

# The Final Round<sup>1</sup>

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State Finals, Wilton High School  
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**Resolved: Businesses should have the right to freely exercise their religious beliefs.**

## A Note about the Notes

I've reproduced my flow chart for the Final Round from State Finals at Wilton High School augmented by what I remember from the debate. The notes are limited by how quickly I could write and how well I heard what was said. I'm sure the debaters will read them and exclaim, "That's not what I said!" I apologize for any errors, but I hope debaters will appreciate this insight: what a judge hears may not be what they said or wish they had said.

There are two versions of the notes. The one below is chronological, reproducing each speech in the order in which the arguments were made. It shows how the debate was actually presented. The second is formatted to look more like my written flow chart, with each contention running across the page as the teams argued back and forth. It's close to the way I actually take notes during the debate.

## The Final Round

The Final Round was between the New Canaan team of Steven Singer and Casey Manzella on the Affirmative and the Stamford/Greenwich team of Sam Aldershof and Olivia Scharfman on the Negative. The debate was won by the Affirmative.

### 1) First Affirmative Constructive

- a) Introduction
- b) Statement of the Resolution
- c) Definitions
  - i) "businesses" include both for profit and non-profit firms
  - ii) "freely exercise" means act according to the Religious Freedom Restoration Act ("RFRA"), the state must have a compelling reason and limit in the least restrictive way.
- d) A1<sup>2</sup>: There is a legal precedent to treat corporations as people
  - i) Citizens United case upheld corporate right to free speech
  - ii) Hobby Lobby case upheld corporate right to exercise religious rights
  - iii) Justice Alito notes corporations are organizations of individuals

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<sup>2</sup> "A1" indicates the Affirmative first contention, "N2" the Negative second contention and so forth.

- e) A2: Religious freedom is paramount in our hierarchy of rights
    - i) Many came to the US specifically for freedom of religion
    - ii) The right is not unlimited, but it is unique to the US
  - f) A3: RFRA requires a compelling interest to interfere
    - i) The RFRA was passed in 1994 in response to Oregon v Smith which weakened the compelling interest test
    - ii) Justice Alito’s opinion notes that even with a compelling interest, the government may still have other ways to achieve its goals
- 2) Cross-Ex of First Affirmative**
- a) Is it illegal to yell “Fire!” in a crowded theater? Yes
  - b) Because it presents a clear and present danger? Yes
  - c) What about health care? That’s a delicate issue.
  - d) Doesn’t denying care cause a clear and present danger? Depends on the case.
  - e) Are corporations people? Yes, under the law.
  - f) Just because it’s legal does that make it good? It’s been upheld by the courts multiple times
  - g) The resolutions says “should”? There should be a consistent standard.
  - h) Is there a right to equality? Privacy? Yes
  - i) Doesn’t the resolution oppose these? Not significantly
  - j) Do rights tradeoffs occur? Yes
  - k) With respect to individual rights? Yes
  - l) With respect to multiple right? Yes
  - m) What about contraception? Justice Alito pointed to that as an example of how rights can be served by other means.
- 3) First Negative Constructive**
- a) Intro
  - b) N1: Free exercise of religion by businesses infringes on individual rights
    - i) This debate is about a clash of rights, and we must choose.
    - ii) Aff violates individual equality
      - (1) These laws have been passed democratically
      - (2) Religion is no reason for an exemption
    - iii) Aff will violate privacy
      - (1) Businesses can’t discriminate without information
    - iv) Public safety is at risk
      - (1) Hobby Lobby won’t provide contraception
      - (2) Lack of condoms can spread HIV
    - v) Non-profits include hospitals
      - (1) Many will refuse abortions, C-sections
  - c) N2: The resolution will cause unjust discrimination
    - i) Sexual orientation is not a choice
    - ii) Precedent—religion was used as an excuse to discriminate against African-Americans
    - iii) Resolution will result in similar discrimination based on sexual orientation
  - d) A1: Since the resolution reads “should”, Supreme Court precedent doesn’t count
  - e) A2: Aff is offering a bad tradeoff
    - i) You can’t value religion above rights to privacy, equality

- f) A3: this contention is just legal minutia
  - i) If there are “other ways,” Aff should tell us
- 4) Cross-Ex of First Negative**
  - a) Should we obey Congress or the Supreme Court? Who reviews the laws? The Supreme Court
  - b) Why disobey the Supreme Court in this? Because we don’t agree with the decision. The status quo is also unclear in other cases.
  - c) Is denying service illegal? Depends on the service.
  - d) What about the fines applied in NY and Oregon? They are okay.
  - e) Do boycotts harm businesses? They have been used to promote civil rights and end discrimination
- 5) Second Affirmative Constructive**
  - a) Intro
  - b) We have defined “free exercise” as the RFRA standard.
    - i) This is not absolute freedom
    - ii) In case of conflict, business can’t discriminate
  - c) N1: Privacy and equality will not be violated
    - i) Privacy is not an explicit or implied right
      - (1) It has never been the sole basis for a Supreme Court decision
      - (2) Not likely to be violated—Supreme Court did not give businesses any “right to know” regarding employees
    - ii) Equality will not be violated
      - (1) Exemptions exist to religious freedom
      - (2) Neg essentially advocates violating existing law
    - iii) Hobby Lobby case only limited paying for contraception
      - (1) Not a public safety issue
      - (2) Court noted other ways to provide these services
  - d) N2: Discrimination is illegal
    - i) Religious free exercise is limited to non-discrimination
  - e) A1: Religious freedom has been upheld in multiple cases with different circumstances
    - i) It clearly has public and legal support
  - f) A2: Religion is explicitly mention in the First Amendment
    - i) Alito noted other options for providing birth control
  - g) Summary
    - i) Corporations have the same rights as people, especially civil liberties
    - ii) Religious freedom is recognized as a paramount right in the US
- 6) Cross-Ex of Second Affirmative**
  - a) Is sexual orientation a choice? No
  - b) Is health care a fundamental right? No, but we aren’t preventing anyone from receiving health care.
  - c) Are hospitals businesses? Yes
  - d) You are for free exercise of religion but not if it harms others? Yes
  - e) So there is a balance, some restrictions? Yes. To privacy? Yes.
  - f) Are you familiar with the Griswold decision? Yes.

