Fulton v. City of Philadelphia

The Challenges of Free Exercise Litigation

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Background

- Philadelphia's history of protecting residents' civil rights
- The foster care system in Pennsylvania
  - City has legal custody of children in foster care
    - Must protect the best interest of the child
  - Contracts with foster care agencies for services including determining if families are qualified for certification to be foster parents under state law
- March 13, 2018, *Philadelphia Inquirer* article
  - Attempts to address the issue
    - Steps to protect the best interest of children in foster care

The District Court Litigation

- May 17, 2018 – Complaint in District Court
  - Sixteen causes of action under federal and state law
- June 4, 2018 – *Masterpiece Cakeshop* (138 S.Ct. 1719) decided
- June 5, 2018 – Preliminary Injunction Motion filed
  - Included claims that a minor child's interests were being harmed
  - Expedited briefing schedule and hearing
- June 18 – June 21, 2018 – evidentiary hearing

District Court Decision

- CSS could not meet its burden on any of the preliminary injunction requirements.
- The City's laws and policies were neutral and of general applicability.
- The City had at least six permissible governmental objectives at issue.
- There was not targeting of CSS for religious reasons.
- The exemptions CSS attempted to argue were permitted by the City were not analogous and therefore inapplicable to this case.
- "Here, CSS seeks . . . a government services contract on terms that it deems acceptable, but unlike those cases where the government withheld essential benefits on religious grounds, CSS is not entitled to a government services contract to perform governmental work. It further bears repeating that there is no evidence in the record that either DHS or Philadelphia has withheld a new contract or contractual compensation to CSS on religious grounds."

Third Circuit Decision

The City's nondiscrimination policy is a neutral, generally applicable law, and the religious views of CSS do not entitle it to an exception from that policy. See Emp't Div. v. Smith, 494 U.S. 872, 877-78 (1990). It has failed to make a persuasive showing that the City targeted it for its religious beliefs, or is motivated by ill will against its religion, rather than sincere opposition to discrimination on the basis of sexual orientation.

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The City stands on firm ground in requiring its contractors to abide by its non-discrimination policies when administering public services. Under Smith, the First amendment does not prohibit government regulation of religiously motivated conduct so long as that regulation is not a veiled attempt to suppress disfavored religious beliefs…. [T]he current record does not show religious persecution or bias. Instead it shows so far the City's good faith in its effort to enforce its laws against discrimination.

Supreme Court Opinion

- "But CSS believes that certification is tantamount to endorsement. And 'religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.'"
- *Smith* does not apply in this case
- Philadelphia's Fair Practices Ordinance does not apply in this case
- "CSS seeks only an accommodation that will allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; it does not seek to impose those beliefs on anyone else. The refusal of Philadelphia to contract with CSS for the provision of foster care services unless it agrees to certify same-sex couples as foster parents cannot survive strict scrutiny, and violates the First Amendment."