



INSTITUTE FOR
REFORMING GOVERNMENT



WISCONSIN SUPREME COURT CAN PROTECT OR DAMAGE FAMILY VALUES & FREEDOM FOR PEOPLE OF FAITH

OVERVIEW

For millions of Wisconsinites, their religious faith is central to their lives. They are grateful to God to live in a land where their religious freedom is protected in the very first clause of the U.S. Constitution. At the same time, they look around contemporary culture and see their values under attack from transgender activists, public schools, DEI, and the Left. The courts are often where questions around abortion, parents rights, and religious liberty are finally resolved.

WHAT YOU SHOULD KNOW

- » Right now, the United States Supreme Court is considering whether to reverse a 4-3 decision by the liberal majority on the Wisconsin Supreme Court to permit a state agency to tax church-affiliated charitable ministries because they aren't "churchy" enough. The liberal majority found that Catholic Charities had to pay taxes even though it is an integrated ministry of the Catholic Diocese of Superior. If the Wisconsin Supreme Court's decision stands, ministries that serve individuals with physical and developmental disabilities will have to start paying taxes to the state Department of Workforce Development.
- » The Left is on a relentless campaign to transform American culture in ways that would wipe out religious liberty and parents rights for millions of Wisconsinites. Biological boys in girls' sports, biological boys in girls' bathrooms, "social transitions" at school hidden from parents—across the board, but especially in public schools, the Left is on a mission to prioritize transgender rights over any

WHAT COULD HAPPEN

Several years ago, WILL filed a case on behalf of parents challenging whether the Madison school district can have an explicit policy barring teachers from telling parents when children ask to "socially transition" between genders at school but to hide that decision from their parents. Many other school districts across Wisconsin have implicit or explicit policies along the same lines. One of those policies is likely to end up back in front of the Wisconsin Supreme Court.

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WHAT'S NEXT

The Wisconsin Supreme Court has two cases pending before it right now on abortion. The first, brought by Attorney General Josh Kaul, challenges the legality of the state's 1849 criminal statute against abortion. The second, brought by Planned Parenthood, asks the court to find a constitutional right to abortion in the state constitution, essentially recreating the *Roe v. Wade* regime on the state level.

The Wisconsin Supreme Court has a case pending before it right now to determine whether the Legislature has the power to check the unelected bureaucrats at a state agency who want to tell faith-based counselors what they can and can't say to their patients struggling with same-sex attraction. A legislative committee has suspended a rule that would stop Christian counselors from providing counseling in line with their faith and the faith preferences of their patients. The legality of the Legislature's decision is now before the Wisconsin Supreme Court.

LEGAL BACKGROUND

The Wisconsin Supreme Court used to be extraordinarily protective of religious liberty. In a case called *State v. Miller*, 202 Wis.2d 56 (1996), the Wisconsin Supreme Court first recognized that the Wisconsin Constitution is more robust in its provision protecting religious liberty. The Court confirmed that more recently in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, with a ringing endorsement of religious liberty. Several years later, a plurality opinion for the Court upheld the right of religious organizations to hire and fire their own leaders free from judicial scrutiny. *DeBruin v. St. Patrick Congregation*, 2012 WI 94. More recently, during COVID, a majority opinion by Justice Rebecca G. Bradley recognized the importance of the religious liberty burden imposed unconstitutionally by overly restrictive public health orders. *James v. Heinrich*, 2021 WI 58.

Most recently, the Wisconsin Supreme Court upheld a law that preferences married couples in adoption proceedings. Justice Jill Karofsky agreed that the law had a "rational basis," and was therefore constitutional, but nevertheless wrote a concurring opinion attacking the law's "outdated values that fail to reflect the practical realities of modern family life." She criticized "an outdated set of values positioning marriage as the moral center of family and society." She continued, "Times have changed, of course, but the justification that marriage is the moral core of society and the family is as weak as it ever was." She concludes, "The notion that marriage serves as the foundation of society is at best outdated, and at worst misogynistic." *AMB v. Circuit Court for Ashland County*, 2024 WI 18.

ZOOM IN

As the DEI ideology has taken hold of more and more institutions, we see increasing conflict between the free speech, religious liberty, and parental rights of people of faith and the radical agenda of the Left. Those conflicts often end up in Wisconsin's courts, where judges are called upon to either enforce contemporary social norms or longstanding constitutional freedoms. These conflicts will not stop anytime soon, making who sits on the Wisconsin Supreme Court all the more important.

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