

# **A Coach's Notes<sup>1</sup>**

Everett Rutan  
Xavier High School  
[ejrutan3@ctdebate.org](mailto:ejrutan3@ctdebate.org)

**Connecticut Debate Association  
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**Resolved: Businesses should have the right to freely exercise their religious beliefs.**

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## **Preface**

This is the State Finals edition of the 2014-15 CDA season. Previous year's editions can be found through the [Training Materials](#) page on the [CDA web site](#). Accompanying this document are my notes from the final round at Wilton High School presented in two formats, transcript and flow chart.

These Notes are intended for your benefit in coaching your teams and for the students to use directly. I hope that you will find them useful teaching tools. Please feel free to make copies and distribute them to your debaters.

I appreciate any feedback you have, good and bad. The best comments and suggestions will find their way into subsequent issues. I would also consider publishing signed, reasoned comments or replies from coaches or students in subsequent issues. So if you would like to reply to my comments or sound off on some aspect of the debate topic or the CDA, I look forward to your email.

## **A Lopsided Result**

For the first time to my knowledge we had a very lopsided result at a CDA tournament. Aff won only about 1/3 of the rounds. Usually the number is around 50%, give or take

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10%. Sometimes we've had single rounds where the ratio was way off, but that usually corrected itself by the end of the tournament.

We care about the balance because the further it is from 50-50 the more it suggests the terms of the debate were unfair in some way: the resolution may be badly worded; the packet may not include enough support for one side; the subject may be too difficult; the participants weren't able to put aside strong beliefs. We aim for balance: this time we were off.

No one sees more than a few debates, so it's impossible to figure out what happened in each round. I have looked through the ballot, and they don't seem much different from most tournaments (other than many fewer Aff wins). I did not see any comments to suggest extraordinary bias on the part of the debaters or the judges.

I've had discussions with some coaches and judges as to what they think happened. We all (or almost all) saw the final round. So based on those discussion, the ballots and the final round, here is my theory.

To win on this resolution, the Affirmative had to argue in favor of one form of discrimination versus another, and that made many uncomfortable. Many Affirmatives tried to define the resolution in a way that avoids discrimination, severely weakening their case. (This clearly occurred in the Final Round, even though Aff won.) This is probably enough to shift the Aff win percentage down to 1/3 from 1/2—remember Aff didn't lose every round, just more than usual.

In support of this theory I'd like to do four things. First I will explain why it is important for the Affirmative to embrace the resolution, warts and all, with a clear example. Then I will review the Final Round and show why the Aff won even though they did not completely do this. Third I will outline an Aff case that avoids this error and is defensible, even in polite company. I will finish with some thoughts on arguing difficult topics and a postscript on how events overtook us.

## **Embrace the Resolution**

Let's start with an example from a debate I saw seven or eight years ago. This was at the Yale Osterweis tournament. The motion was *This House would deny organ transplants to people who lived unhealthy lifestyles*. A team I coached argued for the Government.

The Prime Minister began the round with their interpretation of the motion: they would deny organ transplants to individuals needed as a result of poor lifestyle choices—persistent smoking, excessive drinking, overweight—after those individuals were provided with education and help reforming. The only exceptions would be medical—for example, someone with a genetic predisposition to obesity—or for those near death.

See the problem? I did. Immediately. And I assumed my team was doomed as soon as Opp raised the first POI.

If you don't see the problem, then like the Opposition team in this round you probably would have lost debate. My team escaped their fate—though not my critique—because Opp accepted their terms.

The problem is that no one gets an organ transplant unless they are near death. The last exception in the Gov interpretation means Gov is not advocating for anything. If the motion is rejected, the severely ill will get organ transplants. If the motion is accepted, the severely ill will still get organ transplants—maybe they will have to be just a bit sicker—unhealthy lifestyle or no. *You cannot support this motion, unless you argue in favor of letting people die!* You have to balance that against the incentive it provides people to live healthier lives, resulting in both longer and better quality lives.

