## 2018 Nov/Dec – TA – Lawrence Zhou

Resolved: In a democracy, the public’s right to know ought to be valued above the right to privacy of candidates for public office.

Bio: Lawrence Zhou is the 2014 NSDA Lincoln-Douglas national champion. He debated at Bartlesville HS in Oklahoma (2010-2014) in Lincoln-Douglas debate where he was a two-time champion of the Oklahoma State Tournament and placed 6th at NFL Nationals his junior year. He now attends the University of Oklahoma where he is a MIS major and Philosophy minor. He is an assistant coach at The Harker School, the Director of Publishing at Victory Briefs, a member of the OU Ethics Bowl Team, and debated on the OU policy team.

### Introduction

Despite initial reaction to this topic’s announcement being that of some frustration due to how similar it appears to the September/October topic, after a bit of research, it’s clear that this topic’s primary point of disagreement is actually quite distinct from the previous topics. It invites broad assessment of what a democracy is, how a democracy ought to work, and the role that representatives in a democracy play. These are not questions to be taken lightly and are, in fact, some of the central questions of political philosophy that have been hotly contested for many years. This topic, though perhaps a bit vague, invites debaters to examine these questions in a much more robust and in-depth fashion.

Before I jump in and begin talking about the topic and some possible approaches to it, I want to give this topic its due weight. This is a conflict of values that is abstract but has far-reaching implications across all of society. The right to know and the right to privacy are very important values that are the heart of many value conflicts in society. Take a situation you might well encounter in just a year or two. You’re applying to colleges and the application has a very standard spread of questions about your employment history, academic performance, and extra-curricular activities. You click the next page and a series of new questions appears before you, this time inquiring about deeply personal details. There are questions about illicit substance use, times you’ve disobeyed your parents, sexual history, and other questions that go beyond what you might have expected. You wonder why such questions would be on a college application until you scroll to the bottom and see the rationales provided. It turns out these answers have strong predictive power over the dropout rate of its students and that colleges want to ensure that those they accept do not contribute to its dropout rate. You would rightly still wonder whether such questions were justified to ask even if they did accurately predict dropout rates because while the college might have a vested financial interest in knowing such information, you, and perhaps society writ large, might have a vested personal interest in ensuring such information was not known by the college. And here you see where the conflict of the right to know and the right to privacy might come into conflict. Of course, such a situation does not accurately mirror reality at this time, and, of course, the conflict posited in the resolution is distinct from the one outlined above, but hopefully this helps ground these values a bit more concretely before we dive into a brief introduction into the topic.

Oh, and don’t forget to subscribe to The Argument Clinic podcast, which you can find on Soundcloud and iTunes. It’s a free Lincoln-Douglas debate podcast and in a recent episode, we covered this topic in-depth. An excellent resource if I do say so myself.

### Topic Terms

#### “In a democracy”

There are two primary issues I wish to address here: what “a” means, and what a democracy is. Let’s start with “a”. There is as legitimate question as to what “a democracy” means. Does it mean “in some hypothetical democracy”, “in some particular democracy”, or “in any given democracy”? Or does it mean something totally different? It’s unclear at first. I’ve asked many debaters their initial impression of the topic and how to interpret this phrase, and the initial thoughts were quite varied.

Some thought the topic was read as “in some particular democracy” where in a specified democracy, it ought to be the case that the right to know was valued above the right to privacy (from here on out, I shall shorten this to be RTK > RTP). This reading would enable affirmative’s to argue that a single democracy in the world ought to value RTK > RTP. This reading seems the least plausible for accuracy and fairness reasons. Take another statement: a person ought not kill. It does not appear that proving that any particular person ought not kill would demonstrate the truth value of this statement. Proving beyond a reasonable doubt that Nick Smith ought not kill does not necessarily entail demonstrating that the statement “a person ought not kill” is true. And for obvious fairness reasons, this interpretation seems absurd as it would allow the affirmative to demonstrate that some tiny or random democracy, of which there are many, should value the RTK > RTP, forcing the negative to make particular responses to each and every democracy in existence, a clearly unfair burden.

