**NFHS Debate Topic Proposal: Election Reform**

**2020-2021 National Federation of High Schools Debate Topic Proposal**

**Respectfully Submitted By:**

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**Proposed Resolutions**

**1. Resolved: The United States federal government should substantially increase regulation of Political Action Committees and/or independent expenditure-only committees.**

**2. Resolved: The United States federal government should substantially strengthen regulation of elections and/or election campaigns in the United States.**

**3. Resolved: The United States federal government should substantially increase regulation in one or more of the following areas: drawing of legislative districts, campaign finance, electoral integrity, protection of voting rights.**

**4. Resolved: The United States federal government should substantially strengthen regulation of campaign finance.**

**5. Resolved: The United States federal government should substantially reduce the influence of interest groups and/or independent expenditure-only committees in election campaigns.**

**6. Resolved: The United States federal government should strengthen its electoral integrity.**

**7. Resolved: The United States should substantially increase limits on campaign contributions and/or spending.**

**8. Resolved: The United States federal government should strengthen regulation of federal elections in one or more of the following areas: campaign finance, drawing of legislative districts, foreign electoral intervention, protection of voting rights.**

**Author’s Preface and Introduction**

This paper is a revision and resubmission of a topic proposal that was prepared in 2013. That paper opened with the following quote from Al Gore to a question from Jeff Goodell regarding whether our democracy has been hacked. Gore said, “Yes. It has been captured and distorted and no longer operates as it was intended by our founders. It more often serves the interests of those who have found a way to take control of its operating system. It’s not as if there was a pure golden age of democratic innocence and then all of a sudden it became functionally corrupt and distorted. From the earliest days, wealth and power always struggled against the efforts of those who want to institute reforms. In the past, periods of excess were soon followed by periods of reform and cleansing and a reassertion of the essential purposes of American democracy. The Progressive Era was one such period of reform, as was the New Deal. But as a consequence of our historic transition from being a republic of letters to a republic of television, there has been a solidifying of corporate and special-interest influence.” (Goodell, 40)

The preceding quote is as true now as it was when it led off the 2013 paper, if not more so. Campaign finance appears to be even less transparent than has previously been the case and attempts to promote election “integrity” through limiting voting rights of qualified individuals received official sanction, if but temporary, at the highest level of our government. Gerrymandering remains a problem and even if there have been some successes, they have been localized and the institutions of the federal government haven’t addressed this issue in a serious or sustained way; and given the decisions of the Supreme Court on June 27, it does not appear that they are going to take the lead on this issue, leaving it as a political question to be addressed by other institutions.

One big change, though, from the 2013 paper is that, after this paragraph, there will be no discussion of the Electoral College nor of efforts to eliminate or neutralize it. This is an intentional decision of the author and is done for a couple of basic reasons. First, while there is a literature base that defends the Electoral College as good, the weight of the arguments is generally considered to be heavily against its retention as archaic and undemocratic, leading to a very real fear that large numbers of teams, especially novice teams or programs transitioning to Policy from having been primarily Public Forum squads, would run to this affirmative-friendly safe harbor. We saw this a bit on the 2013-2014 Latin America topic, where many teams (perhaps even a majority of rounds) ran cases that in some way normalized trade relations with Cuba. In a world where this topic were adopted with an “abolish the Electoral College” option, it might be even worse, as evidentiary imbalance more heavily favors the affirmative than was the case on normalizing trade relations – even if the weight of the evidence flowed affirmative, negatives could find authors who were making strategic arguments for the retention of the embargo. While perhaps okay for a one-month Public Forum topic, as a year-long policy debate topic this particular debate would get exhausted very quickly. The second reason why the Electoral College is being excluded from this discussion is that it only comes into use once every four years, and far more often than not, the electoral vote result is reflective of the popular vote in the presidential election. None of this is to be read as an indication of the author’s opinions of the relative merits of the Electoral College as a whole, but rather of the ways it would become the 800-pound gorilla in the resolution if it were to be included. This would only be magnified if the balance of the best evidence ultimately came down on the side of abolition – the most likely scenario is that affirmative teams would run “Abolish the Electoral College”, probably through constitutional amendment and negatives would be left grasping at a very thin risk of a link to the Federalism Disadvantage or a contrived link to a Politics Disadvantage, which would make for a long year of debate and a lot of coin flips functionally deciding the results of elimination rounds.

**Topics of Inquiry**

**Campaign Finance**

As was the case in the 2013 paper, the last significant federal legislation on campaign finance was the Bipartisan Campaign Finance Reform Act, passed in 2003. One of the key goals of that legislation was to restrict the proliferation of “soft money” into politics, which are donations made to parties and committees, compared to “hard money”, which is given directly to a candidate and is more stringently regulated. Supreme Court cases whittled away many of the intended goals of the BCFRA, the most notable of these being *Citizens United v. FEC* (2010), which, along with the District of Columbia Court of Appeals decision in *SpeechNow.org v. FEC* (2010), rendered many of those provisions ineffective when it ruled that limitations on organizations receiving corporate or union money to run electioneering communications were violative of the free speech provisions of the First Amendment. This led to the rise of the independent expenditure-only committees (more commonly referred to as SuperPACs), organizations that can perhaps best be described as detached arms of a campaign, in that they may act in support of a particular candidate so long as they do not “coordinate” with the candidate’s official campaign organization. That distinction is often one of a more technically legal nature than a practical one, as often those who form SuperPACs have some history with the candidate whose cause they are attempting to advance. Subsequently, *McCutcheon v. FEC* (2013) further held that aggregate limits on individual contributions to a national party and candidate committees also violated these same free speech provisions.

