Scientific Advisory Board. 04-15-15. "The Uncertain Consequences of Nuclear Weapons Use." The Johns Hopkins University Applied Physics Laboratory. DTIC. https://apps.dtic.mil/dtic/tr/fulltext/u2/a618999.pdf

Before leaving this scenario, we should also say a few additional words about nuclear winter. At one extreme, it leads us to contemplate consequences completely beyond the scale of anything else on the table—the risk of extinguishing all human life on the planet. This is not the first time effects of nuclear weapons were seriously proposed to produce a hazard to all human existence. In earlier eras, analysis by respected scientists had proposed that chemical products of nuclear detonations injected into the atmosphere might destroy the Earth's protective ozone layer, leading to humankind's extinction. The ongoing reduction in nuclear arsenals along with **countervailing data** acquired following the period of **atmospheric testing**, which produced **too little of the offending chemistry** at high altitude to **initiate such a doomsday scenario**,81 together conspired to **mitigate the urgency** and lower the interest of funding organizations in further pursuit of nucleardriven ozone depletion investigations. It appears to us that much the same fate befell the nuclear winter scenario. For a period of a few years in the 1980s, a lively scientific debate unfolded, with skeptics detailing perceived sins of both omission and commission on the part of the global climate modelers touting the winter scenario, while the latter responded vigorously. It should be noted that the Department of Defense—in the persons of two of the coauthors of this paper (Frankel and Ullrich)—provided **evenhanded funding to both the skeptics and proponents of nuclear winter**. Eventually, based first on **further fuel inventory research** sponsored by the Department of Defense and later on **decreasing arsenal** sizes, a **consensus** emerged that **whatever modeling issues might remain contentious, there would nonetheless be insufficient soot and smoke available at altitude to render nuc**lear **winter** a **credible** threat.82

1AC Avery:

That goes nuclear

Avery 13 (John Scales, Global Peace Activist since 1990, received Nobel Peace prize for his contribution to peace activism in the Pugwash Conferences on Science and World Affairs, serves as the Chairman of the Danish Peace Academy, Technical Advisor at the World Health Organization, fellow of the Nuclear Age Peace Foundation. Prof @ University of Copenhagen, November 6, 2013. "An Attack On Iran Could Escalate Into Global Nuclear War." http://www.countercurrents.org/avery061113.htm)

As we approach the 100th anniversary World War I, we should remember that this colossal disaster escalated uncontrollably from what was intended to be a minor conflict. There is a danger that an attack on Iran would escalate into a large-scale **war in the Middle East**, entirely **destabilizing a region** that is already deep in problems. The unstable government of Pakistan might be overthrown, and the revolutionary Pakistani government might enter the war on the side of Iran, thus introducing **nuclear weapons into the conflict**. **Russia and China**, firm allies of Iran, might also be **drawn into a general war** in the Middle East. Since much of the world's oil comes from the region, such a war would certainly cause the price of oil to reach unheard-of heights, with catastrophic effects on the global economy. In the dangerous situation that could potentially result from an attack on Iran, there is a risk that **nuclear weapons would be used**, either **intentionally**, or by **accident or miscalculation**. Recent research has shown that besides **making large areas of the world uninhabitable** through long-lasting radioactive contamination, a nuclear war would damage global agriculture to such a extent that a global **famine** of

> previously unknown proportions would result. Thus, nuclear war is the ultimate ecological catastrophe. **It could destroy human civilization and much of the biosphere**. To risk such a war would be an unforgivable offense against the lives and future of all the peoples of the world, US citizens included.

The last card that was relevant for this portion of the debate was the 1AR Adler card because it was also a nuclear war impact card that was tagged to make an "outweighs" claim. That evidence was even more warrant-light than Avery. The only sentence, underlined/highlighted or not, relating to nuclear war was this:

> "The devastating, incomprehensible destruction of **nuclear war** and the possible **extermination of the human race** demonstrate the need for **joint participation** in **any decision** to initiate war"

I ultimately decided that the negative's defense to the terminal impact of the turn was greater than the affirmative's defense to the disad's internal link.

This is the part of the debate that decided my ballot. No matter how many different ways I tried to compare different parts of the debate, I kept coming back to the impact of the disad vs the impact of the turn. Because of that, I considered writing two different affirmative ballots. The first read that the impact turn had a higher risk, even if it had a lower impact, because of the lack of defense to it by the negative. The second read into the aff evidence and applied it to the bioterror scenario to argue that congress would be better equipped to respond to the bioweapon attack. The ballot I ultimately ended up writing went negative because I determined that the executive being the best suited to respond to a bioterror attack was a conceded argument in the 2AC and that I mostly would only apply the new internal link arguments to foreign policy because that is what they were made in response to and primarily what the evidence is about. I can see a way in which the groupthink and unaccountability arguments could be applied to a bioterror response, but I can equally see a world in which the negative's Donohue evidence can be read to argue that those swift actions made without consideration of long term political interests to crack down on individual rights and impose quarantines and marshal military resources could only be effectively done by the executive precisely because of their unaccountability.

I struggled for a long time over how much I would read into Donohue and Adler, but ultimately decided that because of the relatively light amount of coverage on this argument in the 2AR, the functionally conceded "nuke war doesn't cause extinction" argument, and the 2AC concession of the internal link, that I had to vote negative.