You should also see the parallel to the resolution at State Finals: *you cannot argue for the Affirmative without arguing in favor of some discrimination!* This must be balanced against the alternative which is denying religious freedom.

Avoiding an unpleasant choice is a common Aff error. For a resolution to be debatable, there must be arguments for and against both sides. The Affirmative duty is to show that on balance the benefits outweigh the disadvantages. Too many Affirmatives try to find an interpretation of the resolution that causes no harm. This almost always means their interpretation, if implemented, will also do no good. This is a failure to embrace the resolution, and it is one of the more common error that I see Affirmative teams make.

Negative teams often fail to notice when Aff does this (and I'm not sure Aff always realizes what they are doing). The first thing the Neg should do when they hear the Aff define or interpret the resolution is ask themselves two questions: Is the interpretation reasonable with respect to the language? Is the interpretation fair with respect to the burden placed on each side? If the answer to either of those questions is “no” then the First Negative should begin the 1NC with that issue.

The first question is clearly definitional. The Aff has the right to set the terms of the debate. I prefer debaters not quibble over the words and get to the issues, unless the Aff is clearly off topic.

But the second question goes to fairness. The Aff has no right to read the resolution in a way that excludes obvious objections to its adoption. In the organ transplant example the Aff interpretation was reasonable with respect to language. But Aff has no right to define the Neg out of the debate. The “near death” exclusion meant the Negative could never show adopting the motion would cause harm!

But it also means that adopting the motion would do no good. Anyone who needs an organ transplant still gets one. The policy has no impact on behavior. And for that reason, the Neg need not present their argument as quibbling over definitions:

*“Mr. Speaker, the Government interpretation means no one will ever be denied an organ transplant for their lifestyle choices. This means that there will be no incentive provided to protect one’s health. No one is harmed; no one is helped. The Government has no case!”*

## **The Final Round at State Finals**

At State Finals, the Affirmative in the Final Round never directly confronted the key issue in the debate in the 1AC! They simply argue religious freedom is good without ever showing it is currently being denied in any way or that adopting the resolution is needed to protect it.

According to my flow, they defined “business” as including for profit and non-profit. They said the standard they would use for “free exercise” was the same as in the Religious Freedom Restoration Act (RFRA). They then present contentions that argue there is a legal precedent for corporations to have rights, that religious freedom is an important right, and that the RFRA provides that “compelling interest” must be balanced against alternative means of achieving that interest. The only example they mention is religious use of peyote, settled twenty some years ago, which was personal not business behavior. In other words they show no compelling problem that needs to be fixed, no evidence that the religious freedom of business is being challenged, no reason to adopt.

The Negative doesn’t notice this until the 2NC, when they raise it in part as a definitional argument and in part as a violation of a “rule” that the Aff must support a change to the status quo.<sup>2</sup>

Who should win at this point is largely a matter of the judge’s preference. If you believe the Neg must raise these issues early in the round, then the objection in the 2NC is too late. The First Negative accepted the Affirmative terms, and both Affirmative constructive speeches have passed, so Aff has no opportunity to answer the argument or expand its case. If it had been raised in the 1NC, the Second Affirmative might have presented an effective response by showing a harm and a solution through the resolution.

That was my position: I believe the Negative should have raised the definitional issue at the beginning of the 1NC. Other than this one argument, the Aff responds effectively to all of the Negative contentions:

- The Neg argues the resolution will infringe on individual rights to privacy, equality and safety; Aff notes privacy isn’t explicitly protected as religion is, that equality can be balanced against religion, and that the Hobby Lobby case shows health concerns can be met in other ways.
- Neg argues the resolution will cause unjust discrimination; Aff notes the compelling interest/alternative means tests in Hobby Lobby can balance the clash fairly.

I don’t buy the Aff argument that religious freedom is paramount to all other rights, but Neg never really shows me how privacy, equality, health or safety will be abused. If you accepted the Aff terms, then I think Aff wins.

