

19-123 FULTON V. PHILADELPHIA, PA

DECISION BELOW: 922 F.3d 140

LOWER COURT CASE NUMBER: 18-2574

QUESTION PRESENTED:

The City of Philadelphia chose to exclude a religious agency from the City's foster care system unless the agency agreed to act and speak in a manner inconsistent with its sincere religious beliefs about marriage. The Third Circuit upheld that action under *Employment Division v. Smith*.

The questions presented are:

1. Whether free exercise plaintiffs can only succeed by proving a particular type of discrimination claim—namely that the government would allow the same conduct by someone who held different religious views—as two circuits have held, or whether courts must consider other evidence that a law is not neutral and generally applicable, as six circuits have held?

2. Whether *Employment Division v. Smith* should be revisited?

3. Whether a government violates 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?

CERT. GRANTED 2/24/2020