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“The longer I live, the more convincing proofs I see of this truth—that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid?”
Benjamin Franklin

Editor’s Note: *We have not written about this week’s federal election results but have included an article at the bottom of the Flyer which we believe offers both practical and spiritual advice for your encouragement while we wait for the results.*

Supreme Court Hears Oral Arguments in Religious Foster Care Case

On November 4, the Supreme Court heard oral arguments in [Fulton v. City of Philadelphia](#), a case concerning Philadelphia’s termination of its foster care contract with Catholic Social Services (CSS) because of its beliefs about the nature of marriage and healthy family structure. CSS has served the destitute and vulnerable children of Philadelphia in various capacities for two centuries, and it has long partnered with Philadelphia to provide homes for children that have been abandoned or removed from dangerous home situations. But in 2018, Philadelphia ended its 100-year partnership with CSS because the agency holds a biblical view on the nature of marriage. Philadelphia asserted that CSS violated the city’s Fair Practices Ordinance because CSS hypothetically could not endorse or support same-sex couples by approving of them as foster parents and placing children in their care.

During [oral arguments](#), the justices were given opportunity to question the counsel representing both the City of Philadelphia and Catholic Social Services. Overall, the justices focused on the conflict between the religious liberty guaranteed by the First Amendment of the Constitution and the right to gay marriage created with the Court’s 2015 decision in *Obergefell v. Hodges*. They also clarified several factual questions, noting that no same-sex couple has ever been denied the opportunity to foster in Philadelphia, that no same-sex couple had ever approached CSS to potentially foster, and that hundreds of children currently await placement in a foster home despite the fact that the city has prohibited CSS from placing more children in homes. Justices Samuel Alito and Brett Kavanaugh made strong statements suggesting that Philadelphia was discriminating against CSS in its actions. Justice Alito, in his questions to Philadelphia’s counsel Neal Katyal, said, “If we are honest about what’s really going on here, it’s not about ensuring that same-sex couples in Philadelphia have the opportunity to be foster parents. It’s the fact that the city can’t stand the message that Catholic Social Services and the Archdiocese are sending by continuing to adhere to the old-fashioned view about marriage.” Justice Kavanaugh stated that the government must try to accommodate the interests of both religious free exercise and same-sex marriage, but that balancing effort was “not at all what happened here. . . . Philadelphia created a clash and was looking for a fight.” He called Philadelphia’s position “absolutist and extreme,” noting that they failed to secure *Obergefell’s* “explicit promise” that people of faith ought to be treated with respect and good will. As the justices indicated in oral arguments, *Fulton v. Philadelphia* will determine vital questions that arise when religious liberty and sexual rights conflict. CSS, and the foster parents with which it partners, hopes that the Court will recognize the unique good CSS does in its community and continue to uphold the Constitution that allows it to serve children in need of loving homes according to its religious beliefs. Summarizing the argument

for CSS, [Becket Senior Counsel Lori Windham](#) stated, “Religious organizations should be free to serve the public, regardless of their beliefs. The public square is big enough to accommodate everyone who wishes to do good—and that should be especially true when it comes to taking care of children in need.”

Life and Religious Liberty Election Updates in the States

On election day, several states considered ballot initiatives regarding life and religious liberty. In [Louisiana](#), voters approved Amendment 1 by a 65% majority, effectively declaring that there is no right to abortion and no state funding will cover abortions. The Love Life Amendment states, “To protect human life, nothing in this constitution shall be construed to protect a right to abortion or the tax-payer funding of abortion.” Other states also garnered pro-life victories in electing pro-life leaders: [Montana](#) voters re-elected Senator Steve Daines over pro-abortion Governor Steve Bullock who vetoed legislation which would have protected babies born alive after failed abortions, and [Ohio](#) voters elected super majorities of pro-life legislators in both chambers of the legislature. However, one pro-life initiative failed in [Colorado](#) where voters [rejected Proposition 115](#) which would have banned abortions after 22 weeks and fined any doctor who violated the order. In [Nevada](#), voters approved the Marriage Regardless of Gender Amendment, which allows marriage between couples regardless of their gender and repeals the state marriage amendment from 2002 which defined marriage to be between one man and one woman. The Supreme Court’s *Obergefell* decision essentially nullified all state marriage amendments, but in some states existing marriage amendments continue to demonstrate the tension between religious free exercise and so-called sexual freedom.

Court Rules Against Religious School Inclusion in School Choice Program

The 1st Circuit Court of Appeals has [ruled](#) against religious school participation in Maine’s high school town tuition program. The school choice program was created in 1873 to allow towns that were too small to provide high school education to direct the education funds to parents to choose a school for their children. Parents were free to choose any school with the funds, including a private religious school, until a “[flawed legal opinion](#)” in 1980 disqualified religious schools. Three Maine families sued the state, charging the exclusion of religious schools violated their free exercise of religion. Tim Keller, senior attorney for the Institute for Justice which is representing the families, pointed to the Supreme Court decision in *Espinoza vs. Montana Department of Revenue* which ruled that it is unconstitutional to exclude religious schools from participation in a neutral public program, like a school choice program, solely on the basis that the school is religious. However, in this recent ruling, Judge David Barron wrote that “sectarian schools are denied funds not because of who they are but because of what they would do with the money—use it to further the religious purposes of the inculcation and proselytization.” Keller disagreed, responding, “Today’s decision allows the state of Maine to continue discriminating against families and students seeking to attend religious schools, and we will immediately appeal to the U.S. Supreme Court.” A [similar case](#) has been filed against Vermont’s town tuition program.

In Case You Missed It:

[Weekly Market Update](#) provided by Jeff Beach of the [AACCS Investment Team at Merrill Lynch](#)

[9 Constructive Things to Do and Pray While Waiting for Election Results](#)

[AEI Webinar: Why Children Can’t Read and What We Can Do About It](#)

[Trump Establishes 1776 Commission](#)

[White House Report: Expanding Educational Opportunity Through Choice and Competition](#)