- g) Are rights determined by the government or because we are human beings? They are given.
- h) Aren't these all globally acknowledged human rights? The issue is whether we should have certain rights.
- i) What about the Supreme Court? The Supreme Court recognizes these are inherent rights.
- j) Aren't you engaged in an "is/ought" fallacy? Not

**7) Second Negative Constructive**

- a) Intro
- b) Resolution
- c) Definitions: Aff is not arguing against the status quo. Under the rules of debate this means these definitions are too narrow.
- d) A1: Resolution reads "should" so Supreme Court precedent is not applicable
- e) A2: Aff elevates religion above public health
  - i) E.g., hospital refused to treat an ectopic pregnancy because woman conceived out of wedlock
  - ii) Aff conceded that all rights have restrictions, e.g. shouting "Fire!"
    - (1) We must restrict religion when it compromises health care
- f) A3: "Compelling interest" standard gives government the right to define rights
- g) N1: Free exercise of religion infringes on right to life, to sexual orientation, race
  - i) These things are not voluntary, so no right to discriminate
- h) N2: Religious freedom has always been an excuse for discrimination
- i) You should vote against this resolution!

**8) Cross-Ex of Second Negative**

- a) How does free exercise of religion violate the right to life? Doctors refuse to treat certain patients and conditions.
- b) Didn't the Supreme Court rule on abortion in Planned Parenthood v Casey? The country is still divided
- c) Resolution says "should"? You've misconstrued that word.
- d) Doesn't the law solve these issues? It doesn't work
- e) Can't we just enforce the law? Not a solution
- f) Why isn't enforcement a solution? Fines are not enough
- g) Doesn't the Heart of Atlanta Hotel case require civil rights laws be enforced? I'm not familiar with that case
- h) What was the result? I don't know, it was my partner's example.
- i) Are corporations people? It depends on the context
- j) Under the First Amendment? They have the right to free speech
- k) Why only free speech? Based on Supreme Court cases.
- l) Didn't the Supreme Court decide in favor of Hobby Lobby? They could have been wrong.

**9) First Negative Rebuttal**

- a) What does the resolution ask?
  - i) Corporations can have religious belief
  - ii) Reflex is to grab a law
  - iii) "should" is what happens in a perfect world
  - iv) Therefore Supreme Court cases don't matter

- b) Definitions: Aff permits free exercise except to the detriment of other rights
  - i) Resolution states religious freedom is good
  - ii) Real world necessitates a rights tradeoff
- c) Does the resolution harm rights in an unacceptable manner?
  - i) Justice—resolution permits discrimination based on religion
  - ii) Safety—can limit contraception, which employers should provide
- d) Aff provides no reason why religious freedom is more important than other rights

#### **10) First Affirmative Rebuttal**

- a) Intro
- b) Definitions—there was no challenge in the 1NC!
  - i) Even admitting their challenge, we are still extending a particular right to corporations
- c) N2: We have been successful limiting discrimination
  - i) Atlanta in 1963/64 Supreme Court struck down discrimination by corporations
    - (1) Before that companies lost business due to boycotts
    - (2) They complied with the decision to protect themselves
  - ii) Contraception—no reason to force businesses to provide
    - (1) Alternatives exist, perhaps a bit more difficult, but were cited by the Supreme Court
- d) Note—Neg quotes the Supreme Court when it benefits them. They can't nitpick.

#### **11) Second Negative Rebuttal**

- a) Intro
- b) Resolution
- c) Supreme Court cases provide support to both sides
  - i) Aff is required to change the status quo
- d) Nothing prevents religious freedom that doesn't infringe other rights
  - i) Corporate exercise of religious rights clearly does
  - ii) A1/A3 are both based on current law.
- e) There is a hierarchy of rights
  - i) Declaration of Independence says "life, liberty and the pursuit of happiness"
  - ii) We have shown the resolution infringes on these
  - iii) There is no right to discriminate
  - iv) We can infringe on freedom of religion due to the importance of these rights

#### **12) Second Affirmative Rebuttal**

- a) Definitions—"freely" still implies there will be some limits
- b) A1: "should" doesn't mean we have to ignore precedent
  - i) Neg relies on legal precedent when it suits them
- c) A2: Religious freedom is why many came to the US
  - i) Privacy is not an enumerated right
  - ii) Life—alternatives exist to see this is not compromised
- d) A3: The compelling interest standard is why the RFRA was put in place
- e) N1: vs A2
  - i) We've noted privacy is not clearly a right
  - ii) Life is not threatened as alternatives exist
- f) N2: Discrimination is not an issue

- i) Religious beliefs do not inherently discriminate
- ii) Neg would put privacy above a clearly protected right and discriminate against these businesses.