My suspicion is that many initially read the topic as “in any given democracy” where presented with any democratic government in existence, it ought to be the case that the right to know is valued above the right to privacy. This seems a possible reading, because proving any single democracy ought to value the RTK > RTP would not be a sufficient condition for affirming, and instead forces the affirmative to broadly defend democratic ideals any valuing the RTK > RTP is consistent with the notions of democracy. It also seems plausible to read it as “in some hypothetical democracy”. I have no strong reason to think of one interpretation over the other. I err towards thinking that the debate should primarily be concerned with which ranking is most consistent with the ideals of some abstract democracy but that is merely my intuition and certainly not the only justifiable way to think about the resolution. The only interpretation that I am inclined to think is false is the one that allows the affirmative to justifiable affirm that a single democracy ought to value RTK > RTP. The remaining two interpretations seem more than justifiable would both encourage meaningful exploration of the core controversy of the topic.

As to what a democracy is, it seems broadly to be “a system of government by the whole population or all the eligible members of a state, typically through elected representatives.” There are, of course, many conceptual disagreements about what a democracy entails and its possible justifications as a system of government. I would encourage debaters to develop a robust conception of what democracy is. The Stanford Encyclopedia of Philosophy has an excellent entry covering democracy, outlining the general conception of what a democracy is as well as providing justifications for its existence. It also has an excellent bibliography at the end of the article which will serve as useful reading. It is beyond the capacity of this topic analysis to expound upon the various theories of democracy as well as its potential justifications. However, I strongly urge debaters to research more about political theory and democracy writ large. Those debaters that truly understand and are capable of justifying democracy to others are more likely to have a more consistent explanation of their arguments on this topic and how they integrate into a more wholistic understanding of what democracy is. At a minimum, a debater that can defend their vision of democracy in cross-examination will gain a huge perceptual advantage in front of most judges.

A final note about this phrase: I don’t think that the affirmative is necessarily committed to defending the normative value of democracy. The resolution isn’t asking the affirmative to defend an action, merely render a ranking the priority of two (I think conflicting) values in a democracy. I don’t think the affirmative necessarily even have to defend the desirability of democracy. One could be quite confident that communism is a suboptimal social arrangement but still, without compromising their ethics, affirm that in a communist society, the rights of workers ought to be valued above the rights of the capitalist class. Affirming such a statement wouldn’t require defending communism as a system but would merely require one to think about the core tenants of communism and how those two values are ranked within such a system. Similarly, one need not be committed to defending democracy as necessarily being ethical to affirm the resolution. This, I think, heavily implies that the negative arguing about the badness of democracy is not a reason to think that one ought to negate the resolution. One could think democracy is bad but still be forced to think about the various rankings of values within such an arrangement.

#### “public’s right to know”

The largest issue is that there does not seem to be a particularly clear definition of what the public’s “right to know” is. The clearest definition seems to be something like “Laws that make government or corporate data and records available to the public or to those individuals with a particular interest in the information.”[[1]](#footnote-1) The problem is that it’s relatively unclear how this definition would interact the right to privacy of candidates specifically given that their information is probably not government or corporate data. Yet if this definition is unusable because it fails to outline an instance where a clear prioritization of these values would make sense, then it becomes difficult to scrounge up another definition that can adequately account for the resolutional conflict. To overcome this, I suggest that the affirmative not read a dictionary definition for the “public’s right to know” and instead define it more in the spirit of what the phrase is suggesting which is likely something about how the public’s right to know is the public’s right to have public access to information that the press thinks is relevant about a candidate. While there are downsides to defining the term in this fashion, I think this is likely the interpretation that makes the most sense and most clearly highlights the conflict the resolution presents.

