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**NCLA Asks US Supreme Court to Recognize that Administrative Policymaking Is Profoundly Unequal for Religious Americans**

*Sharonell Fulton, et al. v. City of Philadelphia, et al.*

**Washington, DC (June 3, 2020)** – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) today in the Supreme Court of the United States in *Sharonell Fulton, et al. v. City of Philadelphia, et al.* In 2018, Philadelphia abruptly terminated foster placement through Catholic Social Services (CSS) leaving foster parents like Sharonell Fulton, who has fostered more than 40 children, without CSS’s support. NCLA is deeply concerned about this decision excluding a religious organization.

Philadelphia left its policy decision to the City’s Department of Human Services (DHS)—an administrative agency. This is problematic because, in comparison with legislative policymaking, administrative policymaking is unresponsive to the interests of religion—especially relatively orthodox or traditional religion—thus rendering resulting policies unequal and unconstitutional under the the First Amendment’s Free Exercise Clause.

The Commissioner of DHS candidly revealed her prejudice against CSS’s traditional Catholic beliefs, and bluntly refused even to consider an exemption from DHS’s policy. This prejudice confirms the underlying structural problem: that the administrative policymaking process is tilted, at least against relatively orthodox or traditional religion.

This unconstitutional slant of administrative power has multiple components. First, administrative policymakers are unelected and therefore are much less responsive to the needs of ordinary Americans than representative legislators. Second, administrative power has long been devoted to ideals of rationalism and scientism, which means that it tends to be indifferent if not antagonistic to orthodox and traditional religion. Indeed, administrators are usually drawn from the knowledge class—a class defined by education—and they therefore tend to be unsympathetic or even hostile to traditional religious beliefs. As a result, even when administrative policies are equal on their face, they are unconstitutionally unequal because of the process by which they are made.

NCLA urges the Court to recognize the inequality of the administrative process for religious Americans. Equality is the right of all Americans, and religious freedom from discrimination is a foundation of the First Amendment, as the Court recognized in *Employment Division, Department of Human Resources of Oregon v. Smith*. NCLA argues that the Supreme Court should recognize the prejudice and discrimination that the Third Circuit overlooked, and it should hold Philadelphia’s resulting foster care policy unconstitutional and void.

**NCLA released the following statements:**

“Religious liberty is fundamental, and it is therefore profoundly disturbing that administrative power threatens this freedom. The administrative policymaking process is skewed against religion—at least against relatively orthodox or traditional religion—and in this case the New Civil Liberties Alliance is asking the Supreme Court to recognize the resulting inequality.”

— **Philip Hamburger, President, NCLA**

“It is time for the Court to recognize that administrative processes are imbued with inequality and that the resulting policies harm religious Americans and violate the First Amendment. Where, as here, administrative lawmaking occurs in combination with candid hostility toward religious beliefs, the process is inherently tilted against religious Americans and unconstitutional.”

— **Kara Rollins, Litigation Counsel, NCLA**

## **ABOUT NCLA**

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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