The upshot of this has been a massive expansion in the amount of outside spending entering into federal campaigns. The Center for Responsive Politics’ website opensecrets.org shows the following outside spending totals from 2008 (the election cycle immediately prior to *Citizens United*) through to the most recent midterm elections.

| **Cycle** | **Total** | **Independent Expenditures** | **Electioneering Communications** | **Communication Costs** |
| --- | --- | --- | --- | --- |
| 2018 | $1,075,349,186 | $1,058,563,604 | $14,689,708 | $2,095,874 |
| 2016 | $1,417,422,485 | $1,388,949,416 | $10,473,378 | $17,999,691 |
| 2014 | $567,026,509 | $549,364,340 | $8,558,578 | $9,103,591 |
| 2012 | $1,039,268,129 | $1,002,666,551 | $15,437,830 | $21,230,660 |
| 2010 | $309,833,966 | $205,519,016 | $79,291,379 | $25,023,571 |
| 2008 | $338,441,092 | $143,659,191 | $131,137,181 | $63,644,720 |

(Source, <https://www.opensecrets.org/outsidespending/cycle_tots.php>, data collected by the Center for Responsive Politics, last accessed 4-16-19)

Within these outside expenditure groups are what are known as 527s. While technically all such outside groups are organized under Section 527 of the Internal Revenue Code, the common definition of a 527 is a group that does not “expressly advocate” for or against a particular candidate, though their communications usually make it pretty easy to determine who their favored candidate is. One of the earliest and most well-known of these is probably *Swift Boat Veterans for Truth*, which organized against John Kerry’s quest for the presidency in 2004, with the bulk of the organization’s money coming from 3 individuals. This represents the concern that citizens have about 527s, in that they offer the opportunity, perceived or real, for donors to impact elections by the sheer weight of their donation. A 2018 report by the Pew Research Center found “extensive support for reining in campaign spending: 77% of the public says ‘there should be limits on the amount of money individuals and organizations’ can spend on political campaigns” with there being bipartisan support for that position as “71% of Republicans and Republican-leaning independents” and “among Democrats and Democratic leaners, even larger majorities favor spending limits (85%).” (Pew Research Center)

**Electoral Integrity**

For the purposes of this paper, I am going to address some of the issues related to voter fraud and voting rights in another section. Here, however, it seems most appropriate to consider other issues, particularly since Russia interference in our election procedures has been so much in the news. For example, the New York Times on April 26 reported that, “Slipped into the long-anticipated special counsel report on Russian interference in the 2016 election last week was a single sentence that caused a stir throughout the state and raised new questions about the vulnerability of the nation’s electoral systems. Although the spearphishing attempt in Florida had first been brought to light nearly two years ago when The Intercept cited a secret National Security Agency report, state officials said they were certain no elections computers had been compromised. The Mueller report turned that assertion on its head. ‘The F.B.I.,’ it said, ‘believes that this operation enabled the G.R.U. to gain access to the network of at least one Florida county government.’” (Robles). Robles continues to note that the attack appears to have placed “the hackers…’in a position’ to change voter roll data” and while that was not acted upon, “such an intrusion could have been devastating…on Election Day you go vote and have mass confusion because voter registration has been deleted from the systems.” (Robles)

It is these state election websites that represent the “soft targets” of our efforts to protect election integrity, since unlike voting machines, they are connected to the internet all the time and contain the ability to have a greater impact on the reporting of election results. In fact, many of these websites are so insecure that, as *The Guardian* noted, “the actual difficulty of such an attack is child’s play. Literally.” (Hern) At the Def Con hacking conference, the organizers used the project of hacking into a state’s election website as an activity for the children of conference attendees to test their skills, where “It took an 11 year-old girl 10 minutes to do it,…and she was the first one. After that, the convention cycled to a new state’s website every 30 minutes, and another child would break it in less than a quarter-hour, over and over. At the point I arrived in the room, the website for the state of Colorado was being projected on the wall, declaring that the candidate for the ‘Communism’ party, Kim Jong-un, had won the state’s election with one quadrillion votes. (The runner-up, the rapper Lil Pump, apparently standing for the Democratic party, had just under 46m votes.)” (Hern)

Additionally, there is also the issue of a number of states still lacking voting machines that provide a paper trail in order to independently verify the vote totals. “In 2019, 12 states still use paperless electronic machines as the primary polling place equipment in at least some cities and towns (Delaware, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, New Jersey, Pennsylvania, South Carolina, Tennessee and Texas). Four (Delaware, Georgia, Louisiana, and South Carolina) continue to use such systems statewide.” (Norden and Cordova) Perhaps even more disconcerting is that despite the antics of the 2016 election cycle, a number of election officials around the country, particularly in Texas, are content to replace their paperless systems with other paperless systems. The authors from the Brennan Center continue to note that “Despite the recent attention to election security, and repeated warnings by security experts that voting machines should have a voter-verified paper backup, several counties in Texas have purchased machines without a paper trail since 2016.” (Norden and Cordova) While a large scale attack on voting machines may be believed to be difficult, “J Alex Halderman…one of the world’s experts on the weaknesses of voting machines…is not prepared to dismiss the risk of a direct threat to the integrity of a US election. In the course of a 30-minute talk in the Voting Village, he demonstrates two direct attacks on a popular class of voting machine, stealing a mock election in front of an audience of 50…The bad actor just needs to steal enough votes in a few counties in America’s battleground states – just enough to steal a close election...What’s more, Halderman notes…while individual voting machines aren’t (or shouldn’t be) connected to the internet, the PCs that are used to program the individual elections are. ‘One large vendor codes the system for 2,000 jurisdictions across 31 states…many other places, like Michigan, use small businesses’ – some with just six or seven employees. Hack those businesses, and an attacker could theoretically reprogram thousands of election machines at once.” (Hern)

**Gerrymandering**

A key issue that appears repeatedly in this literature base is gerrymandering, referring to the drawing of legislative districts in a way to either maximize or minimize the chances for a political party to win elections in those districts. The two most common methods for this are packing and cracking. In packing, a party’s supporters are consolidated into a district to ensure a majority of the vote for that party’s nominees. In some cases, this can be used to concede one district to an opposing party to maximize the chances of winning multiple other districts in that state, while it can also be used to place supporters in multiple districts to maximize the prospects of winning most of an area’s legislative seats. In cracking, a block of support for a party is divided up, or cracked, between multiple districts, usually to ensure that the party being cracked will not be a majority in any of the districts into which they have been divided.

The legal position of the Supreme Court on gerrymandering depends on the purpose for which the gerrymandering is done. In *Shaw v. Reno* (1993), the Supreme Court held that redistricting done specifically to create majority-minority districts is to be held to a “strict scrutiny” standard, the most stringent level of review used by the court to evaluate claims regarding differential treatment based on race. In applying this standard, the Supreme Court ruled that the 12th District of North Carolina, which was 160 miles long and often no more than about ten miles wide, failed to meet this bar. The Supreme Court does not hold that all majority-minority districts are unconstitutional This is not to say that all majority-minority districts were to be held unconstitutional (for example, both the 4th and 5th Districts of Georgia are considered to be constitutionally drawn, though both are majority African-American), but those drawn in a way that disregards compactness and contiguity to achieve a majority-minority district are less likely to pass Supreme Court muster.