####  “ought to be valued above”

There is a legitimate question here about what it means to value something above something else. Minimally, I think this affirmative has to defend that the public’s right to know allows the public to override the right to privacy of candidates for public office should the two conflict.

There is, to me, a relevant question about whether or not this implies the affirmative should defend a particular instance of when the right to know ought to be valued above the right to privacy and whether the affirmative is bound to defend the implementation of some principle or policy in a democracy. I think that it is beyond the scope of this resolution for the affirmative to call for any particular policy or practice that demonstrates an example of when the right to know ought to be valued above the right to privacy. Even though this creates complications because how ideals translate into practice is an important question, I think the affirmative is only really required to make an argument about the relative consistency of these rights with core democratic ideals. I think this is the case because it does not seem like proving a particular example demonstrates the truth value of the statement writ large and because the resolution does not call for any particular action on the part of the affirmative.

#### “right to privacy of candidates for public office”

This is an interesting term in the resolution because the right to privacy is itself already a relatively vague term that lacks official basis in US law and now we have taken an already vague term and narrowed it to specifically just candidates for public office. I suppose we should begin with a consideration of whether or not there is a right to privacy. My initial assumption is that the resolution presupposes that there is a right to privacy and so demonstrating that there isn’t a right to privacy doesn’t seem to be a reason to affirm. I could, however, be wrong about this and affirmatives that attempt to prove that the right to know ought to be valued above the right to privacy by denying there is a right to privacy could potentially affirm the resolution. I really do not foresee this being a major issue because if the negative is unable to defend the existence of privacy as a right, they probably deserve to lose the round anyways. So, it appears the more pressing question is what the right to privacy of candidates for public office even means. The definition of privacy is relatively vague, generally being something like “the right of a person to be free from intrusion into or publicity concerning matters of a personal nature.”[[2]](#footnote-2) This seems to imply at least a few things relevant to this topic. First, the subject areas covered by a right to privacy are not those directly tied to issues of platform. For example, this resolution does not appear to be questioning whether or not the public has a right to know the candidate’s voting record when they held a previous office. Instead, the resolution seems to be directly interrogating personal issues such as tax returns, medical information, or personal group affiliations. Second, the right to privacy is relatively unclear. To what extent, if any, does anyone have a right to privacy? Do we have a right to privacy to conceal crimes? What about while we’re out in public? What about when we’re shopping online? These are not easy to answer questions, but as I suggest above, perhaps the easiest way to ensure clash on this topic and avoid annoying semantic questions is simply for the affirmative to broadly define this term without an appeal to a specific definition and explain the value clash between the right to know and the right to privacy.

#### Final thoughts

With all of these thoughts about how to interpret this topic out of the way, I want to offer three concluding thoughts about this topic before we move on to cover some potential affirmative and negative arguments.

First, the resolution does not specify that these values are “in conflict”. I find this to be relatively unimportant. Obviously these two values have to have some tension given that the right to know demands access to information whereas the right to privacy demands withholding that information.

Second, I want to emphasize that this topic is somewhat vague and that this vagueness seems to beg debaters to draw upon concrete examples to illustrate their arguments. It’s much easier to discuss these value conflicts as they might play out in the real world. I want to caution against this temptation. While debaters should be willing to utilize examples to demonstrate their arguments, I believe that the value in this topic is in the more abstract discussion of which value is more consistent with the ideals of a democracy. It is, to me, far less important of whether particular instances of conflicts such as Trump’s tax returns demonstrate the resolution, and much more interesting to me when the debaters delve into a robust discussion about what a democracy is and what a democracy isn’t. Discussing the conditions of political legitimacy, determining what it means for a someone in public office to truly represent someone, and fleshing out a discussion of the collective good versus individual rights all seem much more central to the core controversary than any given example of the resolution.

