

## Wabash College Moot Court Competition: 2012 Participant's Guide

Preliminary rounds of the Competition will be held in Baxter Hall on Saturday, October 20. The First Round will begin at 9:00 A.M., and the Second Round will begin at 11:00 A.M. Room assignments will be available outside of Baxter 114, beginning at 8:30 A.M. Each team, consisting of two (2) members, will argue in two rounds, once as Petitioners and once as Respondents.

<b>Party</b>	<i>Name in the Trial (District) Court</i>	<i>Result in the Trial (District) Court</i>	<i>Name in the Court of Appeals</i>	<i>Result in the Court of Appeals</i>	<i>Name in the Supreme Court</i>
Dwight, Taupin, Olsson, et al.	Plaintiffs	<b>Won</b>	Appellee	<b>Won</b>	Respondents
Cicccone, Dir. Of OPM, United States of America	Defendants	<b>Lost</b>	Appellant	<b>Lost</b>	Petitioners

### 1) THE PROBLEM:

- a) The issue is the constitutionality of the Defense of Marriage Act ("DOMA"). The problem is absolutely packed with strong arguments on both sides.
- b) The plaintiffs are individuals who claim that the law is unconstitutional. They sued the federal government to stop its implementation. The named defendant is the Director of the Office of Personnel Management (the federal agency responsible for benefits and other "human resources" types of issues for federal employees generally). The "real" defendant is the federal government.
- c) This problem is not designed to be about procedures like preliminary or final injunctions or any other procedural issues about how the case got resolved. This case is about the federal power to have enacted DOMA.
- d) The trial court agreed with the plaintiffs and said the law is unconstitutional. The Court of Appeals also agrees with the plaintiffs. The government keeps going, and appeals to the United States Supreme Court.

### 2) DIVISION OF THE ARGUMENT:

- a) **Petitioners / Appellant / Defendant / Government - Cicccone.** We agree with the dissenting opinion.

- i) First counsel: DOMA does not violate the requirement of equal protection. Case law has already established this. We should simply review this law to determine if there is a rational basis for enacting it. There was. For instance, limiting the benefits available to married couples (tax, etc.) to opposite sex couples saves public money. This was not race-based, gender-based or some other “strict scrutiny” situation where we put the law under a microscope. It was reasonable and rational.
  - ii) Second counsel: DOMA does not violate the Tenth Amendment and this isn’t a case of the federal government intruding on state matters. Most of the laws on family relations and the definitions of “marriage” have historically and presently do come from the states. This does not mean that the federal government cannot define what it means by marriage, especially for purposes of defining things like federal benefits.
- b) **Respondents / Appellees / Plaintiffs / Individuals.** The majority (main) opinion got it right.
- i) First counsel: We have to review whether there is an equal protection violation very carefully, because even if there is not truly a suspect classification here, this is regulating something that the states have traditionally regulated, and intruding into that sphere cannot be justified simply because Congress did not like same-sex marriage. There is no valid basis for this statute, (essentially) no matter what the standard of review. It was quickly and shoddily enacted, too.
  - ii) Second counsel: The Tenth Amendment reserves certain subject matters of regulation to the various states. There has been a long and unbroken history of states being the governmental entities, not the federal government, to handle domestic relations matters like defining marriage.

### 3) OUTSIDE RESEARCH:

- a) ***Outside research is NOT required. It is entirely optional.*** Generally, time is much, much better spent on understanding and refining the arguments presented than on doing outside research. Suppress, if you can, the desire to find the “gotcha” or killer authority, statistic, or quotation. There’s plenty of “ammunition” for the arguments in the two opinions you have.
- b) The problem is an amalgam of several different cases and sources addressing the issues pending or on appeal to the Supreme Court. Please keep in mind that your case is not exactly the same as any outside cases you may find. Do NOT refer to facts in any “real” case that are not in “your” case.

