# 1NC Valley R3

## OFF

### 1

#### The role of the ballot is to determine whether the resolution is a true or false statement – anything else moots 7 minutes of the nc and exacerbates the fact that they get infinite pre-round prep since I should be able to compensate by choosing – their framing collapses since you must say it is true that a world is better than another before you adopt it.

#### They justify substantive skews since there will always be a more correct side of the issue but we compensate for flaws in the lit.

#### Most educational since otherwise we wouldn’t use math or logic to approach topics. Scalar methods like comparison increases intervention – the persuasion of certain DA or advantages sway decisions – T/F binary is descriptive and technical.

#### The ballot says vote aff or neg based on a topic – five dictionaries[[1]](#footnote-1) define to negate as to deny the truth of and affirm[[2]](#footnote-2) as to prove true which means it’s constitutive and jurisdictional. I denied the truth of the resolution by disagreeing with the aff which means I’ve met my burden.

### 2

#### Permissibility and presumption flow neg: [A] Probability, there is one way for a statement to be true and an infinite amount of ways for it to be false [B] If I knew nothing about P I would presume both P and not P true, a contradiction [C] if every action is permissible then ought not statements like the resolution are incoherent.

#### Moral theories must judge action as a unified whole.  If they did not, the separate steps in the chain of action would not be justified.  In the process of doing a whole action, the steps are not disconnected, but rather so connected that one interruption would disrupt the entire action.

(**Rödl**, Sebastian. Self-Consciousness, Harvard University Press, **2007**) // Massa

This is where we left Davidson: I calculate that, all things considered, I should do B, follow the principle of continence and decide all out to do B. I observe that doing A1 is a means, arrive at an action, and do A1. As I have done A1, I ask what to do, considering all things now present. I cal-culate that, all in all, I should do B, follow the principle of continence and decide all out to do B. I realize that this requires doing A2, arrive at an ac-tion, and do A2. No *one* intention is the ground of my doing A1 and my doing A2, but one underlies my doing A1, another my doing A2. But then I am not doing B. **Suppose I walked from *a* to *c*, via *b*.** **It may be that I de-cided to walk from *a* to *b*, and,** having got there, **decided to walk from *b* to *c*. Or I decided to walk from *a* to *c*, and did.** **In the former case, I was walking from *a* to *b*, and then I was walking from *b* to *c*.** But only in the latter case, not in the former, was I walking from *a* to *c*. **As a movement, an action is not an aggregate, but a unity of phases.** Davidson cannot mark this distinction.

#### Thus, the neg burden is to prove the resolution is an impossible course of action, the aff must prove the converse. Prefer:

#### 1. Motivation – Proponents only care about ethical decision making insofar as there is an entity and an action that is coherent enough to achieve that normative end.

#### 2. The AC framework collapses: a] The NC doesn’t deny it – we’re a constraint on action which is sequencing b] Culpability Assessing: to reflect on your actions, action analysis is necessary – otherwise we would never hold agents accountable for their decisions.

#### 3. Theory – if the aff cannot generate an action, it broadens their advocacy to an infinite degree allowing a defense of alternative realities and made up fantasies which we can’t predict.

#### 4. Moral theories must be either motivational or non-motivational. Double bind A] they are non-motivational and won’t be followed, so morality can’t guide action since guides need to be followed or B] morality is motivational and people will do what it says no matter what so it’s just descriptive of action, not providing an obligation.

#### Contention –

#### 1] The resolution doesn’t indicate who is receiving protection – absent an agent to receive protection, the resolution is incoherent, and the action is impossible because there isn’t a clear way to apply the rule delineated by the resolution itself. All enforcement protocols are outside the wording of the resolution itself, which is the only thing we should be bound by because everything else is arbitrary and unpredictable.

#### 2] The WTO is an [intergovernmental organization](https://en.wikipedia.org/wiki/Intergovernmental_organization) that regulates and facilitates [international trade](https://en.wikipedia.org/wiki/International_trade) between nations.[[6]](https://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-:12-6) Governments use the organization to establish, revise, and enforce the rules that govern international trade.

