

The Supreme Court and Public Health
2023-2024 NFHS Topic Proposal Final

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Introduction:

The news cycle talks about the judiciary the same way kids talk about the latest social media challenge. Once a TikTok becomes viral, everyone tries to replicate, react or repudiate the trend. Similarly, every time the Supreme Court hits the front page of CNN or Politico, Vox puts out a video explaining how the Supreme court works like a modern episode of Schoolhouse Rock, followed by Instagram and Twitter posts from armchair lawyers trying to get the most views. Even before the recent news of a leaked draft opinion by Justice Samuel Alito¹, the Supreme Court and their inner workings have dominated this generation's mindset. Almost every modern presidential election brings talking points of Supreme Court vacancies and with public platforms for the voiceless to be heard, movements for equality and fairness are amplified for the Courts to redress grievances. The collective agreement of 5 individuals in silken robes hold more influence than all the likes, follows or subscriptions social media has to offer.

One of the most important court cases concerning this topic is *California vs. Texas* (2021) where the Supreme Court voted 7-2 to uphold the Affordable Care Act for the third time. For nearly 10 years, Obamacare has become a hardline between the two political parties. There have been four new Supreme Court justices appointed since ACA was first implemented. In each of those confirmation hearings, they were asked about *Roe v. Wade* and ACA, further solidifying that health care is the predominant issue. As further warranted in a Times article in

¹ This was paper was outlined before the Roe v. Wade leak, I'm not sure how it will affect this topic paper yet.

November 2018, days before the midterm elections, “In poll after poll, voters say access to affordable care is their top concern. An October Kaiser poll found that registered Democratic and independent voters in battleground districts listed health care as the most important issue.”² While congress will continue to pass laws and policy that effect millions of American citizens, it’s important to know how the other branches of government interacts with this growing industry.

Rationale:

Even before the reality show we call, the pandemic premiered, the Supreme Court was already a reoccurring co-star in the health care sphere. Covid-19 shows that medical information can be misinterpreted or misused. The role of the court is more apparent now. Especially after the years spent deliberating the Affordable Care Act (ACA), the interest in knowing how the Judicial branch works is growing. There has already been numerous PF and LD cases concerning Health Care ranging from drug prices to protecting patient information. Thus, the Court continues to be a common disadvantage or counterplan argument in debate.

As noted in previous Topic Selection meetings, Health Care is something that effects every individual in the country in some capacity. For me, it’s seeing people I personally am invested in, having to journey through the myriad of obstacles and barriers to get care that they need. One those barriers are pharmaceutical companies. For there to be lasting effect, the court could make lasting impacts on case law. Additionally, I think it would be interesting to see a change in actor in a policy resolution from the federal government to the Judicial branch

² <https://time.com/5441430/affordable-health-care-midterm-elections/>

specifically. By isolating the Supreme Court as the primary actor, it allows us to instantly identify a core Legislative branch counterplan.

In most affirmative plans, the de facto position is to have congress pass a particular policy that affirms the resolution, but in recent topics, this limits the affirmative team to defend Congress as part of the solvency. I see this being part of the reason why politics disadvantages have become a necessity in most team files, and it can be a problem for novice debaters to access early on. Civic education aside, the timeliness of court proceedings and election cycles greatly impacts how teams strategize their negative constructive. Limiting the actor to the Supreme Court definitely doesn't get rid of politics disadvantages, but it does minimize the need to run thumpers since the Negative is forced to run more unique argumentation.

There are many different areas I could have focused on concerning the Supreme Court. I am open to other fields concerning the court, I simply chose Pharma for personal reasons, but that does not necessary mean it's the most ideal topic area. It was more interesting to engage with the agency of the resolution. I can see some criticism on this topic as being too vague in nature as the interaction of private pharmaceutical businesses and the Supreme Court is rather limited but having a topic about the Supreme Court and the health care industry as a whole, explodes the number of possible affirmative cases exponentially. Finding that balance would be true for any other topic as well.

PART 1: NFHS Criteria

Timeliness and Interest:

Almost everyone has been exposed to some ramification of the Supreme Court in recent years. With five of the Supreme Court Justices being appointed by the past 2 presidencies over

a span of a dozen years, this era of the Judiciary is still too new to predict what impact they will have. With the exception to *Roe v. Wade* (1973) or cases concerning assisted suicide or “right to die”, the interactions between health care and the Supreme court has not been very popular until recently. *Planned Parenthood v. Casey* (1992), and the upcoming *Dobbs v. Jackson Women’s Health Organization* have shown the ramification the courts have for the future of health and privacy. Additionally, cases such as *California v. Texas* (2021) concerning the Affordable Care Act made the discussion of health care be a national platform issues that drew lines between the two parties. The recent *Biden vs. Missouri* (2022) and *National Federation of Independent Business v. OSHA* (2022) gave conflicting verdicts about vaccine mandates. In a post Covid-19 world, the intermingling of the Judicial branch and the Medical sector will become more and more popular.

