Opinion
NCR Voices
SCOTUS building

The Supreme Court is pictured in Washington Oct. 21. The nation's highest court is scheduled to hear Dec. 4 a challenge to a Tennessee state law banning certain types of medical or surgical gender reassignment procedures for minors who identify as transgender, the high court's first major step toward weighing in on the controversial issue. (OSV News/Reuters/Kevin Mohatt)



by Michael Sean Winters

View Author Profile

Follow on Twitter at @michaelswinters

Join the Conversation

Send your thoughts to *Letters to the Editor*. Learn more

December 4, 2024
Share on BlueskyShare on FacebookShare on TwitterEmail to a friendPrint

This morning, the U.S. Supreme Court will hear oral arguments in the case *United States* v. *Skrmetti* in which the court is asked to answer the question: "Does a Tennessee law restricting certain medical treatments for transgender minors violate the Equal Protection Clause of the 14th Amendment?"

The Catholic Church has some compelling interests in this case, which will impact the legal parameters within which the culture wars are fought. The amicus curiae brief filed by the U.S. Conference of Catholic Bishops, however, articulates a legal stance that undervalues the fact that ours is a pluralistic culture. In such a culture, the church's witness is best served when it overreaches in charity, not in legal

grasping.

The brief does a reasonably good job explaining what the Catholic Church teaches about gender identity and why it opposes medical interventions of the kind the Tennessee law would prohibit. It repeatedly notes that the church's teachings do not rest exclusively on divine revelation but "on the basis of principles grounded in reason and revelation, long-held and universally applied by the Catholic Church."

The problematic argument advanced in the U.S. bishops' brief is that the court needs to uphold Tennessee's law in part to avoid the legal difficulties the Catholic Church continues to face after previous court decisions altered the legal landscape in the culture wars. The brief notes that the court acknowledged their decisions on same-sex marriage and gender ideology could pose a challenge for religious believers. "To temper those consequences, the Court made clear that its rulings i*n Obergefell*, *Masterpiece Cakeshop*, and *Bostock* should not be construed to undermine the ability of religious institutions and individuals to live out their faith," the brief states.

Noting the religious liberty interests of those who hold more traditional views in their decisions is not enough, the U.S. bishops' conference argues. "Despite these assurances, the Catholic Church and other Christian faithful have faced an onslaught of litigation using those cases as a sword to attack the ability of religious entities and individuals to adhere to bedrock teachings regarding marriage, sexuality, and the human body." They warn that the current case will provoke yet another wave of litigation.

Related: Supreme Court gets set for oral arguments over state's gender transition ban for minors

Culture warriors may not like it, but in America, we resolve these kinds of issues in the courts. The "onslaught of litigation" is the cost of maintaining a free society. *Obergefell* legalized same-sex marriage, but it didn't overturn the free exercise clause of the First Amendment. It articulated the principle that same-sex marriage is a right, but could not, in advance, deal with every conceivable situation in which that principle ran up against other constitutional principles.

Obergefell did not decide in advance whether a baker needed to make a cake for a same-sex wedding. That issue arose in *Masterpiece Cakeshop*, which actually engaged the free speech guarantee in the First Amendment as much as the religious liberty interests of the baker.

The court's decision in *Bostock* opened a new front in litigation to determine where to draw the line between the free exercise rights of traditional believers and the court's decision that gender identity and sexual orientation are protected classes under Title VII of the 1964 Civil Rights Act. The court, in *Bostock*, did not overturn its prior ruling in Hosanna Tabor, which granted broad immunity from employment discrimination suits to religious organizations. Drawing the line between the two rulings requires further litigation.

No one likes to pay legal expenses, but is there an alternative? Would it be better for the country if one side or the other simply won the culture wars? Would that constitute freedom? Or justice? The U.S. bishops' conference brief is asking the court to let it run the table. That wouldn't be good for the culture and I doubt it would really be good for the church.

Commenting on the *Hobby Lobby* decision, which extended religious liberty protections previously reserved for churches to for-profit corporations, Boston College law and theology professor Cathleen Kaveny wrote, "In a pluralistic society, the religious freedom of one party needs to be balanced against the rights and the legitimate expectations of others." This is what the U.S. bishops' lawyers never grasp or admit. It is one thing to claim an exemption from a generally applicable law on religious grounds. Insisting, as it does in the Tennessee case, that the court agrees with the church on the merits because the bishops' conference can't be bothered going to court to sustain its exemption makes the church look like a bully or a conniver.

Strangely, the U.S. bishops' brief does not highlight the rights of parents to make health care decisions for their children. In the case at issue, it is clear why they want to support an absolute prohibition on medical interventions, but they should have acknowledged more clearly that the church generally defers to parents in such decisions.

Nor does the brief highlight the conscience rights of health care workers to not participate in procedures that they believe are immoral. This gets tricky: Patients have a right to expect health care providers to do what the patient wants to some degree, but allowances should be made for a nurse who doesn't want to assist in an abortion, for example.

The Supreme Court favors religious liberty, but the argument advanced by the U.S. bishops' conference will prove a bridge too far. Religious liberty is a great thing, a civilizational achievement. It can be threatened from without, but also from spurious, overreaching arguments from within. The U.S. bishops' brief, if it were adopted, would give religious liberty a black eye.

Advertisement

A version of this story appeared in the **Dec. 20, 2024-Jan. 16, 2025** print issue.