Third, I want to encourage debaters to be comfortable with a lack of evidence on this topic. This is not a value conflict that is written about extensively in most literature. It is, absent a few op-eds on Trump’s tax return, a largely unexplored philosophical dilemma. This is not necessarily a short-coming. Think of it as an avenue for creative exploration of the philosophical literature and the opportunity to interject original thought into debate. This is a topic that strongly encourages debaters to infuse their understand of the philosophy of democracy with their own ideas of the ideas of democracy relate to this topic. Because these rights are both relatively vague and their relation with each other is underdiscussed in the literature, it makes much more sense to consider for yourself the reasons why these rights might conflict especially as they relate to the special status of candidates for public office.

With these words of caution out of the way, let’s briefly examine some potential affirmative and negative arguments.

### Affirmative Arguments

In this section, I not cover arguments in a list format. Rather, I will broadly discuss a variety of affirmative arguments. Given the overlap between the justifications for various affirmative arguments, I found the attempt to delineate these arguments as distinct arguments for the resolution to be quite convoluted, so I instead elected to merely discuss these arguments as they seemed to naturally arise.

In my mind, the best affirmative arguments will broadly argue that the right to know ought to be valued above the right to privacy of candidates for public office because of some condition of democratic legitimacy. One important thing to recall when considering these arguments grounded in democratic legitimacy is that we are specifically discussing the right to privacy for just candidates for public office. This excludes, or least it ought to, the vast majority of the general public and currently elected officials. My initial suspicion is that the topic framers decided that candidates for public office represented the intersection of when these values were not clearly ordered. It seems obvious that the right to know is generally not valued above the right to privacy of the general public, or at least the case can be made. Most people do not think that the public has the right to just go snooping through the private information of any citizen without a strong reason to suspend their claim to privacy. To clarify, this is distinct from the government obtaining information over any given citizen such as when they are conducting surveillance. This is not an instance of the public’s right to know, but an instance of the government’s right to know. So I suspect most people would think that the right to privacy of the general public generally outweighs the public’s right to know. However, I also suspect that most people would believe that people who currently hold public office do not have a particularly strong claim to public office. Most people probably do think that any current public official has no right to keep a scandal or infidelity private and that the public has a right to know about the private indiscretions about public officials. So now we are left in this middle ground to discuss if a candidate for public office, not fully a private citizen but also not fully a public official, has a legitimate claim to the right of privacy in the face of the public’s right to know. I believe that most people think that current public officials lack a strong claim to privacy in the face of the public’s right to know because of the unique status that public officials hold. Holding public office means that they are ultimately accountable to the people and represent them and this leads to the public having a right to know about those who represent them. These same rationales might well apply to candidates and explain why they lack a strong claim to privacy. There are a few possible routes to demonstrate this claim.

First, public officials hold immense amounts of power over the general public. In a democracy, this requires, at a minimum, requires that said power be legitimate and constrained by a set of checks and balances. In order for that power to be legitimate, it requires consent on the part of the public. Power that does good for the people but without their consent hardly seems legitimate or democratic. In order for people to properly consent to such a public official, they may be entitled to know the information of candidates, particularly information that might adversely impact their ability to govern. Take tax returns. These documents were the source of a contentious dispute in the 2016 presidential elections. There is a strong case to be made for why candidates should have to disclose tax returns: they help verify the character and honesty of a leader and they may demonstrate some tendencies about a potential public official that has strong implications about their ability to lead. Or perhaps examine medical information. There are physicals and drug tests for driving trucks and many other jobs. It seems like candidates for public office are performing much more important duties and their health may affect their ability to perform their job. In this instance, democratic legitimacy might require candidates sacrifice their privacy to their medical information so that the public can properly determine if such a candidate is fit to rule.

Second, public officials do more than just weird power, but they act as representatives of the will of the people. This might require that the public be assured that such representatives act according to the will of the people even in their private life. There is something that seems unsettling about electing a representative supposedly espousing liberal values like equality while also being a closet KKK member. It seems plausible to think that you want your public officials to have values that align both in public and in private and this might require overriding privacy.