#### A] There res doesn’t specify where the protection is granted – it’s relevant cuz the WTO needs to affect cross-national trade to be a valid action by that agent.

#### B] Nations who are not part of the WTO do not get protection even if it affects members – they aren’t subject to their jurisdiction which makes the action incoherent because it doesn’t protect anyone and defeats the purpose of the action. Medicines can be produced and distributed by states not a part of the WTO.

### 3

#### The safety of the space is prima facie – we don’t know who’s winning if people can’t engage. Anything that doesn’t immediately denounce atrocities excludes people who have and can experience them.

**Teehan** Ryan Teehan [NSD staffer and competitor from the Delbarton School] – NSD Update comment on the student protests at the TOC in 2014. //Massa

Honestly, I don't think that 99% of what has been said in this thread so far actually matters. It doesn't matter whether you think that these types of assumptions should be questioned. It doesn't matter what accepting this intuition could potentially do or not do. It doesn't matter if you see fit to make, incredibly trivializing and misplaced I might add, links between this and the Holocaust. **All** of the **arguments that talk about how debate is** a **unique** space for questioning assumptions **make an assumption of safety**. They say that this is a space where one is safe to question assumptions and try new perspectives. **That is not true** for everyone. **When we allow arguments that question the wrongness of racism, sexism, homophobia, rape**, lynching, etc., **we make debate unsafe for certain people. The idea that debate is a safe space to question all assumptions is** the definition of **privilege**, it begins with an idea of a debater that can question every assumption. **People who face the actual effects** of the aforementioned things **cannot question those assumptions, and making debate** a space **built around the idea that they can is hostile**. So, you really have a choice. Either 1) say that you do not want these people to debate so that you can let people question the wrongness of everything I listed before, 2) say that you care more about letting debaters question those things than making debate safe for everyone, or 3) make it so that saying things that make debate unsafe has actual repercussions. On "**debate is not the real world**". **Only for people who can separate their existence in "the real world" from their existence in debate.** That means privileged, white, heterosexual males like myself. I don't understand how you can make this sweeping claim when some people are clearly harmed by these arguments. **At the end of the day, you have to figure out whether you care about debate being safe for everyone** involved. I don't think anyone has contested that these arguments make debate unsafe for certain people. If you care at all about the people involved in debate then **don't vote on these arguments**. If you care about the safety and wellbeing of competitors, then don't vote on these arguments. If you don't, then I honestly don't understand why you give up your time to coach and/or judge. The pay can't be that good. I don't believe that you're just in it for the money, which is why I ask you to ask yourselves whether you can justify making debate unsafe for certain people.

#### Utilitarian calculus fails to account for moral atrocities.

Jeffrey **Gold**, Utilitarian and Deontological Approaches to Criminal Justice Ethics //Massa

According to utilitarianism, an action is moral when it produces the great-est amount of happiness for the greatest number of people. A problem arises, however, when the greatest happiness is achieved at the expense of a few. For example, **if a large group were to enslave a very small group, the large group would gain certain comforts and luxuries (and the pleasure that accompanies those comforts) as a result of the servitude of the few**. **If we were to follow the utilitarian calculus** strictly, **the suffering of a few (even intense suffering) would be outweighed by the pleasure of a large enough majority**. A thousand people’s modest pleasure would outweigh the suffer-ing of 10 others. Hence, utilitarianism would seem to endorse slavery when it produces the greatest total amount of happiness for the greatest number of people. This is obviously a problem for utilitarianism. **Slavery and oppression are wrong regardless of the amount of pleasure accumulated by the oppressing class. In fact, when one person’s pleasure results from the suf-fering of another, the pleasure seems all the more abhorrent.** The preceding case points to a weakness in utilitarianism, namely, the weak-ness in dealing with certain cases of injustice. Sometimes it is simply unjust to treat people in a certain way regardless of the pleasurable consequences for others. A gang rape is wrong even if 50 people enjoy it and only one suffers. It is wrong because it is unjust. To use Kant’s formulation, it is always wrong to treat anyone as a mere means to one’s own ends. When we enslave, rape, and oppress, we are always treating the victim as a means to our own ends.