While the gerrymandering of districts to achieve increased opportunities for minority representation has been held to be constitutionally problematic, the Supreme Court has yet to rule the same for districts drawn to achieve solely partisan outcomes. Here, the case law appeared to be in a state of flux until the end of this year’s Supreme Court term. Over the last fifteen years, the case controlling the law on this point has been *Vieth v. Jubelirer* (2004), where the Court held 5-4 that claims regarding gerrymandering were non-justiciable, overturning a precedent from about two decades prior. The interesting facet about this case was that Associate Justice Kennedy in a solo concurrence wrote that while such claims were not justiciable under standards in place at the time, he did acknowledge that there might in the future develop standards that may make such cases justiciable. To that end, University of Chicago law professor Nicholas Stephanopolous and political scientist Eric McGhee developed the “efficiency gap” model, which measures the number of wasted votes among a state’s legislative districts. This model was used as the basis to a subsequent challenge to a gerrymandering attempt on the part of the Wisconsin State Legislature after the 2010 Census, designed to retain a majority in light of shifting demographics against them. This practice was challenged in the case of *Gill v. Whitford* (2018), where the Supreme Court remanded the case to the lower courts for lack of standing, as the plaintiff was a Democratic voter living in a heavily Democratic district. The justices, however, did show substantial disagreement on the particular merits of the case. It is worth noting that in the 2018 elections for the Wisconsin State Assembly, “Democrats received 54 percent of the total votes cast for major party Assembly candidates — a figure inflated by the fact that Democrats ran unopposed in 30 districts compared to just eight for Republicans. Yet Republicans won 63 of the 99 Assembly seats, just one less than their pre-election majority. That marks an increase in the pro-Republican “efficiency gap” from about 10 percent in 2016 to almost 15 percent this year.” (Lieb) In the most recent cases, decided on June 27 of this year, the Supreme Court has declared that claims of partisan gerrymandering to be political questions to be beyond the reach of the courts, though there is some indication in Chief Justice Roberts’ majority opinion that Congress could constitutionally take up legislation that would address issues of gerrymandering, noting that “Congress has regularly exercised its Elections Clause power, including to address partisan gerrymandering. The Apportionment Act of 1842, which required single-member districts for the first time, specified that those districts be ‘composed of contiguous territory.” (Roberts, *Rucho et al v. Common Cause et al*) Additionally, Roberts’ opinion noted the existence of potential solutions to the issue of gerrymandering through the Fairness and Independence in Redistricting Act, originally introduced to the Congress in 2005 and reintroduced each Congress since, along with the 2010 introduction of HR 6250, the Congressional Redistricting Formula Act, which “would have required States to follow standards of compactness, contiguity, and respect for political subdivisions in redistricting. It would also have prohibited the establishment of congressional districts ‘with the major purpose of diluting the voting strength of any person, or group, including any political party’ except when necessary to comply with the Voting Rights Act of 1965.” (Roberts, *Rucho et al v. Common Cause et al*).

One area where opponents of gerrymandering have had recent success was in Pennsylvania, where there was a successful challenge to that state’s legislative map. It must be noted, however, that this lawsuit was based on an interpretation of the Pennsylvania State Constitution, and the Supreme Court has been reluctant to intervene when a state’s court of last resort has been interpreting its own constitution. The upshot of all this is that for affirmative teams wanting to address gerrymandering through the courts, there does appear to be room for plans which have the Supreme Court either rule that gerrymandering cases are justiciable, reaffirming *Davis v. Bandermer*, and/or authorizing the use of efficiency gaps as a way to determine whether unconstitutional partisan gerrymandering has occurred.

That said, an issue regarding gerrymandering is that while obvious gerrymanders might be easy to spot, compact districts can also be gerrymandered as well. This was noted by Erica Klarreich when she observed that, “Since drawing compact districts is not a cure-all, solving the gerrymandering problem also requires ways to measure how biased a given map is. In a 2006 ruling, the Supreme Court offered tantalizing hints about what kind of measure it might look kindly on: one that captures the notion of ‘partisan symmetry,’ which requires that each party have an equal opportunity to convert its votes into seats.” (Klarreich) Perhaps an easier way to say this is to quote the title of the article, “Gerrymandering is illegal, but only mathematicians can prove it.” All this is to say that court-based attempts to come up with a universal standard for measuring whether a state’s districts are drawn in a way to comprise an illegal gerrymander are unlikely to be easily understood by those who are not well-invested into matters of political science or mathematics.

All of this, it should be noted, hasn’t even begun to address the possibility of non-court-based solutions to the issue of gerrymandering. While some of these will be referenced in the section on possible affirmatives, there are a couple of interesting options available. The most well-known are the independent redistricting commissions, used in a number of states, mostly in the West. Claims that such commissions violate the Constitution were dispensed with in 2015 (*Arizona State Legislature v. Arizona Independent Redistricting Commission*), though that was also before Anthony Kennedy’s retirement and replacement with Brett Kavanaugh (as a side note, both Gorsuch and Kavanaugh have had at least a couple instances each during the 2018-2019 term where they have joined the liberal wing of the court to produce 5-4 decisions that likely disappoint their conservative brethren). These commissions provide a variety of models in terms of composition and authority, yielding a range of affirmative plan texts. Another option available is to use systems similar to what are in place in the United Kingdom and Australia, which functionally removes the legislature out of any role for drawing the districts and places the decisions in the hands of more disinterested parties.

**Voter Fraud/Voter Identification**

In the wake of the 2016 election, Donald Trump declared that he had only lost the popular vote because of millions of fraudulently cast votes, and then formed the Presidential Advisory Commission on Election Integrity, also known as the Voter Fraud Commission, to seek out alleged fraudulent votes. Headed by Vice President Mike Pence and run day to day by Kris Kobach, the commission was only in existence for eight months, disbanding shortly after Democratic state officials won a district judge’s order that the commission share documents with its Democratic members.