When Neg fails force Aff to prove a case, they essentially take the burden on themselves. We all know the phrase, “Show me the money!” The Neg should always insist, “Show me the harm! Show me the remedy!” And they should do so early in the round.

But debaters should be aware that opinions differ! The decision at State Finals was 3-2. I spoke to one of the judges who voted Negative. That Judge felt the Aff never proved their case and Neg won the round by making that point in the 2NC. This is a perfectly reasonable basis for a decision. This judge and I agree that it was the critical issue in the round. We also agree that it is the responsibility of the Neg to bring up the issue—if Neg had never mentioned it then it would not have counted. We simply disagree as to when the argument had to be presented to be effective. I would have accepted the argument

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<sup>2</sup> Sometimes it is hard to know what the status quo is. The Hobby Lobby case and the Religious Freedom Restoration Act say one thing. The situations described in the packed suggest another.

and voted Neg if it had been made earlier. I believe that the Judge I spoke to would have voted Aff if the Neg had not raised the point.

## An Affirmative Case

Can the Affirmative embrace this resolution and still win the round? In light of the results and my comments so far, I think it is only fair to present a workable Affirmative case for your consideration.

- **Definition:** *we interpret the resolution to mean that closely held or religiously chartered business, for- or non-profit, that are consistently run in accordance with religious requirements, should not be compelled to perform acts that violate those religious requirements.*
- **First Contention:** *we state that religious freedom has always been highly valued in the United States. We feel this is obvious, but if the Negative contends it, we are prepared to provide a detailed argument.<sup>3</sup>*
- **Second Contention:** *The religious freedom of business is currently under attack in the US. We give three examples:*
  - *Small businesses, such as bakers, photographers and florists, are being compelled to participate in non-traditional weddings that conflict with their beliefs.*
  - *Larger corporations are being required to pay for contraception under Obama care. While Hobby Lobby has been decided favorably, the issue is still being disputed in other details and at the state level.*
  - *In particular, hospitals sponsored by religious organizations are being pressured to provide reproductive services contrary to their principles or lose government funding.*
- **Third Contention:** *the principles cited in the Hobby Lobby case can be used to successfully manage the conflict between religion and other rights. These require that the government have a compelling interest and a lack of reasonable alternative before acting against a business. We apply these to the three cases mentioned:*
  - *The government has no compelling interest in the case of small businesses. By definition there are many of them and so alternatives are readily available. There are already anti-trust laws in place to deal with monopolies if a business grows to dominate a product or service.*
  - *With respect to medical care, as the largest buyer of medical services, the government clearly has the funds to build and pay for alternative service providers where those do not already exist, whether insurance coverage or actual hospitals or health clinics.*

I would fill this out with specific references and quotes from the packet to support each item in order to use the full time for the 1AC.

This case has a number of points in its favor.

- First, the case is a very straightforward reading of the material in the packet. There is nothing clever or fancy here. I have always preferred an Affirmative case that embraces the obvious issues and doesn't try to avoid them. Spend your time building strong arguments, not clever ones—you aren't that clever.
- Second, it doesn't try to preempt any Negative arguments. The 1AC is the only speech that doesn't need to deal with the opposition. If you discuss possible arguments against your case, you have to explain those arguments and so plant a basis for them in the mind of the Judge. Leave that for the Negative. Spend your time on the positive aspects of your case.

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<sup>3</sup> This contention illustrates a fine point Aff and Neg should note. Some arguments are generally accepted by everyone, as I believe this one is. There is no point wasting time proving what everyone believes. But you may still need it as a formal part of your argument. So, present it as a contention, note that it is obvious, and save your support for if and when the other team chooses to challenge it.

- Third, the case does not to use the word “discrimination.” This is the most obvious Negative argument, so the previous reason applies. But it doesn’t use the term “religious discrimination” either. “Religious freedom” has positive connotations; “religious discrimination” doesn’t. Think about your word choices.