#### Util excludes people who can’t feel happiness, which results in their manipulation.

**Peter**. “Utilitarianism Is Unjust.” *On Philosophy*, N.P, 8 Sept. **2007**, onphilosophy.wordpress.com/2007/09/08/utilitarianism-is-unjust/. //Massa

According to this principle **utilitarianism** is unjust because it **treats people differently based on their capacity for happiness;** although utilitarians can appeal to their principles to justify this different treatment, so can racists, and like the racist the utilitarian arguments are not based on objective facts. But before we get into the details allow me to give **examples of some groups** of people who would be treated unfairly in a purely utilitarian system. The first are **those who have no capacity for happiness or unhappiness. There are rare people born without this ability**, and we can easily imagine possible species (such as the Vulcans from Star Trek) or conscious computers (such as Data, also from Star Trek) who lack it as well. **Utilitarianism cares only about maximizing happiness or pleasure, and so these people effectively wouldn’t count; their treatment would be invisible to the system**. Since **we can’t make the Vulcans unhappy we would be free to exploit them, turn them into slaves, or whatever else would make us happy.** **And since we can’t make them happy there is no reason for the system to give them any of the rights or privileges that make us happy.** Since they aren’t made unhappy by this treatment the total amount of happiness may be increased, and hence utilitarianism as a system would endorse it. **Also treated unfairly are people who are in a permanent state of unhappiness.** It isn’t inconceivable that someone might have a condition that prevents them from being happy, and, **although many such people might choose to end their lives, there would probably be some who would still choose life.** **A utilitarian system would take that choice away from them, and to execute them immediately, since they will always be unhappy (negative happiness) eliminating them would increase the total amount of happiness.** If such actions could be considered just it would only be if we could somehow convince these people that abusing them on the basis of their capacity for happiness is reasonable, which means convincing them of the validity of utilitarianism. This may be impossible, and not just because utilitarianism advocates acting against their interests. Consider an alien species who is rational, and has emotions, but whose emotions don’t correspond to human emotions. While we are naturally motivated to try to be as happy as possible these aliens are naturally motivated to bring the strength of their Zeb and Geb emotions into balance. Could we convince these aliens that maximizing happiness is reason for them to be treated differently? I am sure that we could make them understand that we are motivated by happiness, and that we wish to maximize it. But they won’t see that as a good reason to let themselves be abused, just as we don’t see another’s desire to steal as good reason to let them steal. No, we will reply that we have interests of our own that stealing from us hurts, and there is no good reason to favor the desire to steal over the desire to be stolen from, and every reason to do the opposite. Similarly, the aliens will reply to us that maximizing total happiness is also against their interests, and that they can’t see a reason to systematically favor happiness over a balance of Zeb and Geb.

#### The alt is to vote neg – it’s as simple as not to vibe with racism: as an educator it’s your job to dismiss racist discourse that kills the spirit of minority debaters.

### 4

#### Interpretation: All debater’s theory shells must operate through NCM, or the norm-setting model, not the abuse model. To clarify, an interpretation under NCM necessitates that a proposed interpretation would produce better norms for debate than the mutually exclusive counter-interp and that those norms should be endorsed. Massa

#### The interpretation generates standards offense – so meeting the standards is nonsense if they don’t meet the interp.

#### A violation says the rule is not a set norm in the debate community. This is done by showing the opposing debater is in violation of the norm. But, showing the opponent’s action is in violation of the rule is unnecessary if the proposed rule is not a set norm in debate.

#### Violation – It’s preemptive.

#### 1] No RVI – under the NCM, any net beneficial interpretation is sufficient to warrant a ballot.

#### 2] Possible 1AR interps – they have justified all 1ar theory as a practice which doesn’t constrain them to particular interps and means they’ve justified a model of debate that allows them to propose rule-less interpretations that indict negative arguments rather than set rules.