Had the 2AR decided to hinge the debate on the impact turn and give a 2AR on "impact turn takes out the 1NC's internal link" where he invested several lines of argument into why Trump would have a terrible reaction to a bioterror attack that would not be useful as per the Fuchs evidence, and weighed the impact arguments that Fuchs does get them, I likely vote affirmative. But I think that was an impossible decision to make precisely because the 2NR refuses to give these arguments any credit and it would be hinging the NDT on whether enough members on the panel decided to even weigh the argument. Those all-or-nothing ballots can only be recognized in hindsight and I can't fault RS for going for the higher percentage play.

Link Uniqueness-

I will try to be brief in this section because it ultimately did not weigh too heavily on my decision. The 2AR gets here last and does not spend much time on this argument and I've also detailed in the counterplan section that I thought Kentucky's link was more specific than "any restriction triggers the link" and made a claim about distribution of power/authority fights. Moreover, any argument won here only served to also lessen the threat of the affirmative impact turn which was the only argument I could have voted aff on given the way that the counterplan solvency debate was going. The only relevance this section of the debate could have had to my decision was if the affirmative won that the risk of the disad was zero because the link uniqueness was so shot that the disad should already be happening or is empirically denied. Because the negative has distinguished their link argument and read several more cards in the 1NR (namely the Goldgeier and Kruse cards) as well as the conceded argument that nuclear authority fights are might more important in terms of magnitude than other fights (the Scarry evidence), I thought there was a decent, if not high, risk of link uniqueness.

Ending-

I voted negative because the counterplan solved all of the case and the risk of the net benefit outweigh the risk of the turn.

Thank you to the teams for allowing me to participate in this round. It was an honor and a privilege to adjudicate such an important round in my first year out and I hope this ballot proves that I gave it all the thought and attention that it deserved. If you have any questions about any of this feel free to contact me.

Thank you to everyone who stuck through this ballot to the end. I'm sure some think the length was annoying and I am a little self-conscious about it but also I'm sure the debate nerds out there will appreciate this just as much as I would have.

Great debate and best to all,

Matt Gomez

Crunkilton

Appreciations

I am honored to be here. I wouldn't have dreamed I'd get a chance to judge both the finals of ADA and the NDT in a single year. I'm having difficulty putting into words what it means to me, so I'll leave it at this really, really means a lot to me and I am immensely grateful for this opportunity.

Georgia: I loved watching and judging you. Johnnie consistently demonstrated clever 1AR decisionmaking and Nathan was among the best at framing and persuading in the 2AR. I also would be remiss if I did not comment on Georga AR – Advait and Swap embodied what I thought was good about debate, and the four of you set an example of hard work, dedication, and care to detail that I cannot speak highly enough of.

My feelings on debate have been mixed since I graduated. Coaching and judging takes a ton of time, doesn't pay well, and it seems like every year I am saying that this is probably my last. At the same time, I feel like I have a large, unpaid (unpayable?) debt to debate for the immense personal benefits and critical thinking skills I acquired. The single most influential thing that kept me coming back the last few years were a couple of conversations with Minnesota AL where they described the immense amount of care and work that they and their friends, particularly four debaters from Georgia, were putting in. It was those conversations that made me want to stay judging so that other young, hardworking debaters who reminded me of myself would have similar opportunities to showcase that same hard work which I derived so much value from. I don't think I've ever expressed this in person, absent those conversations with Rohit and Teja I don't know how or if I would be involved at this point. Thank you, Nathan, Johnnie, Advait, and Swap for being who you are and giving me reasons to come back to this activity.

Kentucky: – super happy that you've made it. From all accounts I've heard, Trufanov does a very large amount of work (which I value a lot given that was the only reason I was anything above mediocre in my career). I know you're not seniors and will have more chances at this, but I wanted to spend a moment talking about Dan – having gone to Minnesota and being friends with Courtney for years, I have felt invested in your success and have been following and cheering you on from afar for a while now. I have several memories of judging you, most involving Marxism, psychoanalysis, or something else seeming equally out of place given the where you are at now, but one anecdote stands out that I wanted to share.

I remember watching the novice state tournament semifinals because I'd heard there was a pretty good novice from Highland Park who Courtney thought might be going somewhere. That novice had just learned about 50 state fiat and was very excited. Dan was so excited, in fact, that he ended up dropping everything else in the debate, including the case and all of the negative's disads. The 2NR then proceeded to drop 50 state fiat. The 2AR, unfortunately, did not go for it, so Dan Bannister was unable to advance to the novice finals. I suppose it ended up working out though.

The Debate

This was a superb round, not only from a quality of arguments perspective but also from a communication perspective – I understood every word that was said, the negative strategy had substantive, well-outlined points of clash with the aff, and the arguments were organized and presented in a clear, precise manner easy to flow for everyone. I strongly recommend lab leaders show this round to their students both for flowing practice and as an example of what high quality debates should look like.

The Decision:

Georgia wins that congress would be better than the president at responding to a range of crises, one of which is bioweapon response. The 1AR impact turns are certainly allowed. The evidence and quality of debating on the turns is substantially stronger for the aff. I did not believe the 2NR's argument that even if congress is better in general it is worse at bioterror made sense given the rest of the debating and evidence. The rest of my decision is outlined below.