In fact, employment in healthcare occupations is projected to grow 16 percent from 2020 to 2030³, much faster than the average for all occupations. There are many reasons why health care is becoming the most popular arena for the courts to make decisions. Aging populations, technological advancements, and illness trends all have an impact on where healthcare is headed⁴. There will be plenty of literature published post-ACA that will give students many ideas for affirmative plans.

Along with a growing industry, the anxiety of affordable and accessible care affects many citizens. Even as medical advancements are being made at exponential rates, these

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<https://www.bls.gov/ooh/healthcare/home.htm#:~:text=Employment%20in%20healthcare%20occupations%20is,of%20the%20other%20occupational%20groups>.

⁴ <https://healthcaremba.gwu.edu/blog/how-we-can-expect-the-healthcare-industry-to-change-in-the-future/>

developments are slow to reach the consumers.⁵ However, Covid-19 proves that this process can be sped up, which left many Americans disillusioned about the process. Additionally, the cost of putting a new drug on the market causes much controversy as well. Drug prices are relatively unregulated, and a major contention on the Affordable Care Act was determining what should be covered or not. This debate is still ongoing a decade later.

Additionally, the recent ruling of *Dobbs v. Jackson Women's Health Organization* (2022), the Court as an actor is even more important. The field of public health and the jurisdiction of the Supreme Court have intersected numerous times in the past, but for the first time in recent memory has this highlight the need for more relevant topics in high school forensics. This activity allows for students to engage with their current society in a wholly unique way and it will draw attention for many students, at the very least the attention of half our population. Furthermore, with recent interest in SCOTUS in the media, this means judges already have a general interest in how the court function. News media have mentioned things such as court packing⁶ as a potential counterplan to the current atmosphere, but it's becoming increasingly clear that more and more people are interested in knowing how the court works. In the past, the Supreme Court is easily waved off as an entity that does not create policies, thus has no place in Policy Debate. Other agencies, such as the FDA might be more apt. However, the current supermajority in the courts puts that whole concept into question.

Scope:

⁵ <https://www.gsk.com/en-gb/research-and-development/development/how-we-develop-new-medicines/>

⁶ <https://www.theguardian.com/commentisfree/2022/jun/27/us-supreme-court-abortion-roe-v-wade-justices-expansion>

This is a domestic scope with the intention for students to learn more about the judicial branch. Having a myriad of case law to go over can be daunting, which is why I want to narrowly tailor the topic to look at health care. Famously, one of the worst decisions made by the courts dealt with the field of medicine. In *Buck v. Bell* (1927), the plaintiff, Carrie Buck had been institutionalized as being “feeble-minded” and demonstrating a pattern of “promiscuity.” The superintendent of the institution bizarrely petitioned for Ms. Buck to be sterilized so that she could no longer procreate. In the 8-1 decisions, Justice Oliver Wendell Holmes explained that it would be better to prevent feeble-minded children from being born rather than have them subsequently starve or break the law. This particular case highlights two elements why this topic is important. First, it shows that the highest court in the land can be critiqued. This allows for robust negative grounds, while it doesn’t take away the scope of the Supreme Courts influence on daily life. The second thing *Buck v. Bell* highlights is that the medical field is ever changing. In 95 years since the decisions, the idea that feeble-mindedness was a legal justification has disappeared, instead we have more accurate descriptions and understanding of mental disorders found in The Diagnostic and Statistical Manual of Mental Disorders (DSM). This topic allows for teams to also dive into innovation and development which makes this topic forward thinking. This allows for a flurry of affirmative advantages that does not necessary always go nuclear.

Quality & Balance:

The courts have been used frequently in the past as counterplans or referenced in court clog disadvantages, so there is an ease of access to the topic. Most high school students have been exposed to landmark court cases in school, but rarely do they go in depth. There are many

counterplan grounds that would allow students to explore how the legislative branch function.

Due to the rich body of literature created post- ACA, there are many avenues students will be able to access for affirmative plans. Since the actor is the Supreme Court, the affirmatives can determine how the Supreme Court should rule or overrule particular case laws that would pressure the legislative branch to act. This means policies can still be read on the affirmative.

For example, the plan can be, “SCOTUS should overrule *Rutledge v. Pharmaceutical Care Management Association* (2020) and establish that drug prices should be federally regulated.”

Rutledge was a unanimous decision that allowed states to set their own regulation on drug prices⁷. The affirmative would have advantages that describe the impact of having federal regulation. For the negative, a generic counterplan that would allow Congress to pass legislation without the SCOTUS overruling Rutledge, could be competitive. On one hand, the affirmative could argue that if Congress passed a law that made drug prices a federally regulated policy without SCOTUS overturning Rutledge, it would be unconstitutional. However, the negative can argue that overturning Rutledge would be a violation of the Tenth Amendment. This example of civic engagement is profound for a number of reasons, primarily it allows for students to research the interaction of the three branches of government. It would also introduce students to court cases.