## ORAL ARGUMENT PROCEDURE:

- You will be judged by a panel of three judges, usually made up of a mixture of practicing attorneys, professors and judges who have had moot court, trial and appellate experience.
- Your argument should be stapled into a manila folder. It is NOT a crutch and DO NOT READ FROM IT VERBATIM. Use it for reference and to keep your place in your argument. Your folder should contain relevant facts, summaries of legal authorities or concepts, and other pertinent information.
- When you enter the room, put your name and the side you will be arguing on the blackboard. If you are in a “courtroom” without a blackboard, the judges will ask your name and the respective side you are arguing and will write it on his/her evaluation sheet.
- The Petitioner (here, the Government’s lawyers) always argues first. When the judges ask if you are ready to proceed, respond “Yes, Your Honor.”
- The introduction both sides should use is “May it please the Court. My name is \_\_\_\_\_, and I represent \_\_\_\_\_, the [Petitioner or Respondent] in this appeal.” The Petitioner is allowed rebuttal and MUST reserve rebuttal time. You ask for rebuttal immediately after your introduction. “At this time, I would like to reserve (1 to 3) minutes of my time for rebuttal.”
- You will be timed by one of the three (3) judges. The timer will remind you how much time you have left. EACH person gets ten minutes. This may sound like an eternity, but it will go by quickly once you get into your argument. You will get a “5 minutes” left signal card, and “2 minutes” left signal card, and “1 minute” left signal card and a STOP card. You won’t believe how quickly the 5-minute card will be flashed at you.
- When the STOP card is flashed, it means STOP regardless where you are in your argument, but don’t stop mid-sentence. The best way to handle this is to say, “I see my time is has expired. May I have a moment to conclude?” The judge will then grant you additional time to you to quickly finish your thought and cut to your prayer. More about the prayer later.
- Pay respect to the Court. Be deferential, yet assert your client’s position. Never interrupt a judge – let him/her get the question out before you start to answer it. Listen carefully to the question to ensure that you are really answering it. Never get mad at a judge or be argumentative – be respectful and assertive (have a conversation with the judges – don’t run over them with a truck and call it advocacy!).
- DON’T talk too fast. Speak clearly and in a moderate tone of voice. Don’t dance behind the lectern. It is distracting, unprofessional and makes you appear nervous and tentative. Appear confident and collected (even if you don’t feel it). Be calm and alert – you’ll be amazed with how much it will enhance your argument. Dress appropriately. Conservative, dark suit and tie.

## PREPARING A SUCCESSFUL ARGUMENT:

- An oral argument has three basic parts – the introduction, the body of the argument itself, and the prayer.
- The Petitioner must briefly state the RELEVANT facts of the case which should only last about one to two minutes. They must be fair, but can be slanted toward your theory of the case. Don’t give facts not contained in the record. DON’T ARGUE THE FACTS: ARGUE THE LAW! The factual argument was made at trial and has already been won or lost. This is the appeal, and the issues are now legal rather than factual.

- The Respondent should do one of the following: (1) accept the appellant's statement of the facts; (2) make corrections in the appellant's statement of facts; (3) clarify or point out any ambiguity in the appellant's statement of the facts; or (4) make any necessary additions to the appellant's statement of the facts. Take issue with the facts to suit your theory of the case. Be brief! DON'T ARGUE THE FACTS: ARGUE THE LAW!
- Road map your argument. State the issues for the court to consider in clear, concise terms. BE PERSUASIVE. That is the whole object of an appellate argument. Tell the Court why you should win. "The trial court erred in finding for the Respondent because..." or "the ruling of the trial court should be upheld because..." (The word "erred" is pronounced so that it rhymes with "bird").
- After you have "road mapped" your issues for argument, go back to point one and begin your analysis of each point/reason why you should win.
- The Prayer: Tell the Court in one sentence what you want them to do for your client. "We respectfully request that this Court reverse/affirm the lower/trial court's decision." After your prayer, close your folder and sit down.
- For rebuttal, do not be verbose. Only one petitioner gives a rebuttal. Your rebuttal should include one or two strong points. Listen to the Respondent's argument closely to pick up on what the judges are questioning him/her about. If it favors your side, hit it hard in your rebuttal. An example might be the correction of a case that the Respondent did not analyze or apply correctly. Rebuttal is very important because it is a great way to win points, and a lawyer's favorite thing to do is to have the last word.
- EYE CONTACT IS VERY IMPORTANT! Look directly at the judges as much as possible. This will also help you appear confident in your argument and enhance your overall advocacy style.
- The most important thing to keep in mind is that you are very familiar with your case and you know what you are talking about. The best way to avoid feeling nervous is to prepare your argument well, think clearly and HAVE FUN!
- You will receive feedback after both sides of the argument are completed (including rebuttal). The judges will give you helpful hints and comments that will be invaluable when you go on to the next round.

### **WHY SO MANY QUESTIONS?**

- The judges will ask you questions about the case. This will happen to EVERYONE, and the purpose is not to humiliate you or trip you up, but to see how well you know your material, how well you can think on your feet, and how well you respond and get back into the flow of your argument.
- Anticipate what these questions might be and prepare to respond to them. Don't write out an answer to any possible questions and then just read it. That's not what the judges are looking for. Answer the question briefly and then get back into your argument. Remember, YOU control the flow of your argument as much as possible so don't open yourself up to distractions and interruptions if you can help it by silently fumbling around trying to figure out what to say next.