

The Final Round¹

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Amity Regional High School

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Resolved: Executive orders should require Congressional review.

A Note about the Notes

I've reproduced my flow chart for the Final Round at State Finals augmented by what I remember from the debate. The notes are limited by how quickly I could write and how well I heard what was said. I'm sure the debaters will read them and exclaim, "That's not what I said!" I apologize for any errors, but I hope debaters will appreciate this insight: what a judge hears may not be what they said or what they wish they had said.

There are two versions of the notes. The one below is chronological, reproducing each speech in the order in which the arguments were made. It shows how the debate was actually presented. The second is formatted to look more like my written flow chart, with each contention running across the page as the teams argued back and forth. It's close to the way I actually take notes during the debate.

The Final Round

The Final Round was between the Ridgefield High School team of Paul Kim and Max Cummings on the Affirmative and the Hamden High School team of Aakshi Agarwal and Kayla Johnson on the Negative. The debate was won by Ridgefield.

1) First Affirmative Constructive

- a) Introduction
- b) Statement of the Resolution
- c) Definitions
 - i) "Executive Order" (EO): same as in the status quo
- d) Plan for Congressional Review (CR)
 - i) Bi-partisan Senate Committee, e.g. Ways and Means
 - ii) 30 days to review and accept or reject, otherwise automatically accepted
- e) Aff belief: Executive is not the legislature, and has no duty to enact laws
- f) A1²: Plan will regulate Executive power
 - i) Ensures the will of the people as represented by Congress
 - (1) President can't strong-arm
 - ii) 8 Senators on the Committee, 4 from each party, 8 different States
 - (1) Ensures wide representation
 - iii) Provides for more robust democracy

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² "A1" indicates the Affirmative first contention, "N2" the Negative second contention and so forth.

- (1) Compared to legislation by EO
- (2) E.g. Andrew Johnson's pardon despite cabinet and Congressional disapproval
- (3) E.g. Bush non-public order on spying
- (4) Now there are no limitation on Executive
- g) A2: EOs will be sustainable over the long-term
 - i) New administrations often repeal previous EO's
 - ii) This leads to uncertainty as to the law
 - iii) Plan prevents flip-flop
 - (1) E.g., Trump immigration ban overturned in one day
 - (2) Many immigrants are still uncertain
- h) Aff believes Exec. should not legislate
 - i) Plan won't block action in a crisis
- 2) Cross-Ex of First Affirmative**
 - a) Will the committee members names be public? Yes
 - b) Who picks them? The Senate, using current procedures
 - c) What if there is a split decision? EO goes into effect
 - d) How can there be oversight if there is no agreement? 8 can stop it
 - e) But if they don't agree? 4-4 split will be rare. For example, Republican Senator McCain spoke out against Trump's immigration ban
 - f) What about future Presidents? There could be a tie. 4-4 doesn't stop EO.
 - g) Can they stop a repeal of an EO? President can issue order, but it is subject to review.
- 3) First Negative Constructive**
 - a) Intro
 - b) Resolution
 - c) Counterplan: Judicial review of EO by Supreme Court
 - i) Review within one week of issuance
 - ii) EO goes into effect immediately if an emergency
 - d) N1: Res fails to prioritize justice
 - i) EO's needed when Congress fails to act
 - (1) E.g., Obama's actions
 - ii) Aff accepts any EO Congress likes
 - (1) An EO should be Constitutional
 - iii) Congress creates new laws, not new morality
 - iv) Congress is extremely bi-partisan
 - e) N2: Counterplan streamlines existing judicial review process
 - i) In status quo EO goes into effect immediately
 - (1) Court challenges start from lowest level
 - ii) Senate Committee still could approve unconstitutional EO's
 - (1) E.g., Obama's DAPA immigration amnesty
 - iii) Aff plan takes 30 days to act
 - (1) EO's still subject to judicial review
 - (2) Counterplan sends them directly to the Supreme Court
 - f) N3: Aff plan will have no significant impact
 - i) A 4-4 split on party lines is highly likely

- (1) E.g. Betsy DeVos confirmed on strict party lines
 - ii) With 4-4 tie, EO effective in 30 days
 - (1) Party has incentive to choose it's share of members carefully
- 4) Cross-Ex of First Negative**
- a) You say the Constitutionality not tested? Yes
 - b) Was EO on Japanese internment stopped by judicial review? Please clarify
 - c) What about a similar order today? It would be unconstitutional.
 - d) Was it unconstitutional in the past? It was eventually overturned
 - e) The Courts never approve anything bad? Their review is better than Congress
 - f) Wouldn't the 1 week deadline overwhelm the Supreme Court workload? The Supreme Court is efficient
 - g) There are 9 members, mostly old, take ½ year off? There could be hundreds of EO's a week? Not hundreds
 - h) There would be a timely decision? Yes, even with 10.
- 5) Second Affirmative Constructive**
- a) Intro
 - b) Neg then Aff
 - c) Counterplan problems
 - i) Timeframe would strain the Supreme Court
 - (1) Poor old RBG!
 - ii) President could state every EO was an emergency, lots of wiggle room
 - (1) Trump call immigration a crisis
 - iii) Judicial review already exists; Aff won't change it
 - iv) Congressional review reflects the will of the people
 - v) Trump's immigration ban stopped before it got to the Supreme Court
 - d) N1: Aff plan has no effect on judicial review, so justice will be served
 - i) Aff does reflect popular preference, provides a failsafe
 - e) N2: Counterplan is only faster at the expense of the Supreme Court's workload
 - i) It's needless crowding: we have judicial review already
 - ii) Legislature will now count in the process
 - f) N3: We don't intend or want to strike down all EO's
 - i) A majority of our committee can stop an EO
 - g) Neg hasn't responded to our contentions
 - h) Plan: we don't have to wait 30 days
 - i) In a disaster we would expect immediate approval
 - ii) States can also act immediately
 - (1) E.g. During Hurricane Sandy, New Jersey responded first
 - i) A1: We scale back Executive power
 - j) A2: EO's will be more consistent
- 6) Cross-Ex of Second Affirmative**
- a) Is the Supreme Court crowded by appeals? Not required to respond in a week. EO's now reviewed as part of regular order.
 - b) 100 EO's in one week? Trump has issued 100 so far.
 - c) Are you sure? Yes
 - d) What happens when Congress isn't in session? We'll add to the plan that there would be a special session if needed.