#### *3] Reasonability – NCM constrains theory to who defends a competitive model of debate to evaluate 2 conflicting norms. Reasonable practices aren’t norms – they’re exceptions to rules.*

#### *4] You say standards violations are sufficient to evaluate theory – spirit of the interpretation allows debaters to meet offense but does not require a stable norm to attach.*

#### And, people’s theory shells currently do not operate under NCM – which is proven by judge paradigms that say theory is only legit if it applies in-round.

#### Vote Neg –

#### 1] Norming – NCM means endorsement of the debater who promotes the best competitive norm, but punishment models of theory do not necessitate comparative models that are evaluated equally as initial interpretations. NCM forces debaters to commit to their theory norm which increases the quality of norms because no one would defend a norm that would get crushed and warrant a loss. Norming outweighs and is a voter – Massa

#### A] Forces both debaters to engage in the issue and debate both sides which is an extension of your interpretation and means any reason why IRA is good is a reason to prefer NCM.

#### B] All voters beg the question of what norms or interpretations are consistent with their impacts. For example, fairness and education are nonsensical without a norm that constitutes it.

#### C] Resolvability – Specifying the exact norm gives judges a delineation of what advocacies to compare and if each debater is consistent with that norm. Otherwise it’s intervention which is an infinite in-round violation because it takes the round of the debater’s hands.

#### D] It’s constitutive of the voter – to make appeals to fairness requires the debate space ought to defend it as a norm.

#### Voters – If you win that my model of debate is bad, the counter-interpretation would not be an RVI. Abuse models imply that you vote for a debater who broke a rule. Proving that you may engage in some practice is insufficient under that model as there is no proactive violation to a rule sufficient to warrant a ballot. Reasonability is also our violation because it does not necessitate comparative norms. Dropping the debater is implied by our interp because you would vote us up for endorsing the better model of debate.

### 5

#### Pharma innovation high now – monetary incentive is the biggest factor.

**Swagel 21** Phillip L. Swagel, Director of the Congressional budget office 4-xx-2021, "Research and Development in the Pharmaceutical Industry," Congressional Budget Office, <https://www.cbo.goc/publication/57126#_idTextAnchor020> SJ//DA