It should be noted that if a resolution were to be adopted that allowed action against voter fraud as an area for affirmatives, there is a body of literature written to provide support for such action. For example, a 2017 report by the Heritage Foundation found that, beginning with their review from 21 states, “The (Government Accountability) Institute compared the lists using an ‘extremely conservative matching approach that sought only to identify two votes cast in the same legal name.’ It found that 8,471 votes in 2016 were ‘highly likely’ duplicates. Extrapolating this to all 50 states would likely produce, with ‘high-confidence,’ around 45,000 duplicate votes.” (von Spakovksy) Hans von Spakovsky goes on to speculate that there are other forms of illegal voting taking place, such as felons voting despite being ineligible to do so, and that these votes had enough of an impact to flip results in particular states. That said, a few points should be made. First, those 45,000 alleged double-votes in the 2016 presidential election represent a mere .03% of the 136,669,276 ballots cast. Second, claims that these double-votes flipped a state are often based on an assumption that the double-votes are all, or nearly all, cast for a particular candidate. Third, anyone wishing to find evidence indicting von Spakovsky would have little trouble doing so, including a federal judge writing that his claims of electoral fraud were not supported by proven research (*Fish v. Kobach*). All this is to say that the evidence on voting fraud can be hyperbolic and while there may be particular issues, one must be very careful when approaching this research. To that end, it seems best to generally leave out questions of voter fraud in the discussion, especially given that a lot of the proposed solutions create issues with voter suppression and are probably only going to be undertaken by affirmatives who crave uphill climbs.

**Voting Rights**

For those who have made any study of American history post-World War II, the term voting rights tends to conjure up images of African-Americans marching throughout the South being attacked by police and/or the Ku Klux Klan in an attempt to gain what we consider that most sacred of rights in our democracy, the franchise. With the passage of the Voting Rights Act, many of the first round of structural barriers were removed, such as literacy tests and grandfather clauses (white primaries and the poll tax had been previously abolished by the courts and the Constitution, respectively). Since that time, however, we have discovered that other barriers have pre-existed and new barriers are attempting to be constructed to deny the right to vote, with evidence indicating that a number of these measures disproportionately impact racial minorities.

One of these issues is the practice of felony disenfranchisement, which has existed since ancient times. While there does not appear to be evidence that the practice was used to create a *de jure* racial disenfranchisement, there is historical and statistical evidence to argue that these policies and others enacted have created and do create such a disenfranchisement *de facto*. For example, in the years following the end of Reconstruction, Southern states did pass Black Codes which criminalized various forms of conduct, the most notorious perhaps being laws against “vagrancy”, which was often ill-defined and extended police authorities wide latitude in how and who to enforce these provisions against, until the Supreme Court ruled such laws as being unconstitutionally vague in *Papachristou v. Jacksonville* (1972). Focusing back on felony disenfranchisement specifically, this is a matter that the federal government has allowed the states to take the lead, creating a patchwork of laws regarding the circumstances when, and if, a felon can have their voting rights restored, as shown in Appendix 1. The net effect of this, however, is that, “Six million Americans are ineligible to vote, members of a group whose ranks have quintupled over the last forty years” (Bassett), noting that “4.7 million are not incarcerated but live in one of 34 states that prohibit voting by people on probation, parole, or who have completed their sentence.” (The Sentencing Project) While almost half of the states have made movement to loosen restrictions on felon re-enfranchisement, the patchwork on inconsistent state laws remains. Additionally, if must be noted that the most prominent of these efforts, the adoption of Amendment 4 by Florida voters last November, is being effectively challenged by Republicans in the Florida State Legislature who have introduced “two bills that have kicked off a new fight over how the constitutional amendment should be implemented. The most controversial measure so far has been the House proposal, which requires those with felony records to fully pay off any court fines and fess – including fees that were not imposed by a judge as part of their sentence – before they can regain their voting rights….Critics say the version of the bill currently in the House effectively functions as a modern-day ‘poll tax’ – … a controversial practice most notably used to limit the voting rights of African Americans.” (Lockhart) Coming back to the racial disparity issue, the Brennan Center for Justice’s Erin Kelly observed that “One in every 13 voting-age African Americans cannot vote, a disenfranchisement rate more than four times greater than that of all other Americans. In four states, more than one in five black adults are denied their right to vote. Although the data on Latino disenfranchisement is less comprehensive, a 2003 study of ten states ranging in size from California to Nebraska found that nine of those states ‘disenfranchise the Latino community at rates greater than the general population.” (Kelly) This disparity is also seen in Appendix 2.

**Key Issues**

**Timeliness**

Like the classic blue blazer and khaki pants, a policy debate topic related to interest group or electoral reform is unlikely to go out of style anytime soon. However, this is uniquely true in the 2020-2021 debate season as the nation will experience a presidential election two months after the traditional start of the debate season and then have a whole series of post-mortems, electoral analyses and data related to campaign spending and its efficacy in the months immediately following that election. There have now been five election cycles (three midterms, two presidential) since *Citizens United v. FEC*, yielding the ability to have longitudinal data both to the rate of spending but also to its impacts in terms of effecting election results and the attention paid by politicians to donors. While there have been between a handful and a couple handfuls of Lincoln-Douglas and Public Forum topics that have addressed electoral issues (e.g. September/October ’13 on compulsory voting in Lincoln-Douglas, NSDA ’16 on one-day primary in Public Forum), the college policy debate community last took up anything related to electoral reform in the Fall 1984 CEDA resolution (“That the method of conducting presidential elections in the United States is detrimental to democracy”) and the high school policy debate community last took this issue up in the 1974-1975 season (“Resolved: That the United States should significantly change the method of selection of presidential and vice-presidential candidates.”), during which time the community has debated all of the following topics on at least two occasions: immigration, education (three times), China, health care/insurance, space, oceans, Latin America, space, poverty, among others. While not intending to denigrate those topics, it does bear mentioning that only a very few active coaches will have even so much as debated this topic the last time it was contested at the high school level (a freshman who debated the 1974-1975 season would now be in their late 50s, and a coach who just started their career on the presidential selection topic would likely be into the latter half of their 60s; for perspective, this author, who will turn a half-hundred on his institution’s third day of school, was in kindergarten the year high schoolers considered the presidential/vice-presidential selection resolution).

