

A debater's thoughts on the CTMSDL January 27, 2018 motion for the debate at Smith Middle School, Glastonbury

by Eliza Posner, January 2, 2018.

This House would eliminate executive pardons and commutations.

A Note on Plans and Counterplans:

The January resolution, *This House would eliminate executive pardons and commutations*, is a great motion for teaching debaters about the strategic use of plans and counterplans. The first thing for debaters consider when thinking about plans is “does my plan/counterplan fit with my side of the resolution?” In the current CTMSDL topic, proposition plans must eliminate executive pardons and commutations while opposition counterplans must not do so. This might seem obvious, but can be tricky. For example, debaters on both sides might be tempted to create a plan that replaces the current presidential clemency system with a more democratic system where, for example, a group of congress-people vote on clemency applications. Debaters might think that this would make a good counterplan because it involves changes to the current system, but it is actually a proposition plan because it involves the elimination of executive pardons. Therefore, while opposition debaters might think that proposition has the burden of eliminating all pardons and commutations, they textually only have the obligation to eliminate those that are *executive* and could propose plans that create a non-executive system. A second example of a tricky plan would be one which eliminates executive pardons but keeps commutations in place or vice versa. With a suggestion like this, it is important for debaters to note that, while proposition has the burden of affirming the resolution in its entirety, opposition's burden is to negate the affirmative, not the entire resolution. Therefore, opposition could potentially run a counterplan that agrees with the proposition in part but differs on some key issue.

The second thing that debaters should ask themselves is “is my plan/counterplan mutually exclusive?” Debaters are often tempted to come up with creative ways to solve the underlying problems presented by resolutions. For example, a proposition team might suggest that, along with eliminating pardons, the US should also eliminate the death penalty so as to prevent wrongful executions. However, because eliminating the death penalty is not inherently connected to pardon power, either side can propose this. Therefore, an opposition team can respond to this plan by saying “we can eliminate the death penalty too” and, in doing so, co-opt proposition's impacts.

While there are a range of legitimate plans and counterplans that could be developed for this motion, the most important thing for debaters to consider is “will a plan/counterplan help me win the debate?” Many debaters get caught up in the creativity of constructing a plan and forget to think about the strategy behind it. In fact, some debaters spend so much time on their plans/counterplans that they don't have time to discuss their contentions. Debaters should remember that plans are not arguments—they are ways of framing the motion that allow contentions to be applicable and impactful. Debaters who want to fit contentions and a plan into short speeches are often tempted to run half-baked plans that are short on details. If debaters run plans/counterplans they should be sure to include all of the relevant details and not leave anything open to interpretation—short plans are easily refutable.

Debaters should also consider whether their case *needs* a plan. In my opinion, this resolution does not require plans or counterplans and the best (and most persuasive!) cases will be those that debate the resolution straight. Some motions require plans—the last CTMSDL motion *This House would implement year-round schooling* almost certainly requires a proposition plan to explain what the year-round schooling format will be and how the new school schedule will work. However, the motion *This House would eliminate executive pardons and commutations* is much more straightforward and can be argued without a plan. Note: this does not mean the resolution can be argued without definitions!

I would encourage debaters writing cases for this motion to think very carefully about whether or not a plan would serve their interests and think even harder before running a counterplan. Debaters should remember that counterplans are even trickier than plans because they require an opposition team to do more than is usually expected. In a round without a counterplan, opposition simply has to prove that proposition's advocacy has significant disadvantages that outweigh any potential benefits. In a round with a counterplan, opposition has to prove that the counterplan has benefits that outweigh any advantages that proposition presents. This essentially means they must do double the work. For this reason, I would encourage middle school debaters to perfect their opposition contention writing and focus on constructing well-researched, well-impacted cases that do not include counterplans.

Sources:

Below are some good sources I have found for the motion, divided into topic areas I think are important for debaters to look into. Since so many different words (pardon, commutation, clemency, etc.) are used in articles related to this motion, I would start any research with some basic articles that give definitions of all the related terms and explain how clemency works. There are many different ways to attack this motion—it could be limited to the president or expanded to include governors. For this reason, I have included a wide variety information on many different aspects of the topics. Depending on how your teams define the motion, some of this research may not be pertinent. For example, a team that chooses to limit to the federal system would have no use for sources discussing how governors have used clemency to effectively eliminate the death penalty in their states. I have also listed some great advanced sources that coaches could read and help students understand.

Definitions, Basic Information, Statistics:

<https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency>

FAQ about presidential clemency and the Office of the Pardon Attorney

<https://www.justice.gov/pardon>

The website for the Office of the Pardon Attorney. Good source for statistics and in-depth information regarding presidential executive clemency.

http://www.slate.com/articles/news_and_politics/explainer/2000/12/whats_the_difference_between_a_pardon_and_a_commutation.html

A great, very short article for definitions of words clemency, commutation, and pardon.

<https://www.aclu.org/issues/mass-incarceration/clemency-and-pardons>

Basic information on how different states grant clemency.

<https://deathpenalty.procon.org/view.answers.php?questionID=001018>

ProCon article on clemency—includes short pieces of other sources that support/negate clemency power or define important terms.

<http://www.pewresearch.org/fact-tank/2017/01/20/obama-used-more-clemency-power/>

Provides definitions of the words clemency, commutation, pardon, remission, and respite as they relate to presidential power. Information regarding President Obama's use of clemency.