**Every year, the U.S. pharmaceutical industry develops a variety of new drugs that provide valuable medical benefits. Many of those drugs are expensive and contribute to rising health care costs for the private sector and the federal government. Policymakers have considered policies that would lower drug prices and reduce federal drug expenditures. Such policies would probably reduce the industry’s incentive to develop new drugs.** In this report, the Congressional Budget Office assesses trends in spending for drug research and development (R&D) and the introduction of new drugs. CBO also examines factors that determine how much drug companies spend on R&D: expected global revenues from a new drug; cost to develop a new drug; and federal policies that affect the demand for drug therapies, the supply of new drugs, or both. What Are Recent Trends in Pharmaceutical R&D and New Drug Approvals? T**he pharmaceutical industry devoted $83 billion to R&D expenditures in 2019. Those expenditures covered a variety of activities, including discovering and testing new drugs, developing incremental innovations such as product extensions, and clinical testing for safety-monitoring or marketing purposes. That amount is about 10 times what the industry spent per year in the 1980s, after adjusting for the effects of inflation.** The share of revenues that drug companies devote to R&D has also grown: **On average, pharmaceutical companies spent about one-quarter of their revenues (net of expenses and buyer rebates) on R&D expenses** in 2019, which is **almost twice as large a share of revenues as they spent in 2000.** That revenue share is larger than that for other knowledge-based industries, such as semiconductors, technology hardware, and software. The number of new drugs approved each year has also grown over the past decade. On averace, the Food and Drug Administration (FDA) approved 38 new drugs per year from 2010 through 2019 (with a peak of 59 in 2018), which is 60 percent more than the yearly average over the previous decade. **Many of the drugs that have been approved in recent years are “specialty drugs.” Specialty drugs generally treat chronic, complex, or rare conditions, and they may also require special handling or monitoring of patients**. Many specialty drugs are biologics (large-molecule drugs based on living cell lines), **which are costly to develop, hard to imitate, and frequently have high prices.** Previously, most drugs were small-molecule drugs based on chemical compounds. Even while they were under patent, those drugs had lower prices than recent specialty drugs have. Information about the kinds of drugs in current clinical trials indicates that much of the industry’s innovative activity is focused on specialty drugs that would provide new cancer therapies and treatments for nervous-system disorders, such as Alzheimer’s disease and Parkinson’s disease. **What Factors Influence Spending for R&D?** Drug companies’ R&D spending decisions depend on three main factors: Anticipated lifetime global revenues from a new drug, **Expected costs to develop a new drug**, and Policies and programs that influence the supply of and demand for prescription drugs. Various considerations inform companies’ expectations about a drug’s revenue stream, including the anticipated prices it could command in different markets around the world and the expected global sales volume at those prices (given the number of people who might use the drug). The prices and sales volumes of existing drugs provide information about consumers’ and insurance plans’ willingness to pay for drug treatments. Importantly, when drug companies set the prices of a new drug, they do so to maximize future revenues net of manufacturing and distribution costs. A drug’s sunk R&D costs—that is, the costs already incurred in developing that drug—do not influence its price. **Developing new drugs is a costly and uncertain process, and many potential drugs never make it to market. Only about 12 percent of drugs entering clinical trials are ultimately approved for introduction by the FDA. In recent studies, estimates of the average R&D cost per new drug range from less than $1 billion to more than $2 billion per drug**. Those estimates include the costs of both laboratory research and clinical trials of successful new drugs as well as expenditures on drugs that do not make it past the laboratory-development stage, that enter clinical trials but fail in those trials or are withdrawn by the drugmaker for business reasons, or that are not approved by the FDA. Those estimates also include the company’s capital costs—the value of other forgone investments—incurred during the R&D process. Such costs can make