Do I Allow The Impact Turns?

Short Answer:

Yes. The 1NR made a new argument. The 1AR gets to answer the new argument. Part of the 1NR's new argument implicated the 1NC impact (bioterror). That's OK. The aff still gets to make that argument.

Long answer:

- The 1NR made a new argument. The 1AR gets to answer the new argument.
  - The 1NR says that DA turns the aff because speed and secrecy solve terrorism and prolif. The 1AR gets to answer that argument. They say that the Yoo evidence is wrong and that executive speed and secrecy is bad because the speedy decisions are made by people who are not smart and subject to groupthink.
  - I included the card in the appendix, but will paste it here for clarity:

    Prez power turns the case.

    John **Yoo 17**, J.D. from Yale, Emanuel Heller Professor of Law and director of the Korea Law Center, the California Constitution Center, and the Law School's Program in Public Law and Policy, "Trump's Syria Strike Was Constitutional", National Review, https://www.nationalreview.com/2017/04/trump-syria-strike-constitutional-presidents-have-broad-war-powers/

    Our Constitution has **succeeded** because it favors **swift presidential action in war**, later checked by Congress's funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo, or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. A **radical change in the system** for making war might appease critics of presidential power. But it could also **seriously threaten American national security**. In order to **forestall another 9/11** attack, or take advantage of a window of opportunity to **strike terrorists** or **rogue nations**, the executive branch needs **flexibility**. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which can lead to passivity and isolation and not smarter decisions, will come at the price of **speed** and **secrecy**. The Constitution creates a presidency that can respond forcefully to

prevent serious threats to our national security. Presidents can take the initiative, and Congress can use its funding power to check presidents. Instead of demanding a **legalistic process** to begin war, the Framers left war to politics. As we confront the new challenges of **terror**ism, **rogue nations**, and **WMD prolif**eration, now is **not the time** to introduce **sweeping**, untested **changes** in the way we make war.

- At a minimum, this card makes the "prez power solves laundry list of threats" argument, which is certainly new. The 1AR response is entirely justified.

- Here are some answers to potential objections to this model of debate:
  - A2 "The intent of the card was only to turn prolif, so they don't get to read their broader turns about groupthink or terrorism"
    - If this card was tagged as "turns prolif," I would be a little more sympathetic to the argument. Unfortunately, it was not tagged that way– on my flow, I have written "DA turns case." If I am in UGA's position, reading that card with the tag I have flowed, my most probable interpretation of this card is "fast executive solves everything/dampens conflict," followed by what Georgia chose to concede – executive solves terrorism/prolif. The 1AR response seems reasonable here and the 2NR does not contest that interpretation of events in the 1NR.
    - Regardless of what I thought – Georgia is correct about what the card says. They get to answer it. The fact that their answers also happen to answer the 1NC impact is a reason why Kentucky should have been more judicious in its 1NR decisionmaking.
  - A2 "This can't apply to terrorism, because that was a 1NC argument. They can use this to answer prolif, but the application to terror should be disallowed"
    - I am somewhat sympathetic, but the neg needs to say that.
    - Here's an analogy: if the 1NC reads a bad link to a DA, the aff drops it, the 1NR reads a better link, the 1AR gets to answer that even though it was dropped in the 2AC. Any other model of debate means that the neg will read short, bad cards in the 1NC then wait to read cards in the block to make them suddenly good, which is a model of debate that seems kind of silly and not very fair.
      - This is especially dangerous because when judges evaluate the "probability" part of impact calculus they often rely on the evidence to determine when, where, and how likely an impact is to happen. If the aff cannot respond to block cards which improve the competitive position of the negative they are in a tough spot. If the 1NC impact is really that good, the neg should not have a reason to read the new cards anyway.
  - A2 "they get defense but not offense", i.e. "the neg can read boosters to weak 1NC cards and the aff can answer them, but they can't impact turn them because the opportunity to impact turn was there in the 2AC and they chose to not select that strategic path"
    - I'm a bit skeptical of the division between offense and defense. Both "executive can't solve" and "executive is bad" are responses to "executive is good" – why should the aff be limited to only defense? Why not only offense? This doesn't

make a lot of sense to me, and I would need the 2NR to outline a reason why this was the case.

Who Wins the Impact Turn?

Short answer:

The affirmative's debating and evidence are both substantially better than the negative's. The key question is whether the aff's arguments apply in the bioterror context. I have difficulty piecing together a coherent narrative about why the president is better suited to responding to a bioterror attack than congress given the quality of debating and evidence by the aff. I understood the impact turns as being responses to the original 1NC scenario from the outset and feel fine applying the aff evidence to the neg's scenario. The objection that the 2AR doesn't do a very good job of applying the turns to bioterror is reasonable, but the neg doesn't explain their internal link either so I don't feel like I am intervening.

Long answer:

Given that the cards are allowed, I now ask: who wins a better internal link to prolif/bioterror?

- This is more difficult – because the aff ev isn't really about terrorism and is more about conflict generally. If the neg had a halfway decent card that said prez speed and secrecy solves bioweapon attacks I would likely be voting neg.

There are two issues here that make it difficult for me to justify a Kentucky ballot: the quality of the debating and of the evidence.

