A. is the counterplan text – In the United States criminal justice system, prosecutorial nullification ought to be used in the face of perceived injustice. **Fairfax** is the solvency advocate**:**

Roger A. Fairfax, Jr. [Associate Professor of Law at GW University Law School. A.B., Harvard; University of London; J.D.] “Prosecutorial Nullification” 2011 <http://bclawreview.org/files/2013/01/02_fairfax.pdf> WH

**Prosecutorial nullification may provide important benefits for** the administration of **criminal justice.** Some scholars, such as Professor Paul Butler, have argued that jury nullification has a role to play in pursuing an equitable criminal justice system. Perhaps prosecutors similarly use prosecutorial nullification to make their own improvements to the quality of justice. Prosecutorial nullification **[it] may serve as a much needed safety valve for when** an otherwise justified **prosecution does not serve societal needs or** the general **aims of** the **criminal law**, particularly in an era of overcriminalization. Furthermore, if mercy is to play an important role in the administration of the criminal law, prosecutorial nullification is a tremendous vehicle for it Prosecutorial nullification **[it] is more efficient than** other mercy mechanism, such as **jury nullification**, because the case is disposed of before significant resources are expended. Finally, prosecutorial nullification may provide the flexibility to bring criminal enforcement in line with evolving societal values, even before the legislature has a chance to do so.

47 states elect their chief prosecutors – means that they, unlike appointed and filtered juries, are democratically selected. Two warrants why the CP uniquely is consistent with the NC while the AC isn’t, **Kerr:**

George Coppolo [Chief Attorney] 2/24/03 “States that Elect Their Chief Prosecutors” OLR Research Report https://www.cga.ct.gov/2003/rpt/2003-R-0231.htm WH

Orin Kerr [Orin Kerr is the Fred C. Stevenson Research Professor at The George Washington University Law School, where he has taught since 2001. He teaches and writes in the area of criminal procedure and computer crime law.] “The Problem with Jury Nullification” 8/10/15 <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/08/10/the-problem-with-jury-nullification/> WH

Second, **jury discretion is less democratically accountable than prosecutorial** discretion. Criminal prosecutions are democratically accountable in two ways. **First,** before the crime occurs, **the elected legislature must enact a law saying** that, in general, **the conduct should be punished. Second,** after the crime occurs, elected executive officials and their employees must make a judgment that the specific conduct by the specific individual merits prosecution. Because **prosecutors** are repeat players who **work for elected politicians**, prosecutorial decisions in the aggregate are ultimately **subject to review by** a majority of the **voters.** If the voters don’t like how a prosecutor’s office has exercised discretion, the voters normally can vote to throw out the head of the office. Both the general judgment ex ante and the specific judgment ex post have to match for a prosecution to be brought. **It’s** a **different** picture **with juries.** You might think of juries as a representative of “the People” and therefore assume they are democratically accountable. But [note that in criminal cases](http://www.wsj.com/articles/SB10001424052748704407804575425912073977370), **the law** normally **requires juries to be unanimous** in order **to render a guilty verdict.** It takes only a single juror to block a conviction. The evidence can be overwhelming, and eleven of the jurors can believe fervently that a particular case is the most compelling prosecution ever brought. But **a single juror, accountable to no one, can put the kibosh on the case** based on his own vision of justice that may have no connection to anyone else’s. We don’t normally think of placing all the power in one unelected person who answers to no one as a democratically accountable approach.

B. is the competition – 1. The counterplan is consistent with the NC, whereas the AC isn’t so the counterplan alone is superior to the perm since the CP is good under both frameworks whereas the aff is at best good under their framework only.

2. Turns and disadvantages to the aff prove that the counterplan alone is better than the perm.

3. Political necessity – it’s unrealistic to consider the permutation since if the CP solves why we need the AC, i.e., to prevent unjust application of the law, the perm wouldn’t actually be considered and is thus unpredictable and not relevant to real world decision making.

4. Mutually exclusive – there’s effectively a zero-sum tradeoff between prosecutorial power and jury power, so perms are impossible, **Reynolds:**

# Glenn Harlan Reynolds “Nullifying juries more interested in justice than some prosecutors” 8/6/15 http://www.usatoday.com/story/opinion/2015/08/06/jury-nullification-prosecutorial-discretion-column/31124011/

And UCLA law professor Eugene Volokh [wrote:](http://volokh.com/2011/02/25/suppression-of-jury-nullification-advocates-speech-outside-courthouse/) “It seems to me that such speech is constitutionally [protected](http://www.usatoday.com/story/opinion/2015/08/06/jury-nullification-prosecutorial-discretion-column/31124011/#57611420), and that the indictment therefore violates the First Amendment. One can debate whether jury nullification is good or bad for the legal system, but it’s clear that it’s not a crime for jurors to refuse to convict even when the jury instructions seem to call for a guilty verdict. So Heicklen is encouraging a jury to engage in legal — even if, in the view of some, harmful — conduct.” It’s legal, but **prosecutors don’t want jurors to know about [nullification]** it because if jurors knew they were free to acquit in the interest of justice, **it would weaken prosecutors.** (Prosecutors don’t even like [billboards](http://www.washingtonpost.com/local/crime/metro-billboard-advocating-jury-nullification-concerns-local-prosecutors/2013/10/29/fe53edbc-3da9-11e3-a94f-b58017bfee6c_story.html) aimed at educating jurors.)

C. is solvency and net benefits – the CP allows us to curb unjust application of laws, one step before juries in the first place, which means I access all your impacts. *[if necessary, explain specifics of why the CP solves the aff]*. Multiple solvency deficits avoided by the CP alone – we don’t even have to go through expensive, time-consuming court procedures in the first place, so we can more efficiently determine whether cases are necessary or not. And the aff allows unqualified, uninformed juries to nullify laws, which is a disadvantage that I solve, **Kerr 2:**

I’m not persuaded. As I see it, there at least two big problems with jury nullification that make jury discretion much more problematic than prosecutorial discretion. First, prosecutors know the facts needed to make decisions in the name of justice while juries generally don’t. **Prosecutors** are supposed to make a decision to prosecute after **learn**ing **things like the suspect’s** criminal **record, the full scope of** his **conduct** (including the inadmissible parts), **how much a prosecution might deter future crimes, and what the punishment might be** if the suspect is convicted. Prosecutors can get the facts and make a call. We might disagree with a prosecutor’s decision, of course. But the prosecutor at least has access to the information needed to make the decision. **Jurors usually don’t have that information.** Jurors are not told what they would need to know to decide what is just. We keep such information away from jurors to help ensure a fair trial and preserve other values in the criminal justice system. The jurors [normally don’t know about the defendant’s criminal record and past bad acts](https://www.law.cornell.edu/rules/fre/rule_404), as we don’t want the jury to just assume that someone who has done bad things before is probably guilty this time, too. Jurors [aren’t told of the inadmissible evidence](https://supreme.justia.com/cases/federal/us/367/643/), such as evidence excluded under the Fourth, Fifth, and Sixth Amendment, to encourage compliance with those provisions of the Constitution. And we don’t explain to jurors why a particular prosecution is thought to further the purposes of punishment because, among other reasons, doing so would take a lot of time and distract jurors from the question of guilt or innocence. In that system, encouraging **jury nullification is a recipe for arbitrariness instead of informed judgment.**