Additionally, there are two other issues that may make such a discussion an important one to have. The first, which was perhaps even less true in 2013 than it is now, involves the Supreme Court’s unlikeliness to act to address the issues of campaign finance and electoral reform in any way that limits what politicians can do – in fact, it seems more likely that the Supreme Court is going to move in a direction of deregulating campaigns or treating them as political questions, evidenced by the June 27 decisions. The other issue involves the current president. Given the proclivity of the president to upend and challenge conventions of democratic government, it is unclear the degree to which President Trump, win or lose in 2020, will attempt to reshape elections and campaigns to accord with whatever philosophical proclivities he may have.

**Scope, Range and Quality**

Regardless of the particular resolution, there are a number of questions that must be addressed in evaluating a topic’s potential to serve as what all high school policy debaters will talk about for an academic year. Among these are the following:

* Is there enough of a range of affirmatives to provide teams strategic choices?
* Do negatives have strategic arguments to make against the range of expected affirmatives?
* Will novice debaters be able to access the topic?
* Will experienced debaters find the topic intellectually stimulating?
* Will the topic literature sustain a year’s worth of debates?

Of course, the answer to these questions will depend some on the specific wording of the resolution that is selected. To that end, my advice is to focus on either a more broadly worded resolution or one that identifies a few problem areas for examination. A topic area limited to gerrymandering, for example, is going to have a narrow range of arguments and plan texts for which there are strong advocates and these debates would likely become stale very quickly. A broader topic is also more likely to address the dual question of providing accessibility to novices and nuance to varsity debaters. As far as the question of whether the topic literature will sustain a year’s worth of debate, I reference the reader back to the section on timeliness where it was noted that there will likely be a healthy supply of new literature that comes out after the 2020 election cycle, so my belief is that there will be a range of new and relevant topic literature, such that the cards that win in October may not be the cards that win in March. Those questions will also be implicitly addressed in the list of possible affirmative plans below.

**Harms Areas**

One of the biggest concerns regarding the 2013 paper was that the impact level of the debate was not particularly “sexy” – the terminal impacts of nuclear war/genocide/environmental collapse/extinction/a plague of locusts descending on the land seemed to be a pretty hard sell, particularly for affirmative teams. This is something I wish to address more aggressively in this version of the paper, especially in light of events over the last couple of election cycles. First, there are definitely some impacts to racism that are not nearly as hard a sell with particular affirmatives, especially those that address the notion of voting rights in some way, shape, or form. Second, in the light of pretty clear evidence of Russian meddling in the 2016 presidential election, such continued meddling might very well lead to a situation where the United States takes more punitive action (for example, interfering with Russian oil exports or freezing Russian assets abroad) that might lead to conflict escalation. Third, and still the author’s belief from the 2013 paper, we might do well to see the notion of impact scenarios that do not fall neatly into a “magnitude/time frame/probability/reversibility” mold might force students to reconsider how they articulate and defend impacts, creating new opportunities for critical thinking within the debate space.

That having been said, certain advantage scenarios seem pretty intuitive for this topic. This list is by no means intended to be exhaustive.

*Capitalism v. Democracy* – While these two ideas are often considered to be branches off of the tree of freedom, there are parts of this topic area where these notions are put into conflict. As articulated by William Hudson, “The current era of super PACs, bundling, and anonymously funded 501(c) groups all funneling mountains of cash to favored candidates has created a new Gilded Age of political spending. From the perspective of equal representation, the money election sharply biases the election process in favor of the very small and wealthy portion of the electorate that contributes to political campaigns. The one-tenth of 1 percent of citizens that provides the bulk of the funds for political campaigns buys unequal influence over elected officials. This influence undermines the fundamental promise of representative democracy that the vote empowers all citizens equally. In elections today, before ordinary citizens cast their votes, the money election has already restricted their choices to candidates who have passed muster with the rich and the special interests.” (Hudson, 193).

*Democracy Promotion –* In the 2013 paper, this section began by remarking that “The rise of democracy over the last few decades is irrefutable.” While that general trend may be historically accurate over the long term, it is perhaps worth noting that Freedom House’s 2019 report was titled “Democracy in Retreat”. The report noted decreases in the number of “Free” and “Partially Free” nations with a corresponding increase in the number of nations deemed to be “Not Free”. Specific to the United States, *Freedom in the World* noted that “Challenges to American democracy are testing the stability of its constitutional system and threatening to undermine political rights and civil liberties worldwide.” (Freedom House). The rise of these sorts of populist forces in places such as France, Germany, Brazil and the Philippines may mean that the United States’ role in promoting democracy may be even more important in the years to come at the time when it is being questioned more than it has in recent years.

*Federalism –* This seems to be most naturally a line of attack that teams might pursue in response to proposals to create independent redistricting commissions, though links could also be generated to plans regarding other forms of election management, since Article I, Section 4 of the Constitution specifies that states are responsible for determining the manner in which their own senators and representatives are elected. This is likely to generate some process debates, making the States Counterplan a potential strategy against some of these affirmatives. Alternatively, teams may argue that such a step so fundamentally shifts power to the federal government as to collapse the federal-state balance, with attendant impacts directly related to that relationship or to the modeling of federalism in other countries.

*Foreign Hacking/Cybersecurity –* As the Guardian article referenced above noted, the nation’s election infrastructure has a number of weak points, particularly at the level of state election organizations, to the point where middle-school aged students have the technical skill to hack these websites. The evidence that Russia attempted to create havoc in the 2016 presidential election is clear and incontrovertible, regardless of whether you believe or not that the Trump campaign was involved at any particular level. As a 2017 report from the Office of the Director of National Intelligence noted, “We assess with high confidence that Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election, the consistent goals of which were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency.” (Office of the Director of National Intelligence) It also seems highly unlikely that this will be a “one-off” show of cyber-muscle and that the Russians and other state and nonstate actors (even terrorists perhaps) will likely try this stunt again in the future. “Director of National Intelligence Daniel Coats warned in July 2018 that Russia is continuing to try to “wreak havoc over our elections,” even if the evidence, so far, of the 2018 midterm elections being affected by outside interference is inconclusive. Other states and even nonstate actors will also likely seek to emulate this model.” (Boot and Bergmann) Boot and Bergmann go further to identify the stakes: “The legitimacy of the U.S. government rests upon the sanctity of the political process. If foreign actors continue to manipulate U.S. politics to their benefit, they will do incalculable damage to American democracy. The very future of the United States as a sovereign nation will be placed in doubt if people lose faith in the electoral process.” In short, teams that want to pursue impacts involving hegemony, democracy promotion, modeling or electoral cybersecurity showing issues with our cybersecurity writ large, should have little trouble doing so with cases in this area of the topic.

