



Catholic Social Services case puts spotlight on Amy Coney Barrett's faith

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Newly minted Supreme Court Justice Amy Coney Barrett's Catholic faith, which liberals argued should keep her off the bench, will be tested Wednesday when she hears a case pitting religious liberty against LGBTQ rights.

In the case, Catholic Social Services challenged the City of Philadelphia's compelling the organization to place foster children with same-sex and unmarried couples.

Philadelphia ended adoption services through Catholic Social Services after discovering the organization only works with married different-sex couples and the church's teachings on sex and marriage.

"Given all the discussion about her religion, that will probably be one that people will be focused on," Curt Levey, president of the conservative Committee of Justice, said of Justice Barrett's role in the legal battle.

During her confirmation hearing to both the appeals court in 2017 and then to the Supreme Court last month, Justice Barrett was probed about being a devout Catholic and how her religion might affect her rulings.

She declared she'll separate her faith from the law as a justice.

Slated to kick off at 10 a.m. Wednesday, the justices will hear the case through teleconference, which the court has been doing since May because of the coronavirus pandemic. A ruling in the case is expected by the end of June when the court usually wraps up the term.

Catholic Social Services has been providing foster care for children in Philadelphia since 1917. The city began partnering with private foster care agencies in the 1950s and has been contracting with Catholic Social Services for decades.

But in 2018, after a newspaper article was published noting the organization's beliefs on sex and marriage, the city threatened to terminate its contract with Catholic Social Services unless it change its policy.

The group said their ministry is based on Catholic Church teachings and sought an injunction to prohibit the city from halting its contract, arguing that doing so would violate the First Amendment.

Catholic Social Services also has noted that it has not been approached by a same-sex couple despite the pushback that arose over its policy.

The federal appeals court ruled for the city, dismissing Catholic Social Services claim that they had been targeted specifically by city officials based on religious animus.

The group sought an emergency injunction from the high court but that was rejected in August 2018. Justices Clarence Thomas, Samuel A. Alito Jr. and Neil M. Gorsuch said at the time that they would have granted the injunction but were overruled.

The Catholic charity's appeal subsequently was granted. The high court now hears the case with the bench having two more President Trump appointees — Justice Brett M. Kavanaugh and Justice Barrett.

Catholic Social Services, in its legal filing, noted that if it is not able to perform a home study for unmarried different-sex couples or same-sex couples, it can refer them to another adoption agency in the city that will accommodate them.

“CSS is asking that it not be compelled to affirm same-sex marriages as the price of continuing a religious ministry. Just as no LGBT couples are prevented from marrying because a particular church does not perform same-sex weddings, no LGBT couples are prevented from fostering because a particular church cannot provide an endorsement,” the Catholic organization argued.

The City of Philadelphia claims taxpayer funds are used by private foster care agencies that contract with the city, and local law bans discrimination based on race or sexual orientation.

The case boils down to “the obligation to give a fair look to every prospective foster parent who walks in the door,” the city argued in court papers. “The City’s ability to impose conditions on the receipt of City funds for City services — here, conditions on who may receive those public services — is well established under this Court’s cases.”

Lawyers for Philadelphia point to the federal appeals court relying on a 1990 Supreme Court ruling in Employment Division v. Smith, which held an individual’s religious beliefs cannot excuse that person from violating a generally neutral law that applies to everyone. The ruling was authored by the late Justice Antonin Scalia, for whom Justice Barrett clerked after graduating from law school.

Court watchers are paying close attention to whether the high court overrules — or limits — the 1990 case.

Justice Barrett joining the court makes it likely Catholic Social Services will succeed, said Ilya Shapiro, publisher of the Supreme Court Review at the libertarian Cato Institute.

“The question is how broadly the court wants to go,” he said.