Section V — Family, Faith, & Civil Society

What Courts Protect When Government Is Not the Only Actor

A free society is not defined solely by its government. It is sustained by a network of institutions that exist prior to, alongside, and independent of the state—families, religious organizations, schools, charities, and voluntary associations. These institutions transmit values, form character, and provide services that government cannot replicate without diminishing liberty.

The Constitution presupposes their existence. It protects the free exercise of religion, limits government intrusion into family life, and restrains the state from monopolizing education or moral formation. Courts play a critical role in enforcing those boundaries. When they do so faithfully, civil society flourishes. When they do not, the state expands into spaces once governed by conscience, community, and parental authority.

In Wisconsin, many of the most consequential legal conflicts involving family and faith have reached the Supreme Court not through legislation, but through litigation. Disputes over parental rights, religious liberty, school choice, adoption policy, and the rights of faith-based institutions increasingly turn on how judges understand neutrality, equality, and constitutional freedom. These cases test whether the law will protect pluralism—or compel uniformity.

Judicial philosophy matters profoundly in this context. A court that treats religious liberty as a disfavored exemption, or family structure as an outdated social construct, will interpret constitutional protections narrowly. A court that views state policy as a vehicle for reshaping private institutions will permit regulation to intrude where restraint was once the rule. Over time, the distinction between public authority and private autonomy erodes.

This section examines how the Wisconsin Supreme Court's decisions affect the institutions that mediate between the individual and the state. It explores legal challenges involving faith-based charities, parental choice in education, marriage and adoption policy, and the rights of families to raise children according to their beliefs. It also considers how administrative power—when unchecked by courts—can be used to condition participation in public programs on the surrender of religious identity or moral conviction.

These conflicts are often framed as culture-war disputes. In reality, they are constitutional disputes. The question is not whether society will change, but **who decides how it changes**—elected representatives accountable to voters, or courts and agencies insulated from them. A judiciary that respects constitutional limits protects space for disagreement. A judiciary that substitutes its own values narrows that space.

The materials that follow underscore a central truth: **civil society depends on judicial restraint as much as economic liberty or electoral integrity**. When courts safeguard the autonomy of families and faith-based institutions, they preserve the diversity and freedom that define a pluralistic society. When they do not, the reach of the state extends quietly but relentlessly into the most personal domains of life.