*Interest Groups –* The role of interest group influence has been a significant part of political debate in the United States for the last few decades. A possible angle of this debate may involve teams contrasting whether interest groups skew policy outcomes in ways that are harmful for the United States versus other teams advancing the idea that interest groups provide a key linkage institution for ordinary citizens and thus gives them a way for their voice to be heard in the policymaking process. Alternatively, teams may argue that interest groups have such a stranglehold on the process that even when the public is overwhelmingly in favor of policy changes, they aren’t implemented, diminishing citizen trust in the system – one might argue that the defeat of background checks for gun purchases despite overwhelming support for it is one example of a system gone awry.

*Plutocracy –* The term chosen for the lack of a more easily articulated alternative on the part of the author, specifically this refers to the increasing role that wealthy donors play in influencing electoral campaigns and the seeming “money election” that takes place to narrow the field before voting begins. William Hudson noted in 2013 that “without the ability to limit expenditures, campaign regulations lost the ability to constrain the ever-expanding election cash arms race and enhanced candidates’ dependence on wealthy contributors to gain office.” (Hudson, 187). Continuing, Hudson further observes that “these few wealthy individuals and special interests gain unequal power because politicians depend on their contributions to gain office. So along with the regular election in which all citizens cast their one vote, there exists a money election in which some citizens gain the equivalent of extra votes for themselves with the dollars they contribute. Not surprisingly, elected officials are quite attentive to those who contribute to their campaigns and the policy issues that concern them. Few will dare to take positions or advocate policies that might anger campaign contributors no matter how popular those policies might be among ordinary voters.” (Hudson, 184)

*Racism –* In the modern context, the issue of race and elections centers around a couple of key themes. The first is the issue of voter identification laws, which the American Civil Liberties Union and others argue to have a disproportionate effect on various minority groups, especially where states have reduced the ease of securing such government-issued identification. While voter identification laws seem to have been around in some form since the middle of the last century, a new push for such legislation began as a function of the passage of the Help America Vote Act in 2002, which required certain individuals to provide identification, based on how they registered to vote and what data they provided when undergoing that process. Though the Supreme Court originally upheld the first of these new round of laws (Crawford v. Marion County Election Board), a number of federal courts have struck down other voter-identification laws, with some of the courts taking particular note of the racial disparity, such as the Fourth Circuit Court noting that a North Carolina’s voter-identification law’s “provisions deliberate ‘target African-Americans with almost surgical precision’ in an effort to depress turnout at the polls” (Wines and Blinder). Another such issue has been the issue of felon disenfranchisement, which has been previously discussed at some length.

*Speech Rights* – Mostly, such arguments are likely to be advanced by negative teams, with a claim that free speech rights are fundamental and that silencing certain groups undermines the political process. Further, negative teams are likely to argue that the loss of speech rights will place our country on the road to tyranny. Affirmative responses are likely to fall along two main tracks: first, that no Constitutional right is absolute and that second, the sorts of groups that are likely to be limited by affirmative plans will have plenty of other venues and the means to make their opinions known, so that no real harm is done.

**Concluding Thoughts**

**Why this topic?**

Every topic we debate is important – while I think we had a sense that immigration would be a hot button issue for 2018-2019, who knew that President Obama would push towards implementing some of the policies that were advocated in the 2013-2014 academic year, even if he wasn’t totally successful in that regard.

The difference between this topic and many of the others is that it is foundational in nature. Look at our political system specifically and democracy globally in general – it’s a hot mess. In the Freedom House’s 2019 Report (Democracy in Retreat), authoritarian systems and leaders are making advances in ways we would have had a hard time fathoming in the years after the end of the Cold War. The AFD (Alternative for Germany) is now the official opposition in Germany and Marine Le Pen placed second in the 2017 presidential election in France, to say nothing of the elections in Russia since Putin’s election. President Trump refuses to criticize Putin and writes a letter to North Korean dictator Kim Jong-Un that Kim considers excellent, while many would have difficulty remembering the times the President has met with leaders we’d consider friendly to democracy. Those looking for the United States to be a leader for the cause of democracy might find themselves waiting a while at the altar.

Another aspect of the topic is that many of these issues are going to be encountered by every high school student in their academic career, unless they find some way to avoid taking classes in civics or United States government. This topic will create a synergy with those courses that will enhance and make more real student learning.

**Why this topic for 2020-2021?**

The short answer is because we’re holding a general election in November 2020. Between the run-up to the election and the post-mortem analyses afterwards, there will be a mountain of evidence that we won’t be likely to see develop in any other year. Trump’s inherent unpredictability is only likely to increase the value of the “gold in them thar hills.” In a debate context, the evidence that wins debates around the election will have to contend with the post-election articles written during the NSDA district qualifying season, as such evidence will have to contend with the cards students cut and run during the NCFL and NSDA National Tournaments. Students will be required to not only analyze the recency of their cards, but also the methodologies of the studies and the qualifications/biases of the authors whose ideas are being clashed. No other year is likely to be as ripe for this research as 2020-2021 will be.

**But is this topic “sexy” enough for high school students?**

The relative attractiveness of this topic was considered an issue when brought forth six years ago, and someone at that meeting may have said “this isn’t the topic you take to prom.” However, given the events of the last few years, I would submit that this topic, like Hans Christian Andersen’s ugly duckling, has become a beautiful swan. While other topics may or may not be relevant to particular demographics of debaters, this one has relevance to everyone – we all have the potential to become voters and we all want our votes to have the greatest efficacy possible. As mentioned above, it links into curriculum that students will have studied or will study in their high school years. It also has the ability to allow debaters to go for big impacts (hegemony/democracy promotion/racism) and take on all off-case positions or to allow students to go small and dodge links to those same off-case positions. Given recent events, this is the topic you not only take to prom, but also bring home to meet your parents.