The debating:

- The 2NR relies heavily on an ethos-laden claim that these arguments are new. The 2NR does not explain the internal link from flex to bioweapon use. I have "executive speed/secrecy is key – even if they win executive is bad in general it isn't for bioterror" on my flow. No description of why the president is speedier, why they are more secret, or even why speed or secrecy matter to broader bioweapon response. Frankly, that sentence at the top during impact calc is all I have the neg saying for their internal link.
- The 2AR does a much better job. Nathan says:
  - Speed/secrecy are wrong because
    - 2001 AUMF proves congress is fast
    - The execute is frequently slower
  - Even if in theory prez flex is good, in practice it isn't because of Trump
  - Generally, Yoo is wrong about congress.
- Of course, this could have been better explained by the aff, especially in the context of bioweapons use, but the neg doesn't do any better. Nathan at least tries to engage with the warrants the neg has forwarded. Overall, Kentucky is relying very heavily on me throwing the cards out because they are new and given that I think they are not Kentucky is in a bit of trouble here.

The evidence:

- Negative evidence:
  - 1NC Donahue: This card says that military should control response to disease/bioterror because they have expertise.
    - I don't know why congress having more power means the military won't be able to respond to crises. If Georgia wins that congress is smart, why wouldn't they lean on the military's expertise in the event of a bioterror attack? Or, why can't they just tell the military to take care of it?
    - The part of the card that makes the "flex/prez power key" argument is copied verbatim here: "**constitutional questions powers come into play**. Rights become constricted, the **current state** is **integration** of **health** and **military quarantine** underscores **Article II claims**
      - 1) to be honest, this just seems like a bunch of random words
      - 2) reading the unhighlighted parts, I guess maybe the military needs to quarantine? I don't know why congress can't order that, especially if they are also fast and smart.
    - Does Kentucky get an internal link to "aff = military doesn't get to do response to bioweapons/disease"? I don't think so. That never was how the internal link was explained, and it seems a bit of a stretch that after the plan congress becomes so power hungry that they abolish the military. Regardless, the only 2NR argument is that "speed and secrecy" are key – the aff wins congress is as fast or faster and there's no warrant for why secrecy matters anywhere in the debate.
  - 1NR Yoo:
    - This card is better. It says that acting quick is important, and that deliberation "comes at the cost of speed and secrecy." However, that is an assertion that the Aff's Striechler evidence is much stronger on.
- Affirmative evidence:
  - Streichler makes a few arguments:
    - Yoo is generally wrong about flex.
    - The president can still do things quickly even if congress has more power.
    - Congress acts fast – AUMF proves
    - Presidents don't always react quickly either.
    - Speedy presidential reactions can be bad because they limit options down the road and stem from groupthink which is bad.
  - Fuchs: This is better on the "executive causes war" argument, which the 2AR does not really impact out. However, it does substantiate the argument that while in theory speed might be good, in practice Trump will mess it up because he makes bad decisions. The card is about war – but it seems natural that if Trump is not smart in that context we would not want him in charge of the bioterror response either.
  - Adler: congress is generally smart and makes better decisions.

My takeaways from reading the evidence are that:

- 1) congress is significantly smarter than the executive both in general and especially for Trump

- 2) The executive does not have a monopoly on speed. Congress is consistently fast and maybe faster than the executive in some cases.
- 3) Yoo is generally incorrect regarding broad claims about presidential power.

These cards are significantly deeper, better explained, and far more comparative than neg's evidence. Even without the external war part of the impact turn, I have serious doubts as to whether the executive is actually speedier or flex-ier, which are the only reasons I can find why prez powers solve bioterror in the 2NR.

Two points on the "groupthink" warrant in the Streichler evidence:

- 1) Is groupthink a new argument?
  - No, it is a response to "executive speed/secrecy good." Georgia impact turned the 1NR yoo card – saying that exec speed/secrecy is bad for response to terror and prolif, because speedy decisions will be wrong. Does groupthink apply to the 1NC scenario? Yes. Does it also apply to the 1NR card? Yes, so they get to read it.
  - I could potentially be much friendlier if the 2NR tried to parse these differences out. For example, say that groupthink/trump bad is not responsive to "speed solves prolif" part of Yoo. Maybe say that answers to new 1NR impacts must be uniquely applicable to that scenario – i.e., if the neg has an arg in the 1NC and reads a different arg in the 1NR, the aff only gets to read answers which contest uniquely the new impact. I disagree with that, but you need to do something. Regardless of hypothetical theory debates that didn't happen, two outstanding issues:
    - a) the card is clearly more than just "exec solves prolif," so even in the best case scenario for the neg this is fine because it is a response to "executive dampens conflicts"
    - b) the 2NR definitely has to say this.
  - Again, if the 1NR card was less "executive solves everything" I'm friendlier here. As is, this seems like a reasonable response to the Yoo card.
- 2) Do I allow the groupthink part of the cards, given that the 2AR didn't impact that out (I'm uncertain if the word "groupthink" even appeared)? I say yes, 2 reasons:
  - 1) Norms: This is tough and speaks more to the larger state of how judges (including me) evaluate evidence. In impact defense, for example, the debaters very rarely draw out every single warrant for why the impact is wrong. In most rounds, the aff will say "yes china war – neg D doesn't assume <<internal link>>", the neg will say "no china war – interdependence overwhelms <<internal link>>." In that case, judges look at the relative quality of both cards, including nuances that the debaters did not discuss, to decide which is better. In this case, groupthink is the reason why congress is better.
  - 2) The debating: The 2AR certainly extends the claim that congress is better and the 3 pieces of evidence. The 2NR did not contest "congress is better" beyond asserting that it was new and claiming it did not apply to bioterror. The warrant in the aff evidence for why congress is better is groupthink. I think it's fine to think about that. I might feel differently if the neg said something else here, but they didn't.

