

**Handout 20D**  
*Prep for judges*

Name: \_\_\_\_\_

**How to Play ‘Devil’s Advocate’**

(Adapted from Jonathan Dorn, "For Argument's Sake: Playing 'Devil's Advocate' with Nonfiction Texts," [http://www.readwritethink.org/files/resources/lesson-docs/HowtoPlay\\_Devils\\_Advocate.pdf](http://www.readwritethink.org/files/resources/lesson-docs/HowtoPlay_Devils_Advocate.pdf) )

Playing ‘devil’s advocate’ is taking an opposing viewpoint or raising an objection to a claim merely for the sake of argument. You do not actually have to believe what you are saying when you raise these questions or objections; you are simply arguing in order to clarify issues and generate debate. This is a skill that requires considerable practice but when executed well, offers new insights, challenges stagnant thinking, and increases the rigor of debate and level of understanding.

In 2015, the Supreme Court held that the right to marry is a fundamental right, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, couples of the same sex may not be deprived of that right. Therefore, States must allow same-sex marriage and must also recognize lawful same-sex marriages performed in other States. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

The examples below will provide strategies to help you become an astute yet insightful devil’s advocate. The “speaker” in these examples wants the Supreme Court to change its mind and stop requiring States to recognize same-sex marriages. Meanwhile, the “devil’s advocate” wants to uphold the Supreme Court’s decision.

<p><b>1. Ask incisive questions.</b></p> <p><u>Speaker</u>: “The Supreme Court should reverse its decision that required states to recognize same-sex marriages.”</p> <p><u>Devil’s Advocate</u>: Who does this disadvantage? Are there any exceptions to this proposal? Should the Court overturn the entire decision, or just parts of it?</p>	<p><u>Plaintiff</u>: The school should repeal the rule against political buttons, patches, and T-shirts.</p> <p><u>Judge</u>:</p>
<p><b>2. Consider proposals from other people’s perspectives.</b></p> <p><u>Speaker</u>: “States should no longer have to recognize same-sex marriages.”</p> <p><u>Devil’s Advocate</u>: What about the couples who are already married? What about the children who live with married same-sex couples? Should their opinions be given any weight?</p>	<p><u>Defendant</u>: Kenji's speech was disruptive to the school.</p> <p><u>Judge</u>:</p>
<p><b>3. Think of comparable scenarios that refute the original claim.</b></p>	<p><u>Defendant</u>: Kenji's speech was considered to be school-sponsored speech.</p>

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<p><u>Speaker</u>: "Marriage is meant to provide a stable and safe relationship in which couples can procreate. Since same-sex couples cannot procreate, they have no need for marriage."</p> <p><u>Devil's Advocate</u>: Many straight couples are infertile, are too elderly to have children, or simply do not want children. Does that mean they too have no need for marriage?</p>	<p><u>Judge</u>:</p>
<p><b>4. Pose hypothetical situations to clarify issues.</b></p> <p><u>Speaker</u>: "States should be allowed to recognize same-sex marriages if they want to, but they shouldn't be forced to."</p> <p><u>Devil's Advocate</u>: Suppose a same-sex couple gets married in one state and lives there for several years. Then they have a career change or a family emergency which requires them to move to another state, which does not recognize same-sex marriage. What happens to the couple?</p>	<p><u>Plaintiff</u>: Kenji's speech was not lewd or vulgar.</p> <p><u>Judge</u>:</p>
<p><b>5. Pose alternative explanations or solutions to problems.</b></p> <p><u>Speaker</u>: "Judges, clerks, and magistrates are unfairly forced to violate their religious convictions by being required to marry same-sex couples."</p> <p><u>Devil's Advocate</u>: But as government workers, they are supposed to uphold the laws of the United States. If their job requirements would violate their religious convictions, wouldn't it make more sense for them to pursue a different job?</p>	<p><u>Plaintiff</u>: The school should allow students to express their political opinions during mandatory school assemblies that feature political speakers.</p> <p><u>Judge</u>:</p>
<p><b>6. Use <i>reductio ad absurdum</i></b> – the technique of reducing an argument or hypothesis to absurdity, by pushing the argument's premises or conclusions to their logical limits and showing how ridiculous the consequences would be, thus disproving or discrediting the argument.</p> <p><u>Speaker</u>: "The United States is a Christian nation, and should base its laws in the Bible."</p> <p><u>Devil's Advocate</u>: But the Bible has a lot of rules that we don't follow today. Are you really saying we should follow all of them? What about...?</p>	<p><u>Defendant</u>: The school must be allowed to censor what is on a student's T-shirt.</p> <p><u>Judge</u>:</p>

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<p><b>7. Expose an exception to the proposal.</b></p> <p><u>Speaker</u>: "Marriage is a traditionally religious institution and should remain such."</p> <p><u>Devil's Advocate</u>: What about civil marriages that take place in courthouses or other non-religious environments?</p>	<p><u>Plaintiff</u>: A message on a student's T-shirt or clothing can never be considered school-sponsored speech.</p> <p><u>Judge</u>:</p>
<p><b>8. Identify hidden assumptions</b></p> <p><u>Speaker</u>: "Homosexuality is wrong because it is unnatural."</p> <p><u>Devil's Advocate</u>: You are assuming that if something is unnatural, it is wrong. Man-made medications are also unnatural. Does that mean medications are wrong too?</p>	<p><u>Defendant</u>: The students were acting rowdy during the assembly because of the lewdness of Kenji's message.</p> <p><u>Judge</u>:</p>
<p><b>9. Provide evidence that is ignored but contradicts the proposal</b></p> <p><u>Speaker</u>: "Studies show that children benefit from having both a mother and a father in the household."</p> <p><u>Devil's Advocate</u>: While that is true, studies also show that children raised by two same-sex parents do not show any developmental disadvantages compared to children raised by two opposite-sex parents.</p>	<p><u>Plaintiff</u>: Kenji's speech was not disruptive in any way.</p> <p><u>Judge</u>:</p>
<p><b>10. Show the downside of the proposal</b></p> <p><u>Speaker</u>: "No one is stopping same-sex couples from living together and loving each other; it's just that state should not have to recognize their relationships as a marriage."</p> <p><u>Devil's Advocate</u>: The problem with that idea is that the couples would lose out on all of the legal benefits associated with marriage.</p>	<p><u>Plaintiff</u>: "The NSA sucks" should be considered political speech.</p> <p><u>Judge</u>:</p>