**Possible Affirmative Plans**

* Enact public financing of federal election campaigns.
* Overturn *Vieth v. Jubelirer* to rule that gerrymandering claims are justiciable issues.
* Implement use of the efficiency gap as a standard to evaluate partisan gerrymandering.
* Limit private contributions to political campaigns.
* Limit private contributions to super PACs/interest groups
* Require states to utilize voting machines that provide a paper trail of cast votes.
* Overturn *Citizens United v. Federal Election Commission.*
* Overturn *SpeechNow v. Federal Election Commission.*
* Require states to restore voting rights to felons on the completion of their sentence (variations on this can exempt certain crimes, such as murder and sexual offenses, or may define completion of the sentence based on interpretations of parole and probation).
* Mandate the use of independent commissions for the drawing of legislative districts (various models exist here, such as Arizona, California, Iowa, or even foreign models such as Australia or the United Kingdom).
* Abolish Section 527 of the IRS Code.
* Remove tax-exempt status for 527 groups.
* Require superPACs to disclose the identity of all donors (this could be set to cover donations above a certain amount, such as $250).
* Require disclosure of the identities of all donors contributing $250 or more to election campaigns.
* Adopt *The Defending Elections From Threats by Establishing Redlines Act of 2018*, written by Senators Bob Menendez and Lindsey Graham
* Increase resources for the Department of Homeland Security to engage in election security, perhaps using the British National Cybersecurity Center as a model
* Adopt the Congressional Redistricting Formula Act (initially filed as HR 6250 from the 111th Congress)

**Possible Negative Arguments (not intended to be an exhaustive list)**

* Afropessimism/Anti-Blackness Kritik
* Base Disadvantage (though admittedly this may be a hard sell after an Immigration topic in 18-19 and an Arms Sales topic in 19-20)
* Constitutional Amendment Counterplan (mainly based on the idea that resolutions using USFG may run into extra-topicality issues if they attempt to fiat adoption of an amendment)
* Court Clog Disadvantage (primarily court-based affirmatives, but would also include cases where the courts are a remedy for individual claims against the state)
* Courts Politics Disadvantage
* Elections Disadvantage (until November, then followed by a Lame Duck Session DA and either a Honeymoon DA if the Democrats win and something like a “Trump horse trades plan for revocation of the 22nd Amendment and we end up with Queen Ivanka or President Eric”)
* Federalism Disadvantage
* Hollow Hope Disadvantage (for court-based affirmatives)
* Judicial Activism Disadvantage (for court-based affirmatives)
* Nativist Backlash Disadvantage
* New Social Movements Disadvantage
* Net Widening Disadvantage (linked to cases that increase cybersecurity as a function of election monitoring)
* Political Question Doctrine Disadvantage (for court-based affirmatives)
* State Circumvention Arguments (something along the lines of what the Florida State Legislature is doing to try and impose barriers to allowing ex-felons to access voting rights post the state’s adoption of Amendment 4 in November 2018)
* States Counterplan
* Spending Disadvantage
* Supreme Court Rollback
* And probably at least 17 kritiks based on the ideas of Continental European philosophers who claim that unless you adopt their method and ideology that life loses all value, of whom probably at least five say life has no value, regardless of whether you adopt their method or not.

**Definitions**

**campaign finance**

“Campaign finance refers to all funds that are raised and spent in order to promote candidates, parties or policies in some sort of electoral contest.” Wikipedia

**“**Campaign finance refers to the means by which money is raised for political [election campaigns](http://www.wordiq.com/definition/Election_campaign).” WordIQ.com

**district**

“A division of an area, as for administrative purposes.” American Heritage Online Dictionary

“a territorial division (as for administrative or electoral purposes).” Merriam-Webster Online Dictionary

**drawing**

“The art of representing objects or forms on a surface chiefly by means of lines.” American Heritage Online Dictionary

“the art or technique of representing an object or outlining a figure, plan, or sketch by means of lines.” Merriam-Webster Online Dictionary

**electoral campaign**

“The electoral campaign can be defined as the set of lawful activities electoral contenders carry out once they have formally been named as such” (http://web.cas.suffolk.edu/faculty/druke/un/elections/main/english/lf/lfd06.htm)

**electoral integrity**

"any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle." (Kofi Annan Foundation, 2012)

**electoral intervention**

“Our experiments also revealed that even modest forms of electoral intervention divided and demoralized the country. Although active measures such as funding, defamation, and hacking were most corrosive, mere endorsements by foreign countries also managed to provoke substantial public ire, undermine faith in democratic institutions, and split the nation along partisan lines.” (Tomz and Weeks)

“Recent studies indicate that partisan electoral interventions, a situation where a foreign power tries to determine the election results in another country” (Levin)

**federal**

“formed by a compact between political units that surrender their individual sovereignty to a central authority but retain limited residuary powers of government” Merriam-Webster Online Dictionary

“Of or constituting a form of government in which sovereign power is divided between a central authority and a number of constituent political units.” American Heritage Online Dictionary

**increase**

“become or make greater in size, amount, intensity, or degree”. Oxford Online Dictionary

“to become greater or larger” American Heritage Online Dictionary

**Independent commission**

“The definition of an independent commission is a group free from outside or political control that works towards a specific goal for the country, state, etc.” Yourdictionary.com

**Influence**

“the capacity to have an effect on the character, development, or behavior of someone or something, or the effect itself:” Oxford Online Dictionary

“Power to sway or affect based on prestige, wealth, ability, or position:” American Heritage Online Dictionary

**Interest group**

“Non-profit and usually [voluntary organization](http://www.businessdictionary.com/definition/voluntary-organization.html) whose [members](http://www.businessdictionary.com/definition/member.html) have a [common cause](http://www.businessdictionary.com/definition/common-cause.html) for which they seek to [influence](http://www.businessdictionary.com/definition/influence.html) [public policy](http://www.businessdictionary.com/definition/public-policy.html), without seeking [political control](http://www.businessdictionary.com/definition/political-control.html). Their [primary](http://www.businessdictionary.com/definition/primary.html) [activities](http://www.businessdictionary.com/definition/activity.html) are [lobbying](http://www.businessdictionary.com/definition/lobbying.html) the members of legislative bodies through [contribution](http://www.businessdictionary.com/definition/contribution.html) to political [parties](http://www.businessdictionary.com/definition/party.html), [working](http://www.businessdictionary.com/definition/worker.html) to [elect](http://www.businessdictionary.com/definition/elect.html) sympathetic or pliable politicians, and conducting covert or [open](http://www.businessdictionary.com/definition/open.html) [propaganda](http://www.businessdictionary.com/definition/propaganda.html) [campaigns](http://www.businessdictionary.com/definition/campaign.html).” From [www.businessdictionary.com](http://www.businessdictionary.com).