Possible Affirmative areas:

- Drug Prices
- Health Insurance Coverage/Mandates
- Mental Health
- Medicare & Medicaid
- Patient Information & Privacy

⁷ <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/supreme-court-ruling-on-drug-pricing-complicates-multistate-employer-plans.aspx>

- Disease Outbreak/Mandates
- Right to Die
- Public Health

There is concern that the negative research burden is imbalance. Some would argue that negatives would have to research a myriad of court cases, but there are only limited number of court cases that pertains to health care. This criticism is not particularly strong because of the real world application this opportunity would provide. For many students who join debate with aspiration of going into the law field, this kind of research provides valuable foundation.

The Negative also has access to many generic disadvantages related to the Supreme Court “itself ranging from hollow hope, federalism, court stripping, court politics, relations between the branches, judicial activism, etc.”⁸ While avoiding some common disads such as spending or politics. Additionally, the Supreme Court as an actor also allows for common Kritik arguments as well. SCOTUS uniquely links to critical legal theories. While my particular state avoids even the mention of Critical Race Theory (I even had to write this section on a personal computer instead of my school-issued laptop in case I can get in trouble under the new proposed law, where “teacher may not be compelled to discuss a widely debated and currently controversial issue of public policy or social affairs,” in a Texas classroom”⁹), this topic has very specific links to these types of arguments. This also allows the affirmative to also access these Kritiks as well, further showing the balance of this topic.

Possible Negative areas:

- Federalism DA

⁸ Sabin, J.Conner & Normington, Sam “The Supreme Court of the United States” NFHS Topic Paper 2021-2022

⁹ <https://www.texastribune.org/2021/12/02/texas-critical-race-theory-law/>

- Congress CP
- States CP
- Economics DA

Range:

The biggest concern on any topic is accessibility. This topic provides a myriad of resources, and the range of affirmatives and negatives can be a challenge for coaches and novices. However, I think the topic area does allow for a relative ease of access. For novice debaters, they are familiar with several landmark cases, but even if students are not familiar with the Supreme Court, this allows for a very engaging way to educating students. The recent Supreme Court case, *Kennedy v. Bremerton School District (2022)*¹⁰, proves that their daily lives are affected by the court as well. Learning about how the highest court of the land functions be left to 12th grade when they take government and economics courses. The narrow range of public health gives novices an easier scaffold to more complex rulings that varsity students can use.

Additionally, the research into court cases is an applicable skill for students who are interest in the legal field post-graduation. Many students join debate thinking that it will help them with their goals of being a lawyer in the future. A topic that looks at court cases is how many legal proceedings play out. This allows varsity students to be creative in how judicial precedent play out in a round.

¹⁰ https://www.supremecourt.gov/opinions/21pdf/21-418_i425.pdf

PART 2: POSSIBLE RESOLUTIONS

Resolved: The Supreme Court of the United States should overrule precedent in one of the following areas: Drug Pricing, Medicare, Health Insurance, and/or Medical patents.

- I'm not a fan of lists topics mainly because the scope is already restricted by the actor. I prefer less restriction on topics. However, I found it hard to only focus on pharmaceutical companies in my research and needed to use a list to expand affirmative ground to allow for more flexibility. So instead of limiting the possible affirmatives, this helps break the narrow scope I originally intended.

Resolved: The United States Federal Government should substantially limit health care industry in one of the following areas: Drug pricing, Medicare, Health insurance coverage, and/or Medical Patents.

- Similar to Option 1, the substantial change here is the actor. Instead of limiting the actor to the Supreme Court, the list is needed to restrict Aff grounds since there are many rogue legislative policies that would fall under "health care industry"

Resolved: The Supreme Court of the United States should issue an opinion that substantially changes public health.

- This wording avoids the list and allows for more Topicality and definition debates. Concerns of the vagueness of "public health" might cause an imbalance in research burden.

PART 0: PRELIMINARY REPORT

Using the Justice System to limit the pharmaceutical industry and promote personal security

By: Harry Yu

Preliminary issues:

In a post-COVID-19 world, the scope of power wielded by pharmaceutical companies and their impact on the American people has expanded. Federal agency (FDA) and congressional power are limited by the science and technology available. Looking at the history of drug regulation, it has been up to the courts to uphold the boundaries of pharmaceutical companies.

Drug Prices:

One of the most prominent areas concerning pharmaceutical companies is drug prices. There have been multiple PF and LD topics that dealt with drug prices, so there is literature about this. However, because of Biden's new Build Back Better plan, drug prices and the pharmaceutical sector will see lasting impacts that will have to be dealt with via the courts.

Drug information:

COVID-19 shows that medical information can be misinterpreted or misused. The 1911 Supreme Court case, *U.S. vs. Johnson*, ruled that the FDA does not prohibit false therapeutic claims, but only prohibits false and misleading statements about ingredients or identity of drugs. It was overturned a year later with the Sherley Amendment. It's clear that the confidence of the American people starts with what happens in the court. Additionally, the FOIA request for Pfizer/BioNTech data for the Covid vaccine hit the headlines when it was revealed that it would take 55 years to fulfill the request. This has led to many to distrust the system because of how the Justice System and the FDA functions.

Domestic Issues:

Other areas that might be included in the scope of this topic would be injection sites, drug courts, the latitude doctors have to prescribe drugs in the first place, Federalism between the state and the FDA, using investigational drugs for terminally ill, and Patents.

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