Other miscellaneous neg arguments, particularly the gridlock link:

This was something that I thought about later in my decision process, when I was scanning through all of the evidence to make sure I didn't miss anything. These cards are pretty good. I can see a ballot where the internal link to the DA is that gridlock causes bioterror attacks because no one can respond. Two issues with this:

- 1) (the big one) - This was not explained as an internal link to bioterror at any point in the debate. The fact I didn't think about that until I'd already finished with my flows should indicate this might be too much intervention. The DA was never framed as the inter-branch conflict DA or the circumvention = fights DA – it was explained as "the president loses power and can't act quickly." I feel like I would be intervening if I decided that the scenario was "bioterror attack will come when gridlock happens," especially given I didn't realize this was relevant until I was scanning the document before I submitted my ballot.
- 2) Even if I give the neg 100% of this link, I don't think that the gridlock lasts for very long and given the neg hasn't given me a scenario for how or when or who conducts the bioterror attack I'm still very confident that congress would do a better job. The neg's Scarry evidence is quite conclusive and both sides have extolled its virtues. It seems like, viewing the neg's link evidence holistically, the most probable outcome is that congress passes the plan, there's a short fight that congress wins quickly, and per the neg's Mann evidence, the executive will become cautious and back down as congress takes control (per Klukowski and Scarry). I'd risk a bioterror attack coming during the next month or two while the government is in gridlock if for the next 50+ years we have a better actor leading our response.

Where I differed from the other judges:

This was (as should be clear, from the header) not something I thought about before deciding. I wanted to make a comment though, as seemed that the other judges' oral RFDs were either a) the impact turns were not allowed, or b) the 2AR did not apply their arguments to bioweapons and would be intervening if they did that work for them. I disagree with a) for reasons outlined above, and for b) I had a different view of what was happening in the debate. Two factors which outline where I came down on b):

- 1) <u>My understanding of the aff arguments</u>: From the 1AR on, I understood the claim that Georgia was making to be "we concede the impact of terror and prolif on Yoo, but impact turn the internal link." The way the cards were extended was consistent with this. I understood the extension in the 2AR to be saying that the neg's terrorism/bioweapons scenario is wrong – the words "we impact turn their internal link to terror" is the first thing I have on my flow, but even if I didn't all of the warrants are applicable to that context and I feel like I would be intervening more to not do that work than to do it. It seemed clear to me that the 2AR's speech, starting off with "we conceded the terrorism and prolif impacts to Yoo but impact turned the internal link," followed by the extension of all of their reasons why the executive is bad demonstrated intent for me to apply those arguments to bioterror. Given how shallow the 2NR was on the internal link I would feel bad giving a ballot for Kentucky here. Obviously, many other smart people disagreed with me here, so maybe I am totally off base and that was not what the 2AR said. There is certainly room for confusion, as Nathan uses prolif to contextualize why the executive is bad and doesn't mention biological weapons much outside of the very start of the speech.

However, to me the clear intent of the 2AR was to say that all of the neg's scenarios are wrong. If congress is faster and smarter than the president I have no idea what the executive does to resolve bioweapon threats that congress wouldn't do better. At some point I'll have to re-watch the speech to see if my read was accurate, but I got the sense that Georgia's intent was for their arguments to be applied to bioweapons.

- 2) Building a coherent worldview from the evidence and arguments presented: If the truth claims in the aff cards are accurate I have trouble reconciling the worldview the negative's framing presents to me (where the executive is bad at everything except bioweapon response). Given the absence of a compelling card and the shallowness of neg debating here, I would have a very difficult time explaining to Georgia how the president is better than congress for bioterror response.

Summary:

Overall, there is a clear and decisive impact turn. It is theoretically legitimate and both the affirmative's evidence set and debating are substantially better than the negative's. The ballot I write for the negative relies heavily on bioterror getting through because the I decide aff's defense doesn't apply or was not applied by the 2AR. I am uncertain after the 2NR what mechanism the president uses to solve bioterror that congress cannot do better and cannot justify that decision based on the weight of evidence or the debating. I thought that Kentucky was ahead on large swaths of the round, but the shallowness of the 2NR on the impact turns made it a pretty clear and easy aff ballot for me.

This was a great debate to end a tremendous season and the quality of both the arguments and debaters themselves is a testament to the immense value of this activity.

Brovero

Highlights

Congratulations to both teams on a fantastic final round, outstanding seasons, and to Georgia RS, extraordinary careers.