Obama Administration Clemency:

<https://www.nytimes.com/2016/12/19/us/politics/obama-commutations-pardons-clemency.html>

Information on pardons and commutations given by President Obama. Focuses specifically on the use of clemency to reduce the time served by low level drug offenders.

<https://www.justice.gov/pardon/clemency-initiative>

Information on the Obama Administration's Clemency Initiative to grant clemency to low level drug offenders.

<https://www.npr.org/sections/thetwo-way/2017/01/17/510307055/president-obama-commutes-chelsea-mannings-prison-sentence>

Information on and discussion of President Obama's pardon of Chelsea Manning. Includes opinions both for and against the pardon.

<https://www.themarshallproject.org/2017/01/26/inside-the-clemency-lottery>

Information on the Obama Administration's Clemency Initiative. Discusses issues with the potential randomness of clemency.

<https://www.themarshallproject.org/2017/02/14/inside-obama-s-clemency-machine>

An interview on clemency with Neil Eggleston, White House counsel from April 2014 until the end of Obama's second term.

<https://www.nytimes.com/2015/08/15/us/with-clemency-from-obama-drug-offender-embraces-second-chance.html>

Story of a drug offender given clemency under the Obama Administration.

<https://fivethirtyeight.com/features/obama-granted-clemency-unlike-any-other-president-in-history/>

Individuals' Clemency Stories:

<https://www.themarshallproject.org/2017/12/13/what-it-s-like-to-get-clemency-one-year-later>

Human interest stories of people granted clemency.

<https://www.nationofsecondchances.org>

A website with photos and stories on individuals granted clemency.

History:

https://www.washingtonpost.com/news/monkey-cage/wp/2017/07/24/heres-what-you-need-to-know-about-the-presidential-power-to-pardon/?utm_term=.985dda5ea884

Historical information about use of clemency.

http://content.time.com/time/specials/packages/article/0,28804,1862257_1862325,00.html

Information on controversial presidential pardons.

<https://fivethirtyeight.com/features/the-arpaiio-pardon-has-plenty-of-precedents-that-got-other-presidents-in-trouble/>

Basic information on presidential clemency and information on controversial presidential pardons.

<http://www.washingtonpost.com/wp-dyn/content/article/2007/07/02/AR2007070200825.html>

Information on the commutation of Scooter Libby's sentence.

https://www.washingtonpost.com/news/retropolis/wp/2017/07/22/trump-is-considering-presidential-pardons-ford-never-recovered-from-the-one-he-gave-nixon/?utm_term=.677d4d9d6376

Article on President Ford's pardon of Nixon.

<http://www.nytimes.com/2006/12/29/world/americas/29iht-pardon.4047202.html>

Article on President Ford's pardon of Nixon.

https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/08/26/is-accepting-a-pardon-an-admission-of-guilt/?utm_term=.7d93b12641e3

Does accepting a pardon mean admitting guilt?

Death Penalty and Clemency:

<https://deathpenaltyinfo.org/clemency>

Information on clemency granted to those on death row.

<http://www.nytimes.com/2003/01/12/us/citing-issue-of-fairness-governor-clears-out-death-row-in-illinois.html>

Article on Illinois Governor George Ryan's commutation of all Illinois death sentences in 2003.

<https://www.npr.org/sections/thetwo-way/2017/07/06/535756548/voices-far-and-wide-try-to-sway-virginia-governor-to-call-off-execution>

Article on the execution of William Morva, who was not granted clemency despite possible mental illness.

Trump and Current Controversies:

https://www.washingtonpost.com/politics/trumps-lawyers-seek-to-undercut-muellers-russia-investigation/2017/07/20/232ebf2c-6d71-11e7-b9e2-2056e768a7e5_story.html?utm_term=.78984c477134

President Trump's potential use of pardons in regard to the Russia investigation.

<https://www.npr.org/2017/08/28/546729186/after-arpaio-4-answers-to-questions-about-how-pardons-are-supposed-to-work>

Information on and discussion of President Trump's pardon of Sheriff Joe Arpaio.

<https://www.theatlantic.com/politics/archive/2017/12/trump-sessions-clemency/547793/>

How clemency might change under the Trump Administration.

More Advanced Sources:

https://www.americanbar.org/publications/human_rights_magazine_home/2016-17--vol--42--/vol--42--no--2---the-death-penalty--how-far-have-we-come--have-mercy--new-opportunities-for-commutations-in-death-penalty-.html

A good, but higher-level, article that considers many nuanced arguments about clemency.

https://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_cjmag_24_3_ridolfi.authcheckdam.pdf

A very good article that covers definitions, history, and procedures related to clemency. Covers every state's system for granting clemency. A higher-level article that would be best for a coach to help students read.

<http://scholarship.richmond.edu/cgi/viewcontent.cgi?article=2033&context=lawreview>

A higher-level article arguing that the reasons for a pardon should be publicly stated.

<https://www.law.cornell.edu/supremecourt/text/32/150>

Information on *United States v. Wilson*, in which SCOTUS held that pardons can be rejected.

<https://supreme.justia.com/cases/federal/us/236/79/case.html>

Information on *Burdick v. United States*, in which SCOTUS held that a pardon, “carries an imputation of guilt and acceptance of a confession of it.”