Third, with great power comes great responsibility. Representatives in a democracy ought to be held to a higher standard than the average citizen because they are those that set public standards for behavior. Consider government corruption, such as taking bribes. While bribery is generally frowned upon in most walks of life, we consider government bribery to be particularly noxious because it represents a betrayal of a representative’s fundamental duty to the people and because it is a visible demonstration of the failure to adhere to broadly shared values. This higher standard might require public inquiry to determine if the candidate is indeed adhering to a higher standard.

Affirmatives can also make arguments that demonstrate the disutility of privacy as a right. As I mentioned above, I don’t think proving that privacy is not a right necessarily negates, but arguments that undercut the belief in the value of privacy certainly do lead one to conclude that one ought to value the right to know higher. There are many criticisms of privacy, including arguments that privacy is used primarily to conceal information that harms other people and so is unjustifiable, that privacy is such a vague right that it is merely a collection of others, and that privacy has historically been used to cover up violence against women. These criticisms of privacy deserve their own paper, but I do want to make debaters aware of these, so they can begin exploring the literature surrounding these.

### Negative Arguments

Of course, just because there are good reasons to think that any given candidate lacks a strong right to privacy doesn’t mean there are equally good reasons to think that a candidate for public office actually has a strong reason to claim privacy.

First, consider that many modern democracies strongly value privacy for a variety of reasons. It minimally enables individuals to control access to information, allows people to keep ideas to themselves, helps individuals conceal information that might be embarrassing, and assists people in maintaining a healthy relationship to society. The list of reasons that privacy might be valuable goes on. I suggest reading about the value of privacy on the Stanford Encyclopedia of Philosophy to get a more robust understanding of it as a concept. There is a reason why there is a raging civil rights debate about the value of privacy as it relates to government surveillance and why governments across the globe have more actively cemented the value of privacy within their legal frameworks. Think about reasons we might value privacy in particular instances. The last Lincoln-Douglas debate topic was about the reporter’s privilege, in which the affirmative was more or less implicitly defending the value of privacy for the identity of sources. This, they argued, was necessary to ensure the protection of sources who might not come forward with important information important to a healthy democracy.

This topic invites similar interrogation by the negative. The negative must defend the value of privacy as it relates to democracy. But they must specifically defend the value of privacy for candidates for public office. And this mission is oddly specific. I believe there are a few strong intuitive arguments that the negative can make to leverage against affirmatives. In my mind, there are two broad strands of arguments that the negative can make: ones that argue that the role does not undermine the general right to privacy and ones that argue that the role generates a specific right to privacy.

Let’s begin with the first, which is merely defend that the role of being a public candidate does not remove a general right to privacy. First, and perhaps, most obviously, the negative can argue that democracies ought to respect libertarian ideals and that libertarian ideals entail a strong respect for individual rights, including the right to privacy. While this defense of privacy is not necessarily specific to a candidate for public office, the libertarian is unlikely to care about this role distinction and simply argue that the right to privacy writ large should apply to all, including candidates for public office. The libertarian likely believes in the value of privacy because privacy represents an extension of self-ownership, the ability of an individual to control how information about oneself is disseminated. Running for public office doesn’t suddenly remove one’s general right to privacy or self-ownership. There are, of course, many articles that defend the value of libertarianism and the value of privacy within a libertarian framework. This represents one of the easiest defenses of privacy that tackles the resolutional question. It is not difficult to understand libertarian principles, defend them in debate, and demonstrate why your opponent’s ethical framework fails, making this one of the most strategic ways to negate the resolution. This approach also likely vastly oversimplifies the ethical conflict and I, like many, find libertarianism to be an implausible ethical theory. Which is not to say that this is not a viable debate argument, and in fact has seen consistent success in traditional circuits across the country for years and was the argument I defended for most of NSDA Nationals my senior year. However, its shortcomings must be recognized.