Nathan & Johnnie – Not sure I can express how much I enjoyed watching you throughout your time in college debate. I meant what I said after the finals about watching two of your BT debates a year apart – you were so tough on yourselves after that 2018 debate – watching you debate them again in the finals of the 2019 was awe-inspiring – you were fierce and debating without fear – so amazing! You were always fun to watch, tough to coach against, and so pleasantly friendly in our interactions outside of debates. Thank you for sharing your time with us, and I expect more great things from you in the future!

Dan & Truf – Enjoy every time I judge you – you keep me on my toes – whether it is new overwrought tradeoff DAs, missing flows and flails, all new impact turns in the 1AR, or just an old-school detailed debate about executive agreement mechanisms – there is always something that makes it so I can't stop thinking about the issues in those debates for a good while afterwards. I hope you will be debating again next year. Thank you for the opportunities I have had to judge you, and I hope there will be more in the future.

It is an honor to judge the finals of the NDT, and it was a pleasure. Thank you for the privilege.

Some of what is written below, could be read as very critical of the teams (in terms of highlighting, brevity/clarity, clash). To be clear, this was an extraordinary debate – both teams performed exceptionally well and should be very proud of this debate and their performances in it. For any audience reading this ballot, please understand my criticisms are minute in the context of the entire debate. I encourage folks to watch the debate (again, if you already have). You can find it the beginning of the debate here: https://www.youtube.com/watch?v=bXQ5sfzXmRw – and thanks to the folks who recorded and uploaded it. Consider using it as a teaching tool with debaters. It might be a little on the quicker side for some folks, but for the most part it is relatively clear, and the issues in the debate narrow over the course of the debate. It offers lots of opportunities for discussion – what a "new" argument is, what legitimizes new arguments, highlighting, debating counterplan solvency – while also showcasing four talented debaters with genuine respect for one another.

Short Reason for Decision

The counterplan is better than the plan. The counterplan does not link to the presidential powers disadvantage. The plan links to the presidential powers disadvantage. The counterplan solves the case. Because the counterplan avoids triggering the presidential powers disadvantage and solves the case, it is better than the plan which triggers the presidential powers disadvantage.

Reason for Decision by Issue

DA

Legitimacy of 1AR Cards/Arguments

I struggled with this due to very shallow explanation on both sides. Would have preferred each side provide more detail on whether these 1AR cards are legitimate or not.

In the 1AR, I have written down:

- Concede Yoo's impacts…prolif…Yoo wrong – flex not key
- Congressional power key to solve conflicts – flex not assume nukes
- Congress key to accountability – outweighs speed

These tags correspond to the 1AR's Streichler, Fuchs, and Adler cards. I don't have anything written down from the cards – likely because I am trying to process what is happening:

- I am initially confused about what the aff is conceding about Yoo, while they are subsequently arguing he is wrong about flex.
- I am also unsure at the time if the subsequent cards are legitimate, because I am not predicting/understanding a rationale that the 2AR will later try to articulate. At the time, my gut reaction was that while Yoo indict was legit since Yoo was first read in neg block, I was very uncertain about the legitimacy of the other two cards (Fuchs & Adler) because they seemed to be prez power bad/Congress powers good args that were not in 2AC, and I was unclear what the neg block had done that legitimized them.

The 2NR argues these cards are illegitimate because the disad has not changed since the 1NC – they did not read a new impact – and these arguments weren't in the 2AC.

The neg's only substantive argument in response to these cards is that the neg's evidence proves flex is crucial to bioweapons response in particular.

As noted, I am sympathetic to the neg's claim that (at least some of) the arguments are new, and they were not explicitly justified by the 1AR. For me to consider them, the justification for the evidence offered by the 2AR needs to:

a) Meet the threshold of being a predictable rationale for why they were not new – i.e. that the neg should have been able to discern why these weren't new, that the explanation is not so tortured as to be beyond the 2NR's anticipation [If not new, the neg has little answer], and
b) That explanation needs to be tied to an accurate characterization of the evidence.

Regarding the threshold question (a) – the 2AR says these are not new arguments because they are a response to the Yoo evidence first read in the block, and they say Congress is key to speed/flex. Regarding the specific cards:

The Yoo indict (Streichler) –

Some, but not all, of the arguments in the evidence are legitimate responses <u>because the neg block introduced Yoo/speed internal link</u>. The highlighting leaves much to be desired. Based on the parts of the evidence that are highlighted, this card says:

- ***Yoo presents a false dichotomy***
- ***The president retains powers to respond quickly***
- ***Congress can move quickly too – 9/11 Senate authorization of force***
- ***President isn't always quick***
- ***Quick decisions may limit long-term options***
- President's capacity overstated
- President's native abilities shape process
- Even talented secretaries succumb to groupthink
- Congress may be able to offset disadvantages – diversity makes them less susceptible to groupthink

The arguments ***bold/italicized*** above are legitimate – they are arguments that indict Yoo by answering the speed internal link (Prez has powers to respond quickly but Congress can too, President isn't always quick, quick may limit long-term options).

The remaining arguments do not seem to clearly clash with the speed argument, at least not in a way articulated fully by what is highlighted by the evidence or by the aff. Even if they are arguably part of a larger indict of Yoo, these are scant claims, very thin on warrants – no examples, details, etc. In order to give them more consideration, the aff would need to explain the connection between native abilities and groupthink and the Yoo argument. The 2AR primarily characterizes the evidence as proving they have the best internal link to speed (Congress), with very only passing references to groupthink and Trump, without clear connection to speed.