up a substantial share of the average total cost of developing a new drug. The development process often takes a decade or more, and during that time the company does not receive a financial return on its investment in developing that drug. The federal government affects R&D decisions in three ways. First, it increases demand for prescription drugs, which encourages new drug development, by fully or partially subsidizing the purchase of prescription drugs through a variety of federal programs (including Medicare and Medicaid) and by providing tax preferences for employment-based health insurance. Second, the federal government increases the supply of new drugs. It funds basic biomedical research that provides a scientific foundation for the development of new drugs by private industry. Additionally, tax credits—both those available to all types of companies and those available to drug companies for developing treatmentscof uncommon diseases—provide incentives to invest in R&D. Similarly, deductions for R&D investment can be used to reduce tax liabilities immediately rather than over the life of that investment. Finally, the patent system and certain statutory provisions that delay FDA approval of generic drugs provide pharmaceutical companies with a period of market exclusivity, when competition is legally restricted. During that time, they can maintain higher prices on a patented product than they otherwise could, which makes new drugs more profitable and thereby increases drug companies’ incentives to invest in R&D. Third, some federal policies affect the number of new drugs by influencing both demand and supply. For example, federal recommendations for specific vaccines increase the demand for those vaccines and provide an incentive for drug companies to develop new ones. Additionally, federal regulatory policies that influence returns on drug R&D can bring about increases or decreases in both the supply of and demand for new drugs. Trends in R&D Spending and New Drug Development Private spending on pharmaceutical R&D and the approval of new drugs have both increased markedly in recent years, resuming a decades-long trend that was interrupted in 2008 as generic versions of some top-selling drugs became available and as the 2007–2009 recession occurred. **In particular, spending on drug R&D increased by nearly 50 percent between 2015 and 2019.** Many of the drugs approved in recent years are high-priced specialty drugs for relatively small numbers of potential patients. By contrast, the top-selling drugs of the 1990s were lower-cost drugs with large patient populations. R&D Spending R&D spending in the pharmaceutical industry covers a variety of activities, including the following: Invention, or research and discovery of new drugs; Development, or clinical testing, preparation and submission of applications for FDA approval, and design of production processes for new drugs; Incremental innovation, including the development of new dosages and delivery mechanisms for existing drugs and the testing of those drugs for additional indications; Product differentiation, or the clinical testing of a new drug against an existing rival drug to show that the new drug is superior; and Safety monitoring, or clinical trials (conducted after a drug has reached the market) that the FDA may require to detect side effects that may not have been observed in shorter trials when the drug was in development. In real terms**, private investment in drug R&D among member firms of the Pharmaceutical Research and Manufacturers of America (PhRMA), an industry trade association, was about $83 billion in 2019, up from about $5 billion in 1980 and $38 billion in 2000**.1 Although those spending totals do not include spending by many smaller drug companies that do not belong to PhRMA, the trend is broadly representative of R&D spending by the industry as a whole.2 A survey of all U.S. pharmaceutical R&D spending (including that of smaller firms) by the National Science Foundation (NSF) reveals similar trends.3 Although total R&D spending by all drug companies has trended upward, small and large firms generally focus on different R&D activities. **Small companies not in PhRMA devote a greater share of their research to developing and testing new drugs,** many of which are ultimately sold to larger firms (see Box 1). By contrast, a greater portion of the R&D spending of larger drug companies (including those in PhRMA) is devoted to conducting clinical trials, developing incremental “line extension” improvements (such as new dosages or delivery systems, or new combinations of two or more existing drugs), and conducting postapproval testing for safety-monitoring or marketing purposes.