- e) How is it the opinion of Congress if only 8 Senators? It's better than one person now.
- f) Couldn't the 8 be from the same region? That is true of many committees
- g) But it could be true for this one? Not really relevant
- h) Why is Congressional better than Judicial? Congress enacts laws

7) Second Negative Constructive

- a) Intro
- b) Plan and Counterplan
 - i) We have 1 week per EO
 - ii) Aff says 100's? Packet chart says <30 in first 100 days. FDR only 9
 - iii) Aff plan shifts as we question it, e.g. "call into session"
- c) A1: Neg regulates, but differently
 - i) Aff 8 known to be hyper-partisan
 - ii) Neg 9 fair, look to the Constitution, not very partisan, regularly vote against party
 - iii) Solvency: if EO is a problem, 4-4 tie likely given party pressure
 - (1) Aff unlikely to regulate President
- d) A2: Aff just need 4 to pass an EO
 - i) If Trump is followed by a Democrat, new Pres. will repeal EO's
 - ii) Repeated repeal won't stop; no change from the past
- e) N1: Neg plan follows Constitution, Aff plan follows what Congress likes
 - i) "Like" means 4-4 split, and appeal to Supreme Court
- f) N2: Covered when we compared Plan and Counterplan
- g) N3: Aff plan will have no real impact, as explained

8) Cross-Ex of Second Negative

- a) You look at the first 100 days? Yes
- b) Didn't Ronald Reagan issue 381 EO's? But only 18 in the first 100 days.
- c) Aren't there 8-10 on most Senate committees? Perhaps
- d) Not representative? Not as representative as you say, and Supreme Court is more qualified
- e) 7 orders in 7 days? Supreme Court has guidelines. In any case most orders will pass.
- f) Won't the Supreme Court hold hearings? That's up to the Supreme Court. Depends on the issue.
- g) Can't emergencies be used as an excuse? Court won't agree.

9) First Negative Rebuttal

- a) Emergency? President can't just declare it. Court won't agree.
 - i) Neg process is accountable to the Supreme Court
- b) Who should handle EO's, judiciary or Congress?
 - i) Consider elected officials vs judges appointed for life
 - ii) Aff plan means 4-4 tie and EO is permanent
 - (1) Only recourse is go to lower courts, long process
 - iii) Neg has Supreme Court act in a timely fashion
 - (1) SC not elected
 - (2) In the Senate, it's hard to buck the party
- c) A2: Aff plan won't prevent repeal of previous EO's

- i) No bar to Hillary Clinton repealing Trump some day
- ii) Neg Supreme Court precedents last
- d) Resolution doesn't prioritize justice
 - i) Aff plan won't have any meaningful impact due to partisanship

10) First Affirmative Rebuttal

- a) Intro
- b) Aff then Neg
- c) A1: Historically Supreme Court has not been a good check
 - i) E.g., Japanese internment Constitutional but bad
 - ii) We agree with judicial review on Constitutionality
 - iii) Adding Congressional review adds will of the people
- d) A2: If a new EO changes an old EO, committee votes
 - i) Fair and democratic
- e) N1: We don't ignore judicial review on Aff
 - i) Same process as exists today
- f) N2: Judicial review blocked Trump's immigration order
 - i) We don't need to go directly to the Supreme Court
- g) N3: Aff can ensure President can't detain people
 - i) Aff can prevent secret surveillance
 - ii) Aff can prevent secret waterboarding
- h) Counterplan saddles the Supreme Court with too much work

11) Second Negative Rebuttal

- a) Intro
- b) N1: EO's are a priority
 - i) Didn't say there was no judicial review under the Aff
 - ii) But EO's pass by default
 - (1) Obama—I have a pen and a phone
 - iii) Plan not effective if Congress not in session
 - (1) They would have to gather to decide
 - iv) The only Aff example, Japanese internment, was eventually struck down
 - v) Secrecy won't be an issue as Supreme Court actions are public
 - (1) EO's could pass unnoticed through Congress
- c) N2: Immigration EO blocked, but can be appealed
 - i) Run of the mill EO's won't take long for Supreme Court to review or impact their workload
- d) N3: Most EO's will pass Congress by default
 - i) This means A1 and A2 don't hold.

12) Second Affirmative Rebuttal

- a) Effectiveness
 - i) Committee will be independent
 - (1) McCain spoke against Trump on immigration
 - ii) Senators can defy the President
 - iii) Judicial review exists already
 - iv) Adding a political check is new
- b) Advantages of the Aff Plan
 - i) We agree not all EO's will be rejected

- ii) Really bad EO's will be rejected
 - (1) EO's that are Constitutional but bad can pass the courts
- iii) Number of states represented in committee not relevant
- c) Supreme Court plan creates a loophole
 - i) President can always declare an emergency to avoid oversight
 - ii) Aff provides more political and judicial oversight
- d) Net Benefits
 - i) Aff protects against executive overreach
 - ii) Neg has no political oversight
 - (1) Will cause backlogs in Supreme Court
 - (2) Can be avoided by declaring an emergency