**political contributions**

“a contribution made to a politician or a political campaign or a political party.” The Free Dictionary.

**reduce**

“make smaller or less in amount, degree, or size” Oxford Online Dictionary

“To bring down, as in extent, amount, or degree; diminish” American Heritage Online Dictionary.

**regulation**

“A rule of order having the force of law, prescribed by a superior or competent authority, relating to the actions of those under the authority's control.” The Free Dictionary.com

“a rule or directive made and maintained by an authority” Oxford Online Dictionary

**should**

“used to indicate obligation, duty, or correctness, typically when criticizing someone’s actions”. Oxford Online Dictionary

“used to express obligation or duty”. American Heritage Online Dictionary

**strengthen**

“The capacity to resist strain or stress; durability” American Heritage Online Dictionary

“make or become stronger” Oxford Online Dictionary

**substantially**

Author’s note – as anyone who has coached or debated will know, several legal definitions exist that assign a precise percentage to this term. However, those definitions are often, by their context, limited to addressing the issue that was at bar in that particular case. Thus, while a list of cases could cite substantially as meaning anything from 10 percent up to 90 percent, I will refrain from listing them here.

“to a great or significant extent”. Oxford Online Dictionary

“considerable in importance, value, degree, amount, or extent”. American Heritage Online Dictionary

**superPAC**

“the superPAC can raise unlimited funds from individuals and corporations, although unlike 501 (c) organizations they must disclose the identity of their contributors. But they are also free to expressly advocate the election of defeat of particular candidates.” (Hudson, 191)

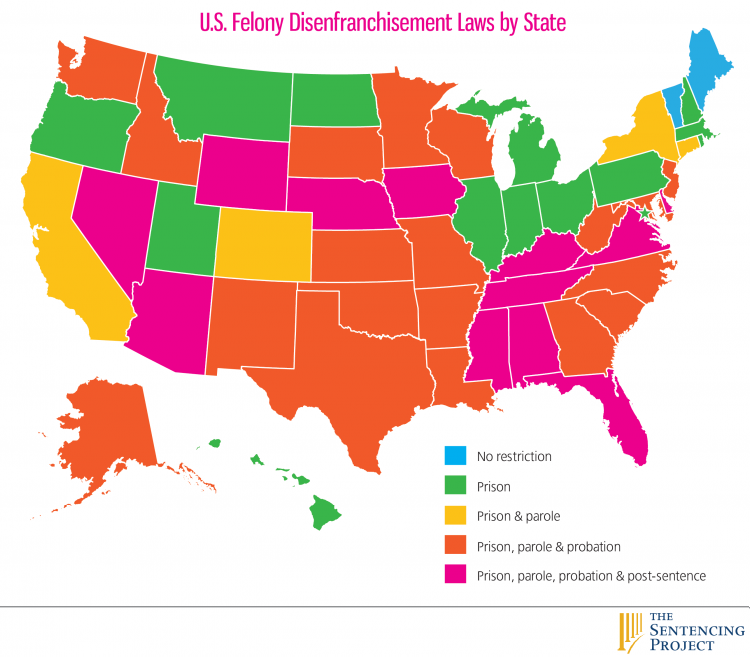
“a Political Action Committee in the USA, which is allowed to spend unlimited amounts on political campaigning provided that it has no direct contact with any candidate or political party” Macmillan Online Open Dictionary

**United States federal government**

“The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary.” US Legal.com Definitions

“The [government](http://www.wordiq.com/definition/Government) of the [United States](http://www.wordiq.com/definition/United_States), established by the [Constitution](http://www.wordiq.com/definition/United_States_Constitution), is a [federal republic](http://www.wordiq.com/definition/Federal_republic) of 50 [states](http://www.wordiq.com/definition/States_of_the_United_States), a few territories and some protectorates. The national government consists of the executive, legislative, and judicial branches.” Word IQ.com

**Appendix 1**

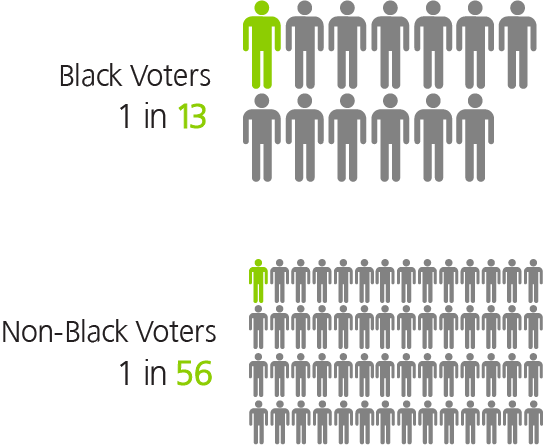


Source: Bassett, Aiden. “Barred from the Ballot Box: Felon Disenfrachisement in America”. Published in the Berkeley Political Review on April 2, 2018. <https://bpr.berkeley.edu/2018/04/02/barred-from-the-ballot-box-felon-disenfranchisement-in-america/>, last accessed 4-24-19.

Note: Since this publication, Florida voters adopted Amendment 4, which restored voting rights to most felons on the completion of their sentences. In recent months, bills have been introduced in both chambers of the Florida State Legislature to limit the applicability of this provision.

**Appendix 2**

##### Disenfranchisement Rate, 2010

[](http://www.sentencingproject.org/wp-content/uploads/2016/01/Disenfranchisement-rate-by-race-21.png)

Source: Sentencing Project, The. “Felony Disenfranchisement Laws in the United States. April 28, 2014. <https://www.sentencingproject.org/publications/felony-disenfranchisement-laws-in-the-united-states/>, last accessed 4-24-19.

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Sentencing Project, The. “Felony Disenfranchisement Laws in the United States. April 28, 2014. <https://www.sentencingproject.org/publications/felony-disenfranchisement-laws-in-the-united-states/>, last accessed 4-24-19.

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