#### The affs wholesale attack on secondary patents ruins innovation---prefer contingencies that solve evergreening.

Holman 18 [Christopher; 9/21/18; Professor at the University of Missouri-Kansas City School of Law, where his primary research focus lies at the intersection of intellectual property and biotechnology; “*Why Follow-On Pharmaceutical Innovations Should Be Eligible For Patent Protection*,” Intellectual property watch, <https://www.ip-watch.org/2018/09/21/follow-pharmaceutical-innovations-eligible-patent-protection/>] Justin

Why Protect Follow-On Innovation? The attack on secondary pharmaceutical patents is based in part on the flawed premise that follow-on innovation is of marginal value at best, and thus less deserving of protection than the primary inventive act of identifying and validating a new drug active ingredient. In fact, follow-on innovation can play a critical role in transforming an interesting drug candidate into a safe and effective treatment option for patients. A good example can be seen in the case of AZT (zidovudine), a drug ironically described in the Guidelines as the “first breakthrough in AIDS therapy.” AZT began its life as a failed attempt at a cancer drug, and it was only years later that its potential application in the fight against AIDS was realized. Follow-on research resulted in a method-of-use patent directed towards the use of AZT in the treatment of AIDS, and it was this patent that incentivized the investment necessary to bridge the gap between a promising drug candidate and a safe, effective, and FDA-approved pharmaceutical. Significantly, because of the long lag time between the first public disclosure of AZT and the discovery of its use in the treatment of AIDS, patent protection for the molecule per se was unavailable. In a world where follow-on innovation is unpatentable, there would have been no patent incentive to invest in the development of the drug, and without that incentive AZT might have languished on the shelf as simply one more failed drug candidate. Other examples of important drugs that likely never would have been made available to patients without the availability of a “secondary” patent include Evista (raloxifene, used in the treatment of osteoporosis and to reduce the risk of invasive breast cancer), Zyprexa (olanzapine, used in the treatment of schizophrenia), and an orally-administrable formulation of the antibiotic cefuroxime. Pharmaceutical development is prolonged and unpredictable, and frequently a safe and effective drug occurs only as a result of follow-on innovation occurring long after the initial synthesis and characterization of a pharmaceutically interesting chemical compound. The inventions protected by secondary patents can be just as critical to the development of drugs as a patent on the active ingredient itself. The Benefits of Follow-On Innovation The criticism of patents on follow-on pharmaceutical innovation rests on an assumption that follow-on innovation provides little if any benefit to patients, and merely serves as a pretense for extending patent protection on an existing drug. In fact, there are many examples of follow-on products that represent significant improvements in the safety-efficacy profile. For example, the original formulation of Lumigan (used to treat glaucoma) had an unfortunate tendency to cause severe hyperemia (i.e., redeye), and this adverse event often lead patients to stop using the drug, at times resulting in blindness. Subsequent research led to a new formulation which largely alleviated the problem of hyperemia, an example of the type of follow-on innovation that significantly benefits patients but that which would be discouraged by a patent regime that does not reward follow-on innovation. Follow-on pharmaceutical innovation can come in the form of an extended-release formulation that permits the drug to be administered at less frequent intervals than the original formulation. Critics of secondary patents downplay the significance of extended-release formulations, claiming that they represent nothing more than a ploy to extend patent protection without providing any real benefit to patients. In fact, the availability of a drug that can be taken once a day has been shown to improve patient compliance, a significant issue with many drugs, particularly in the case of drugs taken by patients with dementia or other cognitive impairments. Extended-release formulations can also provide a more consistent dosing throughout the day, avoiding the peaks and valleys in blood levels experienced by patients forced to take an immediate-release drug multiple times a day. Other examples of improved formulations that provide real benefits to patients are orally administrable formulations of drugs that could previously only be administered by more invasive intravenous or intramuscular injection, combination products that combine two or more active pharmaceutical agents in a single formulation (resulting in improved patient compliance), and a heat-stable formulation of a lifesaving drug used to treat HIV infection and AIDS (an important characteristic for use in developing countries with a hot climate). “Evergreening” – an Incoherent Concept Drug innovators are often accused of using secondary patents to “evergreen” the patent protection of existing drugs, based on an assumption that a secondary patent somehow extends the patent protection of a drug after the primary patent on the active ingredient is expired. As a general matter, this is a false assumption — a patent on an improved formulation, for example, is limited to that improvement and does not extend patent protection for the original formulation. Once the patents covering the original formulation have expired, generic companies are free to market a generic version of the original product, and patients willing to forgo the benefits of the improved formulation can choose to purchase the generic product, free of any constraints imposed by the patent on the improvement. Of course, drug innovators hope that doctors and their patients will see the benefits of the improved formulation and be willing to pay a premium for it, but it is important to bear in mind that ultimately it is patients, doctors, and third-party payers who determine whether the value of the improvement justifies the costs. Of course, this assumes a reasonably well-functioning pharmaceutical market. If that market breaks down in a manner that forces patients to pay higher prices for a patented new version of a drug that provides little real improvement over the original formulation, then it is the deficiency in the market which should be addressed, rather than the patent system itself. For example, if a drug company is found to have engaged in some anticompetitive activity to block generic competition in the market for the original product once it has gone off patent, then antitrust and competition laws should be invoked to address that problem. If doctors are prescribing an expensive new formulation of a drug that provides little benefit compared to a cheaper, unpatented original product, then that is a deficiency in the market that should be addressed directly, rather than through a broadside attack on follow-on innovation. In short, if is found that secondary patents are being used in a manner that creates an unwarranted extension of patent protection, it is that misuse of the patent system which should be addressed directly, rather than through what amounts to an attack on the patent system itself.

### Underview

#### No 1ar theory – a)7-6, 2-1 skew proves its always skewed to the aff, b) resolvability double bind – either the judge has to intervene to decide whether the 2ar’s answers to the 2nr’s Counter interp are sufficient or they auto accept every answer and you auto win. Intervention ow since it takes the round out of the debaters hands. If they win they get 1ar theory only one 1AR shell – a) strat skew – multiple 1ar shells incentivize a bunch of short 1ar shells so that the 2nr can’t answer all of them in depth since we only have like 1 minute on each shell and then they get to collapse to whatever we undercovered for 3 minutes giving them a massive time advantage on the theory debate. NC theory first – our abuse is justified in the context of your abuse – i.e we needed to be abusive to even the playing field since you were abusive first.