Congressional power key to solve conflicts – flex not assume nukes (Fuchs)

Unclear why this evidence is legitimate. The Streichler evidence was legitimate because the neg block introduced Yoo/speed as argument. This card does not appear to clash directly with Yoo/speed. It is an argument why Trump is bad for foreign policy, and Congress needs to step up. There is not a clear speed warrant, and it does not mention Yoo.

Congress key to accountability – outweighs speed (Adler)

Highlighting produces the following:

- Shared power deters abuse, misguided policies, irrational action and unaccountable behavior
- Joint policymaking ensures policies will not reflect private preferences or short-term political interests
- Devastating nuclear war and extermination of the human race demonstrate need for joint participation
- ***Most disputes have virtually nothing to do with rapid response***
- Executive (sic) have become unilateral, secretive, insulated and unaccountable.
- In the wake of Vietnam, Watergate, and Iran-contra … effects of groupthink exacerbated the inexperience of presidents

The bold/italicized argument is a response to speed. The other arguments appear to be president bad/Congress good – but not related to speed or Yoo.

Legitimacy Summary

Claims/arguments that were legitimate:

Streichler:

- *Yoo presents a false dichotomy*
- *The president retains powers to respond quickly*
- *Congress can move quickly too – 9/11 Senate authorization of force*
- *President isn't always quick*
- *Quick decisions may limit long-term options*

Adler:

- *Most disputes have virtually nothing to do with rapid response*

If Legit, What Impact?

The overall impact of these arguments is very small, for a few reasons:

1) Contrary to characterizations, none of these amount to an argument that Congress is ***better*** for speed. At most, these arguments amount to a marginal internal link take-out that Congress can also act quick. The affirmative does not impact this – i.e. they don't say "even if it is not a turn, it takes out the internal link which means X for the DA…" Additionally, the neg is has 1NC and block link arguments that the plan triggers both broad restrictions and fights, which would undercut speed.
2) The primary way the aff impacts this in the 2AR is in relation to prolif – i.e. the case impacts. The counterplan also solves the signal necessary to curtail prolif, and the negative has a framing argument that absent concrete quantification of the impact to a solvency differential between the plan and the counterplan. Because there is not quantification of the solvency deficit, it is negligible.
3) The neg argues that speed is crucial for dealing with bioterrorism, which has an extinction impact, which is larger than the case impact which does not reach extinction level (due to lack of coverage of the neg's nuclear winter defense in the 1AR).

Bigger Picture Thoughts on Resolving This Section of the Debate

As noted, this portion of the debate would be cleaner if either team took a few steps to clean things up more.

Aff

- More clarity/justification in the 1AR. Too much of this is left to my discretion on what a new argument is based on no explanation in the 1AR and thin description in the 2AR. Groupthink args and Fuchs evidence might actually be legit, but I find the rationale in the debate for this insufficient.

- Better highlighting. There is a line (not highlighted) in your Streichler evidence that says, **“No lawmaker would insist on Congress deliberating while terrorists set off weapons of mass destruction in the United States.”** That is an incredibly rhetorically powerful line that would assuage my concerns about Congress v. President in terms of handling bioterror response.

Neg

- More detail on why the evidence read in the neg block was not a new impact and why the 1AR’s arguments are illegit/an example of sandbagging.
- More substantive response to the aff’s arguments. You are taking a big risk putting your eggs mostly in the “it’s new” basket. You should be doing more debating about why your evidence/internal link scenario is better, indicting their evidence, pointing out it does not amount to offense, etc.
- Better highlighting. More coherent highlighting of the 1NC Donohue evidence to make clearer the rationale for rapid exec branch response would be helpful.

Disease/Bioterror Impact Risk

2AR arguments:

- Burn-out or not lethal double-bind
- No tech
- Can’t disperse

The neg’s evidence here is just a little bit better than the aff’s because it takes into account the aff’s arguments.

The 2AC Wimmer evidence, as marked, basically says developing bioweapons is hard and expensive.

The aff’s disease defense evidence (1AR Farquhar) assumes natural pandemics won’t cause extinction because dispersal won’t be wide and they can be contained by rational response.

The 1AR bioterror impact defense (Lentzos) says experts say risk small, barriers high, and countermeasures can contain.

Assessment:

- The neg makes the argument that terrorists have both the motivation and capability to develop genetically engineered pathogens that can survive burnout (Sandberg, Rose, Millett & Snyder-Beattie [UMW DEBATE ALUM]), and even if the risk is low, magnitude of the impact is so extreme we should not risk it (M & S-B).
- The aff’s double-bind argument does not seem to be supported by the evidence, particularly in light of the neg’s evidence about engineering strong pathogens.
- Combined, these neg cards make the arguments that barriers/costs are declining to create engineered pathogens, omnicidal motivations exist for seeking these types of weapons, and strength of containment/countermeasures is of the utmost priority because of the risk of extinction.

Link Threshold

2AR arguments:

- Herb 17
- Threshold so low – 1NC link says "any authority fight triggers a spillover"
- Guantanamo & surveillance restrictions – Obama
- Russia sanctions – Trump
- Risk of the disad is zero

Time on this in the 2AR is very scant – literally the waning moments of the 2AR. It is unclear if it is being extended as a link empirically false or link inevitable argument.

