

A more conservative court hears same-sex foster parent case

by [Jessica Gresko](#) in the [December 2, 2020](#) issue



In October 2019, clergy protested outside the US Supreme Court building as justices heard arguments about anti-LGBTQ discrimination in the workplace. (Photo by Ted Eytan via Creative Commons license)

On November 4, the Supreme Court seemed likely to side with a Catholic social services agency in a dispute with the city of Philadelphia over the agency's refusal to work with same-sex couples as foster parents.

The case is a big test of religious rights on a more conservative court.

Catholic Social Services, which is affiliated with the Archdiocese of Philadelphia, says its religious views keep it from certifying same-sex couples as foster parents. And it says it shouldn't be shut out of a contract with the city to find foster homes for children. Philadelphia says

it requires all the foster care agencies it works with not to discriminate as part of their contract.

With the addition of three appointees of President Donald Trump—justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett—the court seems poised to extend protections for religious objections to antidiscrimination laws.

Kavanaugh, for his part, suggested there should be a way for Catholic Social Services to continue to work with foster families. The case, Kavanaugh said, requires the justices to think about how to balance “very important rights” the court has recognized: religious rights and the right to same-sex marriage.

“It seems when those rights come into conflict, all levels of government should be careful and should often, where possible and appropriate, look for ways to accommodate both interests in reasonable ways,” he said.

Even liberal justice Sonia Sotomayor seemed to recognize the court was sympathetic to Catholic Social Services. “If one wanted to find a compromise in this case, can you suggest one that wouldn’t do real damage to all the various lines of laws that have been implicated here?” she asked at one point.

As they have been doing, the justices heard arguments in the case by telephone because of the coronavirus pandemic.

During nearly two hours of arguments, several justices brought up the fact that there’s no record that any same-sex couple has ever asked to work with Catholic Social Services and been turned away. If a couple did ask, they’d be referred to another of the more than two dozen agencies the city works with, Catholic Social Services says.

The justices, seven of whom are Catholic or attended Catholic schools, also asked about other hypothetical contracts officials might make.

Justice Stephen Breyer asked what would happen if a religious organization bidding on a transportation contract wanted men and women to sit separately or women to wear head scarves.

“If there’s an agency that refuses to employ women, would the state have to contract with that agency?” Justice Elena Kagan asked at one point.

Barrett, hearing her third day of arguments at the high court, asked about a hypothetical case where a state contract with a private Catholic hospital requires it to perform abortions.

Earlier this year, before Barrett joined the court, the justices ruled 6-3 that a landmark civil rights law protects gay, lesbian, and transgender people from discrimination in employment. The opinion was written by Gorsuch, who said it was not likely to be the court's last word on a host of issues revolving around LGBTQ rights.

The case before the justices Wednesday began in 2018 after a *Philadelphia Inquirer* reporter notified city officials that two of the foster care agencies the city contracted with would not work with same-sex couples. One of the agencies, Bethany Christian Services, changed its policy.

Catholic Social Services did not, and the city stopped placing children with the agency, which sued. Catholic Social Services says it views certifying a family to be a foster family as an "endorsement of the relationships of those living in the home" and therefore its religious beliefs prevent it from certifying same-sex couples. It also doesn't work with unmarried couples.

The Trump administration has urged the Supreme Court to side with the agency, saying Philadelphia is unconstitutionally discriminating against religion. —Associated Press