## Case

### 1NC – AT: WTO Jurisdiction

#### The WTO can’t enforce the aff- causes circumvention.

Lamp 19 [Nicholas; Assistant Professor of Law at Queen’s University; “What Just Happened at the WTO? Everything You Need to Know, Brink News,” 12/16/19; <https://www.brinknews.com/what-just-happened-at-the-wto-everything-you-need-to-know/>] Justin

Nicolas Lamp: For the first time since the establishment of the WTO in 1995, the Appellate Body cannot accept any new appeals, and that has knock-on effects on the whole global trade dispute settlement system. When a member appeals a WTO panel report, it goes to the Appellate Body, but if there is no Appellate Body, it means that that panel report will not become binding and will not attain legal force.

The absence of the Appellate Body means that members can now effectively block the dispute settlement proceedings by what has been called appealing panel reports “into the void.”

The WTO panels will continue to function as normal. When a panel issues a report, it will normally be automatically adopted — unless it is appealed. And so, even though the panel is working, the respondent in a dispute now has the option of blocking the adoption of the panel’s report. It can, thereby, shield itself from the legal consequences of a report that finds that the member has acted inconsistently with its WTO obligations.

### 1NC – Diff Sectors

#### Companies will just obtain a patent in a different sector.

Thomas 15 [John R; Visiting Scholar, CRS; “Tailoring the Patent System for Specific Industries, Congressional Research Service,” CRS; 2015; <https://crsreports.congress.gov/product/pdf/R/R43264/7>] Justin

In view of the concerns noted above, commentators have gone so far to say that “it has become increasingly difficult to believe that a one-size-fits-all approach to patent law can survive.”75 To the extent the current patent system creates a blanket set of rules that apply comparably to distinct industries, it likely over-encourages innovation in some contexts and under-incentivizes it in others.76 Further, some observers have asserted that the need of firms to identify and access the patented inventions of others may differ among industries.77 As a result, the case can be made that distinct industrial, technological, and market characteristics that exist across the breadth of the U.S. economy compel industry-specific patent statutes. However, others have questioned the wisdom and practicality of such line-drawing.78 The following concerns, among others, have been identified:

• Over its long history, the U.S. patent system has flexibly adapted to new technologies such as biotechnology and computer software. Legislative adoption of technology-specific categories may leave unanticipated, cutting-edge technologies outside the patent system.79

• Defining a specific industry or category of technologies may prove to be a contested proposition.

80 • Over time, new industries may emerge and old industries may consolidate. The dynamic nature of the U.S. economy suggests greater need for legislative oversight within a differentiated patent regime.

81 • Even if an industry or technology remains relatively stable, the innovation environment within it might change. For example, technological or scientific advances might open new possibilities for research and development within hidebound industries—but also increase expense and risk for those firms.

82 • Distinct patent rights among industries or technologies may lead to strategic behavior on behalf of patent applicants. For example, a computer program that controls a fuel injector within an automobile could possibly be identified as either an automobile-related or a computer-related invention.

83 •The legislative effort to enact sector-specific patent laws may provide an opportunity for politically savvy firms to exert more lobbying and political power, at the possible expense of less sophisticated firms.

1. <http://dictionary.reference.com/browse/negate>, <http://www.merriam-webster.com/dictionary/negate>, <http://www.thefreedictionary.com/negate>, <http://www.vocabulary.com/dictionary/negate>, <http://www.oxforddictionaries.com/definition/english/negate> [↑](#footnote-ref-1)
2. *Dictionary.com – maintain as true, Merriam Webster – to say that something is true, Vocabulary.com – to affirm something is to confirm that it is true, Oxford dictionaries – accept the validity of, Thefreedictionary – assert to be true* [↑](#footnote-ref-2)