



The Case of the Faithful Foster Parents

The Facts of *Fulton v. City of Philadelphia*:

In early 2018, the [City of Philadelphia](#) did not renew [Catholic Social Services'](#) (CSS) contract to place children into foster care because it was CSS' policy to not consider married same-sex couples who were otherwise qualified to foster children. CSS sued Philadelphia, asking the court to force the city to return its contract because the city violated its [First Amendment](#) rights to free speech and the [free exercise of religion](#). CSS argued that its commitment to Catholic teachings were supported by these First Amendment protections which included the right to reject applications from same-sex couples.



The U.S. district court and the Third Circuit Court of Appeals ruled in favor of the City of Philadelphia. Both courts found no evidence that CSS' contract was not renewed because of its religious beliefs. Rather, it was CSS' policy declining same-sex couples as qualified foster parents that was in violation of the city's [non-discrimination policy](#), which the courts said was "a neutral, generally applicable law," and therefore could be applied to CSS for non-renewal of its foster care contract. Lawyers for Catholic Social Services appealed to the U.S. Supreme Court.

On February 24, 2020, the Supreme Court granted Catholic Social Services [certiorari](#), with the justices hearing [oral arguments](#) on November 4, 2020. The Court is being asked to address these three questions:



1. To succeed on their free exercise claim, must plaintiffs prove that the government would allow the same conduct by someone who held different religious views, or only provide sufficient evidence that a law is not neutral and generally applicable?
2. Should the Court revisit its decision in *Employment Division v. Smith*?
3. Does the government violate the First Amendment by conditioning a religious agency's ability to participate in the foster care system on taking actions and making statements that directly contradict the agency's religious beliefs?

Fulton v. City of Philadelphia. (n.d.). Oyez. Retrieved February 25, 2021, from <https://www.oyez.org/cases/2020/19-123>

Supreme Court Precedents Used In This Case:

- [Employment Division, Department of Human Resources of Oregon v. Smith](#) (1990): The Court ruled that unemployment benefits may be denied to a worker who was fired for using illegal drugs for religious purposes. (This case is at the heart of Question 2. It is important to note that in his opinion, Justice Scalia made it clear that religious beliefs do not excuse someone from complying with the law.)
- [Church of Lukmi Babalu Aye, Inc. v. City of Hialeah](#) (1993): The Court ruled a city ordinance specifically targeted the Church of Lukumi Babalu Aye's ritualistic practice of animal sacrifice and was therefore "neither neutral nor generally applicable," making it a violation of the Free Exercise Clause.
- [Burwell v. Hobby Lobby Stores](#) (2014): The Court ruled that under the Religious Freedom Restoration Act of 1993, private, for-profit companies may deny contraceptive health coverage to their employees based on the owner's religious objections.
- [Obergefell v. Hodges](#) (2015): The Court ruled same sex marriage is legal under the Fourteenth Amendment's [Due Process](#) and [Equal Protection](#) Clauses.
- [Trinity Lutheran Church of Columbia, Inc. v. Comer](#) (2017): The Court ruled the First Amendment's Free Exercise Clause protected the freedom to practice religion and laws that hamper religious practice are subject to [strict scrutiny](#).
- [Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission](#) (2018): The Court ruled that a state's public accommodation law compelling someone to do something they find religiously objectionable regarding same-sex marriage is a violation of the Free Exercise Clause. The Court said discrimination laws must be applied in a neutral manner with regard to religion, as religious and philosophical objections to same-sex marriage are protected forms of speech under the First Amendment.
- [Espinoza v. Montana Department of Revenue](#) (2020): The Court ruled that state tuition assistance programs that are denied to parents because their children attend private religious schools is a violation of the First Amendment's Free Exercise Clause.

To Think and To Do: The questions in this case are complex. On the one hand, a religious organization is prohibited from participating in a foster child program because the teachings of its church do not recognize same-sex marriage. On the other hand, city governments have a vested interest in prohibiting discrimination against legally married same-sex couples, wanting to foster a child. Has the City of Philadelphia substantially burdened CSS' religious beliefs? Does the City of Philadelphia have a compelling governmental interest to justify this burden? Given the precedents cited in this case, how do you think the Supreme Court will rule? Explain.

Learn MORE about this case view the [Petition for Certiorari](#); the [Brief for the Petitioner](#); the [Brief for the Respondents](#).

