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### **In Fulton Decision, SCOTUS Solidifies Expansion of Religious Exercise Rights**

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# In Fulton decision, SCOTUS solidifies expansion of religious exercise rights

By The Law, Rights & Religion Project  
June 17, 2021



*Photo by Ian Hutchinson on Unsplash*

## Press Advisory

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**Date:** June 17, 2021

**Subject:** In Fulton decision, SCOTUS solidifies expansion of religious exercise rights

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**New York, New York**—Today, the Supreme Court solidified a dramatic shift in its reading of the constitutional protections for religious liberty. The Court [ruled](#) that religious organizations that contract with local governments to provide foster care services should be exempted from compliance with city non-discrimination requirements if the city permits any discretionary exemptions from those laws. The ruling, authored by Chief Justice Roberts and joined by the

more liberal members of the Court, follows in the footsteps of recent Court decisions exempting religious practitioners from public health regulations during the COVID pandemic. These cases have established a new approach to religious exercise rights, providing them much higher protection than other constitutional rights.

The case, [Fulton v. City of Philadelphia](#), challenged governments' ability to award contracts only to organizations that agree to abide by non-discrimination rules. Specifically, the city of Philadelphia contracted with nonprofit organizations to screen and certify potential foster parents. It required these contractors not to discriminate against potential parents based on, among other things, sexual orientation. After one agency—the faith-based Catholic Social Services (CSS)—made clear that it would not certify same-sex couples, the City declined to contract with CSS for screening services.

In response, CSS sued. It claimed that under the Free Exercise Clause of the First Amendment, it was entitled to receive a contract—despite its refusal, for religious reasons, to screen same-sex parents. According to CSS, the City's refusal to grant them an exemption from its nondiscrimination requirement *itself* amounted to religious discrimination against CSS. The conflict between CSS and Philadelphia is not unique. Other social service agencies across the country have requested the right to receive government support while refusing services to Jewish, Catholic, and other families that do not meet their particular religious standards.

The Supreme Court today found for CSS, holding that the City's denial of a contract to CSS was unconstitutional. The Court focused its analysis on an existing exception to Philadelphia's nondiscrimination policy. This exception was created to allow contracting agencies to sometimes take the race or disability status of a potential parent into account when making a child placement. For example, in the one instance the City's attorney could find of Philadelphia taking the race of a family into account in its services, it declined to place a child who had used a racial slur in a family of that race. Despite the extremely limited use of the existing exception, the Court ruled that “[t]he City offers no compelling reason why it has a particular interest in denying an exception to CSS while making them available to others.”

“Today, the Supreme Court held that the public not only may, but in some cases, *must* fund organizations that do not serve us all” said **Elizabeth Reiner Platt**, Director of the Law, Rights, and Religion Project. “I fear we are on the road to increased social segregation based on religion. We have seen an increasingly successful movement to erode civil rights norms in the public marketplace. Now, the ability to parent a child may be withheld within a government program to those who do not meet particular religious standards. I do not believe that this is the way to protect religious freedom in a pluralistic democracy.”

In addition to this press release, journalists writing about the case are encouraged to review the Law, Rights, and Religion Project and Auburn Seminary's [Media Guide on Religious Liberty](#) for guidance on writing about the intersection of religious liberty and other legal rights.

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*The [Law, Rights and Religion Project](#) is a law and policy think tank based at Columbia Law School that promotes social justice, freedom of religion, and religious pluralism. The Project develops strategic thought leadership on the complex ways in which religious liberty rights interact with other fundamental rights. Sign up for our mailing list at [lawrightsreligion.law.columbia.edu/content/mailling-list](http://lawrightsreligion.law.columbia.edu/content/mailling-list) and follow us on Twitter [@LawRtsReligion](#).*