

Oral Argument Held in Philadelphia Religious Liberties Case

The U.S. Supreme Court will hear oral argument Nov. 4 in *Fulton v. City of Philadelphia* regarding a Catholic foster care agency that refuses to compromise its religious beliefs by placing children with same-sex couples.

However, the high court's decision could have a significant impact on religious freedom and overturn a decision from 1990 if the justices decide to consider the broader issues presented by the case.

In *Fulton v. City of Philadelphia*, Catholic Social Services and two foster parents will ask the Supreme Court to revisit *Employment Division v. Smith*, probably the worst First Amendment free exercise decision from the high court. The *Smith* decision weakened the free exercise Clause. As a result of *Smith*, Congress passed the Religious Freedom Restoration Act (RFRA), which restored the free exercise protections as they were prior to 1990. However, the federal RFRA only applies to federal laws and does not protect violations of free exercise of religion by the states. Congress later passed Religious Land Use and Institutionalized Persons Act that applies to state and local zoning laws. After *Smith*, several states passed similar Religious Freedom Restoration Acts patterned for the most part after the federal RFRA. The free exercise clause should have never been weakened as it was in 1990 by the court. The *Smith* decision has also done considerable damage to the First Amendment. Many Supreme Court justices have criticized *Smith* and called for it to be overturned.

This issue before the court tomorrow and the impact of this

decision will reverberate in every area of the free exercise of religion.

In March 2018, the city canceled its contracts with Catholic Social Services due to its religious beliefs about marriage. This happened not long after the city issued an urgent call for 300 families to provide foster care to help care for the flood of children coming into the system due to the opioid crisis. The city then prohibited Catholic Social Services from placing any more children with the families it had already certified, in order to investigate whether the agency had violated the city's Fair Practices Ordinance, a policy that prohibits "discrimination" on the basis of "sexual orientation" or "gender identity."

Foster parents licensed through Catholic Social Services sought an order to require the city to renew its contract, arguing the city's decision violated its religious freedom under the Constitution. The Third Circuit Court of Appeals previously denied Catholic Social Services' request for a preliminary injunction in its lawsuit against the city of Philadelphia.

In June, the U.S. Department of Justice filed an amicus brief to the U.S. Supreme Court in support of Catholic Social Services. The DOJ quoted the 2018 Supreme Court decision in *Masterpiece Cake Shop v. Colorado Civil Rights Commission* in its brief. "The context of the city's actions reveals impermissible hostility toward religion. The city's actions are also unconstitutional because the record shows the city failed to 'proceed in a manner neutral toward and tolerant of [Catholic Social Services'] religious beliefs,' as it was 'obliged [to do] under the Free Exercise Clause.' The evidence demonstrates the city's impermissible hostility in numerous ways, and so the decision resulting from that hostility—exclusion of Catholic Social Services from the foster-care program 'cannot stand.' Further, the city authorizes some exemptions to its policy it doesn't offer to

religious organizations,” the brief said.

“The city’s action,” the brief said, “burdened Catholic Social Services’ exercise of religion in a manner that the free exercise clause prohibits.”

There are currently 6,000 foster children in the city of Philadelphia and dozens of families licensed to foster through Catholic Social Services who are willing to take in children. However, as a result of the city’s actions, their beds have remained empty for two years.

The plaintiffs include the late Cecilia Paul, who fostered more than 100 children, and Sharonell Fulton, a single mother who has fostered more than 40 children in 26 years.

Liberty Counsel founder and Chairman Mat Staver said, “This case presents the opportunity to fully restore the First Amendment and undo the damage done to it in 1990. The confirmation of Justice Amy Coney Barrett could not be more timely. The existence of every faith-based adoption and foster care ministry depends on this case. These ministries only exist to help children.” {eo}

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