The 2NR has a wall of arguments the aff does not quite overcome here – prior efforts were restrictions were superficial – not authority, House won't restrict now, Dems won't restrict now, nuclear authority restrictions are uniquely likely to trigger fights, will spillover to broader fights, 2019 evidence postdates.

Threshold low:

Not clear where the threshold issue is in the 1NC evidence. The link magnifier that restrictions on nuclear authority are most likely to trigger the link and embolden authority fights seems like there is a substantially higher risk of the link with the plan as opposed to lower likelihood of the link with the status quo or the counterplan.

Herb 17 (Guantanamo, Surveillance, Russia sanctions)

Neg's 2019 evidence says no restrictions likely now, and nuclear authority restrictions are uniquely likely to trigger the link. None of the efforts in the Herb evidence are about nuclear, and unsure the scope/impact of these as restrictions. This is an instance in which digging in on one example and providing more detail (surveillance was a genuine restriction in constitutional authority, it rescinded authority because…that should have triggered X part of the neg's link evidence because…).

Risk of the disad is zero

This needed 10 seconds more. The 1AR explanation on the uniqueness and link was closer to double-bind – i.e. if neg's uniqueness evidence is true, that there is no motive or pressure to reduce war powers/restrict the president. 2AR should be extending it this way and arguing neg can't have it both ways – if it is unique, then the link is empirically false – there is zero risk of the link – i.e. uniqueness proves no motive to spillover, trigger war powers fights, etc. – and the empirical evidence is on our side because surveillance restrictions didn't spill over.

Note about aff highlighting – Herb 17 evidence

This is another instance in which highlighting choices undermine the potential of the evidence. The section in the card that quotes military analyst Kirby provides more weight to the evidence – explaining why these restrictions might be more substantive and/or different from past symbolic efforts to restrain the president.

Disad Summary

Disad has an extinction level impact. The case does not. The counterplan solves the case, meaning the only risk of a link is to the aff. The aff triggers collapse of presidential power and authority fights that would undermine the response to bioterror (regardless of president or congress). While Congress may have the capacity to act quickly in some instances, I have higher confidence in the executive branch responding to a bioweapons attack when unencumbered by authority fights.

Counterplan

CP Links to DA because It's a Restriction

The counterplan is not a restriction and the aff does not fully articulate why it would be perceived/received/spun as such. Contrary to the 2AR's assertion, the neg did not drop this argument – the neg argues that is does not restrict the president's war powers, because he still has the authority to do whatever he wants. The negative's Hathaway, Bradley & Goldsmith, and Harrington evidence describes the counterplan as an unfettered exercise of authority by the president, which undercuts the aff's claim that Congress would seek to restrict the president after the CP.

Reversibility Solvency Deficit

The counterplan is not reversible because the counterplan's fiat means the outcome of the plan is functionally implemented, but not as a restriction. Both the congressional implementing provision and the executive action provisions ensure durability.

CP Perceived as Reversible Solvency Deficit

There is not a warrant for why perception of irreversibility is key until the 1AR (2AC argument was tagged to assert reversibility meant it didn't solve the case, but there was not a perception warrant until the Ingram and Stone cards were read in the 1AR). Technically, the 1NC Harrington evidence pre-empted this argument because it said that it sent the most credible signal because it is seen as interbranch coordination. So, when the 2NR says this is a new argument because the 2AC didn't explain why reversibility impacted perception, he is probably correct.

But even if the argument is legitimate, the aff is behind here – the 1NC evidence is pretty good, but the neg block evidence (Bradley & Goldsmith) is also very good, indicating that no one outside the State Department knows the difference. By contrast, the aff's evidence assumes that perception is a problem if the counterplan were reversed – to which the neg argues fiat and lack of Trump motive mean the counterplan is binding law like the plan, hence no perception deficit.

If Solvency Deficit, Impact?

First, there is NOT a solvency deficit, but even if there were, the negative has argued absent a quantifiable impact to a solvency deficit, the counterplan should be considered sufficiently solvent. There is no discernable impact even if the counterplan solved a little bit less.

CP Summary

Functionally replicates the aff, while avoiding the War Powers DA link. Solves the case because it is durable on account of fiat, and it is perceived as durable because no attempt to reverse it. It avoids the link to the disad because it does not restrict presidential nuclear authority or trigger the fights that undermine response to bioterror.

Case

No Cascade/Proliferation takes 17 years

Pretty high risk of the advantage for the aff. The Walt & Kahl cards do not assume a scenario in which the NPT has collapsed. Walt assumes prolif is okay when slow, and Kahl assumes there are barriers to prolif that keep it slow. Neither of these conditions are met when the system of constraints breaks down, everyone is incentivized to scramble for nukes, and there is no longer a meaningful penalty for doing so.

No Model/Signal – Realism

1AR functionally drops this – the only argument is "no implication". The neg gets some diminution of the solvency here, but still think that even if realism influences countries' policies, prolif risks get much higher without the plan.

Does Case Get to Extinction?

No. The 1AR does not get to the nuclear winter argument before the timer goes off.

Case Summary/Case Impact v DA Impact

Disad has a risk of extinction from bioterror, which outweighs the nuclear war scenarios from the case.