

Amy Coney Barrett May Upend Mentor Scalia On Religious Freedom

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The U.S. Supreme Court will hear arguments in early November from a Catholic foster agency alleging that its religious freedoms were violated when the city of Philadelphia axed a contract with the organization over its refusal to place children with same-sex couples.

The case, which has drawn intense interest from conservative and religious groups, presents the justices with an opportunity to reconsider a majority opinion by the late Justice Scalia, which found that laws which are equally applicable to religious and nonreligious entities cannot be challenged as violations of the right to free religious exercise.

Judge Amy Coney Barrett clerked for Justice Scalia in the late 1990s and has praised his judicial philosophy, but some legal experts believe it could be her who upends Justice Scalia's long-standing decision curtailing religious exemptions to state and local laws.

Speaking with Law360, David Flugman—who penned an amicus brief in support of the city of Philadelphia in the underlying case—explained: "In a universe where the court existed as it did a month ago, you could see various pathways for the court, particularly a five-justice majority with the chief, to come out feeling that they wouldn't need to reach the big question of whether [the decision] should be overturned."

With Judge Barrett on the court, however, Flugman said it could be easier to reach a five-justice majority in favor of a sea change when it comes to Smith.

"If the chief is no longer the vote that's being courted the most and instead you have five justices who want to do something bigger, then there's a possibility you'll actually see a decision that goes more towards the larger questions that the right wing wants to see resolved in their favor," he said.

Read the [full interview in Law360](#).

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Practices

- Public Interest and Pro Bono
- Appellate