How would I deal with the discrimination argument? That depends on how the Negative makes the argument. I purposely haven’t defined discrimination precisely because I want to make the Negative do it. If the Negative doesn’t define it and simply says the resolution discriminates against gays and women, as if it is obvious, I will make that part of my attack:

*The Negative tells you the resolution discriminates but they don’t define it or describe any harm. The Aff has shown you how without the resolution individuals, through their businesses, are forced to act against their conscience, a direct violation of their religious freedom. We have also shown you how alternatives provide service to all.*

If the Negative says the resolution will permit widespread denial of services and products to gays and women, I will argue this isn’t true.

*The Negative has not been able to show widespread attempted denial of service to date. We believe the Hobby Lobby decision outlines why there won’t be under the resolution. First, the number of businesses that qualify as closely held and religiously operated are relatively few in number, as Justice Alito notes. Second, as we have argued in our case, there are alternative ways to see everyone is served, and laws to break up monopolies where they exist. Finally, the alternative is to force those with strong religious beliefs to violate their consciences, and the Negative has shown no compelling state interest to do so.*

I want to throw “discrimination” back at the Negative at the very end, and turn it against them.

Are there problems with this case? Of course there are. The civil rights movement is full of precedents as to why sending someone to another store is still harmful. What rules will Aff establish and how will it enforce them to prevent abuse? These businesses benefit from civil society, they should participate. One-sixth of hospitals are religiously sponsored and will not easily be replaced. If individual doctors, pharmacists and others can decide who to serve and who not to, there will be chaos. Neg has a lot of options as to its attack, and Aff will have to find a way to reply. I leave that to you.

But I think this case is defensible, and would result in a very good debate on the key issue: people feel very strongly about religious rights and about equal rights, and those rights are in conflict!

## Some Final Thoughts

There three debate lessons I want to emphasize.

**On Affirmative:** A direct reading of the resolution is often the simplest and strongest case for the Affirmative—and for the Negative for that matter. Stop wasting time trying to avoid the unpleasant aspects of your assigned side of the issue. Make the most of your strengths, protect your weaknesses, and be prepared to show how the former outweigh the latter.

**On Negative:** Don’t let the Aff slip off the point of the resolution—pin them down. Has the Aff made clear what the debate is about? Did they show a harm? Did they solve it?

Above all, does the Aff case embrace the resolution, the good and the bad? If not, make those points at the start of the INC. Don't wait!

**For Both Sides:** Debate often requires you to argue positions you don't agree with, and may in fact loathe. That is a valuable skill, one you will find you need, and one that is required of lawyers and those who advocate on behalf of others. And even if you never have to speak against your personal preferences, having learned to do so will enable you to better develop insight into your opponents' position and make your arguments that much more effective.

Learn to look past your first impressions when you try to make sense of an issue. With charged words like "discrimination" we often replace logic with emotion and fail to see there might be another side.

Go back and read the packet carefully. Did you realize that the bakers, the florists and the photographers didn't refuse to serve gays, only to provide their services to gay weddings? Many religions accept gays in their congregations, but refuse to sanction gay weddings. Are these cases different? Why or why not?

The world is a complicated place where one example shades into another and there are strong opinions on both sides.

## Postscript

I track potential debate topics both before and after we use them. Rarely has the news peaked so sharply around a tournament. The week before the tournament (too late to make the packet) Indiana passed a law similar to the Religious Freedom Restoration Act that raised a firestorm of opposition. Governor Malloy temporarily banned travel to that state by Connecticut state employees! And the week after State Finals, Arkansas considered and passed a similar law.

In my reading, I learned 20 states (including Connecticut!) already have these laws, worded almost identically to the RFRA.

This New York Times article <http://www.nytimes.com/2015/04/01/us/religious-freedom-restoration-act-arkansas-indiana.html> provides a national view and a map.

You can read the Connecticut statute here:

<http://www.churchstatelaw.com/statestatutes/CT.asp> )

And this is a local article on the issue: <http://wtnh.com/2015/04/01/connecticut-has-its-own-religious-freedom-restoration-act-several-differences-from-indianas/> .

Interesting!