Debaters could also argue that the role is morally irrelevant to the question of basic rights. A negative case that merely established the goodness of privacy as a general right that democracy valued and subsequently argued that the role itself did not alter the existence of those rights would also be a plausible way of negating the resolution. There are many reasons to think that the role of assuming the position of a candidate for public office does not change whether or not basic rights applied. Negatives could argue that it is the proactive burden of the affirmative to demonstrate a morally relevant distinction between a candidate and the general public. They could also point out that candidates don’t actually represent the general population so they have not consented in any meaningful way to have their private life torn apart. They could argue that nothing about being a candidate requires the public to have information not relevant to how the candidate will vote. Or they could convincingly argue that running for public office cannot require the forfeiture of basic rights like privacy since that would be inconsistent with the role of a public servant. There are other possible reasons, but these seem like a good starting point. Any negative case that demonstrated the value of privacy generally and then denied that the role of being a candidate alters how those rights should be applied would form a strong case against the resolution.

But there are likely more robust defenses of privacy that more clearly address the question of democracy and the role of a candidate for public office that might serve as more compelling negative arguments. In this light, debaters could take the second route and argue that the unique role of being a public candidate actually justifies particularly strong privacy protection. There are at least three that I can think of.

First, they can argue that revealing too much information about candidates actually leads to substantial harms to the candidate. Take medical information for example. Forcing candidates to disclose medical information might end up creating a perverse incentive for candidates to avoid seeking medical treatment because they are fearful of that information being exposed to the public. Or perhaps women candidates who have suffered domestic violence. The exposure of that information might cause society to look down upon them because they perceive them as weak. That might also deter those potential candidates from seeking police recourse because of fear of political retribution. Think of any category of information that the right to privacy likely protects and there is almost certainly a legitimate reason why a candidate would want to keep that information private and that forcing candidates to disclose that information would create particularly bad consequences for the candidate in the long run.

Second, there is reason to suspect that the right privacy for candidates prevents the degrading of the quality of democratic discourse. Lots of information revealed about candidates only increases the chances of distortion and misunderstanding. It is often thought that increased information increases the quality of the marketplace of ideas, but in the digital age when information is available in quantities greater than our minds can process it, revealing too much information is likely to lead to information overload and an overall worsening of democratic discourse. By forcing candidates to reveal private information that is relatively extraneous from their ability to govern or hold office, it likely will cause information about that candidate to be interpreted in an unfavorable light and hurt their ability to run. Once again, take medical information. It is likely that in the near-future we will develop genetic tests that have some accuracy in predicting future diseases. A presidential candidate could likely test positive for traits that are likely but not certain determiners for possible future medical conditions. This is likely information that will simply distract the public from the real issues at hand for a presidential candidate, namely their platform and mental constitution to rule. Unraveling a right to privacy for these candidates likely worsens the democratic process.

Third and finally, you could argue that candidates running for public office deserve particularly stringent protection of basic rights. It seems plausible that a core feature of justice that is everyone has the relatively unimpeded ability to run for office in a way that, for example, does not automatically preclude women from running for office. If this is a core right, part of the basis of rule by the people, then it seems strange that it would require sacrificing core rights they have a citizen merely for the opportunity to run. In fact, it seems much more likely that they deserve stricter rights to privacy given the increased public scrutiny of their life as it is. To violate their privacy risks that information being used against them in a way that is counterproductive to a healthy democracy.

Ultimately, there are many possible ways to negate this resolution and I hope these arguments provide a solid foundation for exploring this topic from the perspective of the negative.

### Conclusion

To quote Marshall Thompson “this is a difficult topic to debate.” But this doesn’t mean this resolution can’t be an incredibly rewarding topic to debate. While its vagueness seems to many to be a weakness of it, I see it as an incredible opportunity for debaters interested in exploring democracy from a more philosophical and abstract standpoint to shine. I see it as containing the potential to force debaters to stop thinking like policy debaters and to really think critically about the central features and components of democracy. I hope this topic is a fun and interesting one to debate and I hope this topic analysis helps you think a little more about the resolution in a principled fashion.

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